



Arbitration CAS ad hoc Division (OG London) 12/010 Swedish National Olympic Committee (SNOC) & Swedish Triathlon Federation (STF) v. International Triathlon Union (ITU), award of 11 August 2012

Panel: Mr Stuart McInnes (United Kingdom), President; Mr Allan Sullivan QC (Australia); Mr Sharad Rao (Kenya)

Triathlon

Protest against a referee's decision

Field of play decision

Pursuant to the long-established line of CAS jurisprudence, the CAS will only review a field-of-play decision in circumstances of the decision having been taken arbitrarily or in bad faith (“*the Field-of-Play Principle*”). In this respect, in a race context, a referee decision relating to the determination of the first athlete crossing the line is a field-of-play decision.

The Swedish National Olympic Committee (SNOC) is the National Olympic Committee of Sweden.

The Swedish Triathlon Federation (STF) is the National Federation for triathlon in Sweden.

The International Triathlon Union (ITU) is the International Federation for triathlon.

Ms Nicola Spirig is a Swiss athlete (“*the Swiss Athlete*”) who was awarded the gold medal in the women’s triathlon competition during the Games of the XXX Olympiad in London (“*the Event*”).

Ms Lisa Norden is a Swedish athlete (“*the Swedish Athlete*”) who was awarded the silver medal in the women’s triathlon competition during the Event.

The International Olympic Committee (IOC) is the international sports organisation which, in particular, organizes, promotes, coordinates and monitors the Olympic Games.

The Event took place on Saturday, 4 August 2012.

It was not disputed that the referee, Dr Bela Varga, watched the race on live television from the Technical Delegates’ room, which was situated next to the finish line on an elevated platform. Having watched the first, second and third athletes cross the line he decided that the finish was so close as to require the photo-finish procedure to be implemented.

The referee was provided with an image taken from the official photo-finish camera located at the finish line to the right of the athletes as they crossed. The image was wide-angle field shot which showed the full bodies of the athletes crossing the line. At the hearing the Panel was shown a zoomed-in, cropped version of the same image which focused on the upper bodies and heads of the athletes. Superimposed on the images were two red vertical lines – each one marking the foremost section of the athletes’ upper bodies at the exact time the race ended.

It was then discovered that there had been a technical problem with the secondary camera, positioned to the left of the athletes as they crossed the line. This camera is ordinarily used as a backup for photo-finishes, thus no further images were available for his consideration.

Having watched the finish on live television and then reviewed the official image, the referee signed off on the first, second and third positions (*“the Referee’s Decision”*), awarding first place to the Swiss Athlete with a time of 1:59:48; and second place to the Swedish athlete, also with a time 1:59:48. Third place was awarded to Ms Erin Densham from Australia, with a time of 1:59:50.

Before the medal ceremony took place, after the Event, a delegation from STF visited the referee and asked to view the photo-finish image. He took them to the ‘Technical Delegates’ room and allowed them to view it on the monitor. Having had the opportunity to consider it they said they accepted his decision.

By letter dated 6 August 2012, SNOC filed a protest against the Decision (*“the Protest”*) pursuant to Article 12.6 a) of the ITU Competition Rules, which provides as follows:

“Protests Concerning Timing and Results:

(a) Protests concerning mistakes in timing and results (time errors, athletes’ ranking) may be delivered in writing by the Athlete or the NF to the ITU TD within thirty (30) days after the competition”.

By letter also dated 6 August 2012, the ITU Co-Technical Delegates confirmed receipt of the Protest and further confirmed that the official results accurately reflected the decisions of the referee.

Notwithstanding the failure on the part of the Swedish Athlete and/or STF to appeal the Referee’s Decision pursuant to Article 13.2 a)(i), the ITU Executive Board (ITU EB) agreed to hear the Applicants’ appeal, which was duly heard on 7 August 2012.

