



Arbitration CAS ad hoc Division (OG Tokyo) 20/015 Yuberjen Martínez & Colombian Olympic Committee (COC) & Colombian Boxing Federation (CBF) v. IOC Boxing Task Force, award of 5 August 2021 (operative part of 4 August 2021)

Panel: Mr Manfred Nan (The Netherlands), President; Mr Juan Pablo Arriagada (Chile); Prof. Song Lu (China)

Boxing

Win on points decision by the judges of a bout

Field of play doctrine

Conditions for the reassessment of a field of play decision

Role of CAS panels in the reassessment of field of play decisions

1. The field of play doctrine, *inter alia*, provides that courts may interfere only if an official's field of play decision is tainted by fraud or arbitrariness or corruption; otherwise although a court may have jurisdiction it will abstain as a matter of policy from exercising it. This doctrine, established as a fundamental principle of the *lex sportiva*, is justified by the need to preserve the finality and certainty of sports results under the authority of sports referees, the lack of technical expertise of the members of arbitration tribunals, the need to avoid disruption of competitions and the need to limit the risk of leaving the court flooded with requests for review and rewriting of sports results. The doctrine places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of the field of play decision.
2. Opinions voiced by news outlets, individual experts or even untrained eyes about the results of a competition cannot be considered sufficient to reassess the righteousness of field of play decisions and to establish bad faith on the part of the judges, neither individually nor collectively, as debates as to results or scores in jury sports are omnipresent and opinions adverse to the decision of a jury always exist.
3. 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.

1. PARTIES

- 1.1. Mr Yuberjen Martínez (the “First Applicant” or the “Colombian Boxer”) is a Colombian citizen and a boxer participating in the category “Men’s Fly (48-52kg)” at the XXIII Olympic Games in Tokyo (the “Olympic Games”).
- 1.2. The Second Applicant is the Colombian Olympic Committee (the “COC”) which is the organization responsible for the Olympic movement in Colombia.
- 1.3. The Third Applicant is the Colombian Boxing Federation (the “CBF”) which is the national governing body for boxing in Colombia.
- 1.4. The Respondent is the IOC Boxing Task Force (the “IOC BTF”), which is an operationally independent body of the IOC, but not a legal entity. The IOC BTF indicated that, in the interest of procedural efficiency, it considered that the application was formally addressed against the IOC.
- 1.5. The First Interested Party is the Japanese Olympic Committee (the “JOC”), the organisation responsible for the Olympic movement in Japan.
- 1.6. The Second Interested Party is Mr Ryomei Tanaka (the “Japanese Boxer”). He is citizen of Japan and a boxer also participating in the category “Men’s Fly (48-52kg)” at the Olympic Games.

2. FACTS

- 2.1. The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2. On 3 August 2021, the Colombian Boxer faced the Japanese Boxer in Quarterfinal 1 in the Boxing category “Men’s Fly (48-52kg)” at the occasion of the Olympic Games (the “Bout”). The Colombian Boxer was in the red corner, while the Japanese Boxer was in the blue corner.
- 2.3. At the end of the Bout, it was determined by the judges that it was a “Win on Points” for the Japanese Boxer by a 4:1 split decision. The official “Bout Result” (the “Appealed Decision”) lists the following scores:

	Judge 1		Judge 2		Judge 3		Judge 4		Judge 5		Warnings		Knockdown	
	RED	BLUE	RED	BLUE	RED	BLUE	RED	BLUE	RED	BLUE	RED	BLUE	RED	BLUE
ROUND 1	9	10	10	9	10	9	10	9	10	9				
ROUND 2	10	9	9	10	9	10	10	9	9	10				
ROUND 3	9	10	9	10	9	10	9	10	9	10				
TOTAL	28	29	28	29	28	29	29	28	28	29				

3. CAS PROCEEDINGS

3.1. On 4 August July 2021, at 4:10 pm (time of Tokyo), the Applicants filed an Application with the CAS Ad Hoc Division against the Respondent with respect to the Appealed Decision.

