



**Arbitration CAS 2019/O/6552 Phillip Shinnick v. International Association of Athletic Federations (IAAF), award of 21 May 2021**

Panel: The Hon. Hugh Fraser (Canada), Sole Arbitrator

*Athletics (long jump)*

*Request for ratification of a jump as a world record*

*Duty to comply with the rules established to maintain objectivity and a level playing field*

*Proper interpretation of Rule 24(g) of the 1963 IAAF Rulebook*

1. According to the relevant portions of Rule 24(g) of the 1963 IAAF Rulebook, for all records up to 220 yards and for the long jump and hop, step and jump, information as to wind conditions must be available. The period for which the wind component shall be measured in jumping events is 5 seconds. The fact that, during a competition, only one anemometer was available to measure the wind conditions and that the meet officials used subjective judgement to determine who should have the benefit of the anemometer reading and who should not, is inconsistent with the objectivity and level playing field argument that was the justification for the introduction of Rule 24(g).
2. Rule 24(g) requires the certification of the force and direction of the wind for a period of five (5) seconds, but does not state precisely how the wind is to be measured. If the intent of Rule 24(g) was that only wind readings obtained by an anemometer would be valid, the rule could have and should have been written to include those words. A proper interpretation of Rule 24(g) as it existed in 1963 must therefore be that satisfactory verification of the wind direction and speed had to be provided in order for a long jump record to be recognized and ratified, and such verification was not limited to measurement by an anemometer, but could also be done by other credible evidence, such as affidavits of the meet officials, scientific tests, contemporaneous newspaper accounts of the competition, etc.

## **I. PARTIES**

1. Dr. Phillip Shinnick (the “Claimant”) competed internationally for the United States during the 1960’s and early 1970’s in the sport of Track & Field (also known as Athletics). He represented his country in the long jump competition at the 1964 Tokyo Olympics. On 25 May 1963, he jumped 8.33 meters in the long jump, a performance which would have exceeded the world long jump record at the time, had it been ratified.

2. The International Association of Athletics Federations, (the “Respondent” or “IAAF”) is the international governing body for the sport of athletics. In June 2019, their name was changed to World Athletics. The organization has its headquarters in Monaco.

## I. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 25 May 1963, Phillip Shinnick, then a 20-year old sophomore athlete at the University of Washington, jumped 8.33 meters in the long jump at the Modesto Relays in Modesto, California, a performance which exceeded the existing world long jump record of 8.31 meters set by Igor Ter-Ovanesyan of the USSR.
5. In his junior year at the University of Washington (“University”), the Claimant was named to the National Collegiate Athletic Association (“NCAA”) All-American team and was also named to the United States Olympic team for the Tokyo Olympic Games. As a senior athlete in University, he had the second highest high jump (6’11” – a University of Washington record) in the National Championships. Thereafter, Dr. Shinnick competed for another nine years at a national and international level.
6. At the time of the long jump which is the subject of this proceeding, the 220-yard low hurdles race was also taking place. There was only one wind measurement gauge in use at the Modesto Relays in 1963 and this wind measurement instrument (“anemometer”) was being used to measure the wind velocity for the low hurdles race.
7. The long jump runway was parallel to the strait way for the 220-yard hurdles race. The wind reading for the low hurdles race was 1.6m/second. As the wind reading device was being used for the race on the track, and was therefore not positioned to record the wind as the Claimant took his potential record-breaking jump, no official wind reading was taken for the 8.33 meter jump.
8. Rule 24(g) of the 1963 IAAF Rulebook required that there had to be an official wind measurement indicating that the wind following the jumper was 2 meters per second or less in order for the jump to be considered for world record ratification.
9. The prior rule (Rule 26) in the IAAF’s 1936 rulebook had provided that a long jump performance could only be recognized as a world record if it was *“measured with a steel tape by at least three Field Judges and supported by the affidavits of at least six officials certifying as to the place, time of day, state of weather, condition of track or field, force and direction of wind, level or gradient of ground,*

*weight, measurement and material of implements, and correctness of announced time or distance*". In relation to the wind, six officials had to certify that the competitor did not get "*an assistance from a wind blowing at his back, either directly or in a slanting direction. For this purpose, a following wind exceeding 2 m/sec is considered to be of assistance to the competitor*".

