



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2016/A/4475 World Rugby v. Luke Willmott & Rugby Football Union

CAS 2016/A/4503 WADA v. Luke Willmott & Rugby Football Union

CONSENT ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Ken E. **Lalo**, Attorney-at-Law, Gan-Yoshiyya, Israel

Arbitrators: Mr. L. Yves **Fortier**, C.C. Q.C., Barrister, Montreal, Canada

Mr. Mark A. **Hovell**, Solicitor, Manchester, United Kingdom

in the arbitration between

WORLD RUGBY, Dublin, Ireland

Represented by Ms. Louise Reilly, Barrister, Dublin, Ireland & Mr. Ben Rutherford, Senior Legal Counsel & Integrity Unit Manager, World Rugby, Dublin, Ireland

as First Appellant

&

WORLD ANTI-DOPING AGENCY, Montreal, Canada

Represented by Mr. Ross Wenzel, Kellerhals Carrard, Attorney-at-law, Lausanne, Switzerland

as Second Appellant

&

LUKE WILLMOTT, Arnold, Nottingham, United Kingdom

Represented by Mr. Mike Morgan, Morgan Sports Law LLP, London, United Kingdom

as First Respondent

&

RUGBY FOOTBALL UNION, Twickenham, Middlesex, United Kingdom

Represented by Mr. James Segan, Blackstone Chambers, London, United Kingdom & Mr. Stuart Tennant, Disciplinary Case Manager, Rugby Football Union, Twickenham, Middlesex, United Kingdom

as Second Respondent

I. PARTIES

1. World Rugby (“WR”) is the international governing body of rugby worldwide. The membership of the WR primarily comprises of national rugby unions and/or associations. It has its seat and headquarters in Dublin, Ireland. WR is a signatory of the World Anti-Doping Code.
2. World Anti-Doping Agency (“WADA”) is a Swiss private-law foundation. Its seat is in Lausanne, Switzerland and its headquarters are in Montreal, Canada.
3. Mr. Luke Willmott (the “Player”), born on 29 March 1990, is a rugby player and, prior to the events underlying these appeals, played with Derby Rugby Football Club (“Derby RFC”).
4. Rugby Football Union (“RFU”) is the national governing body for rugby in England and is affiliated to WR.

II. JURISDICTION

5. WR relies on Regulation 21.13 of the 2015 WR Anti-Doping Rules (“WR ADR”) and in particular 21.13.2.1 and 21.13.2.3 thereof, as conferring jurisdiction on the Court of Arbitration for Sport (“CAS”). The jurisdiction of the CAS over this matter is not disputed by the Player, by RFU or by WADA. WADA relies on Regulation 21.13.2.3 WR ADR as providing WADA with the right to appeal.

III. FACTUAL BACKGROUND OF THE DISPUTE AND PROCEDURAL HISTORY

6. On 13 April 2015, the RFU Anti-Doping Panel found the Player guilty of the offense of Attempted Trafficking in relation to the delivery of a package addressed to the Player containing human Growth Hormone (“hGH”) and reserved its decision on sanction (the “Liability Decision”).
7. On 2 June 2015, the RFU Anti-Doping Panel imposed on the Player a period of ineligibility of five (5) years, commencing on the date of his provisional suspension, namely, 23 July 2014 (the “Sanction Decision”).
8. The Player appealed both the Liability Decision and the Sanction Decision to the RFU Appeal Panel.
9. On 11 January 2016, the RFU Appeal Panel issued its Final Reasoned Award and Decision of Panel upholding the finding on liability but reducing the sanction to a period of ineligibility of two (2) years, and backdating the commencement date to 1 April 2014 (the “Appealed Decision”). The Appealed Decision was notified to WR by email on 4 February 2016.
10. On 25 February 2016, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), WR filed a statement of appeal directed only at the sanction element of the Appealed Decision. The proceedings were opened under the

reference *CAS 2016/A/4475 World Rugby v Luke Willmott & Rugby Football Union*. In its statement of appeal, WR submitted following requests for relief:

“World Rugby respectfully requests CAS to rule that:

