



Arbitration CAS 2021/A/8284 World Anti-Doping Agency (WADA) v. World Baseball Softball Confederation (WBSC) & Laura Vigna, consent award of 19 April 2022

Panel: Mr Jordi López Batet (Spain), Sole Arbitrator

Softball

Doping (evading, refusing or failing to submit to sample collection)

Right of a CAS panel to issue a consent award and purpose of it

Duty of the CAS panel to verify the bona fide of the settlement agreement

1. **In accordance with Article R56 para. 2, second sentence, of the CAS Code, a CAS panel is expressly allowed to issue an award embodying the terms of the settlement if all parties to the dispute agree. The CAS panel’s endorsement of the settlement agreement and incorporation in an award serves the obvious purpose of rendering it easier for the parties to enforce the settlement agreement.**
2. **As any settlement “may” be embodied in an award, it is up to the CAS panel to verify the *bona fide* of the settlement agreement, so that the consent award mechanism is not manipulated by the parties as an instrument of fraud, and to acknowledge that the settlement terms are not contrary to public policy principles or mandatory rules.**

I. PARTIES

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is the international anti-doping agency, constituted as a private law foundation under Swiss law. WADA has its registered seat in Lausanne, Switzerland and has its headquarters in Montreal, Canada.
2. The World Baseball Softball Confederation (“WBSC” or the “First Respondent”) is the international governing body for the sport of baseball/softball, legally established in accordance with its own Statutes as well as Swiss Civil Code and in charge of all baseball/softball activities thereof in all the countries and territories of the world, which accept its Statutes, Code of the Divisions, By-Laws, Rules and Regulations.
3. Ms Laura Vigna (“the Athlete” or “the Second Respondent”) is an Italian softball player.

II. FACTUAL BACKGROUND OF THE DISPUTE

4. On 19 November 2020, there was an unsuccessful attempt to conduct an out-of-competition doping control on the Athlete.

5. On 26 April 2021, the International Testing Authority (“ITA”) acting on behalf of the WBSC notified the Athlete of an apparent anti-doping rule violation (“ADRV”).
6. On 28 June 2021 and 1 July 2021 respectively, the Athlete and the ITA on behalf of the WBSC signed an Agreement on Consequences in accordance with Article 7.10.1 of the 2015 WBSC Anti-Doping Rules, by virtue of which it was agreed that the Athlete had committed an ADRV under Article 2.3. of said Rules (“Evading, Refusing or Failing to Submit to Sample Collection by an Athlete”) and that a period of ineligibility of 8 months starting from 19 November 2020 was imposed on the Athlete.
7. On 16 July 2021, WADA requested the case file to the ITA in view of a potential appeal to be filed against said Agreement on Consequences.
8. On 8 August 2021, the ITA provided the case file to WADA.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

9. On 30 August 2021, WADA submitted a Statement of Appeal before the Court of Arbitration for Sport in accordance with Article R47 et seq. of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Agreement on Consequences signed by the Athlete and the ITA on behalf of WBSC on 28 June 2021 and 1 July 2021 respectively. In its Statement of Appeal, the Appellant requested the appeal be resolved by a Sole Arbitrator and the Sole Arbitrator to rule as follows:
 1. *The appeal of WADA is admissible.*
 2. *The Appealed Decision signed by Laura Vigna and WBSC on 28 June 2021 and 1 July 2021 respectively is amended as follows: Paragraphs 2 and 3 of the operative part of the Appealed Decision (at Appendix A) are modified in such a way that a period of ineligibility of between 12 and 24 months, starting from 19 November 2020, is imposed on the Athlete.*
 3. *The arbitration costs, if any, shall be borne by WBSC or, in the alternative, by the Respondents jointly and severally.*
 4. *WADA is granted a contribution to its legal and other costs.*
10. On 2 September 2021, the CAS Court Office notified the Statement of Appeal to the WBSC and the Athlete and *inter alia*, invited them to comment on the Appellant’s request that the dispute was resolved by a Sole Arbitrator and on the language of the proceedings chosen by the Appellant (English).
11. On 6 September 2021, the Second Respondent requested the proceedings be conducted in Italian.
12. On 8 September 2021, both the First and the Second Respondent requested the dispute be resolved by a Panel of three arbitrators.

