



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2004/A/766 IAAF v/ Athletics Australia & Stuart Lyall

ARBITRAL AWARD

Rendered by

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: **Jan Paulsson**, Paris, France

Arbitrators: **Peter Leaver** QC, London, United Kingdom

Hon. Justice **Tricia Kavanagh**, Sydney, Australia

in the arbitration between

International Association of Athletics Federations

Represented by Mr Mark Gay of the law firm of DLA Piper Rudnick Gray Carey UK LLP, London/U.K.

Appellant

and

1. Athletics Australia

Represented by Mr Adam Firth of the law firm of Simone Rofe, Sydney, Australia.

2. Mr Stuart Lyall

Represented by Mr Mark Purvis, Attorney-at-law, Melbourne, Australia.

Respondents

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THE PARTIES

1. The Appellant International Association of Athletics Federations (the *IAAF*) having its registered office at 17 Rue Princesse Florestine, BP 359 – MC 98000 Monaco, is composed of affiliated national members that regulate athletics in their respective countries.
2. The first named Respondent, Athletics Australia (*AUS*), having its registered office at Suite 22, Fawkner Towers, 431 St Kilda Road, Melbourne, Victoria 3004, Australia, is an affiliated national member of the IAAF. *AUS* describes its presence in this case as purely formal, and has made no submissions on the contentious issues.
3. The second named Respondent, Mr Stuart Lyall, is an Australian-registered track and field athlete who describes himself as having competed essentially on a national level as a middle-distance runner.

A SUMMARY OF THE FACTS

4. In December 2001, Mr Lyall was arrested on charges relating to the use and trafficking of illegal drugs. He was charged with using and trafficking in cocaine and ecstasy (methylenediosynethamphetamine). These offences were not committed in connection with training or competition, but they were the grounds of his initial suspension from *AUS*.
5. On 20 December 2001, *AUS*'s Chief Executive Officer, Mr Simon Allatson, served Mr Lyall with an Infraction Notice pursuant to Clause 16.6(2) of the *AUS* Anti-Doping By-Law (the *AUS By-Laws*). This resulted in an interim suspension.
6. On 23 April 2003, Mr Lyall pleaded guilty to the criminal charges brought against him.
7. On 8 May 2003, Mr Lyall was convicted in a county court of the State of Victoria on a number of counts, including the use of cocaine and trafficking in ecstasy.
8. On 30 September 2003, Mr Allatson wrote to Mr Lyall's counsel to inform him that the Infraction Notice was activated as of that date. The letter noted that, pursuant to *AUS* By-Law 16.7(2), Mr Lyall could require that *AUS* refer the matter to its Doping Control Tribunal for a hearing within 28 days of the date of the Infraction Notice. Mr Lyall availed himself of that recourse.
9. On 12 March 2004, the *AUS* Doping Control Tribunal (the *AUS Tribunal*) was constituted and conducted a preliminary telephone hearing, at which it was agreed that *AUS* had properly appointed the Hon. Henry Jolson QC as Chairman of the *AUS* Tribunal and that the letter of 20 December 2001 constituted sufficient notice of the alleged doping offences against Mr Lyall.
10. On 19 May 2004, the parties agreed to extend the time for written submissions to the *AUS* Tribunal. A Notice to Admit was served on Mr Lyall. In response, he

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made a number of significant admissions that substantially shortened the length and lowered the cost of the hearing.

11. On 20 August 2004, the Tribunal announced its finding that Mr Lyall had committed doping offences. The sanction imposed was the minimum period prescribed by AUS By-Law 16.10(2) for offences other than trafficking, viz. a period of two years from 21 January 2002 to 21 January 2004. In relation to the trafficking offence, the AUS Tribunal stated that it would impose the mandatory suspension of life as set out in by-law 16.10(1)(d), (e), (f) and (g).

12. On 1 October 2004, the AUS Tribunal decided that, taking into account the objectives of the AUS By-Laws and the exceptional circumstances surrounding the offences, Mr Lyall should be immediately reinstated.

PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 7 December 2004, the IAAF filed a Statement of Appeal before CAS against the AUS Tribunal's decision and appointed Mr Leaver.

14. On 17 December 2004, the IAAF submitted an Appeal Brief to the CAS as per Rule 51 of the CAS Code and Rule 21.8 of the IAAF Rules.

15. On 20 December 2004, the Respondents were provided with a copy of the IAAF's Appeal Brief and invited to submit Answers within thirty days from the receipt of said copies. Also on that day, Mr Lyall appointed Justice Kavanagh as the Respondents' party-appointed arbitrator.

16. On 22 December 2004, AUS indicated that they acceded to the appointment of Justice Kavanagh as arbitrator.

17. On 19 January 2005, Mr Lyall's counsel filed an Answer to the IAAF's Appeal Brief.

18. On 27 January 2005, the Appellant was provided with a copy of Mr Lyall's Answer. The letter from CAS accompanying this copy also indicated that the Respondent's Answer would be the parties' final submission unless otherwise agreed by the parties or ordered by the President of the Panel.

19. On 2 February 2005, AUS indicated that it intended to make no argument in respect of the substance or the merits of the parties' positions in the proceedings if no cost orders were sought against it.

20. On 10 February 2005, IAAF requested that - should an award be issued on the sole basis of the written submissions - the parties be allowed to serve what would in effect be the equivalent of closing oral submissions. If such leave were not to be granted, the IAAF indicated their intention to call for an oral hearing. On that same day, the CAS sent out a letter indicating that should the award be issued on the basis of written submissions, it was the CAS' policy to allow a final exchange of written

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statements between the parties. The parties were invited to object to this on or before 15 February 2005.

21. On 15 February 2005, Mr Lyall indicated a preference for the matter being determined by written submissions. Further, he neither consented to nor opposed the granting of leave to serve further written submissions.

22. On 16 February 2005, AUS restated that as it was participating purely by reasons of formality, it would not be making any submissions and thus would not object to the procedures chosen by the other parties should no costs be sought against it.

23. On 8 March 2005, the parties were informed that the arbitration Panel had been constituted with Mr Paulsson as President.

24. On 21 March 2005, the CAS informed the parties that the Panel would consent to a second exchange of written submissions.

25. On 11 April 2005, the Appellant filed its additional written submissions.

26. On 26 April 2005, Mr Lyall filed his second answer.

27. On 29 April 2005, Mr Lyall informed the Arbitral Tribunal that he accepted that the IAAF Rules are applicable to the present dispute, as urged by the IAAF.

28. On 9 May 2005, IAAF filed a statement on costs.

29. The parties' agreement that the Arbitral Tribunal issue an award on the sole basis of written submissions was confirmed in the 30 May 2005 Order of Procedure.

30. On 30 May 2005, the Panel issued an Order of Procedure setting out, among other things, the composition and the seat of the Panel, the language of the arbitration, the law applicable to the merits of the dispute.

THE DECISION APPEALED: PROCEEDINGS BEFORE THE AUS TRIBUNAL

31. Immediately after imposing the required sanction of lifetime ineligibility, the Tribunal held that by-law 16.13 could allow the Tribunal to reinstate an athlete before the expiry of the suspension. This by-law provides that:

"16.13 In exceptional circumstances an Athlete may apply to the tribunal for reinstatement before the expiry of their period of ineligibility. Rule 60.8 of the IAAF constitution and clause 4 of the Guidelines will apply mutatis mutandis to the determination of all such applications."

