



Arbitration CAS ad hoc Division (OG Tokyo) 20/010 & 20/011 National Olympic Committee of Belgium (NOC Belgium) & Netherlands Olympic Committee and Netherlands Sports Federation (NOCNSF) v. World Athletics (WA) & United States Olympic and Paralympic Committee (USOPC) & National Olympic Committee of Dominican Republic (NOC Dominican Republic), award of 2 August 2021

Panel: The Hon. Annabelle Bennett AC SC (Australia), President; Prof. Song Lu (China); Mrs Yasna Stavreva (Bulgaria)

Athletics (4 × 400m Relay Mixed Athletics)

Reinstatement and annulment of original disqualification of teams at an Olympic event

CAS jurisdiction with regard to a decision of the WA's Jury of Appeal

Appeal to CAS of a field of play decision

Review of field of play decisions

Rules of the game

- 1. The fact that the WA Technical Rules provide that there is no appeal to the CAS from a decision of a Jury of Appeal does not derogate from the jurisdiction awarded in the Olympic Charter to the CAS. The arbitration clause contained in the Olympic Charter, confirmed in the entry form for the Olympic Games, binds the athletes and also the International Federations and the National Olympic Committees. The athletes are bound by their acceptance on signing the entry form; the International Federations and National Olympic Committees are bound as being deemed to have subscribed to the arbitration clause in the Olympic Charter by reason of their recognition of the IOC. Jurisdiction is given to the CAS with respect to disputes arising out of or in connection with the Olympic Games by the Olympic Charter and not by the rules of the various International Federations, which cannot, therefore, limit that jurisdiction.**
- 2. The question whether or not a decision that is classified as a field of play decision may be appealed to the CAS is not an issue of jurisdiction, or of admissibility of the CAS appeal. It is a decision on the merits of the appeal or on the substantive law, to be dealt with in the context of the examination of the merits.**
- 3. For a CAS panel to overturn a field of play decision, there must be direct evidence that establishes, to a 'high hurdle', bad faith or bias, or, for example, that the decision was made as a consequence of corruption or arbitrarily. CAS arbitrators are not, unlike on-field judges, selected for their expertise in the particular sport and do not review the determinations made on the playing field concerning the "rules of the game" in circumstances where there was no fundamental violation of the rules.**
- 4. The rules of the game define how a game must be played and who should adjudicate upon the rules, such that the referee's *bona fide* exercise of judgment or discretion is**

beyond challenge, otherwise than in so far as the rules of the game themselves provide. The principles underlying this doctrine include the need for finality, to ensure the authority of the referee and match officials, and the fact that, in most cases, “*there is no way to know what would have happened if the decision had gone the other way*”.

I. PARTIES

1. The Applicants are the National Olympic Committee of Belgium (“NOC Belgium”), which represents the Olympic movement in Belgium, with seat and headquarters in Brussels, Belgium; and the Netherlands Olympic Committee and Netherlands Sports Federation (“NOCNSF”) which represents the Olympic and Paralympic movements in Netherlands, with seat and headquarters in Arnhem, Netherlands.
2. The First Respondent is World Athletics (“WA”), formerly known as the International Association of Athletics Federations (the “IAAF”), which is the international governing body of the sport of athletics, with seat and headquarters in Monaco.
3. The Second Respondent is the United States Olympic and Paralympic Committee (“USOPC”) which represents the Olympic and Paralympic movement in the United States of America.
4. The Third Respondent is the National Olympic Committee of Dominican Republic (“NOC Dominican Republic”) which represents the Olympic movement and its values in the Dominican Republic, with headquarters in Santo Domingo, Dominican Republic.

II. FACTS

5. The matters set out below are a summary of the main relevant facts as established by the Panel, by way of an uncontested chronology on the basis of the submissions of the Parties. While some of the times as set out in the Applications are not internally consistent, the differences are not relevant. The facts as set out are taken from the Applications which also refer to decisions taken after midnight but said to be dated the preceding day. Additional facts may be set out, where relevant, in the legal and factual considerations of the present award.
6. On 30 July, 2021, during Heat 1/2 of the 4 x 400m Relay Mixed Athletics, the Team of the United States of America (“Team USA”) exchanged their baton outside the designated takeover zone where the baton exchange has to take place, which originally led to its disqualification.
7. On the same date 30 July, 2021, within the same race of the 4 x 400m Relay Mixed Athletics, the Team of the Dominican Republic (“Team Dominican Republic”) switched lanes in the last moment from the outside position to the inside lane, which originally led to its disqualification.

