



Arbitration CAS 2021/A/8077 Tyron Lardy & Karate-do Bond Nederland v. World Karate Federation (WKF), award of 16 February 2022

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

Karaté

Qualification for the Olympic Games

Statement of appeal as an appeal brief and subsequent amendments

Filing of a protest and issuance of a decision by the wrong adjudicatory body

Dismissal of the appeal by CAS and adjustment of arbitration costs and legal fees

1. An appellant can ask the CAS to consider its statement of appeal simultaneously as an appeal brief, and waive his right to further develop his arguments in writing, in accordance with Articles R48 et seq. of the CAS Code. If he subsequently seeks to amend his position, his request will be addressed in light of Article R56 of the CAS Code and by all accounts denied, failing the respondent's consent or the existence of exceptional circumstances.
2. The regulations of international sports federations governing martial arts usually prescribe specific time-limits and formal requirements for the filing of a protest by an athlete or his team. If the appeals jury accepts the protest despite some obvious procedural flaws, this results in a procedural anomaly that should be examined by the relevant appellate body. If such body fails to render a formal decision after being instructed to do so, the athlete who feels aggrieved ends up in a problematic legal situation. He cannot, however, try to resolve this situation by turning to another internal body, which evidently lacks jurisdiction, with a view to appeal its decision with CAS.
3. In such circumstances, CAS will have no choice but to dismiss the appeal, without being able to examine the other arguments raised by the appellant, and to enjoin the appellant to approach the relevant body to request a decision to be passed, insofar as it still has a practical interest. It may also take into account the significant trouble and expense caused to the athlete when fixing the arbitration costs and legal fees.

I. THE PARTIES

1. Tyron Lardy ("the Athlete" or "the First Appellant"), born on 6 December 1996, is a Dutch Karateka performing at international level and a member of the Karate-do Bond Nederland.

2. The Karate-do Bond Nederland (“KBN” or “the Second Appellant”) is the national federation of Karate of The Netherlands. It has its registered office in BZ Maarsbergen, The Netherlands, and is affiliated to the World Karate Federation.
3. Tyron Lardy and Karate-do Bond Nederland are referred to as “the Appellants”.
4. World Karate Federation (“WKF” or “the Respondent”) is the governing body of all national Karate organizations worldwide. It is headquartered in Madrid, Spain.

II. THE FACTS

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
6. The dispute involves the allocation of a quota slot for the Tokyo Olympic Games, which were originally scheduled to be held in 2020 but were finally held in July-August 2021 (“Tokyo 2020”). The WKF awarded the single remaining quota slot to Mr Daniel Gaysinski (“Mr Gaysinski”), and the Appellants argue that it should have been allocated to Mr Lardy.
7. From 11 June to 13 June 2021, Mr Lardy participated in the Men’s Kumite +75 kg at the Karate Olympic Qualification Tournament 2021, in Paris, France. The top three athletes in each category obtained one quota place for Tokyo 2020.
8. On 13 June 2021, Mr Lardy competed against his Canadian opponent, Mr Daniel Gaysinski.
9. After the match, an official protest was announced against Mr Lardy and was approved by the Appeals Jury. Mr. Lardy lost the match and a quota place for the Olympic Games.
10. On the same date, the KBN sent a letter to the Executive Committee of the WKF (“EC WKF”), whereby it reported the dispute and expressed its serious “*displeasure*” at the procedural course.
11. On 15 June 2021, the KBN received a written answer (via email) from the WKF’s President Mr Antonio Espinõs to explain WKF’s position and the reasons why the official protest dated 13 June 2021 should be considered as correct.
12. On 17 June 2021, the KBN presented the dispute to the WKF’s Disciplinary and Legal Commission (“the DLC”), insisting on the urgency of the dispute at stake.
13. On 21 June 2021, the WKF published a list of 82 karateka who would represent their countries at Tokyo 2020.