32. There is no established definition of "exceptional circumstances" in either the AUS Anti-Doping Code or the IAAF Rules. However, the AUS Tribunal did consider Clause 4.1 of the IAAF Procedural Guidelines for Doping Control, which provides that:

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“4.1 Under IAAF Rule 60, an athlete may apply to the Council for reinstatement before the IAAF’s period of ineligibility has expired. It is not possible to state comprehensively the circumstances in which the discretion to reinstate will be exercised by the Council. However, the Council will not regard as exceptional for the purposes of Rule 60 an allegation that the prohibited substance was given to an athlete by another person without his knowledge, an allegation that a prohibited substance was taken by mistake or a suggestions that a medication was prescribed by a doctor in ignorance of the fact that it contained a prohibited substance. The Council may, however, consider that exceptional circumstances exist where an athlete has provided substantial evidence or assistance to a National Federation or the IAAF in the course of disciplinary or legal proceedings brought against those dealing in prohibited substances or coaches or athletes representatives who are taking, or inciting or assisting others to take such substances.”

33. Exercising broad discretion to consider whether or not exceptional circumstances existed, the AUS Tribunal (Mr Jolson) observed that the purpose of the AUS By-Laws is to prevent and prohibit the use of drugs in sport where a competitive advantage can be gained by the use or distribution of those drugs, and went on to accept that Mr Lyall’s doping offences did not violate that purpose, as they were not associated with sport.

34. On 1 October 2004, Mr Jolson rendered his written reasons and reinstated Mr Lyall. He took account of the fact that Mr Lyall’s admissions lead to a much quicker and less expensive hearing. Second, his conduct after the offences - which included his removal from the drug scene, visits with a psychologist, and continued community service work – impressed Mr Jolson favourably. Third, his positive character evidence was mentioned. Further, Mr Jolson mentioned that Mr Lyall was still young (31 years of age) and had a passion for competitive athletics. His use of drugs began after his development of an irregular heartbeat whose consequence was a 13-month halt in training; during this time he became more involved with drug-using acquaintances. Finally, Mr Jolson cited a number of persuasive precedents which suggested that reinstatement was appropriate.

35. This is the decision which now finds itself the object of the present appeal.

IAAF’S PRAYERS FOR RELIEF

36. The IAAF requests that the Arbitral Tribunal issue an award:

(a) Concerning AUS

- (1) Concluding that AUS failed to impose the proper sanction, namely a lifetime suspension pursuant to IAAF Rule 60.2(c).

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- (2) Concluding that AUS did not have jurisdiction to consider whether exceptional circumstances existed so as to allow Mr Lyall's early reinstatement.
- (3) Ordering AUS and Mr Lyall to reimburse to the IAAF the Court Office fee of 500 CHF and costs to be ascertained.

(b) Concerning Mr Stuart Lyall

- (1) Concluding that Mr Lyall be declared ineligible from competition for life by virtue of his having committed a doping offence.
- (2) Concluding that this ineligibility begin on the date of the CAS Panel's decision, subject to his right to apply to the IAAF Council for early reinstatement pursuant to IAAF Rule 60.9 on the basis that the IAAF Council consider whether exceptional circumstances exist.
- (3) Ordering Mr Lyall and AUS to reimburse to the IAAF the Court Office fee of 500 CHF and costs to be ascertained.

AUS' PRAYERS FOR RELIEF

37. On the condition that no costs orders are sought against it, AUS's does not ask for any relief.

MR LYALL'S PRAYERS FOR RELIEF

38. Mr Stuart Lyall requests that the Arbitral Tribunal issue an award:

(a) Concerning the IAAF

- (1) Concluding that exceptional circumstances existed in his case.
- (2) Concluding that the IAAF should declare him ineligible for life, but then subsequently reinstate him.
- (3) Requiring that IAAF reimburse his costs, to be ascertained, should the appeal be dismissed.
- (4) Requiring that the IAAF and/or AUS reimburse his costs, to be ascertained, should the appeal succeed on the ground that he should not suffer hardship as the result of: (a) an *ultra vires* act by the AUS Tribunal; (b) failures or shortcomings in the AUS by-laws; (c) the AUS's failure, or that of the IAAF, to raise any objection to the AUS Tribunal's jurisdiction prior to its decision on 1 October 2004.