10. The IAAF had concerns that Rule 26 called for a subjective assessment by meet officials of the force and direction of the wind. At the 1960 IAAF Congress, delegates approved a proposal to the Technical Committee to add the provision that for all records up to 220 yards and for the long jump and hop, step, and jump, information as to wind conditions had to be available. The new proposal also required that the wind must be measured in jumping events for a period of 5 seconds.
11. A number of officials at the 1963 Modesto Relays event believed that the wind behind the Claimant's 8.33 meter jump was within the permissible 2m/second limit and should have been considered a world record. However, they acknowledged that the wind gauge was not in place by the long jump runway when the jump took place and therefore no specific measurement of wind was taken for Dr. Shinnick's jump.
12. Forty years later, in 2003, the Claimant undertook research and obtained affidavits from the surviving meet officials. He also commissioned a scientific study in a Government Wind Tunnel laboratory. The evidence gathered by Dr. Shinnick was then submitted to the USA Track and Field ("USATF") in order to have his long jump recognized retrospectively as a U.S. national record, standing from 25 May 1963 to 23 September 1964.
13. USATF thereafter approved Dr. Shinnick's 1963 jump as a retrospective American record. By letter dated 10 December 2003, USATF formally requested that the IAAF ratify the USATF long jump record as a world record at the time, and submitted documentation in accordance with the World Record Application procedures.
14. In a letter dated 28 April 2004 addressed to the Claimant, the Respondent advised Dr. Shinnick that the application for ratification of the World Record had been reviewed during the IAAF Council meeting on 27 and 28 March 2004, and a decision had been made to deny his application because "*the criteria set out by the IAAF Rules were not met and ... in the absence of a wind measurement, your performance cannot be ratified as a world record*".
15. On 7 September 2018, the Claimant submitted a second application to the IAAF for retrospective recognition of his 8.33m jump as a world record for the period 25 May 1963 to 23 September 1964. This second application also acknowledged that the one and only anemometer in use at the Modesto Relays had momentarily been removed from the long jump but contended that contemporaneous reports and subsequent statements by meet officials supported the application.
16. This second application was initially reviewed by the IAAF Technical Committee and the Committee concluded that they could not retroactively accept the performance as a World Record because the rules in force at that time (1963) clearly stated the requirement of wind measurement had to be adhered to. On 16 January 2019, the Technical Committee referred

the matter to the IAAF President and CEO for consideration in accordance with Rule 260.9 of the IAAF Competition Rules.

17. On 14 March 2019, the IAAF President, Lord Sebastian Coe and the CEO, Jon Ridgeon wrote to the Claimant, advising him that the IAAF maintained the position that was stated in 2004 that the long jump of 8.33 meters could not be ratified as a World Record because the requirements of the rule in force at the time were not met.
18. The parties agree that the Rule which was in effect at the time of the Claimant's long jump is Rule 24(3) and 24(4) which state:

*“3-A World Record shall be accepted if the application form is submitted by the member where the Record was made and is certified by the Referee, Judges and Recorder of the Meeting as to:*

- place*
- time of day*
- state of weather*
- condition of track or field*
- force and direction of wind*
- level or gradient of ground*
- correctness as to the distance covered by the competitor in a race*
- correctness of announce time, distance or height, weight, measurement and material of implement and that the athletic rules of the I.A.A.F. have been strictly followed.*

*4.(g) For the 200 metres and 220 yards (including hurdles) there shall be two separate classes of records. Those made on a straight course, and those on a course with bends.*

*Records over these distances made on tracks of more than 440 yards perimeter, or not started on a perimeter, shall be classified as made on straight courses.*

*No record at any distance over 220 yards shall be recognized if made on a track exceeding 440 yards in perimeter or carrying more than 8 lanes, or not started on some part of the perimeter.*

*For all records up to 220 yards and for the long jump and hop, step and jump, information as to wind conditions must be available. If the component of the wind measured in the direction of the racing behind the competitor exceeds 2 m.(6ft.6in.) per second the record will not be accepted.*

*The periods for which the wind component shall be measured are as follows; from the report of the pistol:*

	<i>Seconds</i>
<i>80 m. hurdles</i>	<i>10</i>
<i>100 m.</i>	<i>10</i>
<i>110 m. or 120-yard hurdle</i>	<i>10</i>
<i>200 m. straight and 220-yard hurdles</i>	<i>20</i>

*In 200 metres or 220 yards (including hurdles) run on a curve, the component shall be measured for a period of 10 seconds, commencing as the runners enter the straight.*

*In jumping events it shall be measured for a period of 5 seconds.*

*In each case the average wind speed during the prescribed period will be calculated”.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

19. On 29 October 2019, the Claimant filed a Request for Arbitration with the Court of Arbitration for Sport (“CAS”), Ordinary Arbitration Division, in accordance with Article R38 of the Code of Sports-related Arbitration (the “Code”). In his Request for Arbitration, the Claimant proposed that this procedure be referred to a Sole Arbitrator.
20. On 13 November 2019, the Respondent confirmed its agreement to refer this procedure to a Sole Arbitrator.
21. On 12 December 2019, in accordance with Article R39 of the Code, the Respondent filed its Answer to the Request for Arbitration.
22. On 8 January 2020 the CAS Court Office, on behalf of the President of the CAS Ordinary Arbitration Division confirmed the appointment of the Hon. Hugh L. Fraser, Judge, in Ottawa, Canada, as Sole Arbitrator.
23. On 13 March 2020, in accordance with Article R44.1 of the Code, the Claimant filed his Statement of Claim.
24. On 20 April 2020, in accordance with Article R44.1 of the Code, the Respondent filed its Statement of Defence.
25. On 9 June 2020 the Respondent confirmed that although it was unable to print, sign and return the Order of Procedure, it agreed to its content.
26. On 10 June 2020 the Claimant signed and returned the Order of Procedure.