3.2. On 4 August 2021, at 5:27 pm (time of Tokyo), the CAS Ad Hoc Division notified the Application to the Respondent and invited it to file its Answer by 4 August 2021 at 9:00 pm, time of Tokyo. The Interested Parties were also informed of their entitlement to file within the same deadline an *amicus curiae* brief if they wished to do so. Furthermore, the CAS Ad Hoc Division notified the Parties that the Arbitral Tribunal was composed of:

President: Mr Manfred Nan, Attorney-at-Law, Arnhem, The Netherlands;

Arbitrators: Prof. Song Lu, Attorney-at-Law, Beijing, China;

Mr Juan Pablo Arriagada, Attorney-at-Law, Santiago, Chile.

3.3. On 4 August 2021, at 8:58 pm (time of Tokyo), the Respondent filed its Answer with exhibits.

3.4. The Interested Parties did not file any *amicus curiae* brief.

3.5. On 4 August 2021 at 10:00 pm (time of Tokyo), a hearing was held. The Panel was joined at the hearing by Mr Antonio De Quesada, CAS Head of Arbitration. The following persons also attended the hearing:

For the Applicants: The First Applicant, Mr Luis Fernandez Aguilera and Mr Felix Andrés Burgos Mendez, Attorneys-at-Law, by video; and Ms Fernanda Strasse, Interpreter,

For the Respondent: Mr Antonio Rigozzi and Ms Charlotte Frey, Attorneys-at-Law, by video;

For the First Interested Party Mr Kengi Kasahara, by video.

3.6. The Second Interested Party did not attend the hearing.

- 3.7. There were no objections to the constitution of the Panel and the Parties confirmed that their right to be heard and to be treated equally was respected.

4. PARTIES' SUBMISSIONS

- 4.1. The Parties' submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered. The Panel, however, underlines that no positions and/or requests were submitted by the Interested Parties.

A. Applicants' Requests for Relief and Position

- 4.2. The Applicants requests the CAS to rule as follows:

"1. To declare Martínez as the winner of the Fight

2. If not, to declare the Fight as void and order a replay

3. If none of the previous requests are granted, we request to consider Martínez as the rightful semi-finalist in case Tanaka is not able to fight in the semi-final".

- 4.3. In essence, the Applicants allege that the judges acted in bad faith when judging the Bout.

- 4.4. The Applicants contend that the applicable rule in this case is Article 18.11 of the AIBA Technical & Competition Rules, which establishes as follows:

"18.11. Each Judge independently judges the merits of the two (2) Boxers using the AIBA Scoring System based on the following criteria:

18.11.1. Number of quality blows on target area;

18.11.2. Domination of the Bout by technical and tactical superiority;

18.11.3. Competitiveness".

- 4.5. The Applicants submit that the amount of quality blows was overwhelming in favour of the Colombian Boxer. In all three rounds, the Colombian Boxer landed more quality blows than the Japanese Boxer. The only one that showed moves to avoid blows was the Colombian Boxer. His technical and tactical abilities were superior to the Japanese Boxer in every aspect.
- 4.6. Regarding domination of the Bout by technical and tactical superiority, in this case, both the expert witnesses relied upon by the Applicants but not examined during the hearing (Mr. Jesus Martínez, Coach of Panama's Team, and Mr Roberto Ibanez Chavez, Coach of Mauritius' Team), and the public in general agree that the result of the Bout was incredible.

- 4.7. In respect of competitiveness, the Colombian Boxer was able to walk out of the ring without requiring any aid, whereas the Japanese Boxer needed the help of his crew and a wheelchair to leave the arena. Moreover, the Colombian Boxer was more competitive than the Japanese Boxer, who was almost asking for the Bout to be over.

B. Respondent's Requests for Relief and position

- 4.8. The Respondent requested the CAS:

"In light of the above, the IOC BTF respectfully invites the Panel to summarily dismiss the Applicant's requests for relief and to confirm the appealed decision(s).

To the extent necessary, the IOC BTF notes that (i) request n°1 would impermissibly require the Panel to substitute its judgment to the one made by the judges, (ii) request n° 2 would in any event be impossible to implement, as conceded by the Applicant, and (iii) request n° 3 has no basis in the applicable regulations".