By a decision published on 8 August 2012, the ITU EB determined, on all the evidence presented to it, that the Applicants’ request should be rejected and that the results of the Event should be confirmed (*“the ITU EB Decision”*).

An application was filed on 9 August 2012 at 6.30 pm with the CAS ad hoc Division, along with 10 exhibits. The Applicants requested that the ranking of athletes be changed to a tie between the Swiss and the Swedish Athletes and that the result be changed to two winners and a second gold medal be awarded to Ms Lisa Norden.

The CAS Court Office communicated the application to the Respondent and to the Interested Parties granting them until 2 pm, 10 August 2012, to file if they so wished, an answer, including any evidence and witness statements, to the application.

The Panel also granted the Respondent until 2 pm, 10 August 2012, to provide (i) the ITU Competition Rules 21 February 2012 edition, (ii) the case file presented before the Executive Board of the ITU, and (iii) such coloured images of the finish/conclusion of the race event as were available. Some of the Interested Parties were invited to call an expert/specialist from Swiss Timing to the hearing in order to clarify the technical aspects of the photo-finish in the present case.

The hearing of the application commenced shortly after 6 pm on 10 August 2012. Present were those persons listed on the Attendance Sheet as follows:

For the Applicants:

- Stefan Lindeberg, NOC Sweden
- Maria Damgren Nilsson, Swedish Triathlon Federation
- Ola Silvdahl, Swedish Triathlon Federation
- Anders Wiggerud, NOC Sweden

For the Respondents:

- Loreen Barnet, ITU Secretary-General
- Antonio Fernandez Arimany, AFL, ITU Director
- Gergelt Harkus, ITU Sport Director
- Kokyee Ng, DLA Piper
- Patrick Mitchell, DLA Piper
- Catherine Beloff, DLA Piper
- Thanos Nikopoulos, ITU
- Leslie Buchanan, ITU
- (By telephone) Dr Bela Varga, the referee for the ITU at the Event.

For Nicola Spirig and the Swiss Olympic Committee:

- Andrew Hunter QC
- Gian Gill, NOC, Switzerland
- Iwan Schuwey, NOC, Switzerland
- Enrique Quesada

For Swiss Timing, Pascal Rossier.

At the outset of the hearing the parties confirmed that they had no objection as to the composition of the Panel.

At the end of the hearing, the Applicants, the Respondent and those Interested Parties that were represented expressed that they were satisfied with the way the hearing was held and acknowledged that they had been treated equally and that their right to be heard had been respected.

The Panel clarifies that the following short summaries of the parties' positions are only roughly illustrative and do not purport to detail all of the submissions made by the parties. However, the Panel has thoroughly considered in its deliberation all of the evidence and arguments submitted by the parties, even if there is no specific or detailed reference to that evidence or those arguments in this award.

The Applicants' submissions

The decision at the finish line was not taken applying the ITU rules. This is not a field-of-play issue, it is a violation of or a failure to apply the rules.

Rule 6.2 a) provides that, "*an athlete will be judged as "finished," the moment any part of the torso, reaches the perpendicular line extending from the leading edge of the finish line*". A torso is defined in Appendix D to the ITU Competition Rules as the "*section of the body extending from the base of the neck to the base of the sternum*".

This is not what happened. Instead of applying the rules it is clear that the referee assessed the finish by reference to the whole of the upper body and, in particular, the athlete's belly, rather than by reference to the foremost part of the torso crossing the line.

Despite the experience of the Technical Officials, this was an unusual case of an athlete crossing the line leaning backwards, rather than leaning forwards. Neither the rules nor the referee contemplated this distinction, which sees the base of the torso crossing the finish line before the top of it.

Finally, the base of the Swiss Athlete's torso is not visible in the official photo-finish image. Because it cannot be seen, it is impossible to know who crossed the line first and so the only just and fair decision is to call a dead-heat.