14. On 22 June 2021, Mr Lardy and the KBN applied directly to the WKF's President and received on the same date the decision of the DLC ("the Challenged Decision"), which reads in its final part as follows:

"On the basis of the above reasoning, this WKF Disciplinary and Legal Commission does not find itself to have jurisdiction for the knowledge and/or decision on the dispute submitted by the Dutch Karate Federation on 17 June 2021".

III. RELEVANT PROCEEDINGS BEFORE THE CAS AND THE PARTIES' SUBMISSIONS

15. On 23 June 2021, the Appellants filed with the Court of Arbitration for Sport (the "CAS") a Statement of Appeal against the Respondent with respect to the decision rendered by the DLC on 22 June 2021, pursuant to Article R48 et seq. of the CAS Code of Sports-related Arbitration (2020 edition) (the "CAS Code"). The Appellants mentioned that their Statement of Appeal should be considered as their Appeal Brief and further requested that the proceeding be expedited in accordance with Article R52 of the CAS Code and that a decision be rendered by 5 July 2021 as this was the date by which the KBN must enter athletes' names for Tokyo 2020. In their Statement of Appeal/Appeal Brief, the Appellants mentioned their intent to alternatively request provisional measures under Article R37 of the CAS Code. In their appeal, the Appellants stated that the Canadian Karate Federation and/or Mr Gaysinski should be considered as possible interested parties.
16. On 24 June 2021, the CAS Court Office initiated an appeals arbitration proceeding under the reference *CAS 2021A/8077 Tyron Lardy & Karate-do Bond Nederland v. World Karate Federation*. The CAS Court Office invited, *inter alia*, the Respondent to declare whether it would agree to submit the present dispute to an expedited procedure.
17. On 25 June 2021, the Respondent argued that the present matter concerns a "*field of play decision*" and requested that the appeal be dismissed. It further objected to an expedited procedure and the appointment of a sole arbitrator.
18. On 28 June 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division ("the Division President") decided to submit the present proceedings to a Sole Arbitrator.
19. On the same date, the CAS Finance Director invited the Appellants to pay the entire advance of costs until 30 June 2021 in accordance with Article R64.1 of the CAS Code, unless there was any payment by the Respondent of its share of the advance of costs within the prescribed deadline.
20. On 30 June 2021, the CAS Court Office informed the Parties of the Appellants' payment of the entire advance of costs and notified the Parties that, on behalf of the Division President and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the present matter would be constituted by Prof. Dr. Martin Schimke as Sole Arbitrator.

21. On the same date, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Appellants to submit their Application for Provisional Measures on or before Thursday, 1 July 2021, 12 noon (Swiss time), by email and with direct copy to the Respondent. The CAS Court Office further instructed that, upon receipt of the Appellants' Application for Provisional Measure, the Respondent would be granted a deadline until Friday, 2 July 2021, 12 noon (Swiss time) to submit its reply to the Appellants' Application.
22. On 1 July 2021 and within the prescribed deadline, the Appellants filed their Application for Request of Provisional Measures, further to Article R37 of the CAS Code, requesting that:

"[...] given the utmost urgent interest, I request the Sole Arbitrator alternatively to award preliminary relief and to order:
 - (i) the direct suspension of the decision of the WKF; and*
 - (ii) WKF to include Mr Lardy in the list of athletes to qualify for the Olympic Games".*
23. On the same date, the CAS Court Office, on behalf of the Sole Arbitrator, requested the Appellants to communicate by return the contact details of Mr Daniel Gaysinski.
24. On the same date, the CAS Court Office submitted a copy of the Statement of Appeal/Appeal Brief to the Canadian Karate Federation and Mr Daniel Gaysinski and invited them to inform the CAS Court Office by the end of 1 July 2021, whether they intended to participate as parties in the present proceedings in accordance with Article R41.3 of the CAS Code.
25. On 2 July 2021 and within the prescribed deadline, the Respondent submitted its answer to the Appellants' Request for Provisional Measures, requesting the following:

