



Tribunal Arbitral du Sport
Court of Arbitration for Sport

**CAS 2009/A/1545 Andrea Anderson, LaTasha Colander Clark, Jearl Miles-Clark,
Torri Edwards, Chryste Gaines, Monique Hennagan, Passion
Richardson v/ IOC**

PARTIAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Massimo Coccia, Professor and Attorney-at-Law, Rome, Italy
Arbitrators: Mr Yves Fortier, Attorney-at-Law, Montreal, Canada
Mr Hans Nater, Attorney-at-Law, Zurich, Switzerland

in the arbitration between:

1/ Ms ANDREA ANDERSON

2/ Ms LATASHA COLANDER CLARK

3/ Ms JEARL MILES-CLARK

4/ Ms TORRI EDWARDS

5/ Ms CHRYSTE GAINES

6/ Ms MONIQUE HENNAGAN

7/ Ms PASSION RICHARDSON

Represented by Mr Mark S. Levinstein, Attorney-at-Law, Washington DC, U.S.A.

- Appellants-

and

INTERNATIONAL OLYMPIC COMMITTEE (IOC), Lausanne, Switzerland

Represented by Mr Howard Stupp, Director of Legal Affairs, Lausanne, Switzerland

- Respondent -

I. PARTIES

1. Ms Andrea Anderson, Ms LaTasha Colander Clark, Ms Jearl Miles-Clark, Ms Torri Edwards, Ms Chryste Gaines, Ms Monique Hennagan and Ms Passion Richardson (the “Appellants” or the “Athletes”) are all track and field athletes from the United States of America. The Athletes participated in the Sydney Olympic Games in 2000 as members of the U.S. Olympic team sent by the United States Olympic Committee (the “USOC”).
2. The International Olympic Committee (the “IOC” or the “Respondent”) is the organisation responsible for the Olympic movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan and oversee the winter and summer Olympic Games.

II. BACKGROUND FACTS

3. The background facts stated herein constitute a brief summary of the main relevant facts, as established on the basis of the parties’ written submissions, set forth for the sole purpose of this partial award. Additional facts will be set out, where material, in connection with the discussion of the parties’ factual and legal submissions.
4. On 30 September 2000, during the Sydney Olympics, the finals of the women’s 4x100 meters and 4x400 meters relay track and field races took place.
5. The Athletes, together with Ms Marion Jones (hereinafter also “Ms Jones”), were the members of the U.S. women relay teams for these races.
6. The U.S. women relay teams won the bronze and gold medals for the 4x100 meters race and the 4x400 meters race respectively.
7. The closing ceremony of the Sydney Olympic Games took place on 1 October 2000.
8. On 8 October 2007, Ms Marion Jones signed in front of the United States Anti-Doping Agency (“USADA”) a document entitled “*Acceptance of Sanction*”, confessing that she had committed a “*doping offense arising from [her] use of a prohibited substance known as the ‘clear’ beginning on or about September 1, 2000 to July 2001*”. In particular, Ms Jones admitted that she had “*used the prohibited substance known as the ‘clear’ prior to, during and after the 2000 Olympic Games*”. As a consequence of her violation of anti-doping rules, Ms Jones accepted various sanctions, including “*disqualification of all competitive results obtained on or subsequent to September 1, 2000, including forfeiture of all medals, results, points, and prizes*” and “*agreed to return all medals won by [her] at the 2000 Sydney Olympic Games*”.
9. By letter of 28 November 2007, the President of the International Association of Athletics Federations (“IAAF”) informed the President of the IOC that the IAAF Council had confirmed, with regard to IAAF-sanctioned events, the annulment of all

the individual results achieved by Ms Jones on or after 1 September 2000 and of all the relay teams' results in which Ms Jones had competed on or after 1 September 2000.

10. On 12 December 2007, the IOC Disciplinary Commission decided to disqualify Ms Marion Jones from the athletics events in which she had competed at the 2000 Sydney Olympic Games, among which the 4x100 meters and 4x400 meters relay races.
11. On 9 April 2008, after having given the USOC and the Athletes the opportunity to file written submissions regarding the disqualification of both U.S. women relay teams, the IOC Disciplinary Commission sent recommendations to the IOC Executive Board regarding the USOC. The IOC Disciplinary Commission recommended the following:

«I. The USOC relay teams to be disqualified from the following events in which they competed at the 2000 Sydney Olympic Games in the sport of athletics:

- *4 x 100 meters relay-women-USOC relay team, where the team placed third; and*
- *4 x 400 meters relay-women-USOC relay team, where the team placed first.*

II. The USOC to be ordered to return to the IOC all medals and diplomas awarded to all members of both USOC relay teams in the above noted events, it being acknowledged that USOC has already returned to the IOC the medals won by Ms Jones in such events.

III. The international association of Athletics Federations ("IAAF") to be invited to postpone any further adjustment of results until further notice from the IOC.

IV. The issue of awarding new medals and diplomas as a consequence of this decision to be addressed by the IOC Executive Board in due course pending further information».

12. On 10 April 2008, upon consideration of the IOC Disciplinary Commission's recommendations, the IOC Executive Board decided to adopt, without any modifications, the said recommendations (the "Appealed Decision").
13. The Appealed Decision was notified to the Athletes on the same day.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 30 April 2008, the Athletes filed an appeal with the Court of Arbitration for Sport (the "CAS") requesting the CAS to overturn the Appealed Decision.
15. On 18 June 2008, the CAS Court Office informed the parties, on behalf of the Deputy President of the Appeals Arbitration Division, that the Panel appointed to decide the case was composed by Mr Massimo Coccia, Rome, Italy (President), Mr Yves Fortier, Montreal, Canada (appointed by the Appellants), and Mr Hans Nater, Zurich, Switzerland (appointed by the IOC).