8. On 31 July, 2021 at 12:24 am (time of Tokyo), the World Athletics' Jury of Appeal rendered a Decision according to which Team Dominican Republic was reinstated and its original disqualification was annulled, such that Team Dominican Republic obtained the right to participate in the final of the 4 x 400m Relay Mixed Athletics due to the following reasons:

Following review of the video and discussion with the officials, the Jury concluded that the Dominican Republic athlete correctly positioned herself in position 2 in response to an incorrect original placement. There was no interference or adverse consequence to any other team as result of the action by the Dominican Republic athlete. The appeal is upheld and the results shall be corrected accordingly.

9. On 31 July, 2021 at 12:54 am (time of Tokyo), the World Athletics' Jury of Appeal rendered a Decision according to which Team USA was reinstated and its original disqualification was annulled, such that Team USA obtained the right to participate in the final of the 4 x 400m Relay Mixed Athletics due to the following reasons:

The Jury reviewed the available footage of the actions of USA athlete and spoke with the officials responsible for the event. The Jury concluded that the athlete was not properly placed in the correct position at the time the signal was given for the athletes to move to their places on the track. It is the Jury's view therefore that the appeal should be upheld and results amended accordingly.

10. On 31 July, 2021 at 10:10 (time of Tokyo) the World Athletics' Jury of Appeal rendered a Decision according to which the Team of Germany obtained the right to participate in the final of the 4 x 400m Relay Mixed Athletics due to the following reasons:

In light of the circumstances surrounding the disqualification and subsequent reinstatement of the USA Team, the Jury has decided that the teams with the best 8 valid performances (as per the criteria for qualification for the final) shall participate in the final plus the USA Team. This includes the German Team.

III. CAS PROCEEDINGS

11. On 31 July 2021 at 8.22 pm (time of Tokyo), NOC Belgium filed an Application with the CAS Ad Hoc Division against the Respondents with respect to the Decisions being:
- 1) Decision of World Athletics dated 31 July, 2021 at 00:54 (time of Tokyo) Jury Decision - Team United States of America reinstated
 - 2) Decision of World Athletics dated 31 July, 2021 at 11:24 (time of Tokyo) Jury Decision - Team Dominican Republic reinstated;
 - 3) Decision of World Athletics dated 31 July, 2021 at 11:24 (time of Tokyo) "Start List revised";
 - 4) Decision of the Jury of Appeal of World Athletics dated 31 July 2021 at 10.30 (time of Tokyo) rejecting NOC Belgium's appeal dated 31 July, 2021

12. On 31 July at 9.00 pm (time of Tokyo), the mixed relay final (400m) took place. Poland, Dominican Republic and USA won the gold, silver and bronze medals respectively.
13. On 31 July 2021 at 11.49 pm (time of Tokyo), NOCNSF filed an Application with the CAS Ad Hoc Division against the Respondents with respect to the same Decisions that had already been challenged by NOC Belgium.
14. On 1 August 2021 at 10:57 am and 11:05 am (time of Tokyo), the CAS Ad Hoc Division notified the Applications to the Respondents and the International Olympic Committee (IOC), in its capacity as an interested party.
15. On 1 August 2021 at 12:43 pm, the CAS Ad Hoc Division notified the Parties of the composition of the Arbitral Tribunal in the procedures CAS OG 10 and CAS OG 11:

Ms. Annabelle Bennett, as President of the Panel;