"The WKF applies for the Sole Arbitrator to rule as follows:
 - I. The CAS does not have jurisdiction to rule on the request for provisional measures filed by Tyron Lardy and Karate-do Bond Nederland against World Karate Federation.*
 - II. The request for provisional measures filed by Tyron Lardy and Karate-do Bond Nederland against World Karate Federation, is dismissed.*
 - III. Tyron Lardy and Karate-do Bond Nederland shall bear the arbitration costs and shall be ordered to compensate World Karate Federation with a contribution towards its legal and other costs incurred within the framework of these proceedings, in an amount to be determined at the discretion of the Sole Arbitrator".*
26. On the same date, the CAS Court Office acknowledged receipt of the Respondent's observations to the Appellants' Request for Provisional Measures and informed the Parties that such correspondence would be forwarded to the Sole Arbitrator for his consideration.
27. On 3 July 2021, the Canadian Karate Federation informed the CAS Court Office that it did not intend to participate in the present arbitration proceedings as neither the Federation nor Mr. Gaysinsky had been named as respondents.

28. On 5 July 2021, the CAS Court Office notified the operative part of the Order on Urgent Request for Provisional Measures issued by the Sole Arbitrator and informed the Parties that the reasoned Order would follow in due course. The operative part stated the following:

“1. The Court of Arbitration has prima facie jurisdiction over the present appeal filed on 23 June 2021 by (1) Mr Tyron Lardy and (2) Karate-do Bond Nederland (“the Appellants”) against World Karate Federation with respect to the decision rendered by the Disciplinary and Legal Commission of the World Karate Federation on 22 June 2021.

2. The Appellants’ Application filed on 23 June 2021 and 1 July 2021 for Provisional Measures under Article 37 of the CAS Code of Sports-related Arbitration 2020 is dismissed.

3. All issues of costs of this Application for Provisional Measures will be determined in the final Award in the present procedure”.

29. On 14 July 2021, the Respondent filed its Answer. In its Answer, the Respondent indicated that a hearing did not appear to be necessary in this case.
30. On 21 July 2021, the Appellant informed the CAS Court Office that he did not prefer a hearing to be held in this case.
31. On 26 July 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided that he deemed himself sufficiently well-informed to decide this case based solely on the Parties’ written submissions, without the need to hold a hearing. The Sole Arbitrator also rejected the Appellant’s request for a second round of submissions.
32. On 28 September 2021, the CAS Court Office informed the Parties that Mr. Vishakh Ranjit, Attorney-at-Law in Kerala, India, had been appointed as *Ad hoc* Clerk.
33. On 15 November 2021, the CAS Court Office, on behalf of the Sole Arbitrator, issued an Order of Procedure, which the Parties signed respectively on 15 and 19 November 2021.

IV. JURISDICTION

34. In accordance with Article 186 of the Swiss Private International Law Act (“PILA”) and Article R55 of the CAS Code, CAS has power to decide upon its own jurisdiction.
35. Article R47 CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body [...]”.

36. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.

37. Article 26 of the WKF Disciplinary and Ethics Code:

“26. APPEALS TO THE COURT OF ARBITRATION FOR SPORT

26.1. Decisions of the DLCT and the Appeal Tribunal may be appealed exclusively before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision. Unless agreed otherwise by the parties, the CAS Panel will be composed of three arbitrators and the language will be English”.

38. In addition, article 21.9 of the WKF Statutes states as follows:

“21.9 Affiliated members and Individuals shall commit themselves to accept no authority other than the one of the WKF. An appeal before the Court of Arbitration for Sport (TAS / CAS) is only possible after having exhausted all the internal resources foreseen in the WKF Statutes and Disciplinary Rules”.

39. The Respondent, in its Answer, accepts the jurisdiction of CAS to rule on the present case, while also stating that CAS has no power to review a *“field of play decision”*.

40. In light of the foregoing, the Sole Arbitrator is therefore satisfied that CAS has jurisdiction to decide on the present dispute.

V. ADMISSIBILITY

41. Article R49 CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

42. In accordance with Article 26 of the WKF Disciplinary and Ethics Code and Article R49 of the CAS Code, the time limit for filing the appeal is 21 days. The present Appeal has been filed within this deadline as the Challenged Decision was rendered on 22 June 2021 and the present Appeal was filed on 23 June 2021. The Appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee. Therefore, the Sole Arbitrator is satisfied that the appeal is admissible.