16. On 3 October 2008, the Athletes filed with the CAS a “Motion for Summary Disposition in favour of the Appellants” (the “Motion”) by which they requested a preliminary decision on Rule 25.2.2.4 of the Olympic Charter in effect in 2000 (the “2000 Olympic Charter”), according to which “*no decision taken in the context of the Olympic Games can be challenged after a period of three years from the day of the closing ceremony of such Games*”. The Athletes also requested a stay of all further proceedings while the Panel considered the Motion. According to the Athletes, a preliminary decision on the three-year limitation (hereinafter also referred to as the “three-year rule”) provided by Rule 25.2.2.4 of the 2000 Olympic Charter, and later by Rule 6.4 of the Olympic Charter in force in 2008 (the “2008 Olympic Charter”), could permit the annulment of the Appealed Decision without any need to further proceed on the merits of the case.
17. On 15 October 2008, the Panel dismissed the Appellants’ Motion, stating that the Code of Sports-related Arbitration (the “CAS Code”) did not provide for a “motion for summary disposition” and did not grant a legal basis permitting the Panel to summarily dispose of the case.
18. On 22 October 2008, the Athletes filed their Appeal Brief, confirming their position that Rule 25.2.2.4 of the 2000 Olympic Charter prevented further proceedings. The Athletes also submitted their position on the merits of the case.
19. On 17 November 2008, the IOC submitted its Answer Brief, opposing the Athletes’ positions on the three-year rule and on the merits of the case.
20. On 22 December 2008, the CAS Court Office informed the parties that the Panel had determined that the issues related to the interpretation and application of the three-year rule could be severed from the other legal issues and be decided on a preliminary basis. The parties were also informed that the Panel deemed itself sufficiently informed to deliberate and issue a partial award on the three-year rule without holding a hearing, in accordance with Article R57 of the CAS Code. Accordingly, the parties were informed that “*should the Panel decide in favour of the Appellants on this issue, the award will terminate the case without dealing with the merits; on the other hand, should the Panel decide in favour of the Respondent, a hearing will be held in Lausanne on the merits of the case*”, thus dismissing the Appellants’ request that the Panel clarify some other issues of the case.
21. On 7 January 2009, the IOC submitted an “application for additional submission prior to partial award” for the determination of the applicable rules and potential consequences thereof.
22. On 20 January 2009, the CAS Court Office informed the parties that the Panel, considering the legal issues to be discussed and determined in order to deliberate on the three-year rule, had decided to allow the parties to file additional briefs on the said issues. In this connection, the Panel submitted to the parties a list of potential issues to be determined, asking them to express their positions on those issues.

23. On 9 February 2009, the Appellants and the Respondent submitted their additional briefs.
24. On 4 May 2009, the CAS Court Office informed the parties that the Panel, having considered the parties' additional submissions, pursuant to Articles R44.3 and R56 of the CAS Code, requested the Respondent to provide further information on the legislative history of Rule 25.2.2.4 of the 2000 Olympic Charter.
25. On 27 May 2009, the Appellants filed a submission concerning the legislative history of the three-year rule included in Rule 25.2.2.4 of the 2000 Olympic Charter.
26. On 29 May 2009, the CAS Court Office informed the parties that the Panel had decided that the Respondent, together with its submission on the legislative history of Rule 25.2.2.4 of the 2000 Olympic Charter, would be allowed to comment on the Appellants' submission of 27 May 2009.
27. On 9 June 2009, the IOC submitted its observations and comments on the legislative history of Rule 25.2.2.4 of the 2000 Olympic Charter and on the Appellants' submission of 27 May 2009.
28. On 10 June 2009, the Appellants filed a response to the Respondent's submission of 9 June 2009.
29. On 15 June 2009, the Appellants submitted a further "Response to International Olympic Committee's exhibits and observations concerning the legislative history of Rule 25.2.2.4 of the Olympic Charter".
30. On 17 June 2009, the CAS Court Office indicated to the parties that, pursuant to Articles R56 and R57 of the CAS Code, the Appellants' unauthorized submissions of 10 and 15 June 2009 were deemed inadmissible and thus stricken from the record. However, the Panel also authorized the Appellants to comment on the Respondent's authorized submission and evidence concerning the legislative history of the three-year rule, authorizing at the same time the IOC to file an answer. Moreover, the Panel confirmed that it would not hold a hearing to address this specific issue and considered to be sufficiently informed to issue a partial award on the basis of the written submissions of the parties. The Panel also declared that the proceedings as to the three-year rule would be considered as closed after the filing of the above authorized submissions.
31. On 25 June 2009, the Appellants filed their authorized "Response to International Olympic Committee's exhibits and observations concerning the legislative history of Rule 25.2.2.4 of the Olympic Charter".
32. On 3 July 2009, the Respondent submitted its authorized reply to the Appellants' response of 25 June 2009.
33. Subsequently, having closed the proceedings as to the three-year rule, the Panel held some conference calls and met personally *in camera* in order to deliberate on this preliminary matter.