Mr Song Lu and Ms Yasna Stavreva, as co-arbitrators.
16. On 1 August 2021 at 1:21 pm (time of Tokyo), the IOC informed the CAS Ad Hoc Division that it would not participate in these proceedings.
17. On 1 August 2021 at 1:25 pm (time of Tokyo), the Parties were informed that both matters, CAS OG 20/10 and CAS OG 20/11, would be consolidated in accordance with Article 11 (3) of the CAS Arbitration Rules for the Olympic Games.
18. On 1 August 2021 at 1:43 pm (time of Tokyo), the Panel issued procedural directions as follows:
 - Respondents to file an Answer by 1 August 2021 at 7:00 pm (time of Tokyo). The IOC to file an *amicus curiae* brief if it wishes to do so within the same time limit
 - The Parties and the Interested Party to inform the CAS Court Office by 1 August 2021 at 7:00 pm (time of Tokyo) whether they consider it necessary to hold a hearing.
19. On 1 August 2021 at 2:56 pm (time of Tokyo), NOCNSF informed the CAS Ad Hoc Division that it does not consider a hearing to be necessary.
20. On 1 August 2021 at 5:01 pm (time of Tokyo), WA filed its Reply. In the Reply, WA asked that the Panel decide the matters dealt with in the Reply on the papers and only hold a hearing if the merits of the challenged decision were to be reviewed.
21. On 1 August 2021 at 6:15 pm (time of Tokyo), NOC Belgium informed the CAS Ad Hoc Division that it does not consider a hearing to be necessary.
22. On 1 August 2021 at 8:54 pm (time of Tokyo), the Panel noted that none of the Parties requested a hearing and informed the Parties that it will proceed accordingly.

IV. THE PARTIES' SUBMISSIONS

IV.1 The Applicants' Submissions

23. Pursuant to Article 1 of the CAS arbitration rules for the Olympic Games and Article 61.2 of the Olympic Charter, the present dispute is within the competence of CAS Ad Hoc Division.
24. Article 8.11 of the technical rules of World Athletics, providing that "*there shall be no further right of appeal, including to CAS*", is overruled by the general competence rule of the CAS under Article 61.2 of the Olympic Charter, and the rule contained in Article 8.11 is a serious infringement of the right to a fair trial.
25. Based upon the provisions laid down in WA's Technical Rules, the WA Jury of Appeal's decisions of July 31, 2021 (0:24) regarding Team USA and (0:54) regarding Team Dominican Republic are erroneous.
26. In addition, the WA Jury of Appeal decision that the "*German Team advanced to the final*" explicitly confirms that the performance of Team USA was invalid.
27. The relief sought in the Applications is, relevantly:
 - *annul the decision upon appeal to reinstate Team USA for participation in the final of 4 × 400m Relay Mixed Athletics at the Tokyo 2020 Olympics and, hence, confirm the initial decision to disqualify Team USA for participation in the final of 4 × 400m Relay Mixed Athletics at the Tokyo 2020 Olympics; AND*
 - *exclude Team USA from participation in the final of 4 × 400m Relay Mixed Athletics at the Tokyo 2020 Olympics; AND*
 - *annul the decision upon appeal to reinstate Team Dominican Republic for participation in the final of 4 × 400m Relay Mixed Athletics at the Tokyo 2020 Olympics and, hence, confirm the initial decision to disqualify Team Dominican Republic for participation in the final of 4 × 400m Relay Mixed Athletics at the Tokyo 2020 Olympics; AND*
 - *exclude Team Dominican Republic from participation in the final of 4 × 400m Relay Mixed Athletics at the Tokyo 2020 Olympics; AND*
 - *amend the Start List of the final of 4 × 400m Relay Mixed Athletics at the Tokyo 2020 Olympics [Decision of World Athletics dd. July 31, 2021 (11:24) "Start List revised"] accordingly.*
28. The Applicants also sought a stay of the decisions to reinstate Team USA and Team Dominican Republic.

IV.2 First Respondent's Submissions

29. The Applications cannot proceed on the merits, because:
- (i) they were filed too late;
 - (ii) the challenged decisions are “*field of play*” decisions that should not be reviewed by CAS; and
 - (iii) the challenged decisions are stated explicitly in the WA Technical Rules not to be appealable to CAS and are therefore not covered by a relevant arbitration agreement.
30. The First Respondent's prayers for relief are as follows:
- a) The CAS does not have the jurisdiction in respect of the Applications and, in the alternative, the Applications are not admissible.
 - b) In the alternative, the Applications are dismissed.
31. The second and third Respondents did not file submissions.
32. While the Panel has provided a summary of the facts and the parties' submissions, the Panel has considered the Applications and the Reply in their entirety, including the facts and submissions contained therein. The Panel will refer to the facts and submissions as necessary to explain the reasons for this Award.