- 1. The Appeal of World Rugby is admissible.*
 - 2. The decision on sanction (set out at points 4.1.2. and 4.1.3. of the operative part of the appeal Panel Decision) rendered by the Appeal Panel of the Rugby Football Union on 11 January 2016 is set aside.*
 - 3. Mr Luke Willmott is sanctioned with a period of ineligibility of a minimum of four years up to lifetime, starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, Mr Luke Willmott before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*
 - 4. The remaining findings set out in the operative part of the Decision of the Appeal Panel of the Rugby Football Union remain in full force and effect.*
 - 5. World Rugby is granted an award for costs, legal fees and expenses.”*
11. On 7 March 2016, WADA applied to CAS to intervene in the CAS Appeal 2016/A/4475 as an interested party, in accordance with Article R41.3 of the CAS Code.
 12. On 9 March 2016, WR sent an email consenting to WADA's request to intervene in the CAS Appeal 2016/A/4475.
 13. On 14 March 2016, in accordance with Article R51 of the CAS Code, WR filed its appeal brief with exhibits, repeating the requests for relief contained in its statement of appeal.
 14. On 14 March 2016, the Player objected to WADA's request to intervene in the CAS Appeal 2016/A/4475.
 15. On 17 March 2016, WADA filed its statement of appeal against the Player and RFU (the “Respondents”), *“out of caution”* and since its application to intervene had not yet been determined by CAS and considering that the deadline to appeal might arguably be held to expire. The proceedings were opened under the reference *CAS 2016/A/4503 IAAF v WADA v Luke Willmott & Rugby Football Union*. In its statement of appeal WADA had the following requests for relief:

“WADA hereby respectfully requests CAS to rule:

- 1. The Appeal of WADA is admissible.*
- 2. The decision on sanction rendered by the Appeal Panel of the Rugby Football Union on 11 January 2016 is set aside.*
- 3. Mr. Luke Willmott is sanctioned with a period of ineligibility of a minimum of four years up to lifetime, starting on the date on which the CAS award enters*

into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, Mr. Luke Willmott before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.

4. *The remaining findings set out in the operative part of the Decision of the Appeal Panel of the Rugby Football Union dated 11 January 2016 remain in full force and effect.*
5. *WADA is granted an award for costs."*
16. On 18 March 2016, the parties were informed of the decision of the President of the CAS Appeals Arbitration Division to deny WADA's request for intervention in the proceedings CAS 2016/A/4475.
17. On 18 March 2016, the Respondents jointly nominated Mr. Mark Hovell as an arbitrator in the proceedings.
18. On 22 March 2016, CAS informed the parties that the two cases CAS 2016/A/4475 and CAS 2016/A/4503 were consolidated pursuant to Article R52 of the CAS Code.
19. On 29 March 2016, in accordance with Article R51 of the CAS Code, WADA filed its appeal brief with exhibits, repeating the requests for relief contained in its statement of appeal.
20. On 6 April 2016, the Player filed a letter requesting to have the issue of the Player's right to file cross appeals pursuant to Regulation 21.13.2.4 WR ADR determined on a preliminary basis and to suspend the deadlines for filing answer briefs pending such determination.
21. On 12 April 2016, WR agreed to have the issue of the Player's right to file cross appeals decided as a preliminary issue, but objected to the Player's request to suspend the deadlines for filing his answer briefs pending such determination. WR proposed that the Player file his application to cross appeal with the answer (rather than the full substantive submissions of such cross appeals) and that any such application, if made, would then be dealt with on a preliminary basis.
22. In its letter of 13 April 2016, WADA agreed with WR's position and proposal in regard to the cross appeal and objected to any delay in the filing of the answers by the Player.
23. Further to additional submissions by the Player and by RFU on 13 April 2016 and by WADA on 14 April 2016, the parties were advised on 18 April 2016 that the President of the CAS Appeals Arbitration Division "*has decided to allow*" the Player and RFU "*to file submissions limited only to the admissibility of the cross-appeal and to suspend the time limit for the filing of the remaining issues to be addressed in the Respondents' Answers*", further specifying that "*[t]he decision on the issue of admissibility of the cross-appeal will be taken by the Panel, once constituted*".
24. On 20 April 2016, RFU filed its submissions on the Player's entitlement to file cross-appeals.