IV. OVERVIEW OF THE PARTIES' POSITIONS ON RULE 25.2.2.4 OF THE 2000 OLYMPIC CHARTER AND RULE 6.4 OF THE 2008 OLYMPIC CHARTER

34. The following overview of the parties' positions on the preliminary issue concerning Rule 25.2.2.4 of the 2000 Olympic Charter and Rule 6.4 of the 2008 Olympic Charter is in summary form and does not purport to include every contention put forward by the parties. However, the Panel has carefully considered all of the submissions put forward by the parties, even if there is no specific reference to those submissions in this award.

IV.1 The Appellants

35. The Athletes, in their Appeal Brief, incorporated by reference the arguments made in their Motion concerning Rule 25.2.2.4 of the 2000 Olympic Charter. According to the Athletes, Rule 25.2.2.4 of the 2000 Olympic Charter, according to which "*no decision taken in the context of the Olympic Games can be challenged after a period of three years from the day of the closing ceremony of such Games*", is applicable in the present dispute and expressly prohibits any challenge to the Athletes' medals and results more than three years after the closing ceremonies of the Sydney Olympic Games.
36. The Athletes contend that this rule expressly protects athletes from having to deal with or respond to any challenge more than three years after the closing ceremonies of the Olympic Games during which they have achieved their results. Thus, on 1 October 2003, three years after the closing ceremonies of the Sydney Olympics, the time period specified in Rule 25.2.2.4 of the 2000 Olympic Charter expired and all decisions made in the context of the Games, including the IOC's acts of awarding the Athletes their gold and bronze medals for the relay races, could no longer be challenged.
37. According to the Athletes, Rule 25.2.2.4 of the 2000 Olympic Charter was enacted after a controversy which took place in 1998, when the IOC did not cancel the medals won by several East German athletes at the Olympic Games of 1976 and 1980, notwithstanding the newly discovered massive doping practices that had taken place in the German Democratic Republic. According to the Athletes, the IOC Juridical Commission drafted Rule 25.2.2.4 in order to confirm that the IOC would not rewrite history, prohibiting the IOC or anyone else from withdrawing medals more than three years after the closing ceremony of the relevant edition of the Olympic Games.
38. Moreover, the Appellants refer to Rule 6.4 of the Olympic Charter in effect in 2004 (the "2004 Olympic Charter") which clarified the three-year rule by providing that "*Notwithstanding the applicable rules and deadlines for all arbitration and appeal procedures, and subject to any other provision of the World Anti-Doping Code, no decision taken by the IOC concerning an edition of the Olympic Games, including but not limited to competitions and their consequences such as rankings or results, can be challenged by anyone after a period of three years from the day of the Closing Ceremony of such Games*". The same wording can be found in the subsequent versions

of the Olympic Charter, especially in Rule 6.4 of the Olympic Charter in effect as from 7 July 2007 (the “2008 Olympic Charter”).

39. According to the Appellants, the World Anti-Doping Code (the “WADA Code”) is not applicable in the present case for obvious reasons, and mainly because the WADA Code was not applicable before 1 January 2004, *i.e.* after the three-year rule had expired with respect to the Athletes.
40. The Athletes are of the opinion (see pages 17-19 and 34-35 of their brief of 9 February 2009) that, as the IOC owns and controls the Olympic Games (see Rule 11 of the 2000 Olympic Charter), and as the technical jurisdiction of the International Federations is “*subject to the IOC’s authority*” (see Bye-laws to Rule 57), all decisions in the context of the Olympic Games, even those made by the International Federations, to whom the IOC delegates technical responsibilities, are decisions “*taken by the IOC*”.
41. Moreover, the Athletes argue that, with the clarification of Rule 6.4 of the 2004 Olympic Charter, decisions about Olympic results, rankings, diplomas and medals are “*decisions taken by the IOC*” in the context of the Olympic Games.
42. The Athletes also argue that if the scope of application of the three-year rule were to be confined to actual sanctions, it would be a useless provision because challenges to sanctions are possible only in front of the CAS within a deadline of twenty-one days.
43. Therefore, the Athletes conclude that the three-year rule provided for in Rule 25.2.2.4 of the 2000 Olympic Charter prohibited the IOC from challenging their results at the Sydney Olympics after 1 October 2003. Therefore, the Athletes request that the Appealed Decision be annulled.

IV.2 The Respondent

44. The IOC contends that, in the absence of any true decision made by the IOC, the three-year rule contained in Rule 25.2.2.4 of the 2000 Olympic Charter does not apply. According to the IOC, Rule 25.2.2.4 of the 2000 Olympic Charter was enacted following the “Rick DeMont case” in 1995. The concern was to prevent legal actions by third parties seeking to revive old cases and reverse actual decisions, in particular sanctions, which had already been taken by the IOC’s competent bodies.
45. For the Respondent, the first decision ever taken by the IOC with regard to the present matter has been the decision of the IOC Executive Board of 12 December 2007 sanctioning Ms Jones. The IOC argues – at page 16 of its brief dated 17 November 2008 and at page 7 of its brief of 9 February 2009 – that, according to the Olympic Charter, it takes no decision when it awards Olympic medals during the Olympic Games because such distribution flows directly from the results of the athletes as established by the competent International Federation on the basis of current Rule 47 and its Bye-laws (2008 Olympic Charter) and the former Rule 57 and its Bye-laws (2000 Olympic Charter).