VI. APPLICABLE LAW

43. Article R58 CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

44. The Sole Arbitrator finds that, in accordance with Article R58 of the CAS Code, the WKF Regulations, including the WKF Karate Competition Rules, the WKF Disciplinary and Ethics Code and the WKF Statutes, shall be applicable primarily. If necessary, Spanish law shall be applicable subsidiarily as WKF is domiciled in Spain.

VII. SUBMISSIONS OF THE PARTIES

45. The Appellant’s submissions, in essence, may be summarised as follows:
- WKF has acted entirely contrary to the WKF Statutes and the WKF Competition Rules (Article 11). The wording of Article 11 of the Competition Rules is clear and does not leave any room for interpretation. In brief, the said provision states that the Competitor’s Coach should submit an official protest within one (1) minute after the end of the bout. Thereupon, the Coach is obliged to complete the official protest form within four (4) minutes, in writing. As such, the official protest should never have been accepted.
 - In the email dated 15 June 2021, Mr. Espinos completely ignored the aforesaid procedural violations with regard to the protest.
 - The DLC disregarded the scope of Article 21.2 of the WKF Statutes while deciding that it did not have jurisdiction.
 - The DLC has stated in its decision that the dispute does not arise from *“the application or interpretation of a rule”*. However, the present case does, in fact, concern the application or interpretation of Article 11 of the WKF Competition Rules.
 - The Executive Committee did not make any decision. There is only an email from the WKF President Mr. Espinos dated 15 June 2021 which could be assumed to be a decision made by the Executive Committee.
 - The Sole Arbitrator who passed the DLC decision, Mr. Jose Garcia Maanon, was not independent or impartial. In addition to his role as the DLC Chairman, Mr. Maanon is also the Vice President/board member of the WKF’s Executive Committee. He is also the President of the Panamerican Karate Federation. The Canadian Karate Federation is a member of the Panamerican Karate Federation. This implies a conflict of interest and raises questions of the independence of the DLC in the present case.

46. The Respondent's submissions, in essence, may be summarised as follows:

- Mr. Lardy accepted the decision of the Appeals Jury and continued the bout without any protest subsequently.
- The Appellant's sole argument with respect to the Appeals Jury decision is that it was allegedly not filed within the time period specified and that it was not presented by the coach of the team. The Appellant has not alleged that the Appeals Jury decision was arbitrary or that it was tainted by any possible corrupt act.
- Before the DLC, the Appellant argued both that the Executive Committee had not jointly deliberated and decided on the Appellant's claim and also that Mr. Espinosa's email is assumed to be a decision by the Executive Committee. In the Appellants' claim of 17 June 2021 before the DLC, they did not seek any relief against any possible decision issued by the WKF Executive Committee.

(i) *The WKF does not have standing to be sued alone*

- The WKF does not have the standing to be sued alone, because the Appellants failed to name the necessary Respondents, i.e. Mr. Daniel Gaysinski, the Canadian Karate Federation, the Dutch and Canadian NOCs and the IOC.
- The Appellants' ultimate claim in this appeal is to obtain an athlete quota place in the 2020 Tokyo Olympic Games as reflected in the relief claimed. As such, if the Appellants' prayer for relief were granted, it would directly affect Mr. Gaysinski as he would be deprived of his right to participate in the Olympic Games. The relief sought by the Appellants directly affects the interests of another athlete who has not been named as party to the arbitration proceedings.
- As per Article 44.2 of the Olympic Charter, "*only NOCs recognised by the IOC may submit entries for competitors in the Olympic Games*". Therefore, only the Dutch NOC is entitled to submit any entry for Mr. Lardy to compete in the Olympic Games. Yet, the Dutch NOC is not a party to these proceedings. Further, the IOC is the only entity who can allocate the additional quotas to participate in the Olympic Games and the IOC has not been made a party to the proceedings.
- As per CAS jurisprudence¹, it is the responsibility of the Appellants to correctly identify all the respondents in their appeal. All potentially affected parties must necessarily be parties to the proceedings. CAS cannot compel a third party to participate in the proceedings. Any failure on the part of the appellant to bring a necessary party as respondent entails dismissal of the appeal.