27. On 15 June 2020 at 15:00 CET a hearing was held by videoconference. The Sole Arbitrator was present and was assisted by Brent J. Nowicki, Managing Counsel for the CAS. Also present at the hearing were the following individuals:

For the Claimant:

- Doctor Phillip Shinnick (Claimant)
- Alexander Hartnett (Counsel)
- Grant Birkinshaw

For the Respondent:

- Jonathan Taylor QC (Counsel)
- Arantxa King (Counsel)
- Imre Matrahazi (Observer)
- Vijay Parbat (Observer)

28. At the outset of the hearing, the Parties confirmed that they had no objection to the appointment of the Sole Arbitrator; that they had agreed to proceed by way of videoconference; and, that they had received a fair hearing and had been given the opportunity to fully present their case.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. The Claimant's Submissions**

29. Dr. Shinnick submits that (i) the documents and affidavits that he has provided in support of his claim clearly establish that his long jump was not impermissibly aided by wind; (ii) that the jump qualified as a world record at the time; (iii) that he complied with the 1963 Rule 24; and (iv) that the necessary details for ratification of his world record were provided to the IAAF.
30. Furthermore, Dr. Shinnick submits that there is nothing in the 1963 IAAF Rule 24 that states how the 2.0m/s wind is to be measured and that the measurement of wind did in fact occur on 25 May 1963 as is set forth in the affidavit of the Meet officials.
31. The Claimant also submits the anemometer was in fact used to measure wind velocity with regard to the 220-yard low hurdles event at a point which was in proximity to and parallel to the runway used for his long jump. The Claimant maintains that the wind measurement by such anemometer occurred simultaneously with his jump, thus satisfying the dictates of Rule 24.
32. The Claimant acknowledges that Rule 24(g) of the 1963 IAAF Rulebook is applicable and was in force in May 1963 and that in accordance with the Rule, *"there had to be an official wind measurement showing that the speed of the wind following the jumper was 2 metres per second or less"*.

33. However, the Claimant submits that the requisite compliance and measurement set out in Rule 24(g) took place based on meet official's affidavits which included the objective observation of the 25 May 1963 long jump by informed officials.
34. Dr. Shinnick further submits that the word "anemometer" is not found in the 1963 rules, and a measurement by anemometer was just one way in which the force of the wind could be measured in order to satisfy the requirement of Rule 24(g).
35. The Claimant also submits that the IAAF acted improperly by referring this matter to their Technical Committee rather than to the IAAF Council as is contemplated by Rule 260.9 of the 2018-2019 IAAF Competition Rules.
36. In addition, the Claimant submits that the evidence submitted by him was sufficient for the USATF to ratify his long jump at the Modesto Relays as an American record and in so doing the National governing body were clearly satisfied that the applicable rules had been complied with.
37. In terms of the "five second" requirement, the Claimant submits that the referees were at the long jump area for the duration of the entire event and were in the best position to determine a wind measurement for the long jump in the absence of an instrument reading.
38. The Claimant requests that the Sole Arbitrator order the IAAF to certify his jump of 8.33 meters on 25 May 1963 as a world record at that time.

## **B. The Respondent's Submissions**

39. The Respondent's initial submission is that Rule 24(g) of the 1963 IAAF Rulebook is clear: an official measurement has to be taken specifically of the wind prevailing behind the jumper as he runs down the track, for a period of five seconds, and that measurement has to show that the average wind speed over that five seconds was less than 2 m/s.
40. The Respondent also submits that the Claimant's proposed interpretation of 1963 Rule 24(g) is clearly wrong and would render the changes made to the old rule superfluous, and contradict the clear purpose of the changes, which was to ensure objectivity, consistency and accuracy.
41. The Respondent submits that everyone at the Modesto competition, including all of the meet officials, and even the Claimant, understood Rule 24(g) as requiring measurement of the wind by a wind gauge.
42. The Respondent further submits that even if affidavits from the meet officials attesting to their human observation that the wind was within the permissible limits at the time of the jump were good enough, the Claimant has not met this requirement either, because he has not produced the six affidavits required by the 1936 rule.
43. The Respondent further submits that there is no scope to depart from that requirement because the credibility of the sport and its world records depends on strict application of the

relevant rules, to ensure objectivity and consistency of treatment, and to avoid allowing subjective judgment and therefore potential bias, whether conscious or unconscious to creep in.