46. The results and rankings are established by the International Federations and the allocation of medals automatically flows as a direct consequence of such rankings and results. No decision is ever taken by any IOC body or representative as to the allocation of medals, unless an incident or offense takes place which would result into the disqualification of an athlete or in another sanction or measure. The Respondent argues that, in such case only, the matter leads to a specific decision in the form of a measure or sanction.
47. According to the IOC, as soon as it was informed of the violation of the anti-doping rules committed by Ms Jones, it commenced all necessary disciplinary actions against her and against the concerned USOC relay teams. Such actions were commenced less than eight years after the date of Ms Jones' violation and after the date of the closing ceremony of the Sydney Olympic Games. Therefore, according to the IOC, these disciplinary actions were allowed by Article 17 of the WADA Code, according to which "*No action may be commenced against an Athlete or other Person for a violation of an anti-doping rule contained in the Code unless such action is commenced within 8 years from the date of the violation occurred*".
48. The IOC contends that the 2000 Olympic Charter is applicable to all facts, events and circumstances which took place at the 2000 Olympic Games. However, the 2008 Olympic Charter is applicable to all acts, facts, events and circumstances which occurred at the time of the Appealed Decision.
49. The Respondent concludes requesting that the Panel dismiss the Appellants' submission on the three-year rule issue and, more in general, that the Panel dismiss the appeal.

V. DISCUSSION

V.1 CAS Jurisdiction

50. The jurisdiction of CAS, which is not disputed, derives from Rule 59 of the 2008 Olympic Charter and article R47 of the CAS Code.
51. It follows that the CAS has jurisdiction to decide on the present dispute.
52. Under article R57 of the CAS Code, the Panel has the full power to review the facts and the law.

V.2 Applicable Law

53. Pursuant to Rule 59 of the 2008 Olympic Charter, the provisions of the CAS Code are applicable.

54. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and 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 the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

55. Regarding the issue at stake, the Panel is of the opinion that the “applicable regulations” are the rules of the Olympic Charter, which have been accepted by the Athletes when they took part in the Sydney Olympic Games and which application has been invoked by both sides. On the contrary, the World Anti-Doping Code is not applicable as such because it was not in force at the time of the Sydney Olympic Games. Then, the Panel notes that the parties have not agreed on the application of any specific national law. Therefore, as the IOC is an association constituted under Swiss law and domiciled in Lausanne, Swiss law applies in accordance with the above quoted Article R58 of the CAS Code.

V.3 Admissibility

56. The appeal was filed within the deadline provided by article R49 of the CAS Code. It complied with all the other requirements set forth by article R48 of the CAS Code.

57. It follows that the appeal is admissible.

V.4 The Three-Year Rule Issue

58. In view of the above, this partial award is concerned solely with the three-year rule issue.

59. In order to resolve on the three-year rule issue, the Panel must determine the following sub-issues:

- A. Which version of the Olympic Charter is applicable to the present case?
- B. Does the three-year rule impose a limitation only to challenges brought by third parties or also to the power of the IOC to change its own decisions?
- C. Does the three-year rule only apply to decisions taken by the IOC?
- D. Under the relevant rules, was a decision reached in the context of the 2000 Olympic Games with regard to the distribution of medals to the Appellants?

A. *Which version of the Olympic Charter is applicable to the present case?*

60. The Appealed Decision makes reference to sporting events (the 4x100 and 4x400 relays) which took place on 30 September 2000 at the Sydney Olympic Games. The Panel notes that, in comparison with the current version of the Olympic Charter, at that

time, the three-year rule was drafted differently, and was inserted in a different part of the Olympic Charter.

61. Rule 25 of the 2000 Olympic Charter provides as follows:

“Rule 25.– IOC Ethics Commission – Measures and Sanctions

1 An IOC Ethics Commission is charged with developing and updating a framework of ethical principles, including a Code of Ethics, based upon the values and principles enshrined in the Olympic Charter. In addition, it investigates complaints raised in relation to the non-respect of such ethical principles, including breaches of the Code of Ethics, and if necessary proposes sanctions to the Executive Board.

2 The measures or sanctions which may be taken by the Session or the Executive Board are:

2.1 In the context of the Olympic Movement:

2.1.1 with regard to IOC members and honorary members:

a) a reprimand, pronounced by the Executive Board;

b) suspension, for a specific period, pronounced by the Executive Board. The suspension may be extended to all or part of the rights, prerogatives and functions deriving from the membership of the person concerned.

Sanctions may be imposed on IOC members or honorary members who, by their conduct, jeopardize the interests of the IOC.

The measures and sanctions provided above may be combined.

By decision of the Executive Board, the member or honorary member concerned may, throughout the disciplinary inquiry conducted into his case, be deprived of all or part of the rights, prerogatives and functions deriving from his membership.

The expulsion of a member or honorary member is governed by Rules 20.3.4 and 20.3.5.

2.1.2 with regard to IFs:

a) withdrawal from the programme of the Olympic Games of:

- a sport (Session);

- a discipline (Executive Board);

- an event (Executive Board);

b) withdrawal of recognition (Session);

2.1.3 with regard to associations of IFs: withdrawal of recognition (Session);

2.1.4 with regard to NOCs:

a) withdrawal of the right to enter competitors in the Olympic Games (Executive Board);

b) suspension (Executive Board); in such event, the Executive Board determines in each case the consequences for the NOC concerned and its athletes;

c) provisional or permanent withdrawal of recognition (Session); in the case of permanent withdrawal of recognition, the NOC forfeits all rights conferred on it in accordance with the Olympic Charter;

d) withdrawal of the right to organize a Session or an Olympic Congress (Session);

2.1.5 with regard to associations of NOCs: withdrawal of recognition (Session);

2.1.6 with regard to a host city, an OCOG or an NOC: withdrawal of the right to organize the Olympic Games (Session).