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(b) Concerning AUS

- (1) Concluding that AUS had the authority and/or power to consider whether or not exceptional circumstances existed in this case.
- (2) Concluding that the AUS Tribunal applied the sanction fixed for the relevant offense and otherwise properly directed itself and reached the correct decision.
- (3) Requiring that AUS and/or the IAAF reimburse his costs, to be ascertained, should the appeal succeed on the ground that he should not suffer hardship as the result of: (a) an *ultra vires* act by the AUS Tribunal; (b) failures or shortcomings in the Firstnamed Respondent's by-laws; (c) the failure by the Firstnamed Respondent and/or the Appellant to raise any objection to the AUS Tribunal's jurisdiction prior to its decision on 1 October 2004.

CAS JURISDICTION

39. Rule 21 of the 2002-2003 IAAF Rules provides that all appeals are to be referred to the CAS.

40. The 2002-2003 Rules are applicable since the relevant Doping Offences took place in November and December 2001 and the 2002-2003 handbooks were printed on 1 November 2001.

41. Of particular relevance to these proceedings are Rules 21.2 and 21.3(ii). Rule 21.2 provides that:

"All appeals (i) between Members, (ii) between a Member and an athlete, (iii) between the IAAF and an athlete, or (iv) between the IAAF and a Member, however arising, whether doping or non-doping related, shall be referred to the Court of Arbitration for Sport or any of its affiliates situated elsewhere ("CAS") within sixty days of the date of communication to the prospective Appellant of the decision that is to be referred."

42. Rule 21.3(ii) provides that:

"The following are examples of disputes that may be submitted to CAS by way of an appeal ...Where a Member has held a hearing under Rule 59.3 and the IAAF believes that, in the conduct or conclusions of such hearing, the Member has misdirected itself, or otherwise reached an erroneous conclusion."

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43. The parties confirmed the jurisdiction of the Arbitral Tribunal by signing the Order of Procedure dated 30 May 2005. The Arbitral Tribunal's jurisdiction is accordingly not in dispute.

APPLICABLE LAW AND ADMISSIBILITY

44. The 2002-2003 IAAF Rules and Procedural Guidelines are applicable. The appeal is decided pursuant to Rule 58 of the CAS Code.

45. The appeal was filed within the deadlines. It follows (undisputedly) that the appeal is admissible.

MAIN ISSUES

46. The main issues to be resolved by the Arbitral Tribunal are:

- (1) Whether the IAAF is estopped from appealing the AUS Tribunal's decision of 1 October 2004.
- (2) Whether AUS failed to impose the mandatory sanction of life ineligibility for the doping offence committed by Mr Lyall.
- (3) Whether AUS had jurisdiction to consider exceptional circumstances and allow reinstatement.

1. Whether the IAAF is estopped from appealing the AUS Tribunal's decision of 1 October 2004

a. Mr Lyall's Contentions

47. Mr Lyall contends that he was acting in accordance with the instructions and/or requests of the IAAF. Mr Lyall relies on a facsimile transmission from his solicitors to the AUS Tribunal, dated 8 April 2004, which states, *inter alia*:

"I have since been advised that Athletics Australia and the IAAF would like the matter finalised as soon as possible ... it may be appropriate to convene a second telephone conference in light of the views of AA and the IAAF."

48. Mr Lyall claims that neither the AUS nor the IAAF made any objection to the Tribunal's authority or power to hear and determine his application for reinstatement pursuant to AUS By-Law 16.13. Accordingly, Mr Lyall submits that the Appellant is now estopped from denying the authority or power of the AUS Tribunal to reinstate the Secondnamed Respondent pursuant to AUS By-Law 16.13.

b. The IAAF's Contentions

49. The IAAF contends that the only evidence Mr Lyall tenders in support of his estoppel argument is the sole fax dated 8 April 2004. He does not suggest that there

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were any other contacts, which specifically mentioned the exceptional circumstances issue.