44. The Respondent adds that there is no scope to accept a wind measurement taken during a different event, at least 15 to 20 meters away from the jump in question. The Respondent also notes that there was a conflict in the record as to whether the long jump did in fact take place during the 220-yard hurdle race.
45. The Respondent maintains that it is imperative that the requirements for recognition of a performance as a world record are entirely objective and capable of clear and consistent application. It states that performances can only be properly compared if every performance is judged and measured by the same set of objective criteria, and not by subjective criteria that are potentially susceptible to unconscious bias.
46. The Respondent submits that this case shows why the IAAF has to insist on applying the objective criteria set out in its rules. To depart from that strict approach is to open the door to conjecture and subjectivity, and from there to a lack of consistency that means the playing field is no longer level for all competitors.
47. The Respondent also submits that it is required to apply its technical rules strictly in accordance with their letter and their spirit. If it fails to do so, to the benefit of one competitor, it could be sued by other competitors who are prejudiced (e.g., the previous record holder, whose reign as world record holder is cut short). Everyone must be treated entirely equally, no exceptions may be allowed, however sympathetic the story. Therefore, the IAAF submitted that this challenge to its decision not to recognize the Claimant's 8.33 meter jump as a world record must be dismissed.
48. The Respondent has also submitted that there was no procedural breach when its President and CEO referred the matter to the Technical Committee rather than to the IAAF Council because Rule 260.9 of the 2018-19 IAAF Competition Rules authorize those two officials to ratify World Records and if they are in any doubt whether or not the performance should be ratified, only then would the case be referred to the Council for decision.
49. On the basis of the foregoing submissions, the Respondent requests that the challenge to its decision not to recognize the Claimant's 8.33 meter jump on 25 May 1963 as a world record be dismissed.

## V. JURISDICTION

50. The CAS Ordinary Division has jurisdiction to hear and determine this matter in accordance with IAAF Rule 60.5 which reads as follows:

*This Rule 60.5 relates to any legal dispute of any kind whatsoever arising between the IAAF on the one hand and any Member, Area Association, athlete, athlete support personnel or other person who is subject to the IAAF Constitution and/or any of the IAAF Rules or Regulations on the other hand, in relation*

*to the IAAF Constitution and/or any IAAF Rule or Regulation and/or any IAAF decision or act or omission, howsoever arising, that is not covered by the dispute resolution provisions of the IAAF Constitution or any IAAF Rules or Regulations (a "Dispute"). Each Dispute shall be referred to arbitration before the CAS, to the exclusion of any other court or forum. The CAS will bear and determine the Dispute definitively in accordance with relevant provisions of the CAS Code of Sports-Related Arbitration. The law governing the Dispute will be the IAAF Constitution and IAAF Rules and Regulations, with the laws of Monaco applying subsidiarily. Unless the parties agree otherwise, the arbitration proceedings before the CAS will be conducted in the English language before a Panel consisting of three arbitrators. Pending determination of the Dispute by the CAS, any provision of the IAAF Constitution or IAAF Rule or Regulation or decision or act or omission under challenge will remain in full force and effect unless the CAS orders otherwise. The ultimate decision of the CAS on the merits of the Dispute will be final and binding on all parties, and all parties waive irrevocably any rights they might otherwise have to any form of appeal, review or other challenge in respect of that decision, except as set out in Chapter 12 of the Swiss Federal Code on Private International Law.*

51. Separately, the Parties confirmed jurisdiction by agreeing to the Order of Procedure. Both parties also confirmed that they were willing to proceed before a Sole Arbitrator.

## **VI. ADMISSIBILITY**

52. The Respondent waived any argument that the statute of limitations has run on the Claimant's claim that his 25 May 1963 jump should be recognized as a world record and agrees that the Claimant should have his claim determined on its merits by the Court of Arbitration for Sport.

## **VII. APPLICABLE LAW**

53. Article R45 of the Code provides as follows:

*The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide ex aqua et bono.*

54. The parties have determined that the law governing this dispute will be the IAAF Constitution and IAAF Rules and Regulations, with the laws of Monaco applying subsidiarily.

## **VIII. MERITS**

### **A. The Issue**

55. The issue in this dispute has been well identified. The Claimant, Dr. Phillip Shinnick contends that the decision by the IAAF not to retrospectively recognize his 8.33 meter long jump on 25 May 1963 as a world record is erroneous and must be overturned. The Respondent, IAAF, while very sympathetic to the Claimant's cause, and with admiration for his multi-decades pursuit of this cause, nevertheless maintains that Rule 24(g) of the 1963 IAAF Rulebook was

not complied with, in that there was no official wind measurement of the jump, and it can therefore not be recognized as a world record at the time.

56. The parties agree that Rule 24(g) of the 1963 Rulebook is applicable and was in force in May 1963. The Claimant's argument is that the requisite compliance and measurement standards have been met by the evidence provided by him in support of his world record application.

**B. What does Rule 24(g) say?**

57. The relevant portions of Rule 24(g) of the 1963 IAAF Rulebook state that for all records up to 220 yards and for the long jump and hop, step and jump, **information as to wind conditions must be available** (emphasis added). If the component of the wind measured in the direction of the racing behind the competitor exceeds 2m. (6 ft. 6 in.) per second the record will not be accepted. The period for which the wind component shall be measured in jumping events (is) 5 seconds. In each case the average wind speed during the prescribed period will be calculated.