V. JURISDICTION AND ADMISSIBILITY

33. Article 61.2 of the Olympic Charter relevantly provides:
- Any dispute arising on the occasion of, or in conjunction 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.*
34. The jurisdiction of the CAS for the Olympic Games is governed by the Olympic Charter with respect to disputes that arise on the occasion, of or in conjunction with, the Olympic Games; there is no question that this condition, has been met. It is apparent that the dispute has arisen during the Tokyo Olympic Games.
35. The Applicants refer to Article 8.11 of the WA Technical Rules, which provides that:
- The decision of the Jury of Appeal (or the Referee in the absence of a Jury of Appeal or if no appeal to the Jury is made) shall be final and there shall be no further right of appeal, including to CAS.*

36. However, the Applicants do not rely on Article 8.11 to oust the jurisdiction of the CAS but submit that it is overruled by Article 61.2 of the Olympic Charter. The Applicants submit that Article 8.11 is not applicable.
37. The Panel determines that the fact that the WA Technical Rules provide that there is no appeal to the CAS from a decision of a Jury of Appeal does not derogate from the jurisdiction awarded in the Olympic Charter to the CAS.
38. In CAS 2008/A/1641, the rules under consideration, relevantly of the IAAF, also provided that the decision of the Jury of Appeal shall be final and that there shall be no further right of appeal, including to the CAS. The Sole Arbitrator in that case determined that, nevertheless, the arbitration clause contained the Olympic Charter, which was confirmed in the entry form for, there, the Beijing Olympics, binds the athlete and also the IAAF and the National Olympic Committees. The former is bound by their acceptance on signing the entry form; the IAAF and National Olympic Committees are bound as being deemed to have subscribed to the arbitration clause in the Olympic Charter by reason of their recognition of the IOC.
39. The Sole Arbitrator also observed that jurisdiction is given to the CAS with respect to disputes arising out of or in connection with the Olympic Games by the Olympic Charter and not by the rules of the various International Federations, which cannot, therefore, limit that jurisdiction.
40. WA submits that the CAS does not have jurisdiction by reason of Article 8.11, but when its submission is examined in more detail, it can be seen that WA construes this provision to refer to field of play decisions as not subject to review. That is not a question of jurisdiction.
41. The question whether or not a decision that is classified as a field of play decision may be appealed to the CAS is not an issue of jurisdiction, or of admissibility of the CAS appeal. It is a decision on the merits of the appeal (CAS 2015/A/4208) or on the substantive law, to be dealt with in the context of the examination of the merits (TAS JO 16/027).
42. There is no dispute in the present case that the Applicants have exhausted all internal remedies.
43. The Panel therefore finds that it has jurisdiction over these Applications and that the Applications, which fulfil the requirements of Article 61.2 of the Olympic Charter and the CAS Arbitration Rules for the Olympic Games, are admissible.

VI. APPLICABLE LAW

44. Under Article 17 of the CAS 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*”. The Panel considers that the WA Technical Rules, to the extent not in conflict with the Olympic Charter, are also relevant to these proceedings.

VII. MERITS

A. Field of play

45. The Panel has jurisdiction and the power to overturn a field of play decision. However, it is very well established in CAS jurisprudence that, for a CAS Panel to overturn a field of play decision, there must be direct evidence that establishes, to a 'high hurdle', bad faith or bias (CAS OG 00/013; CAS OG 16/028), or, for example, that the decision was made as a consequence of corruption (CAS OG 00/013) or arbitrarily (CAS OG 12/010).
46. CAS Panels have consistently pointed out, in different words but to the same effect, that CAS Arbitrators are not, unlike on-field judges, selected for their expertise in the particular sport and do not review the determinations made on the playing field concerning the "*rules of the game*" in circumstances where there was no fundamental violation of the Respondent's own rules (CAS OG 00/013).
47. The discussion in CAS 2015/A/4208 is of assistance in describing why CAS Arbitrators ought not enter into field of play decisions in the absence of the above factors. The Panel there pointed out, (citing an essay by Michael Beloff QC) that the rules of the game define how a game must be played and who should adjudicate upon the rules, such that the referee's *bona fide* exercise of judgment or discretion is beyond challenge, otherwise than in so far as the rules of the game themselves provide. The Panel referred to the principles underlying this doctrine, which included the need for finality, to ensure the authority of the referee and match officials, and the fact that, in most cases, "*there is no way to know what would have happened if the decision had gone the other way*".
48. In this case, the final of the relay has been run.
49. In the Applications, the Applicants set out the merits of their case and the factual matters on which they rely. They cite the WA Technical Rules with respect to the positioning of athletes during an event. These concern the exchange of baton outside the designated takeover zone by Team USA and the switching of lanes in the last moment by Team Dominican Republic in the same event. In each case, the Jury Decision was based on the review of video and discussion with officials. The determination was as to the correct positioning in response to an incorrect original placement (Team Dominican Republic) and the fact that the athlete was not properly placed in the correct position (Team USA).
50. The Applicants do not assert any bad faith in the making of these decisions, or any other similar failure such as malicious intent or arbitrariness. Rather, they point to matters of positioning as set out in the WA Technical Rules and the actions taken by the athletes in question in response to directions from officials.
51. The decisions were clearly, in the Panel's view, field of play decisions as to which the Panel will not interfere.