50. The IAAF further argues that there is no substance to Mr Lyall's estoppel argument. The IAAF submits that the generally recognised ingredients of estoppel are that there has been made:

- (i) a clear and unambiguous representation;
- (ii) which is relied upon;
- (iii) to the detriment of the relying party;
- (iv) from which it would be unfair to allow him to resile.

51. The IAAF contends that in Mr Lyall's case, he falls at the first hurdle. The attitude evinced in the fax is merely that the IAAF is concerned to see that the case is dealt with – not that it approves the manner in which the case is being dealt with, or was subsequently dealt with. Indeed the fax says nothing at all on the issue of the applicability of the exceptional circumstances provisions to the current case.

52. Consequently, the IAAF contends that Mr Lyall is unable to point to any representation, still less one that is clear and unambiguous, made by the IAAF that the AUS Tribunal had jurisdiction to consider his application for early reinstatement. The IAAF argues that Mr Lyall has not pointed to any clear and unambiguous representation from the IAAF that it was even aware that Mr Lyall had made an application for early reinstatement to the AUS Tribunal. As Mr Lyall has failed to clear the first hurdle necessary to establish the basis of an estoppel, it is unnecessary to consider whether the other elements of estoppel have been satisfied.

c. The Arbitral Tribunal's Determination

53. The single facsimile submitted by Mr Lyall does not support a finding of estoppel with respect to the controverted proposition that the AUS Tribunal had authority to order reinstatement. It is accordingly unnecessary to consider the admissibility in principle of such a defence to the IAAF's claim.

2. Whether AUS failed to impose the mandatory sanction of life ineligibility for the doping offence committed by Mr Lyall

a. The IAAF's Contentions

54. The IAAF contends that AUS, having found Mr Lyall guilty of a doping offence, failed to impose the correct sanction, *ie* lifetime ineligibility, as required under IAAF Rule 60.2(c). This rule provides that:

"60.2 If an athlete commits a doping offence, he will be ineligible for the following periods:

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(c) for an offence under Rule 60.1(vii) involving any of the substances listed in Schedule 1 of the "Procedural Guidelines for Doping Control" – for life."

55. IAAF contends that AUS breached the IAAF rules by reinstating Mr Lyall under the exceptional circumstances exception, with the effect of his suspension being inferior to three years.

b. Mr Lyall's Contentions

56. Mr Lyall denies that AUS failed to impose the correct sanction as required under IAAF Rule 60.2(c).

57. Mr Lyall notably points out that at the hearing on 20 August 2004, the AUS Tribunal imposed the mandatory life sanction prior to considering his application for reinstatement. This can be seen in paragraph 31 of the AUS Tribunal's decision:

"In relation to the Doping Offence constituted by trafficking, the Tribunal was satisfied beyond reasonable doubt, and announced, that it was satisfied that the Doping Offence had been proved under By-Law 16.10(2)(c). It imposed the mandatory suspension of life in relation to those matters set out in By-Law 16.10(1)(d), (e), (f), and (g)."

c. The Arbitral Tribunal's Determination

58. In the Panel's analysis, this issue is misconceived; it poses the wrong question. It is clear that the AUS Tribunal formally imposed the mandatory suspension of life. Conceptually, one might imagine an argument to the effect that the subsequent reinstatement was a subversion of the mandatory suspension, and that therefore IAAF Rule 60.2(c) was violated in substance. But since the mechanism of reinstatement exists, and since it perforce involves the exercise of discretion, a sounder approach is to examine the AUS Tribunal's jurisdiction to reinstate. That is the next issue to be considered.