25. On 21 April 2016, the Player filed his submissions on the admissibility of cross-appeals.
26. On 13 May 2016, WR filed its response to the Respondents' submissions on the issue of admissibility of cross-appeals.
27. On 13 May 2016, WADA submitted by email and on 19 May 2016 by courier its response to the Respondents' submissions on the issue of admissibility of cross-appeals.
28. By letter of 26 May 2016, following a challenge to an earlier nominated arbitrator, WR and WADA informed the CAS Court Office that they wished to nominate Mr. L. Yves Fortier, C.C., Q.C., as an arbitrator in these proceedings.
29. By letter dated 15 June 2016, the CAS Court Office, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the panel to hear the appeal had been constituted as follows: President, Mr. Ken E. Lalo, Attorney-at-Law, Gan-Yoshiyya, Israel, Mr. L. Yves Fortier, C.C., Q.C., Barrister, Montreal, Canada and Mr. Mark A. Hovell, Solicitor, Manchester, United Kingdom.
30. On 12 July 2016, the parties were invited on behalf of the Panel, further to and in accordance with Articles R44.3 and R57 of the CAS Code to file further memorandums *"addressing the ability, if any, to file a cross appeal to the CAS under R55 of the Code as presently drafted, the circumstances, if any, in which a panel may permit a cross appeal to CAS, the existence of such circumstances in the present cases and the interaction between Regulation 21.13.2.4 of the World Rugby's Anti-Doping Regulation (2016 edition) and Article R55 of the Code"*. The parties attention was directed by the Panel to the award rendered in the proceedings CAS 2015/A/4215 *FIFA v Korea Football Association & Kang Soo II* (and in particular to paragraphs 154 to 165 of such award). The Panel invited the Respondents to provide their positions first. The Appellants were invited to provide their positions following the submissions by the Respondents.
31. On 12 July 2016, the Player responded, requesting CAS to switch the order in which the parties were to file the further memorandums regarding the Player's entitlement to file a cross-appeal, so that the Appellants be required to file their memorandums first.
32. On 19 July 2016, RFU filed its further submissions on the Player's entitlement to file a cross-appeal.
33. On 19 July 2016, WR informed the CAS Court Office that the parties were in discussions with a view to reaching an amicable settlement to the procedures and accordingly requested to suspend the proceedings. The other parties to the proceedings confirmed this request.
34. On 21 October 2016, the parties informed the CAS Court Office that they had reached a settlement and submitted signed copies of the settlement agreement (the "Settlement Agreement").
35. The Settlement Agreement was signed on 20 October 2016 by WADA and by RFU and on 21 October 2016 by WR and by the Player.

36. The parties requested the Panel to ratify the following portion of their Settlement Agreement pursuant to Article R56 of the CAS Code:

"COURT OF ARBITRATION FOR SPORT

CAS 2016/A/4475 & CAS 2016/A/4503

SETTLEMENT AGREEMENT

-between-

World Rugby, *World Rugby House, 8-10 Pembroke Street Lower, Dublin 2, Ireland*

World Anti-Doping Agency (WADA), *Stock Exchange Tower, 800 Victoria Square, Suite 1700, P.O. Box 120, Montreal, Quebec, H4Z 1B7, Canada*

-and-

Luke Willmott (the Athlete), *39 Oxengate, Arnold, Nottingham, England*

Rugby Football Union (RFU), *Rugby House, Twickenham Stadium, 200 Whitton Road, Twickenham, Middlesex TW2 7BA, England*

NOW THEREFORE, *in consideration of the mutual agreements and promises stated herein, IT IS AGREED AS FOLLOWS:*