¹ CAS 2017/A/5131, CAS 2016/A/4668, CAS 2011/A/2551.

(ii) The Appellants have no legal interest in pursuing the appeal

- Pursuant to established CAS jurisprudence², the Appellants must demonstrate that they have a current interest worthy of protection in challenging the decision for their appeal to be admissible. In the present case, the Appellants have lost any interest in the appeal as the final entries deadline for the Tokyo Olympic Games expired on 5 July 2021 as per the WKF Qualification System. The Appellants do not allege that a late entry after the expiry of this deadline would be possible. As per para 17 of the IOC Qualification System Principles, the confirmation of a NOC to accept the allocated places cannot be reversed. The Appeal should hence be dismissed as it has become moot.

(iii) The Appeals Jury decision is a “field of play decision”

- The decision of the Appeals Jury of 13 June 2021 is a field of play decision that cannot be reviewed by the WKF DLC or by CAS. The field of play doctrine is defined in CAS jurisprudence³ as follows:

“The essence of the field of play doctrine is that it is for sporting bodies via their appropriate officials to take decisions relevant to the conduct of particular events. They only lose their immunity from review by CAS in circumstances of arbitrariness and bad faith, (meaning fraud, corruption or malice), or some equivalent vice. This proposition, he asserted, is supported by a long and consistent line of authority [...] The doctrine concerns not only the evaluation of the conduct of an event but whether a protest has been properly filed”.

- According to the long-standing CAS and Swiss Federal Tribunal’s jurisprudence, “game rules, in the strict sense of the term, should not be subject to the control of judges, based on the idea that “the game must not be constantly interrupted by appeals to the judges”⁴. CAS Panels thus cannot review “the determinations made on the playing field by judges, referees, umpires or other officials who are charged with applying what is sometimes called “rules of the game”, except if such rules “have been applied in bad faith, e.g. as a consequence of corruption”⁵. Accordingly, “it is not open to a player to complain about a “field of play” decision simply because he or she disagrees with that decision”⁶. In accordance with the field of play doctrine, the CAS reviews neither the application of substantive rules governing the award of points, nor the application of procedural rules governing the assessment of the validity and the grounds of a protest⁷.

² TAS 2014/A/3745.

³ CAS 2008/A/1641, para. 89

⁴ CAS OG 96/006, Award of 1 August 1996, paragraph 5 citing the judgment of the Swiss Federal Tribunal ATF 119 II 12/19.

⁵ CAS OG 00/13, Award of 30 September 2020, para 17.

⁶ CAS OG 02/007, Award of 23 February 2008.

⁷ CAS 2018/O/5764.