2.2 In the context of the Olympic Games:

2.2.1 with regard to individual competitors and teams: temporary or permanent ineligibility or exclusion from the Olympic Games; in the case of exclusion, any medals or diplomas obtained shall be returned to the IOC (Executive Board);

2.2.2 with regard to officials, managers and other members of any delegation as well as referees and members of the jury: temporary or permanent ineligibility or exclusion from the Olympic Games (Executive Board);

2.2.3 with regard to all other accredited persons: withdrawal of accreditation (Executive Board);

2.2.4 no decision taken in the context of the Olympic Games can be challenged after a period of three years from the day of the closing ceremony of such Games.

3 Before applying any measure or sanction, the competent IOC organ may issue a warning.

4 Any individual, team or any other individual or legal entity has the right to be heard by the IOC organ competent to apply a measure or sanction to such individual, team or legal entity. The right to be heard in the sense of this provision includes the right to be acquainted with the charges and the right to appear personally or to submit a defence in writing.

5 Any measure or sanction decided by the Session or Executive Board shall be notified in writing to the party concerned.

6 All measures or sanctions shall be effective forthwith unless the competent organ decides otherwise” (emphasis added).

62. Rule 6 of the 2004 and 2008 Olympic Charters reads as follows:

“6 Olympic Games

1. The Olympic Games are competitions between athletes in individual or team events and not between countries. They bring together the athletes selected by their respective NOCs, whose entries have been accepted by the IOC. They compete under the technical direction of the IFs concerned.

2. The Olympic Games consist of the Games of the Olympiad and the Olympic Winter Games. Only those sports which are practised on snow or ice are considered as winter sports.

3. The authority of last resort on any question concerning the Olympic Games rests with the IOC.

4. Notwithstanding the applicable rules and deadlines for all arbitration and appeal procedures, and subject to any other provision of the World Anti-Doping Code, no decision taken by the IOC concerning an edition of the Olympic Games, including but not limited to competitions and their consequences such as rankings or results, can be challenged by anyone after a period of three years from the day of the Closing Ceremony of such Games” (emphasis added).

63. The Panel notes that it is common ground between the parties that the 2000 Olympic Charter is applicable to all facts, events and circumstances which took place during the 2000 Olympic Games. This conforms to the general legal principle “*tempus regit actum*”, according to which facts are governed by the law in force at the time they occur (see CAS 2004/A/635 *Espanyol de Barcelona v/ Velez Sarsfield*, at para. 44). Therefore, the Panel determines that it shall decide the disputed issue on the basis of the 2000 Olympic Charter.

64. The Panel also notes that both parties have made reference for interpretation purposes to the modified three-year rule included in Rule 6.4 of the 2004 and 2008 Olympic Charters. The Panel is thus of the view that it may also take into consideration, insofar as strictly needed and merely as an ancillary interpretive tool, the text of Rule 6.4 of the 2004 and 2008 Olympic Charters.

B. Does the three-year rule impose a limitation only to challenges brought by third parties or also to the power of the IOC to change its own decisions?

65. The Panel is not persuaded by the IOC’s argument that the expression “*no decision [...] can be challenged*” used in Rule 25.2.2.4 of the 2000 Olympic Charter applies only to proper “legal challenges” by third parties and that, thus, the IOC itself is never time-barred by the three-year rule and can always revise its previous decisions concerning Olympic medals or other Olympic matters.

66. The Panel observes that the French text of Rule 25.2.2.4 of the 2000 Olympic Charter, which must prevail over the English text in case of divergence (Rule 27.3 of the 2000 Olympic Charter), reads as follows:

«aucune décision prise dans le cadre des Jeux Olympiques ne pourra être remise en cause après un délai de 3 ans courant à partir du jour de la cérémonie de clôture de ces Jeux» (emphasis added).

67. The Panel remarks that the French expression “*remise en cause*” is certainly broader than the term “*challenged*” (“*contestée*” in the French text of Rule 6.4 of the 2008 Olympic Charter), in the sense that it may well be read as a reference to the possibility of “reopening a matter” previously decided. While “to challenge” necessarily implies somebody’s action against somebody else’s decision, “to reopen a matter” may also entail somebody spontaneously reconsidering its own previous decision.
68. Therefore, the Panel finds that the Athletes’ submission that Rule 25.2.2.4 of the 2000 Olympic Charter prevents (time-bars) the IOC from revising its own decisions taken in the context of the Olympic Games three years after the closing ceremony of the pertinent edition of the Olympic Games is well founded.
69. The Panel notes that in the current French and English texts of the three-year rule (as provided by Rule 6.4 of the 2008 Olympic Charter) there is no such divergence – “*contestée*” and “*challenged*” have analogous meanings – and, therefore, the above Panel’s interpretation is strictly related to the 2000 Olympic Charter.