1. *Each of the Parties agrees that:*
 1. *The decision on sanction (points 4.1.2. and 4.1.3. of the operative part of the Appeal Panel Decision) rendered by the Appeal Panel of the Rugby Football Union on 11 January 2016 is set aside.*
 2. *Mr Luke Willmott is sanctioned with a period of ineligibility of four years.*
 3. *The period of ineligibility shall commence on 15 August 2013, such that, for the avoidance of doubt, Mr Luke Willmott shall be entitled to return to training on 15 June 2017, and to competition on 15 August 2017.*
 4. *The remaining findings set out in the operative part of the Appeal Panel Decision remain in full force and effect.*
 5. *The costs of arbitration to be determined by the CAS Court Office shall be borne by World Rugby, the World Anti-Doping Agency and the Rugby Football Union in equal shares.*
 6. *The Parties shall each bear their own legal fees or other expenses incurred in connection with the CAS Appeal.*

[-----]

DATE: _____

World Rugby

DATE: _____

WADA

DATE: _____

Luke Willmott

DATE: _____

Rugby Football Union"

37. Under Swiss Law, an arbitration tribunal has authority to issue an award embodying the terms of the parties' settlement if the contesting parties agree to a termination of their dispute in this manner. The Panel's ratification of their settlement and its incorporation into this consent award serves the purpose of enabling the enforcement of their agreement.
38. Moreover, in accordance with Article R56 of the CAS code:
- "[...] Any settlement agreement may be embodied in an arbitral award rendered by consent of the parties."*
39. The parties have requested that the Panel ratify and incorporate the portion of the Settlement Agreement reproduced in Paragraph 36 above into a Consent Award. It is the task of the Panel to verify the *bona fide* nature of the Settlement Agreement to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
40. After reviewing the terms of the Settlement Agreement, the Panel finds no grounds to object or to disapprove of the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to its attention.
41. In view of the above, and in particular of the joint request made by all parties, the present Consent Award puts an end to the arbitration procedures CAS 2016/A/4475 *World Rugby v Luke Willmott & Rugby Football Union* and CAS 2016/A/4503 *WADA v Luke Willmott & Rugby Football Union* on the terms indicated in the Settlement Agreement and those detailed below.
42. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.
43. Within the Settlement Agreement the parties requested that this Consent Award shall be made public by CAS, pursuant to R59 of the CAS Code.

IV. COSTS

44. Article R64.4 of the CAS Code provides that:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS and the costs of witnesses, experts and interpreters.”

45. Article R64.5 of the CAS Code provides that:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which portion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

46. In the case at hand, the parties agreed that the costs of arbitration to be determined by the CAS Court Office shall be borne by WR, WADA and RFU in equal shares.
47. The parties further agree that each party shall bear its/ his own legal fees or other expenses incurred in connection with the CAS proceedings.
48. The Panel does not see any reason to deviate from the agreement reached by the parties on the issues of costs, fees and expenses, which are therefore confirmed by the present Consent Award.
49. The final amount of the costs, including the CAS Court Office fee, the administrative costs of the CAS, the costs and fees of the Panel and a contribution to the expenses of the CAS, shall be communicated separately to the parties by the CAS Court Office (see article R64.4 of the CAS Code).

ON THESE GROUNDS

The Court of Arbitration for Sport renders the following:

CONSENT AWARD

1. The Panel, with the consent of World Rugby, World Anti-Doping Agency (WADA), Luke Willmott and Rugby Football Union, hereby ratify the relevant portion of the Settlement Agreement executed by the parties on 20 and 21 October 2016 (see Paragraph 36 of the present award) and incorporates its terms into this consent arbitral award.
2. The arbitral procedures CAS 2016/A/4475 *World Rugby v Luke Willmott & Rugby Football Union* and CAS 2016/A/4503 *WADA v Luke Willmott & Rugby Football Union* are terminated and deleted from the CAS roll.
3. Each party is hereby ordered to perform the obligations and duties as per the Settlement Agreement referred to above.
4. As per clause 5 of the Settlement Agreement signed on 20 and 21 October 2016, the costs of the arbitration, which shall be determined and separately communicated to the parties by the CAS Court Office, shall be paid by World Rugby, the World Anti-Doping Agency and the Rugby Football Union in equal shares.
5. As per clause 6 of the Settlement Agreement signed on 20 and 21 October 2016, each party shall bear its/ his own legal costs and expenses.
6. All other requests of prayers for relief are rejected.

Done in Lausanne, 20 January 2017

THE COURT OF ARBITRATION FOR SPORT



Ken E. Lalo
President