- The referee has to evaluate not only whether an athlete actually fulfilled the competition rule, but also whether a protest was properly filed, i.e. timely and by the legitimated subject. Both evaluations – combined together – make up the decision of the “*field of play officer*” as to the regularity of the game and as to its results⁸.
- It can thus be inferred from the CAS jurisprudence that:
 - The results of a competition should not be changed.
 - A field of play decision can only be reviewed if and after the appellants provide evidence that it is seriously vitiated by bias, malice, bad faith, arbitrariness or legal error.
 - If an internal legal remedy exists at the federation level, the appellate body shall apply the field of play doctrine.
 - The CAS is not subject to the field of play doctrine if the decision at stake has actually been reviewed by an internal appellate body of the sports body, actually having jurisdiction to review such decisions.
- In the present case, the Appellants are precisely challenging a field of play decision, namely the decision originally taken by a referee and reviewed by the Appeals Jury relating to the possible commission of a *Jogai* by Mr Gayvinsky pursuant to the WKF competition rules. This decision was taken in the strict application of the rules of the game and the game itself.
- The WKF Appeals Jury issued a decision on the protest, pursuant to article 11.04 of the WKF Competition Rules; this is a pure field of play decision, applying strictly and exclusively the WKF Competition Rules; pursuant to article 11.12 of the WKF Competition Rules, the decision of the Appeals Jury is final and can only be overruled by a decision of the Executive Committee; accordingly, the WKF Executive Committee shall also apply the field of play doctrine.
- In the present case, there is no decision by the WKF Executive Committee; the Appellants chose to dispute only the Appeals Jury decision and the “*response of Mr Espinos*” before the DLC, rather than requesting a decision by the WKF Executive Committee; yet, the DLC does not have jurisdiction to rule on challenges of an Appeals Jury decision, as only the WKF Executive Committee may overrule such decision, which is final otherwise; therefore, as the DLC has no jurisdiction to review a field of play decision, neither has the CAS the power to review such decision instead of the DLC, in spite of the power to review *de novo* provided at article R57 of the CAS Code.
- The exception to this limitation of the CAS power of review is that the field of play decision was proved to be biased by malice, bad faith, arbitrariness or legal error; the burden of proof in that regard rests on the party challenging such field of play decision; the Appellants did not allege such bias in its Appeal Brief and even while

⁸ CAS 2008/A/1641.

raising an allegation in their Request for Provisional Measures, failed to prove such bias.

- The field of play decision comprises both the application of substantive rules governing the award of points, and the application of procedural rules governing the assessment of the validity and the grounds of a protest. In the case at stake, the Appeals Jury had to evaluate not only whether there was a *Jogai*, but also whether the protest had been properly filed, i.e. timely and by the legitimate subject. Both evaluations – combined together – make up the field of play decision of the Appeals Jury, which cannot be reviewed by the DLC or the CAS.

VIII. PROCEDURAL ISSUES

47. The Appellants, through their letter dated 9 July 2021 to the CAS Court Office, requested the possibility to “*amend their position*” upon receipt of the Respondent’s Answer. The CAS Court Office treated this as a request for a second round of submissions and invited the Respondent to confirm it agrees to the same. The Respondent cited Article R56 of the CAS Code and objected to any further submissions from the Appellants.

48. Article R56 of the CAS Code states:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.

The Panel may at any time seek to resolve the dispute by conciliation. Any settlement may be embodied in an arbitral award rendered by consent of the parties”.

49. The Sole Arbitrator, after having considered the facts and circumstances of the present case, came to the conclusion that there were no exceptional circumstances which required a second round of submissions in the present case. Accordingly, the request of the Appellants was rejected.

IX. MERITS

50. Though the Appellants have challenged the DLC decision dated 22 June 2021 through the present Appeal, the primary aim of the Appellants is that the Appeals Jury decision of 13 June 2021 should be reversed. It must be noted at the outset that the Tokyo Olympic Games have concluded prior to the issuance of this Award and it is no longer possible for Mr. Lardy to participate in the Olympic Games. Be that as it may, the Sole Arbitrator shall proceed to decide the present Appeal on the merits.