**C. How is Rule 24(g) to be interpreted?**

58. As the Claimant has indicated, Rule 24 does not mention that information as to wind conditions must be measured using an anemometer. There is reference in the rule to the need to calculate the wind speed for a period of 5 seconds. However, the rule does not state how the calculation is to be achieved. Both parties acknowledge that an anemometer is a device that is capable of performing such a calculation and it is a device that has been utilized to calculate wind direction and force at athletics competitions for decades. But Rule 24(g) as written in 1963 did not specify how the average wind speed was to be calculated.

**D. Was compliance with Rule 24(g) possible in 1963?**

59. In its submission, the Respondent highlighted the fact that the rules regarding the ratification of world records were changed at the 1960 IAAF Congress to ensure objectivity and consistency of treatment of athletes and to avoid allowing subjective judgment and therefore potential bias to creep in. Those are laudable goals. But on the facts presented in this case, the meet officials presiding at the Modesto Relays competition in 1963 did not treat all athletes equally and used subjective judgement to determine who should have the benefit of an anemometer reading and who should not.
60. The letter written by the Modesto meet director, Mr. Tom Moore, on 5 August 1994 explains the subjective thinking that resulted in the absence of any scientific instrument that could be used to measure the Claimant's long jump.

*At the time of your turn to jump the long jump, the officials switched to the running event because they did not think you had a chance at any record. No one told them not to record your jump, but I think that is what happened. I also noted when your mark was announced, I was very elated and thought for sure that we had another world record, because the wind was barely negligible [sic] at the time. I was very disappointed*

*when Dr. Glover told me that he had no wind reading, I conferred with our referee, Charlie Hunter, and he stated that he had to report the fact that the wind gauge was not operating at the time of your jump. There was a breeze, however slight, off and on during the meet and some of the running events had over the allowable reading of about one mile per hour. A strong breeze came up later in the evening. I have regretted this happening all these years, also, as I have always felt that the wind was under the allowable and you should have had a world record. It is also something that Dr. Glover had to live with because he also thought that it was fairly calm at the time of your jump.*

61. Dr. Leon Glover Jr., one of the senior officials at the Modesto meet wrote as follows in an affidavit included in the evidentiary record:

*It was not yet standard practice - even for major meets such as this one - to measure the specific wind for every jump of every jumper. (Shinnick's jump changed that). For earlier meets in Modesto as well as this one, it was our practice to measure the wind for all the required events and to measure the wind on the jumps of high level jumpers - as determined by consultation with Mr. Tom Moore (also now deceased); May 2002), the meet director. For this meet and essentially for all his competitions at Modesto, all the jumps of Mr. Ralph Boston got wind measurements as he was jumping fairly consistently at world record distances. Dr. Shinnick was not yet known to be capable of similar distances so his jumps did not have wind measurements. This choice had to be made as we only had 1 wind gauge available and the gauge had to be moved 15-20 meters (from its straightaway race position) to the correct position for measuring Mr. Boston's jumps. [...] At the time of Dr. Shinnick's record breaking jump, we were both (my father and I) by the gauge a few feet from the takeoff board as a running race requiring wind had recently concluded. Dr. Shinnick completed his jump, which measured 8.33 meters so the head LJ official and Mr. Tom Moore, meet director, came to us to ask for the wind reading (for the record application). We had to state that we had not had the gauge in place by the LJ runway to take a reading, so no measurement was made in the normal manner at the exact time of his jump. [...] As scientists and experienced T&F officials we were dismayed not to have a wind gauge reading to provide for the record application. However, we were able to accurately judge, from our senses and our experience that there was no wind during the jump. Thus, it was our opinion then, and is now, that Dr. Shinnick's jump at Modesto was legal and a world record.*

62. There is no suggestion that Tom Moore, Leon Glover Jr. or Leon Glover Sr. acted with any mala fides towards Dr. Shinnick. Nevertheless, it is clear that with the knowledge that only one wind gauge or anemometer was available for use at the competition, they determined not only which event would have the benefit of the device, but went even further to subjectively decide which athletes would receive the benefit of the use of the device.
63. The practice in 1963 as indicated by Mr. Moore was to measure the wind for all of the required running events. It was not standard practice to measure the specific wind for every jumper. The rules as these meet officials understood them at the time did not require consistency in terms of how the wind was to be measured for all events. These meet officials were well aware of the fact that running events on the track could take place simultaneously with field events such as the long jump or hop, step and jump (which later became the triple jump). It's well documented that Jesse Owens set four world records in a 45-minute span in 1935. His long jump and 220-yard world records were set just nine minutes apart.