B. The relief sought in the Applications

52. In CAS 2015/A/4208 it was also observed that the established field of play doctrine, as described by Beloff and adopted by that Panel, means that where the rules of the game in question “do not provide for any review after the event or match has finished, then the CAS is directed to respect such a silence and draw the necessary consequences”.
53. In the present case, Article 8.9 of the WA Technical Rules provides that the Jury of Appeal may reconsider a decision if new conclusive evidence is presented, “provided the new decision is still applicable. Normally, such re-consideration may be undertaken only prior to the Victory Ceremony for the applicable event, unless the relevant governing body determines that circumstances justify otherwise”. That is, the rules of the game themselves provide for no further review after the victory ceremony which, in the present case, has already taken place. It is in this context that Article 8.11 provides that there shall be no further right of appeal to the CAS.
54. Apart from the fact that the WA Technical Rules which govern field of play preclude an appeal after the Medal Ceremony unless the circumstances justify it, as WA points out it is too late to grant the relief sought, that Team USA and Team Dominican Republic be excluded from the final of race, or to amend the start list for that final. That is, the relief sought is basically moot.

C. The order in which the decisions concerning Team USA were issued

55. The Applicants raise a further point concerning the timing of the Jury of Appeal decisions. In essence, the submission is that the final issued Jury decision which was issued last was that the best 8 valid performances will participate in the final, plus Team USA and including the German Team. The Applicants assert that this amounts to an affirmation that the Team USA performance was not valid. As this decision was made after the Jury decision to reinstate Team USA, the Applicants submit that it overrules the earlier reinstatement decision. Thus, the Applicants contend, Team USA could not qualify for participation in the final based on an invalid performance and should be excluded.
56. The Panel does not accept this submission. First, the decisions were, together, an outcome of the field of play decision concerning Team USA and, as such, the Panel will not interfere with those decisions or enter into the merits of them. Secondly, the decisions, for various reasons including pressure of time and being authored by the Jury of Appeal, should not be construed as if they were statutes or regulations. It is clear that the Jury of Appeal decided, as a consequence of its field of play decision, to reinstate Team USA but not preclude the German Team which otherwise had won a place in the final. It is apparent that the issued decisions, to reinstate Team USA and to extend the field for the final to 9 teams, were in effect a single consequence of, and part of, the field of play decision.

VIII. CONCLUSION

57. It follows that the Panel concludes that it has jurisdiction to determine the Applications. The decisions under challenge are each field of play decisions and the Panel will not engage with the

merits of those decisions in the absence of any allegation of a fundamental violation such as bad faith, bias or arbitrariness. Further, the race in question, the final of the 4 x 400m Relay Mixed Athletics has already been run and the medals awarded. Accordingly, the relief sought is moot or not appropriate.

IX. COSTS

58. Article 22 of the CAS Ad Hoc Rules provides that the facilities and services of the CAS Ad Hoc Division, including the provision of arbitrators to the Parties to a dispute, are free of charge. It further provides that the Parties shall pay their own costs of legal representation, experts, witnesses and interpreters.
59. The Parties in the present dispute do not seek an award for costs.
60. The Parties will bear their own legal costs.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The Ad Hoc Division of the Court of Arbitration for Sport has jurisdiction to hear the applications filed by the National Olympic Committee of Belgium and the Netherlands Olympic Committee and Netherlands Sports Federation on 31 July 2021.
2. The applications filed by the National Olympic Committee of Belgium and the Netherlands Olympic Committee and Netherlands Sports Federation on 31 July 2021 are admissible.
3. The applications filed by the National Olympic Committee of Belgium and the Netherlands Olympic Committee and Netherlands Sports Federation on 31 July 2021 are rejected.
4. Each Party shall bear its own legal costs and other expenses incurred by this procedure.