3. Whether AUS had jurisdiction to consider exceptional circumstances and allow Mr Lyall's early reinstatement

a. The IAAF's Contentions

59. The IAAF asserts that AUS breached the IAAF Rules when its Tribunal considered the question of exceptional circumstances and reinstated Mr Lyall. Its position is that the IAAF Rules make it clear that only the IAAF Council has the authority to determine early reinstatement on the grounds of exceptional circumstances. The IAAF refers to Rule 60.9, which provides that:

"In exceptional circumstances, an athlete may apply to the Council for re-instatement before the IAAF's period of ineligibility has

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expired. Where an athlete has provided substantial assistance to a Member in the course of an enquiry into doping carried out by that Member, this will normally be regarded by the Council as constituting exceptional circumstances. A decision on exceptional circumstances shall be made only if the athlete is able to present three negative tests conducted by the Member or the IAAF, with a period of at least one month between each test. However, it is emphasized that only truly exceptional circumstances will justify any reduction. Details of the procedure and the criteria for application are to be found in the "Procedural Guidelines for Doping Control."

60. The IAAF insists that the AUS Tribunal misdirected itself by acting outside its powers to evaluate the merits of the application for reinstatement. The IAAF asserts that the AUS Tribunal did not have the power under IAAF Rules to consider Mr Lyall's application for reinstatement. IAAF Rule 2 provides:

"The IAAF shall comprise duly elected national governing bodies for athletics which agree to abide by the rules and regulations of the IAAF. The rules and regulations of an elected national governing body must be in conformity with and not wider than IAAF eligibility rules."

61. The IAAF relies on CAS jurisprudence to support its interpretation of the Rules.

62. In *IAAF v. CAF and Zubek*, the athlete was given a 2 year suspension in a case involving an IAAF prohibited substance. The IAAF calls attention to paragraph 48 of this decision:

"IAAF Rule 60.2(a)(i) provides that an athlete's first Doping Offence involving a Schedule 1, Part I substance results in a period of ineligibility "for a minimum of 2 years from the date of the hearing at which it is decided that a Doping Offence has been committed". Where, as here, the athlete has already served a provisional suspension, the Rule provides that "such a period of suspension shall be deducted from the period of ineligibility imposed by the relevant Tribunal." ..."

63. Second, the IAAF relies on *IAAF v. CBAt and Fabiane dos Santos*, where the athlete had tested positive for testosterone, a prohibited substance. This was her second testosterone-related offense, and resulted in a lifetime ban. On the issue of the application of this sanction, the Panel stated, "[a]ccordingly, in the event of a fixed sanction, CAS Panels must automatically apply the sanction stipulated by the sporting federation." As to the issue of exceptional circumstances, the Panel stated, at paragraph 199:

"Given that IAAF Rule 60.2(a) sets out a fixed sanction for a second doping offence, the Panel does not consider that it has

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jurisdiction to consider exceptional circumstances in fixing the sanction in this appeal. Within the framework of the IAAF Rules, exceptional circumstances are only relevant within the limited context of an athlete's request for reinstatement by the IAAF Council in accordance with the IAAF Rule 60.9. The decision at issue in this appeal is not, however, a decision on reinstatement by the IAAF Council, but rather a decision on an eligibility decision by a IAAF member federation."

64. Third, IAAF relies on *IAAF v. MAR and Brahim Boulami*, another case of an athlete testing positive for a prohibited substance, where the Panel concluded:

*"In the present case, it is not for the Panel to determine whether there are mitigating circumstances that should lead to a reduction of the suspension. Rather, IAAF Rule 60.9 provides a specific procedure for early reinstatement on the basis of exceptional circumstances; according to this rule, a request for early reinstatement may be addressed to the IAAF's Council, which has the jurisdiction to rule on the application, see *Longo v/ IAAF, CAS 2002/A/409.*"*

65. Finally, IAAF relies on the IAAF Arbitration Panel decision in *IAAF v Fédération Française d'Athlétisme in the matter of Olivier Jean-Théodore*. On the subject of sanctions, the Panel stated:

"Pursuant to IAAF Rule 2, member Federations must abide by and incorporate IAAF Rules ... Neither Rule 60 nor any other provision of the IAAF Rules or guidelines provide any authority for adjustment or alteration of the authorized sanction in any manner by the Arbitration Panel. However, IAAF Rules provide for the opportunity for consideration of exceptional or mitigating circumstances which may later the sanction in the specific procedure embodied in Rule 60.8. Therein, that power and authority is granted exclusively to the IAAF Council."