64. An experienced official such as Tom Moore would have been aware of the possibility of a world record being set in the 220-yard low hurdles race or in some other sprint race that took place in Modesto. He decided that the running events would have priority with a wind gauge being used for all of those races. In the long jump, only those recognized names or those with prior marks that made them a threat to set a world record, would benefit from the use of the anemometer.
65. In so doing, Mr. Moore and the other officials left open the possibility of some inconsistent and irreconcilable results. If a competitor in a sprint or hurdles race had set a world record while the anemometer was in use at the long jump, or hop, step and jump event, that track record would not have been accompanied by a wind gauge reading. Conversely, if someone set a world record in the long jump, or hop, step and jump while a running event was taking place, the anemometer would not have been available for use by the jump officials to verify the wind conditions. That is the very scenario that the Claimant has had to deal with.
66. The subjective decision making by the officials went even further. Dr. Shinnick testified that Ralph Boston was the jumper who followed him in the long jump sequence. The anemometer was put in place by the meet officials for all of Mr. Boston's jumps. If Mr. Boston had jumped 8.32 meters with a legal wind reading from the anemometer he would have been credited with a world record, yet finished second in the competition behind Dr. Shinnick's 8.33 meter jump.
67. Although there is no suggestion of any attempt by meet officials to deliberately foil Dr. Shinnick's world leading jump, the fact that these officials were in a position to determine who had the benefit of the wind gauge and who did not, could have potentially resulted in mischief by an ill-intentioned official who decided to favour one athlete over another, or one nationality over another. This is inconsistent with the objectivity and level playing field argument that the Respondent maintains as the justification for the introduction of Rule 24(g).
68. It is also interesting to note that Dr. Shinnick had jumped 8.19 meters in the first round of the Modesto Relays, a foul which was close to being a legal jump if he had not been deemed to be off balance when he landed. In his affidavit, Mr. Boston indicated that he was quite impressed by that foul and determined that he would keep an eye on Dr. Shinnick's subsequent jumps. Notwithstanding this display of the Claimant's potential to jump at a world class level, the meet officials still determined that the anemometer would not be brought back to the long jump area until Mr. Boston was ready to jump. In hindsight, the failure to have the anemometer available for Dr. Shinnick's jump has been described as an error on the part of the officials, when in actual fact a deliberate decision had already been made that the anemometer would not be in place for his jumps even though he was jumping just a few minutes ahead of Mr. Boston and already had a long foul attempt earlier that evening.
69. In his affidavit, Dr. Leon Glover Jr. wrote that a running race had recently concluded. Based on that observation, the officials could have moved the anemometer the 15 or 20 meter distance from beside the track to an area close to the long jump runway had they so desired. They must certainly have moved the device in time to measure the wind on Mr. Boston's next jump.

70. The Respondent has submitted that Rule 24(g) implies that an anemometer is to be used to calculate the wind speed and direction to bring a stop to the prior practice of individuals using their own judgement to calculate wind speed. The difficulty with that argument is that if that was in fact the true intent of the rule, it would have been incumbent upon the governing body to also make it obligatory for wind gauges to be available for all events requiring a wind measurement. To sanction a competition where only one such device was available, leaves the meet officials in a position where they had to subjectively determine which event was most likely to benefit from this more precise form of measurement.
71. In sum, the Sole Arbitrator considers that on 25 May 1963 the presence of just one anemometer at the Modesto Relays meant that the information as to wind conditions and the average wind speed required by Rule 24(g) could be calculated using an instrument such as an anemometer if one were available, and if one was not available, by other credible evidence.

**E. Does the Claimant's evidence meet the standard required by Rule 24(g)?**

72. In addition to his own testimony, the Claimant presented the following evidence in support of his position that his jump of 25 May 1963 should be recognized as a world record:
- Affidavit of the 1963 Modesto Relays Meet Director, Tom Moore;
  - Affidavit from Dr. Leon Glover, Jr. one of the two wind gauge operators at the Modesto Relays in 1963;
  - Affidavit from fellow competitor Ralph Boston;
  - Affidavit from fellow athlete and teammate Brian Sternberg;
  - Correspondence sent to the IAAF General Secretary on 10 December 2003 from USA Track and Field CEO, Craig Masback, noting the approval of the Claimant's long jump as a United States record and seeking ratification as a World Record;
  - Results of scientific wind tunnel tests conducted in 2010;
  - Results of the 1963 Modesto Relays;
  - A 2 minute, 25 second you tube video showing an earlier race at the 1963 Modesto competition;
  - Contemporaneous Newspaper accounts of the competition;
  - Letter of 6 January 1996 from the University of Washington in support of the record application;
  - Letter of 20 January 2016 from the University of Washington sent to IAAF President, Lord Sebastian Coe.

73. The wind tunnel tests were conducted in 2010 by Opus International Consultants and are presented as evidence of the wind conditions present at the time of the Claimant's 8.33 meter jump. The author of the wind tunnel test report, Neil Jamieson, noted in his background comments that he had viewed some visual records of Dr. Shinnick's jump including film showing the Claimant as he starts his run-up. Mr. Jamieson wrote that:

*In this film, there are two indicators of the wind conditions occurring at this time, these being (1) flags on the flagpoles around the perimeter of the stadium, and (2) a line of bunting running at an angle directly behind Mr. Shinnick as he starts his run. Both of these show some movement due to the wind that was blowing at the time. However, it is the movement of the bunting that is critical to any scientific assessment of the wind speed. If the movement of the bunting was shown to be less than would occur for a mean wind speed of 2.0m/s, it could be reasonably assumed that the wind conditions during Mr. Shinnick's jump were less than required for a valid world record.*

74. Mr. Jamieson then described the tests that were carried out in Opus Central Laboratories boundary layer wind tunnel to simulate the motion of bunting under mean wind speed conditions of 2.0m/s.