51. The first question to be considered in the present dispute is whether the protest made by Mr. Gaysinski was made within the time limit and in the form prescribed in Article 11.5 of the WKF Competition Rules. The Appellants allege that the protest was not in compliance with these procedural requirements under the WKF Competition Rules and hence, could not have been accepted. The Appellants' argument is supported by the video footage of the bout.
52. The Respondent claims that "... *the Canadian team filed a protest with the Appeals Jury in compliance with article 11.3 of the WKF Competition Rules ...*". The Respondent also states that the Appellants fully accepted the decision of the Appeals Jury when it was issued and Mr. Lardy continued the bout without disputing the Appeals Jury decision.
53. The Sole Arbitrator finds that it is undisputed that the protest was not filed within the time period or in the form prescribed in the WKF Competition Rules. However, despite this procedural issue, the Appeals Jury accepted the protest and approved it. This being the case, the next question that arises is how can such a procedural anomaly be challenged.
54. As per Article 11.12 of the WKF Karate Competition Rules states that "*The decision of the Appeals Jury is final and can only be overruled by a decision of the Executive Committee*". Therefore, it is amply clear that the only body that was competent to examine the decision of the Appeals Jury of 13 June 2021 is the WKF Executive Committee. The Sole Arbitrator notes that the KBN did indeed write a letter on the same day i.e. 13 June 2021, to the WKF Executive Committee stating the following specific violations of Article 11 of the WKF Competition Rules:
- i. The protest was not announced by the official coach who was coaching Mr. Gaysinsky during the match.
 - ii. The protest was not announced within the one minute after the end of the bout.
 - iii. The completed and signed protest was not submitted within the four minutes after the first announcement.
55. However, it appears from the record that there was no decision passed by the WKF Executive Committee on the issues raised in the letter sent by the KBN. The only response to the said letter was an email from the WKF President Mr. Espinos stating that "... *The facts around the bout between the athlete of Netherlands and Canada that you refer were analysed by the Appeals Jury and it was found that no Jogai had been happening, therefore the decision reached. This is the main matter to be considered and evaluated, always aligned with the priority of protecting the rights of the athletes and the fairness of the competition ...*". The Statement of Appeal asserts, at paragraph 5.3.10: "*there was no decision of the EC at all. There is no evidence whatsoever that the EC has made a decision: only an email of WKF President Mr. Espinós, in which nothing appears to be a proper or decent reaction of the EC*". The Sole Arbitrator agrees.
56. The Respondent has failed to provide any explanation for the lack of a decision from the WKF Executive Committee. In fact, the Respondent goes as far as to claim that the KBN

did not request a decision from the WKF Executive Committee through its 13 June 2021 letter.

57. The Sole Arbitrator finds that there was no decision taken by the WKF Executive Committee on the letter sent by KBN dated 13 June 2021. The letter was clearly addressed to the WKF Executive Committee, asking the Executive Committee to overrule the Appeals Jury decision, as it was entitled to do under Article 11.12 of the Competition Rules, if it thought fit. However, the WKF President's response on 15 June 2021 gave no indication that the Executive Committee (as opposed to the President himself) had considered the matter at all or were even aware of the KBN's 13 June 2021 letter.
58. The present Appeal has been brought against a decision of the DLC which arose from a proceeding initiated by KBN by assuming the email of the WKF President dated 15 June 2021 was a rejection of the objections contained in the letter sent by KBN on 13 June 2021. It is pertinent to note that KBN referred, in its submission to the DLC, to Article 21.2 of the WKF Statutes. In the said submission, KBN claimed that as per Article 21.2 of the WKF Statutes, the DLC will settle any dispute arising from the application of the Statutes, Rules, Regulations and Standards of WKF and accordingly, the DLC has jurisdiction over this dispute. Through this submission, KBN sought, *inter alia*, the rectification of the Appeals Jury decision, the rectification of the WKF President's response and the declaration of the outcome of the bout as a draw.
59. The DLC decision, which is the challenged Decision in this appeal, was notified to the KBN on 22 June 2021. The key points of the decision for present purposes were:

“Reason V: The WKF rules do not provide for a second instance or review of Appeals Jury decisions and therefore these must be considered as final. They can only be overturned by the Executive Committee, as provided for in Article 11.12 (“Power and Constraints. The decision of the Appeals Jury is final and can only be overruled by a decision of the Executive Committee”).

Reason VI: We are not really dealing with a dispute arising from the application or interpretation of a rule, but what is sought is the review and, as the case may be, reversal of a decision of the Appeals Jury by a body which has no power to do so.

DECISION:

On the basis of the above reasoning, this WKF Disciplinary and Legal Commission does not find itself to have jurisdiction for the knowledge and/or decision on the dispute submitted by the Dutch Karate Federation on 17 June 2021”.

60. The Sole Arbitrator considers that “Reason V” contained in the DLC decision is of particular relevance. As per Article 11.12 of the WKF Competition Rules, the only body competent to overrule an Appeals Jury decision is the Executive Committee. The KBN refers to Article 21.2 of the WKF Statutes to claim that the DLC has jurisdiction.