66. Relying on the IAAF Rules and the above CAS precedents, the IAAF submits that only the IAAF Council can consider whether an athlete exhibits evidence of exceptional circumstances, and that to the extent that AUS By-Law 16.13 does not conform to those rules, AUS exceeded its jurisdiction.

b. Mr Lyall's Contentions

67. Mr Lyall submits that IAAF Rule 2, which provides that a national governing body may make rules "in conformity with and not wider than IAAF eligibility rules", allows such bodies to have concurrent jurisdiction in appropriate matters as long as the authority and powers of the local body conform with and are not wider than the IAAF eligibility rules. Furthermore, if a national governing body has concurrent jurisdiction, it is reasonable and proper for the athlete to make his application to that

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local tribunal. Mr Lyall thus denies that IAAF Rules clearly provide that only IAAF Council can consider evidence of exceptional circumstances and/or reinstate athletes early.

68. Mr Lyall's application is based on AUS By-Law 16.13, which provides that:

"In exceptional circumstances an Athlete may apply to the Tribunal for reinstatement before the expiry of their period of ineligibility. Rule 60.8 of the IAAF Constitution and clause 4 of the Guidelines will apply mutatis mutandis to the determination of all such applications."

69. As regards its scope, Mr Lyall claims that it is impossible that AUS By-Law 16.13 be wider than or in conflict with IAAF rules because its text requires that it be construed, or read as amended, to comply with such.

70. Further, Mr Lyall submits that the jurisprudence provided by the IAAF does not support the Appellant's submission.

71. In conclusion, Mr Lyall submits that the AUS Tribunal did not act outside of its jurisdiction, that it had the authority to consider whether exceptional circumstances existed and that it had the power to reinstate him.

c. The Arbitral Tribunal's Determination

72. The procedures that govern the applicability and processes of the 'exceptional circumstances' exception are explained in the 2000 edition of the *IAAF Procedural Guidelines for Doping Control*. These Guidelines set out the procedures to be followed when an athlete wishes to apply for early reinstatement. The AUS Tribunal recognised the inapplicability and indeed applied Article 4.1 in its 1 October 2004 decision. However, it failed to consider the following provisions of Article 4 of the Guidelines, which read as follows:

"4.2 Where an athlete believes that exceptional circumstances exist, application should be made through the athlete's National Federation to the General Secretary of the IAAF. No applications can be accepted otherwise than through an athlete's National Federation.

4.3 The General Secretary shall consider the circumstances put forward by the athlete through his National Federation and, if he thinks there is some merit in the case put forward, shall include discussion of the case on the agenda of the next meeting of the Council.

4.4 If the General Secretary thinks there is no merit in the case, he shall write to the athlete's National Federation in those terms. Despite this, the athlete's National Federation may, within 28 days of the General Secretary's letter, reply requesting that the matter

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be placed on the Council's agenda. The General Secretary shall then place the matter on the Council's agenda for its next meeting.

4.5 Where an athlete's application for early reinstatement has been added to the agenda of the Council meeting, the Council shall consider the question of reinstatement. It shall consider both the application by the athlete and the circumstances surrounding the athlete's ineligibility."

73. Article 16.13 of the AUS By-Laws reads as follows:

"In exceptional circumstances an Athlete may apply to the Tribunal for reinstatement before the expiry of their period of ineligibility. Rule 60.8 of the IAAF Constitution and clause 4 of the Guidelines will apply mutatis mutandis to the determination of all such applications."

74. Mr Lyall's interpretation of these provisions is not sustainable.

75. The starting point is necessarily the proposition, abundantly clear in the Guidelines, that an athlete seeking reinstatement must apply to the General Secretary of the IAAF through his national federation. The issue is ultimately decided by the IAAF Council, provided either that the Secretary General finds "some merit" in the application or that the national federation presses for a decision.