*Bunting*

*For these tests we used bunting that had been made that was as close as possible in terms of the size and weight of material to that shown in the film of the jump. This bunting was strung horizontally across the low speed test section of the wind tunnel.*

*Wind Simulation*

*The tests were carried out in the low speed test section of Central Laboratories boundary layer wind tunnel. The wind simulation included some turbulence in the wind flow. Wind speeds in the wind tunnel were monitored using a hot-film anemometer and a PC based data acquisition system. This was calibrated prior to the tests, and the wind tunnel speed was adjusted so that the mean wind speed averaged over 5 seconds was consistently just less than 2.0 m/s. Tests were carried out with the bunting strung across the wind tunnel at right angles to the wind flow, and also at an angle of 45° to the flow. It was considered that from the film record taken on the day that these represented the most appropriate configurations given the wind directions observed from the film taken on the day of Mr. Shinnick's jump. Short video records were made of the tests that show the movement of the bunting in wind conditions that were just below the threshold of the maximum wind speed allowed for a valid world record.*

75. Mr. Jamieson's assessment of the wind tunnel test videos led to the following conclusion:

*Comparing the video footage from (1) the start of Mr. Shinnick's jump and (2) the bunting tests carried out in the wind tunnel for wind speeds just below the threshold for a valid world record, shows much less movement of the bunting in the former. This is strong evidence that the wind conditions during Mr. Shinnick's jump were pithing the 2.0 m/s threshold, and that there is no reason for him not to be credited with a valid record on the basis of wind assistance.*

76. As indicated earlier, the Claimant also submits that there were a number of contemporaneous newspaper accounts which support his assertion that the wind was legal when he made his career best jump. In the San Francisco Examiner of 27 May 1963, the following quote appeared:

*Bob Lynch head inspector at the relays said three inspectors said Shinnick's jump came during the college low hurdles. The maximum wind during the low hurdles race was 3.30 mph and this is additional evidence that Shinnick's jump was not wind aided.*

*Meet officials obviously absorbed in something else, had failed to leave an observer at the wind gauge. Though the wind had read below the 4.46 mph (miles per hour) allowable limit before Shinnick too off.*

*With an honest, but strong presentation, Haralson feels that the jump could gain approval at both the national and international levels. 'I personally inspected all else about the jump, I was standing close by the jump when it was made and found everything else to be ultra-legal', the US track chief noted.*

77. The following account was written in the Seattle Post Intelligencer of 28 May 1963:

*Meet Director Dr. Tom Moore, swallowed chagrin, announced resolutely yesterday that the leap will be submitted to the national AAU, in hopes of recognition. Affidavits from meet officials are being gathered for submission nationally this week. Thereupon, international approval is usually considered routine.*

*... Bob Lynch, head inspector during the relays, argued that three inspectors claimed Shinnick's jump came during the running of the junior college low hurdles. The maximum wind during the low hurdles was 3.30 mph and this is additional evidence that the jump was not wind aided.*

*Supporting this effort is Dr. Hilmar Lodge, director of the Mount San Antonio Lodge, striking a positive note, 'There is no reason in the world why it shouldn't be recognized, I was right there and can testify there was hardly any wind'.*

78. Arthur Robinson, a sportswriter from the Sacramento Bee who had been at the Modesto Relays competition on the evening in question wrote that:

*First of all, it wasn't a wind, it wasn't even a breeze. Nor was it a zephyr. Whatever it was it wasn't enough to blow out a match and as a collector of kites who flies 'em and also as one who done quite a bit of sailing I fancy myself as something of an expert about winds, breezes and zephyrs. Even a hummingbird's feather would have dropped to the ground without drifting in its descent at the moment young Shinnick made his phenomenal jump.*

79. The Claimant also included a comment from Tex Maule, track writer for Sports Illustrated who stated "not a breath of air was stirring".

80. Dr. Shinnick testified that the conditions were ideal for a world record achievement on the evening of 25 May 1963. He had competed earlier in the day in another meet at Berkeley and had jumped well. It was early in the season but he was in good shape and it was a warm, late spring evening, where he would be competing in front of a large crowd of track enthusiasts

against excellent competition including the American record holder and reigning Olympic champion in the long jump.