C. Does the three-year rule only apply to decisions taken by the IOC?

70. The Panel observes that Rule 25.2.2.4 of the 2000 Olympic Charter makes generically reference to a “*decision taken in the context of the Olympic Games*”, without specifying whether the rule applies merely to decisions taken by the IOC or whether it may likewise apply to decisions taken by other entities having some authority (obviously at different levels and in different moments) in the context of the Olympic Games, such as International Federations or National Olympic Committees or the local Organizing Committee.
71. The Panel notes that the preambular language (the “chapeau”) of Rule 25.2 of the 2000 Olympic Charter (of which Rule 25.2.2.4 is a subparagraph) makes reference to “*measures or sanctions which may be taken by the [IOC] Session or the [IOC] Executive Board*”. In the Panel’s view, as the chapeau of Rule 25.2 of the 2000 Olympic Charter exclusively mentions two IOC bodies, the “decisions” to which the three-year rule applies are necessarily decisions taken by the IOC.
72. The Panel takes comfort from the fact that its interpretation is confirmed by Rule 6.4 of the 2004 and 2008 Olympic Charters, which specifically refers to decisions “*taken by the IOC*”.

73. Accordingly, the Panel finds that the three-year rule applies only to decisions taken by the IOC, and not to decisions taken by International Federations, National Olympic Committees or other entities.
74. In addition, the Panel notes that Rule 25.2.2.4 of the 2000 Olympic Charter is included in Rule 25, which deals with "*IOC Ethics Commission – Measures and Sanctions*". In fact, Rule 25 of the 2000 Olympic Charter lists the sanctions applicable for various violations of the Olympic Charter and allocates the power to apply those sanctions to the IOC Session or the IOC Executive Board (as seen in the above quoted chapeau of Rule 25.2 of the 2000 Olympic Charter).
75. In particular, the Panel finds that, as both the first sentence of Rule 25.2.2 and Rule 25.2.2.4 of the 2000 Olympic Charter use the identical expression "*in the context of the Olympic Games*", Rule 25.2.2.4 of the 2000 Olympic Charter may only refer to IOC decisions related to measures and sanctions taken pursuant to Rules 25.2.2.1, 25.2.2.2 and 25.2.2.3 of the 2000 Olympic Charter.
76. Accordingly, in the Panel's view, Rule 25.2.2.4 of the 2000 Olympic Charter can only refer to decisions taken by the IOC Executive Board concerning: (a) temporary or permanent ineligibility or exclusion of individual competitors or teams from the Olympic Games with, in the case of exclusion, the related withdrawal of any medals or diplomas obtained (Rule 25.2.2.1); (b) temporary or permanent ineligibility or exclusion from the Olympic Games with regard to officials, managers and other members of any delegation as well as referees and jury members (Rule 25.2.2.2); or (c) withdrawal of accreditation with regard to all other accredited persons (Rule 25.2.2.3). The awarding of medals would not seem to represent a decision in terms of this rule.

D. Under the relevant rules, was a decision reached in the context of the 2000 Olympic Games with regard to the distribution of medals to the Appellants?

77. Before addressing the question as to whether or not a decision was rendered on 30 September 2000, the Panel wishes to state that it considers the parties' respective accounts of the legislative history of Rule 25.2.2.4 of the 2000 Olympic Charter as non conclusive. Indeed, both parties presented possible explanations of how Rule 25.2.2.4 of the 2000 Olympic Charter came to be inserted into the Olympic Charter but neither side submitted sufficiently persuasive evidence in support of its argument. In particular, the minutes of the IOC 107th Session of February 1998 appear to contradict the legislative history suggested by the Appellants insofar as they show that the issue of a time limit for IOC decisions taken on the occasion of the Olympic Games was already being discussed within the IOC many months before the issue of the East German athletes came up (at page 6 of those minutes there is a reference to the proposed "*Introduction of a time limit for appeals against decisions taken on the occasion of the Olympic Games*"). In addition, with regard to the German Democratic Republic's case, there is evidence on file which seems to indicate that the British and U.S. Olympic Committees were not actually asking that medals be stripped from the East German

athletes but, rather, that British and U.S. athletes be given duplicate gold medals. Moreover, the Panel finds no evidence on file proving or disproving the IOC's legislative intent to consider the distribution of Olympic medals immediately after the competition as a "decision" taken by the IOC. In view of the above, the Panel's conclusion is that its interpretation of Rule 25.2.2.4 of the 2000 Olympic Charter is not controlled by the legislative history developed by the parties.

78. The decisive question to be addressed is whether, on 30 September 2000, the IOC actually rendered a decision when it distributed the bronze and gold medals to the Appellants for the results obtained by the USOC teams competing in the women's 4x100 and 4x400 relay races. Indeed, should the Panel find that the IOC did render one or more decisions in awarding those medals, according to Rule 25.2.2.4 of the 2000 Olympic Charter, such decisions could no longer be put into question as of 1 October 2003, *i.e.* more than three years after the closing ceremony of the 2000 Olympic Games in Sydney; as a consequence, the Athletes would necessarily keep their medals. If, on the other hand, the Panel finds that the awarding of medals to the Appellants does not represent a decision pursuant to Rule 25.2.2.4 of the 2000 Olympic Charter, the three-year rule would not apply to the case at stake and the Panel would have to proceed on the merits.
79. The Panel considers that, undoubtedly, all Olympic competitions are governed and officiated by the competent International Federations, in accordance with the technical rules of each particular sport. This is reflected by the 2000 Olympic Charter, which provides that the International Federations "*assume the responsibility for the technical control and direction of their sports at the Olympic Games*" (Rule 30.1.5) and that each of them "*is responsible for the technical control and direction of its sport; all competition and training sites and all equipment must comply with its rules*" (Rule 57.3).
80. The Panel remarks that, as an evident consequence of the above quoted Rules 30.1.5 and 57.3, the 2000 Olympic Charter specifically provides that International Federations have the "*rights and responsibilities: [...] To establish the final results and ranking of Olympic competitions*" without any deference to the IOC's authority (Bye-laws 1 and 1.2 to Rule 57). In contrast, the International Federations' "*technical jurisdiction over the competition and training venues of their respective sports during the competition and training sessions at the Olympic Games*" is exercised "*[s]ubject to the IOC's authority*" (Bye-law 1.3 to Rule 57). In other words, contrary to what the Appellants submit, under the Bye-laws to Rule 57 of the 2000 Olympic Charter, International Federations are subject the IOC's authority with regard to the Olympic "*venues*" – stadiums, arenas, pitches, courts, ice rinks and the like – whereas their rights and responsibilities to establish the "*final results and ranking*" of Olympic competitions are unfettered.