The Respondent's submissions

Firstly, there is a long-established line of CAS jurisprudence that the CAS will not review decisions taken on the field-of-play. In particular, the decisions in CAS 2004/A/727; OG 02/007; OG 00/012 and 2008/A/1641 support this.

In the event that the Panel do not agree with that, the decision taken was correct; the first to finish was awarded the gold medal. The decisions were taken correctly, according to the photo-finish procedure, and the decision was taken once the referee had reviewed the official image.

Finally, on a matter of form, the Applicants were granted the opportunity to appeal to the ITU EB and did so. The ITU EB heard the same arguments that have been presented before the CAS and upheld the referee's decision.

The Submissions on behalf of the Interested Party, the Swiss Athlete

The Swiss Athlete adopted all the arguments made by the Respondent and added further that on the subject of field-of-play decisions and, in particular, CAS 2004/A/727, the jurisprudence of the CAS is clear. The CAS will only review field-of-play decisions in the event that they are arbitrary or taken in bad faith. There is no suggestion in the present case that this exception applies.

LAW

Jurisdiction

1. Article 61.2 of the Olympic Charter provides as follows:

“61 Dispute Resolution

[...]

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration”.

2. Article 1 of the CAS Arbitration Rules for the Olympic Games (the “Ad Hoc Rules”) provides as follows:

“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.

3. Article 13.2 c) of the ITU Competition Rules provides as follows:

“[...] The decision of the ITU Executive Board may be appealed, as a final and last resort, to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, to the exclusion of any recourse to ordinary courts.

Any decision taken by the said court (CAS) shall be without appeal and shall be binding on the parties concerned”.

4. The jurisdiction of the CAS was also confirmed in the ITU EB Decision as communicated on 8 August 2012:

“This decision may be appealed, as a final and last resort, to the Court of Arbitration for Sport (CAS), according to article 13.2 c) of the ITU Competition Rules”.

Applicable Law

5. Under Article 17 of the Ad Hoc Rules, the Panel must decide the dispute *“pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate”.*
6. The Panel notes that the *“applicable regulations”* in this case are ITU Competition Rules, edition of 21 February 2012.

Discussion

7. It was not disputed by any of the parties that, pursuant to the long-established line of CAS jurisprudence, the CAS will only review a field-of-play decision in circumstances of the decision having been taken arbitrarily or in bad faith (*“the Field-of-Play Principle”*).
8. This principle was reviewed at length in the decision of CAS 2004/A/727, where (at paragraph 28) it was noted that the CAS has the jurisdiction to try and review field-of-play decisions but that, where there is a relevant procedure in place to resolve such issues, the CAS *“accepts the decision reached by this procedure as final, except where it can be demonstrated that there has been arbitrariness or bad faith in arriving at this decision”.*
9. The application of the Field-of-Play Principle prior to CAS 2004/A/727 was examined at length in that decision. It has also been applied in the decisions of CAS 2008/O/1483, CAS 2008/A/1641 and, with respect to the CAS ad hoc Division at the Olympic Games, CAS OG 00/013. The Panel is satisfied that this principle continues to prevail.
10. The Applicants submitted that the CAS should review the Referee’s Decision because it was not an appreciation of the state of affairs on the field at the time, but was the application of the wrong rule, or the failure to apply the correct one to the factual circumstances.
11. The Panel accepts the evidence of the referee that he was applying Article 6.2 a) as drawn. Because he applied the correct rule, the Referee’s Decision falls squarely within the definition of a field-of-play decision. The sole question, then, for the referee to decide was which athlete’s torso crossed the line first.

Conclusion

12. Having reviewed the photo-finish images, the referee decided that the Swiss Athlete's torso crossed the line first. Because this is a field-of-play decision, the CAS will not review it in the absence of arbitrariness or bad faith and, accordingly, the Panel will not seek to review his decision.

The ad hoc Division of the Court of Arbitration for Sport rules:

1. The Application filed by the Swedish National Olympic Committee and the Swedish Triathlon Federation is denied.