## F. Conclusion

81. Rule 24(g) requires the certification of the force and direction of the wind for a period of five (5) seconds, but does not state precisely how the wind is to be measured. The Claimant has presented a significant body of evidence from individuals who were present at the Modesto Relays on 25 May 1963. A number of officials either prepared affidavits, authored letters, or made public statements in support of their belief that the wind was under the required 2 meters/second at the time of the Claimant's record-breaking jump.
82. Tom Moore, the Meet Director who stood behind the Claimant on the runway as he jumped, stated that *"the wind was barely negligible at the time"*. The wind gauge officials, Leon Glover Sr. and Leon Glover Jr. both maintained that the wind was below the allowable limit during the jump. Leon Glover Jr. stated that *"we can come within a half mile of what the velocity is just by listening to the hum of the anemometer"*.
83. Head Referee Bob Lynch recalled that three referees had stated to him that the 220-yard low hurdle race was run at the same time of the Claimant's jump and the anemometer recorded a wind of 1.6m/sec for the hurdle race. J. B. (Cap) Haralson, who was at the time the Head AAU Official in California said that he was standing close by and found everything about the jump to be legal.
84. The Open Meet Referee Charlie Hunter stated *"I personally inspected all else about the jump. I was standing close by when it was made and found everything else (besides a reading) to be ultra-legal"*. Hilmer Lodge, the Director of the Modesto Relays had the following comment: *"I was right there and can testify there was hardly any wind"*.
85. In addition to those ten officials, the University of Washington Track Coach, Stu Hiserman, who was at one point the NCAA Coaches Association President, and Brian Sternberg, Dr. Shinnick's team mate who set a world record in the pole vault in the Modesto competition, both asserted that they had paid particular attention to the wind conditions, realizing that a long jump world record was a possibility that evening and were satisfied that the wind was below the allowable limit when the Claimant made his 8.33 m. jump.
86. Many of the documents submitted as part of this claim were also submitted to USA Track & Field when Dr. Shinnick applied to have his long jump mark of 8.33 meters accepted as an American record. In 2003, USA Track & Field CEO Craig Masback wrote to the General Secretary of the IAAF to inform him that the USATF Men's Track & Field Committee, after careful review of Dr. Shinnick's application and supporting materials, voted to ratify his 8.33 long jump performance at the Modesto relays as an American Record. On the basis of that decision the USATF applied to the IAAF for further consideration of the Claimant's long jump as a World Record.

87. The IAAF determined that they would not ratify the Claimant's Modesto performance as a world record because they believed that the jump had not complied with Rule 24(g) of the 1963 rulebook.
88. The Sole Arbitrator finds that if the intent of Rule 24(g) was that only wind readings obtained by an anemometer would be valid, the rule could have and should have been written to include those words. If that was the intent of the rule, or if that intent was to be implied, then full compliance with the rule was an impossibility in 1963 when there was no specification that anemometers be present for every event that required a wind measurement. In other words, Rule 24(g) would have been unenforceable given the circumstances present at the Modesto Relays on 25 May 1963.
89. As such, the Sole Arbitrator finds that a proper interpretation of Rule 24(g) as it existed in 1963 was that satisfactory verification of the wind direction and speed had to be provided in order for a long jump record to be recognized and ratified, and such verification was not limited to measurement by an anemometer. It is unfair to the Claimant to impose the best practices of 2020 on the standards that were used and accepted in 1963. As the evidence presented in this case indicates, it was only after the controversy at the 1963 Modesto Relays that the practice of measuring the specific wind for every jump of every jumper was adopted. With this, and noting the highly specific and unique facts of this particular case, this is likely the last episode of a controversy which took place before the regular use of anemometers in track & field events.
90. The Claimant has presented a substantial amount of evidence in support of his world record application and there was no evidence filed substantially contradicting the Claimant's witness statements. No single document or piece of evidence is determinative of the issue that the Sole Arbitrator has been asked to consider. However, when considered cumulatively, this evidence presents a compelling case that the Claimant met the requirements of Rule 24(g) of the IAAF Rulebook as it appeared in 1963. In other words, the Sole Arbitrator finds that reliable information as to wind conditions was presented to the Respondent to satisfy the requirement that the wind speed behind the Claimant did not exceed 2m (6.6ft.) per second and that wind speed was consistent for a period of five seconds.
91. For these reasons, the Sole Arbitrator finds that the IAAF in making the decision not to retroactively ratify Dr. Shinnick's 8.33 meter long jump of 25 May 1963 failed to comply with the applicable law, being Rule 24, and exercised the discretion conferred on it under Rule 24, in an arbitrary manner.
92. The Sole Arbitrator orders the Respondent, IAAF (now World Athletics), to ratify Dr. Phillip K. Shinnick's long jump of 8.33 meters set on 25 May 1963 as a world record.
93. The Sole Arbitrator further orders the Respondent to amend its record books to reflect that Phillip Shinnick broke the world record of Igor Ter-Ovanesyan (URS) on 25 May 1963 and held the world record until it was subsequently broken by Ralph Boston (USA) on 12 September 1964.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The request of arbitration filed by Dr. Phillip Shinnick on 29 October 2019 against the International Association of Athletics Federations (IAAF) seeking to overturn the decision by the IAAF President and CEO not to give retroactive recognition as a world record to his 25 May 1963 long jump of 8.33 meters is upheld.
2. The IAAF (now World Athletics) is ordered to ratify Phillip Shinnick's long jump of 8.33 meters set on 25 May 1963 as a world record.
3. The IAAF is ordered to amend its record books to reflect that Phillip Shinnick was the world record holder in the long jump from 25 May 1963 until 12 September 1964.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.