61. The Sole Arbitrator finds that considering that there was no decision passed by the WKF Executive Committee on the letter sent by KBN dated 13 June 2021, the DLC had no power to interfere with the Appeal Jury's decision. Even if (contrary to the Sole Arbitrator's view) the WKF President's email of 15 June 2021 were to be taken as a decision by the WKF Executive Committee, any question of overturning the Appeals Jury's decision would have had to be remitted back to the WKF Executive Committee as the DLC was not competent to decide on it. The DLC's competence with regard to such a decision by the WKF Executive Committee would have been limited to examining whether the decision had been made in compliance with the WKF Statutes and Regulations (see Article 21.2 WKF Statutes).
62. The present Appeal has arisen from the DLC decision of 22 June 2021, in which the DLC stated that it did not have jurisdiction to decide on the dispute submitted by the KBN. The Sole Arbitrator agrees with the conclusion reached by the DLC. As such, the present Appeal is liable to be dismissed. However, it may be noted that since the WKF Executive Committee has not yet made any decision, it is open to the Appellants now to approach the WKF Executive Committee and request a decision to be passed on KBN's letter of 13 June 2021. Whether there is any practical sense in that course, several months after the Tokyo Olympic Games, is a matter for the Appellants.
63. The essential difficulty for the Appellants is that the DLC had been asked to reverse the decision of the Appeals Jury. The DLC correctly held that it had no power to do that. Although Article R57 of the CAS Code gives the Sole Arbitrator's full power to review the facts and the law, he can have no more power than the DLC itself as the body whose decision is under appeal.
64. The Sole Arbitrator notes that the situation in the present dispute was certainly avoidable if, as provided for under the WKF Competition Rules, the WKF Executive Committee had deliberated on the issue and issued a formal decision. Instead, the WKF President seems to have decided to act on his own, in contravention to the procedural requirements.
65. The Respondent has also raised certain other arguments in support of dismissing the appeal including the non-joinder of necessary parties, lack of legal interest and the Appeals Jury decision being a "*field of play decision*". Considering the above conclusion reached by the Sole Arbitrator, it is not necessary to decide on these issues.

X. CONCLUSION

66. Based on the foregoing, the Sole Arbitrator finds that:
 - i. It is undisputed that the protest was not filed within the time period or in the form prescribed in the WKF Competition Rules.
 - ii. There was no decision taken by the WKF Executive Committee on the letter sent by KBN dated 13 June 2021.
 - iii. The DLC had no jurisdiction to decide the dispute submitted to it by the KBN.

67. Accordingly, the Appeal, along with all other and further motions or prayers, is dismissed.

XI. COSTS

68. Article R64.4 of the CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs”.

69. Article R64.5 of the CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties”.

70. The Sole Arbitrator considers that significant trouble and expense has been caused by the WKF President’s failure to deal properly with the KBN letter dated 13 June 2021. His email response on 15 June 2021 was not a responsible way of dealing with the point, which should have been clearly referred to the WKF Executive Committee for a decision; and the WKF Executive Committee decision should then have been clearly notified to the KBN.

71. Having taken into account the outcome of the arbitration and the fact that the Appellants were placed at a disadvantage due to the lack of a formal decision by the WKF Executive Committee and the way in which the WKF President handled the matter in June 2021, the Sole Arbitrator considers it reasonable and fair that the costs of the arbitration, in an amount that will be determined and notified to the Parties by the CAS Court Office, shall be borne equally by both Parties.

72. Furthermore, pursuant to Article R64.5 of the CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, including the considerations mentioned in paragraph 71 above, the Panel rules that all Parties shall bear their own legal fees and other expenses incurred in connection with these arbitration proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 23 June 2021 by Tyron Lardy and Karate-do Bond Nederland against the decision issued on 22 June 2021 by the WKF Disciplinary and Legal Commission is dismissed.
2. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne equally by both Parties.
3. All Parties shall bear their own legal fees and other expenses incurred in connection with these arbitration proceedings.
4. All other and further motions or prayers for relief are dismissed.