76. The only qualitative decision with respect to reinstatement that appertains to the national federation is whether it would insist that the matter be put on the Council's agenda even if the Secretary General were to find no merit in it. There is no need for a national federation to make such a determination unless and until the Secretary General has declined to put it on the Council's agenda. But nor is there any impediment in the IAAF Rules to a national federation making its views known at an earlier stage, for the earlier and better information of the Secretary General and (in due course) the Council. If a national federation communicates the views in this respect of a tribunal which considered the merits of the original infraction and therefore has had the occasion to make an informed evaluation of the case, *it should be clearly understood that those views are no more than recommendations obiter dictum; the only legally operative decision on reinstatement belongs to the Council.*

77. In sum, the AUS Tribunal did not have the power to reinstate Mr Lyall. This power, as explicitly stated in Article 4 of the IAAF Guidelines lies exclusively with the IAAF Council.

COSTS

78. Rules 65 *et seq.* of the CAS Code apply in respect of the determination and allocation of the costs of these proceedings.

79. Article R65.3 of the Code provides that the Panel shall decide which party shall bear the costs of the parties, witnesses, experts and interpreters, taking into

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account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

80. The IAAF has requested that AUS and Mr Lyall reimburse its costs. For their part, AUS does not make any submissions as long as no costs are awarded against them. Mr Lyall requests that, should the appeal succeed, AUS or the IAAF reimburse his costs lest he suffer hardship due to (a) an *ultra vires* act by the AUS' Tribunal; (b) failures or shortcomings in AUS By-Laws; (c) the failure by AUS and/or the IAAF to raise any objection to the AUS Tribunal's jurisdiction prior to its decision on 1 October 2004.

81. In view of the fact that the IAAF's appeal succeeds and that Mr Lyall's resistance to the appeal was therefore erroneous, there is no ground for awarding costs to him. Equally, the Panel concludes that Mr Lyall should not be held responsible for following what he believed to be the proper procedure, and therefore not bear any of the costs of the IAAF. As for AUS, it was responsible, on the one hand, for promulgating an *ultra vires* rule, which engendered the dispute before CAS, but, on the other hand, took no sides in this case and therefore did not add to any of the IAAF's cost. With some hesitation, the Panel concludes that this issue should (at least in the confines of this tripartite proceeding) be put to the side as to be more appropriately dealt with, if at all, as a matter of the IAAF's bilateral relations with its member.

82. The Arbitral Tribunal is thus of the view that each party shall bear its own costs and expenses incurred in connection with this appeal arbitration procedure.

COMMENT

83. The Panel wishes to record its non-binding view that notwithstanding the *ultra vires* status of the AUS Tribunal's decision of 1 October 2004, it merits sympathetic consideration as a careful and balanced evaluation of the exceptional circumstances of Mr Lyall's case. The Panel recommends in particular that Paragraphs 52-55 of that decision be given the weight they deserve if this matter is pursued.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the IAAF on 7 December 2004 is granted.
2. The AUS decision of 1 October 2004 is amended as follows :
Mr Stuart Lyall shall be declared ineligible for life.
3. All other claims are dismissed.
4. This award is rendered without costs, except for the Court Office fee of CHF 500 paid by the IAAF, which is retained by the Court of Arbitration for Sport.
5. Each party shall bear its own costs.

Lausanne, 20 October 2005

THE COURT OF ARBITRATION FOR SPORT

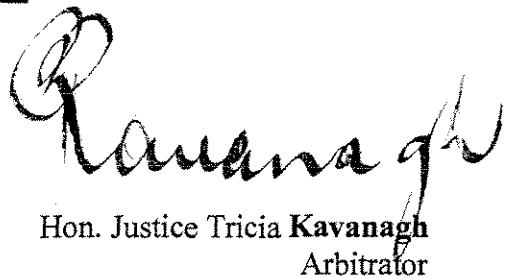
President of the Panel



Jan Paulsson



Peter Leaver QC
Arbitrator



Hon. Justice Tricia Kavanagh
Arbitrator