- 4.9. In essence, the Respondent's position is that the Appealed Decision is a field-of-play decision which allows judicial review by the CAS only in very limited circumstances, for example, extremely bad faith.
- 4.10. The Respondent submits that the Applicants have submitted no evidence whatsoever, that the referees' decision to declare the Japanese Boxer the winner of the Bout was tainted with bad faith or that there was any preference for the Japanese Boxer (or prejudice against the Colombian Boxer).
- 4.11. The allegation that the Colombian Boxer dominated all three rounds of the Bout is only supported by four selected images of the Bout. The screenshots do not support the allegation that *"the amount of quality blows was overwhelmingly in favor"* of the Colombian Boxer. The only way to support that allegation would be to have the full video of the Bout reviewed by the Panel – which would require the Panel to have the technical expertise to make such an assessment. This is not the role of judicial authorities, in particular in cases like the present one, where the Applicants accept that *"boxing is a sport of appreciations"*, which means that the Panel should substitute its own appreciation to the judges' appreciation (without having the required technical background). This is precisely why the field of play doctrine exists.
- 4.12. The reality is that the Bout was a close one, as is evidenced by the fact that the winner had to be determined by a "split decision" in accordance with Article 19.1.1 of the BTF Event Regulations.
- 4.13. As to the fact that the Japanese Boxer had to be escorted out of the tournament premises on a wheelchair, the Post-Bout Medical Form filled in by the certified ringside doctor shows that this was *"due to dehydration and fatigue"*, which is a more than understandable state following a Bout such as the one the Japanese Boxer fought in.

- 4.14. Finally, the IOC BTF notes that the referees and judges officiating at the Tokyo OG are selected based upon a thorough selection process, which is precisely aimed at ensuring greater transparency and neutrality during the Games.

5. JURISDICTION AND ADMISSIBILITY

- 5.1. Article 61.2 [*Dispute Resolution*] of the Olympic Charter provides as follows:

“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”.

- 5.2. In view of the above, the Panel considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter. The jurisdiction of the CAS Ad Hoc Division was not contested in the written submissions and/or at the hearing.

- 5.3. Article 1 [*Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)*] of the CAS Arbitration Rules for the Olympic Games (hereinafter: the “CAS Ad Hoc Rules”) provides as follows:

“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”.

- 5.4. The Appealed Decision was issued on 3 August 2021.
- 5.5. In view of the above and taking into account that the Applicants filed their application on 4 August 2021, the Panel considers the application admissible. In any case, the Panel notes that the admissibility was not challenged.

6. APPLICABLE LAW

- 6.1. 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*”.

- 6.2. In addition to the Olympic Charter, the Panel considers that the AIBA Technical & Competition Rules are also relevant to these proceedings as well as the IOC BTF Event Regulations in so far as they deviate from the AIBA.

7. DISCUSSION

- 7.1. This case is about the question of whether the Appealed Decision issued by the judges of the Bout, determining that the Japanese Boxer won is to be overturned.

- 7.2. The Applicants acknowledged during the hearing that the field of play doctrine is applicable to the matter at hand and in their Application, they had already submitted that they were familiar with such doctrine.

- 7.3. As cited in the Respondent's Answer, the field of play doctrine, *inter alia*, provides the following:

"[...] Courts may interfere only if an official's field of play decision is tainted by fraud or arbitrariness or corruption; otherwise although a Court may have jurisdiction it will abstain as a matter of policy from exercising it" (CAS 2004/A/704, para. 13).

"This doctrine of the rules of the game, established as a fundamental principle of the lex sportiva, is justified by the need to preserve the finality and certainty of sports results under the authority of sports referees, the lack of technical expertise of the members of arbitration tribunals, the need to avoid disruption of competitions and the need to limit the risk of leaving the court flooded with requests for review and rewriting of sports results" (CAS 2015/A/4208 and confirmed by TAS OG 20/014).

"[...] there must be some evidence of preference for, or prejudice against, a particular team or individual. The best example of such preference or prejudice was referred to by the Panel in [CAS OG 00/013], where they stated that one circumstance where a CAS Panel could review a field of play decision would be if a decision were made in bad faith, eg. as a consequence of corruption. The Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision" (CAS OG 02/007, para. 17, with reference to CAS OG 00/013).

- 7.4. As set forth above, the Applicants, *inter alia*, contend that they would *"demonstrate how the judges acted in extreme bad faith in this case"*.