81. In addition, Rule 57 of the 2000 Olympic Charter provides *inter alia* as follows:

“[...] 5 The necessary technical officials (referees, judges, timekeepers, inspectors) and a jury of appeal for each sport are appointed by the IF concerned, within the limit of the total number set by the IOC Executive Board upon the recommendation of the IF concerned. They perform their tasks in accordance with the directions of such IF and in coordination with the OCOG.

6 No official who has participated in a decision may be a member of the jury responsible for making a ruling on the resulting dispute.

7 The findings of the juries must be communicated to the IOC Executive Board as soon as possible.

8 Juries make a ruling on all technical questions concerning their respective sports, and their decisions, including any related sanctions, are without appeal, without prejudice to further measures and sanctions which may be decided by the IOC Executive Board or Session [...]” (emphasis added).

82. In the Panel’s view, these rules of the 2000 Olympic Charter demonstrate that the decision-making process regarding technical control, direction, ranking and results of the various sports competitions that take place at the Olympic Games lies solely with the responsibility of the International Federations.
83. Accordingly, the argument of the Athletes according to which, as the IOC owns and controls the Olympic Games (Rule 11 of the 2000 Olympic Charter), all decisions concerning competitions within the Olympic Games made by International Federations must be considered as decisions “*taken by the IOC*”, must be rejected.
84. The IOC obviously supplies the administrative and organizational framework for such competitions and may obviously take “*further measures and sanctions*” (Rule 57.8 of the 2000 Olympic Charter, quoted *supra* at para. 81). However, the Panel deems that the Olympic Charter is very clear in leaving to the “*technical officials*” and “*juries*” of each International Federation the exclusive responsibility to decide results and rankings or, in other words, who wins and who loses.
85. In this perspective, the distribution of medals done by the IOC is merely the implementation of decisions that are taken by the technical officials and juries of each sport. This is after all the common experience of everybody who has witnessed an Olympic competition: once the competent technical officials or juries have decided who has come first, who has come second, and who has come third, the distribution of medals is done by the IOC in full compliance with the ranking communicated by the concerned International Federation. In real life, nobody has ever seen an athlete winning an Olympic race and then refraining from rejoicing while anxiously waiting for the IOC to decide – in the few minutes between the end of the race and the victory ceremony – whether it will give the medals in accordance with the finish order or not.

86. It is true that, as pointed out by the Appellants, “[v]ictory ceremonies must be held in accordance with the protocol determined by the IOC” and the “medals and diplomas shall be provided by the OCOG for distribution by the IOC, to which they belong” (Rule 70 of the 2000 Olympic Charter), but the Panel finds that the Olympic Charter leaves no margin of discretion to the IOC in awarding the three medals according to the ranking and results established and communicated by the competent International Federation. As the IOC has correctly stated in one of its briefs, “the allocations of medals automatically flow as direct consequences of such ranking and results”. In other words, Rule 70 of the 2000 Olympic Charter and its Bye-laws do not provide that a decision by the IOC must be taken prior to the distribution of the medals. Obviously, there might be a true IOC decision *afterwards*, when on the basis of some incident or occurrence the IOC may decide – for example – to give a second gold medal, as happened in Salt Lake City when the Canadian ice skating pair Salé-Pelletier received a second gold medal.
87. In this connection, the wording of Rule 6.4 of the 2004 and 2008 Olympic Charters, which makes reference to decisions taken by the IOC “including but not limited to competitions and their consequences such as rankings or results”, does not alter the above interpretation because it does not state at all that a competition and its results or rankings are decisions in terms of the three-year rule. In the Panel’s view, there is no doubt that the IOC has the authority, as previously mentioned, to take “further measures and sanctions” (Rule 57.8 of the 2000 Olympic Charter, see *supra* at paras. 81 and 84) and that those measures and sanctions may involve and affect competitions, rankings and results. However, the Panel underscores that those are “further” measures and sanctions, *i.e.* in addition to and beyond those taken by International Federations. In the mere distribution of medals after a competition, the IOC does not exert its authority to take any such “further measures and sanctions” but merely implements what has been decided by the competent International Federation. In the Panel’s opinion, if and when the IOC intervenes with a “further” measure or sanction concerning competitions, rankings or results (for instance disqualifying an athlete or withdrawing a medal or conferring a second gold medal), this intervention would certainly be a decision under the three-year rule, and it would clearly be seen as such under Swiss law.
88. As the Olympic Charter fails to clarify what is meant by “decision of the IOC”, Swiss law, *i.e.* the law of associations under the Swiss Civil Code, is applicable to decide whether the distribution of medals constitutes a decision or not.
89. As a matter of fact, in the Panel’s opinion, the bottom line of this preliminary issue is that the mere action of putting a medal around an athlete’s neck, without exerting any margin of appreciation, may not be qualified as a decision under Swiss law.
90. Swiss doctrine understands a decision by an association as a uniform declaration of intent determining the will of the association that emerges from multiple aligned declarations of intent (see U. SCHERRER & H. TÄNNLER, *When is a “resolution” a resolution?*, in *Causa Sport* 3/2005 280, at 281). Swiss doctrine distinguishes

substantively between a legal act establishing or revoking authority or actions bound by instructions (see U. SCHERRER & H. TÄNNLER, at 281). A decision by an association serves its decision-making process and is therefore based on the association's *animus decidendi* (see H.M. RIEMER, *Personenrecht des ZGB*, 2nd ed., Berne 2002, at 239). As a result, U. SCHERRER & H. TÄNNLER note the following with regard to the acts of individuals who are within an association:

“When an individual from an association substantiates the will of the association or federation through the volition of a legal act, establishing or revoking authority or issuing instructions, in other words, if the intent to make a decision is evident or any such intent may be assumed, a formal challengeable decision exists as a matter of principle. All other cases represent an informal, non-challengeable articulation of all types [...]”.

91. Consequently, association decisions come about through the common formation of intent pursuant to the procedures set forth in the statutes of the association (see Zurich District Court, 7 February 2005, *Galatasaray Spor Kulübü v. FIFA*, in *Causa Sport 2005*, at 254, where the existence of a challengeable association resolution was denied for lack of a common decision-making process as well as for the lack of existence of a decision by the competent body).
92. In the Panel's opinion, in the light of the applicable Swiss law, a decision can be detected only if the decision-making body makes use of some cognitive process leading to the choice of a course of action among some alternatives. Every decision-making process is related to a margin of appreciation which produces as output a final choice of an action or an opinion.
93. In fact, the Panel notes that no IOC body follows a decision-making process and exerts a margin of appreciation under Rule 70 of the 2000 Olympic Charter (and its corresponding Bye-laws) regarding the victory ceremony and the awarding of medals (cf. *supra* at para. 86).
94. The IOC, in implementing the ranking and presenting the medals within the victory ceremony, simply applies the data established and forwarded to it by the competent International Federation. The publication of the race results, photo-finish and rankings – which in Sydney was done, on the basis of the evidence on file, by the local organizing committee (“SOCOG”) and not by the IOC – occurs as a mere public notice of what was decided by the technical officials or juries appointed by the competent International Federation; accordingly, such publication is no legal act of the IOC. It does neither create nor rescind any rights and has no legal effect on anyone. By distributing medals to the winners during the victory ceremony, the IOC officials do not undertake a proper legal act under Swiss law; in short, the IOC does not issue a decision.
95. Based on the above, the Panel finds that there is “no decision taken by the IOC” in distributing the medals at the victory ceremony, in the IOC's own sphere of responsibility. As a consequence, the three-year rule does not prevent (time-bar) the

IOC from withdrawing a medal which was merely awarded at the victory ceremony. Contrary to that, the withdrawal of medals is expressly provided for in Rule 25.2.2 of the 2000 Olympic Charter and Rule 23.2 of the 2008 Olympic Charter, as a consequence of a disqualification or of the withdrawal of an accreditation imposed as a sanction by the IOC Executive Board. Obviously, these “consequences” imposed by a decision of an IOC body are covered by the three-year rule (see also *supra* at para. 87). Therefore, the Appellants’ argument that the distribution of medals must necessarily be seen as a decision, because otherwise there would never be an IOC decision that would be subject to the three-year rule, fails.

96. In conclusion, as it is undisputed that on 30 September 2000 the Athletes received their relay medals from the IOC on the basis of and in compliance with the ranking provided by the IAAF and published by the SOCOG, the Panel concludes that the IOC took no decision in the sense of Rule 25.2.2.4 of the 2000 Olympic Charter and Rule 6.4 of the 2008 Olympic Charter. As a consequence, the three-year rule did not preclude the IOC from taking the decision to withdraw from the Appellants the medals awarded for the 4x100 and 4x400 relay races of the Sydney Olympic Games of 2000.
97. The Panel thus holds that, as the Appellants’ preliminary objection based on three-year rule has failed, the present case must proceed on the merits.

VI. COSTS

98. The Panel determines that the costs connected with the present partial award shall be determined in the final award.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. Rule 25.2.2.4 of the Olympic Charter in effect in 2000 did not preclude the IOC from taking a decision concerning the medals awarded for the women's 4x100 and 4x400 athletics relay races of the Sydney Olympic Games of 2000.
2. The exception submitted by Ms Andrea Anderson, Ms LaTasha Colander Clark, Ms Jearl Miles-Clark, Ms Torri Edwards, Ms Chryste Gaines, Ms Monique Hennagan and Ms Passion Richardson on the basis of Rule 25.2.2.4 of the Olympic Charter in effect in 2000 and of Rule 6.4 of the Olympic Charter in effect in 2008 is dismissed.
3. The CAS retains jurisdiction to adjudicate on the merits the appeal submitted by Ms LaTasha Colander Clark, Ms Jearl Miles-Clark, Ms Torri Edwards, Ms Chryste Gaines, Ms Monique Hennagan and Ms Passion Richardson against the decision of the IOC Executive Board of 10 April 2008.
4. All further decisions are reserved for the subsequent stages of the present appeal arbitration proceedings.
5. The costs connected with the present partial award shall be determined in the final award.

Done in Lausanne, 18 December 2009

THE COURT OF ARBITRATION FOR SPORT



Massimo Coccia

President of the Panel