13. On 9 and 10 September 2021 respectively, the Appellant and the First Respondent objected to the Athlete's request to conduct the proceedings in Italian.
14. On 13 September 2021, the CAS Court Office informed the Parties, *inter alia*, that English would be the language of the proceedings and that the issue of the number of arbitrators to be appointed to resolve the dispute would be decided by the President of the CAS Appeals Arbitration Division or her Deputy.
15. On 28 September 2021, the Appellant filed its Appeal Brief, with the following request for relief:
 1. *The appeal of WADA is admissible.*
 2. *The Appealed Decision signed by Laura Vigna and WBSC on 28 June 2021 and 1 July 2021 respectively is amended as follows: Paragraphs 2 and 3 of the operative part of the Appealed Decision (at Appendix A) are modified in such a way that a period of ineligibility of between 12 and 24 months, starting from 19 November 2020, is imposed on the Athlete.*
 3. *The arbitration costs, if any, shall be borne by WBSC or, in the alternative, by the Respondents jointly and severally.*
 4. *WADA is granted a significant contribution to its legal and other costs.*
16. On 15 October 2021, the First Respondent requested the proceedings be suspended in light of the Parties' ongoing discussions to settle the matter. WADA supported this request by virtue of an email sent to the CAS Court Office on the same day.
17. On 2 December 2021, WADA communicated to the CAS Court Office that the Parties had settled the matter, enclosed counterparts of the Settlement Agreement signed by the Parties and requested that paragraph 1 of the Settlement Agreement be embodied in an Arbitral Award rendered by consent of the Parties, in accordance with article R56(2) of the CAS Code.
18. On 6 January 2022, the CAS Court Office informed the Parties, further to Article 54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, that the Panel appointed to decide on the present matter had been constituted as follows:

Sole Arbitrator: Mr Jordi López Batet, Attorney-at-law, Barcelona, Spain.

IV. THE SETTLEMENT AGREEMENT

19. The Sole Arbitrator notes that the Parties have agreed to settle their dispute and that all of them signed a Settlement Agreement which paragraph 1 reads as follows:

1. *The Parties agree as follows:*

- (a) *The Agreement on the Consequences of the Anti-Doping Rule Violation signed on 28 June 2021 by the Athlete and on 1 July 2021 by the ITA (on behalf of WBSC) is set aside.*
- (b) *Laura Vigna is sanctioned with a period of ineligibility of one (1) year commencing on 19 November 2020 (i.e. the date of the anti-doping rule violation) as a consequence of the anti-doping rule violation committed pursuant to Article 2.3 of the 2015 WBSC Anti-Doping Rules.*
- (c) *The World Baseball Softball Confederation shall pay WADA a contribution to its legal and other costs in the amount of CHF 4,000. The other parties shall bear their own legal and other costs in respect of the CAS appeal. The Athlete, WBSC and WADA waive all monetary claims against each other in connection with the CAS Appeal and the underlying subject matter of such appeal.*

20. The Sole Arbitrator also notes the request to embody paragraph 1 of the Settlement Agreement in a Consent Award pursuant to Article R56(2) of the CAS Code.

V. JURISDICTION

- 21. The jurisdiction of CAS, which is not disputed, derives from Article 13.2 of the WBSC Anti-Doping Rules and Article R47 of the CAS Code.
- 22. It follows that the CAS has jurisdiction to decide on the present dispute and to issue this Consent Award.

VI. RATIFICATION AND INCORPORATION OF THE SETTLEMENT AGREEMENT BY CAS

- 23. In accordance with Article R56 para. 2 of the CAS Code “[...] *Any settlement may be embodied in an arbitral award rendered by consent of the parties*”.
- 24. Therefore, the Sole Arbitrator is expressly allowed to issue an award embodying the terms of the settlement if all parties to the dispute agree. The Sole Arbitrator’s endorsement of the Settlement Agreement and incorporation in an award serves the obvious purpose of rendering it easier for the Parties to enforce the Settlement Agreement.
- 25. All Parties to the present dispute have agreed to embody part of the Settlement Agreement (paragraph 1) in a Consent Award. However, as any settlement “*may*” be embodied in an award, it is up to the Sole Arbitrator to verify the *bona fide* of the Settlement Agreement, so that the consent award mechanism is not manipulated by the Parties as an instrument of fraud, and to acknowledge that the settlement terms are not contrary to public policy principles or mandatory rules.
- 26. The Sole Arbitrator, having reviewed the text of the Settlement Agreement and the evidence on file, finds no reason to object to or disapprove the terms of the Settlement Agreement and

is satisfied that the agreement constitutes a *bona fide* settlement of the dispute brought to its attention.

27. Accordingly, by consent, an award is made directing the Parties to fully comply the Settlement Agreement. The Settlement Agreement and Consent Award terminate the proceedings *CAS 2021/A/8284 World Anti-Doping Agency v. World Baseball Softball Confederation (WBSC) & Laura Vigna*.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The terms of paragraph 1 of the Settlement Agreement submitted to the CAS Court Office on 2 December 2021 are hereby ratified by the CAS with the consent of the Parties and embodied in this arbitral Award.
2. The arbitral procedure with reference *CAS 2021/A/8284 World Anti-Doping Agency v. World Baseball Softball Confederation (WBSC) & Laura Vigna* is terminated and deleted from the CAS roll.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.