- 7.5. The Panel finds that, if the Applicants were indeed able to corroborate such statement with evidence, this would in principle indeed justify interfering with the Appealed Decision.

- 7.6. However, this is where the Applicants' case fails, because they provided no evidence whatsoever of any *"bad faith"* on the side of any of the judges.

- 7.7. The mere fact that certain news outlets and boxing coaches, i.e. the witnesses relied on by the Applicants, are of the opinion that the Colombian Boxer should have been declared the winner

of the Bout does not come close to establishing bad faith on the part of the judges, neither individually nor collectively.

- 7.8. In the absence of evidence bad faith, fraud, arbitrariness, corruption, preference for an athlete, prejudice against an athlete, etc., the Panel finds that it is inappropriate to assess the merits of the Applicants' appeal.
- 7.9. The Panel finds that there is also no indication that the judges may have applied incorrect criteria or yardsticks in judging the Bout, nor is this contended by the Applicants. There is no indication on file suggesting that the judges would have applied Article 18.11 of the AIBA Technical & Competition Rules incorrectly.
- 7.10. The Applicants furthermore maintain, *inter alia*, that “*when in boxing, one of the competitors exits the ring in a wheelchair, one must just assume that such competitor is the loser not the winner by almost unanimous decision*”, and that “*for the untrained eye of the public audience the win from [the Colombian Boxer] was clear*”.
- 7.11. The Panel finds that also these contentions of the Applicants must fail. The Appealed Decision was issued before the Japanese Boxer left the arena by wheelchair and therefore could not and, indeed, should not have been taken into account in judging the performance of the athletes **during** the Bout. Moreover, based on the evidence submitted by the Applicants and the Respondent, the Panel is satisfied to conclude that the use of the wheelchair by the Japanese Boxer after he had left the ring was due to dehydration and fatigue.
- 7.12. The Panel further finds that if the opinions voiced by news outlets, individual experts or even untrained eyes were considered relevant in assessing the righteousness of field of play decisions, this would be the nail in the coffin for jury sports, as debates as to results or scores in jury sports are omnipresent and there will probably always be opinions adverse to the decision of a jury. This by itself cannot be sufficient to reassess a field of play decision and the Panel therefore refrains from doing so. The Panel finds that, in situations like these, the only appropriate decision is to defer to the technical and specialist knowledge of the judges of the Bout, who are better trained in judging boxing bouts than the members of this Panel.
- 7.13. The Panel feels itself comforted by the fact that 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 rules (CAS OG 00/013).
- 7.14. On the basis of the above reasoning, requests for relief no. 1 and 2 of the Applicants are to be dismissed, but it does not necessarily rule out request for relief no. 3.
- 7.15. In its request for relief no. 3, the Applicants request the Panel to determine that if the Japanese Boxer is not able to fight in the semi-final due to his injuries, the Panel should consider replacing him by the Colombian Boxer.

7.16. As contended by the Respondent during the hearing, the Panel finds that this would be rewriting the applicable rules.

7.17. Article 19.11.2 of the AIBA Technical & Competition Rules provides as follows:

“If a Boxer fails the Medical Examination or Daily Weigh-In, his/ her opponent will win by Walkover”.

7.18. Accordingly, the hypothetical situation that the Japanese Boxer may fail the Medical Examination prior to the Semi-Final is foreseen in the applicable rules. There is no legal basis for the Panel to change such rule on an *ad hoc* basis, not least because this would also prejudice the opponent, who is entitled to a win by walkover in accordance with the applicable rules. Therefore, request for relief no.3 is also dismissed.

8. CONCLUSION

8.1. In view of the above considerations, the Applicants’ application filed on 4 August 2021 shall be dismissed.

9. COSTS

9.1. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division “*are free of charge*”.

9.2. According to Article 22 para. 2 of the CAS Ad Hoc Rules, parties to CAS *ad hoc* proceedings “*shall pay their own costs of legal representation, experts, witnesses and interpreters*”. *In casu*, the Panel does not see any reason to deviate from such rule.

DECISION

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

1. The application filed by Mr. Yuberjen Martínez, the Colombian Olympic Committee and the Colombian Boxing Federation on 4 August 2021 is dismissed.
2. The Parties shall bear their own costs.