

AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Kaj **Hobér**, Attorney-at-Law, Stockholm, Sweden

Arbitrators: Mr. L. Yves **Fortier**, CC, QC, Barrister, Montréal, Canada
Mr. David A.R. **Williams**, QC, Barrister, Auckland, New Zealand

(the "Panel")

Ad hoc Clerk: Mr. Stephen L. **Drymer**, Barrister, Montréal, Canada

In the Arbitration Proceeding No. CAS 2004/A/725 Between:

- 1. UNITED STATES OLYMPIC COMMITTEE ("USOC"),**
- 2. MICHAEL JOHNSON,**
- 3. ANTONIO PETTIGREW,**
- 4. ANGELO TAYLOR,**
- 5. ALVIN HARRISON, and**
- 6. CALVIN HARRISON (THE "ATHLETES")**

Represented by Mr. Mark S. Levinstein, Mr. Gabe A. Feldman and Mr. John Cuddihy of the law firm *Williams & Connolly, LLP*, Washington, D.C., United States

Appellants

– AND –

- 1. INTERNATIONAL OLYMPIC COMMITTEE ("IOC")**

Represented by Mr. François Carrard and Mr. Howard Stupp, respectively Secretary of the IOC Disciplinary Commission and Director of Legal Affairs of the IOC

and

- 2. INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS ("IAAF")**

Represented by Mr. Mark Gay and Ms. Sally Clark of the law firm *DLA Piper Rudnick Gray Cary U.K. LLP*, London, U.K., and by Mr. Michael Beloff, QC, as counsel

Respondents

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I. PREFACE

1. This case, in its essence, concerns the interpretation of relevant IAAF Rules and their application to five members of the gold medal-winning U.S.A. team (the “U.S.A. team”) in the men's 4 x 400m relay event at the 2000 Sydney Olympic Games (the “relay event”). It is a most peculiar case, arising in most unusual circumstances.
2. As explained more fully in this Award, the results of the relay event and the fate of the medals awarded to the U.S.A. team at the 2000 Sydney Games have, five years later, been called into question as a result of two occurrences.
3. First, on 28 June 2004, a Panel of the Court of Arbitration for Sport (“CAS”) found that a Doping Appeals Board of USA Track & Field (“USATF”), the national federation that governs the sport of athletics in the United States of America, had misdirected itself and reached an erroneous conclusion when, on 10 July 2000, it exonerated Mr. Jerome Young (a sixth member of the U.S.A. team, who is not one of the Appellants in this arbitration) of having committed a doping offence on 26 June 1999, just prior to the Sydney Games. The CAS Panel found that Mr. Young had committed a doping offence, that the resulting period of ineligibility extended through the Sydney Games, and that Mr. Young should therefore not have participated in those Games (CAS Arbitration 2004/A/628, IAAF v/ USATF & Jerome Young, award of 28 June 2004).
4. Second, on 18 July 2004, the IAAF Council determined that “as a consequence of Jerome Young’s ineligibility to have competed at the Sydney Olympic Games in 2000 [by virtue of having committed a doping offence on 26 June 1999], the result of the USA Men's 4 x 400m relay event is annulled and the final placings are revised accordingly.”
5. It is the subject matter of the second of these decisions – that is, whether under IAAF Rules in force at the time of the Sydney Games, the results of the relay event should be annulled and the final placings revised accordingly – that is the primary issue in the present appeal.

II. INTRODUCTION

A. The Parties

6. First Appellant, USOC, is the body to which all US Olympic sports federations are affiliated and is responsible, among other duties, for the selection and registration of athletes in the Olympic Games. USOC has its seat in Colorado Springs, Colorado, U.S.A.
7. Second, third, fourth, fifth and sixth Appellants, Messrs. Michael Johnson, Antonio Pettigrew, Angelo Taylor, Alvin Harrison and Calvin Harrison (the “Athletes”) are five of the six athletes who were members of the U.S.A. team awarded gold medals in the 4 x 400 men’s relay event at the 2000 Sydney Olympic Games. The sixth member of that team, Mr. Jerome Young, is not a party in these proceedings.
8. First Respondent, the International Olympic Committee (“IOC”) is the governing body of the Olympic Movement. One of its mission is to ensure the regular celebration of the Olympic Games. The IOC has its seat in Lausanne, Switzerland.
9. Second Respondent, the International Association of Athletics Federations (“IAAF”) is the international federation that governs the sport of athletics throughout the world. The IAAF has its seat in the Principality of Monaco. On 18 July 2004, the IAAF Council made the decision (the “IAAF decision”) that is the subject of the present appeal.

B. Jurisdiction

10. As stated by Appellants in their Statement of Appeal, this appeal is brought pursuant to both IAAF Rule 21 (IAAF Handbook 2002-2003) and more particularly, because the matter concerns the Olympic Games, Article 61 of the Olympic Charter, which provides:

Any dispute arising on the occasion of, or in connection with, the Olympic Games, shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.

11. For its part, the IAAF acknowledges that the Athletes, who are the subject of the IAAF decision, have standing to appeal that decision to the CAS in virtue of IAAF Rule 60.13 (IAAF Handbook 2004-2005).¹ However, the IAAF contends that USOC enjoys no such standing and should be removed as a party to these proceedings. For the reasons set forth below, and in view of the Panel's findings in respect of the substantive issues in this appeal, the IAAF's request that USOC be struck as a party to these proceedings need not be determined; and the Panel thus refrains from doing so.

C. Key IAAF and Olympic Charter Rules²

12. IAAF Rule 59.4 is in the following terms:

If an athlete is found to have committed a doping offence and this is confirmed after a hearing or the athlete waives his right to a hearing, he shall be declared ineligible. In addition, where testing was conducted in a competition, the athlete shall be disqualified from that competition and the result amended accordingly. His ineligibility shall begin from the date of suspension. Performances achieved from the date on which the sample was provided shall be annulled.

(emphasis added)

13. Bye-law 1.2 to Rule 57 of the Olympic Charter provide:

1. Technical provisions relating to IFs at the Olympic Games:

The IFs have the following rights and responsibilities:

¹ IAAF Rule 60.13 (IAAF Handbook 2004-2005) reads as follows:

Parties entitled to appeal decisions

In any case involving International-Level athletes (or their athlete support personnel) or arising from an International Competition, the following parties shall have the right to appeal a decision to CAS:

- a. the athlete or other person who is the subject of the decision being appealed;
- b. the other party to the case in which the decision was rendered;
- c. the IAAF;
- d. the IOC (where the decision may have an effect on eligibility in relation to the Olympic Games; and
- e. WADA (in doping-related matters only).

² Unless otherwise stated, all references in this and subsequent sections of the present Award to IAAF and Olympic Charter Rules are to such rules as were in effect in the time of the Sydney Olympic Games, to wit: IAAF Rules as contained in the IAAF Handbook 2000 to 2001; and the Olympic Charter in force as from 12 December 1999.

[...]

1.2 To establish the final results and ranking of Olympic competitions.

14. In addition, it is relevant to note articles 6.11 (d) and (e) of the IAAF Constitution in force as from 1 November 2003 (the version of the IAAF Constitution that is relevant here), which provide:

The Council's powers shall include the following:

[...]

(d) to make decisions in urgent matters relating to all Rules. Any such decisions may be notified to the members by the IAAF Office and shall be reported to the next Congress.

(e) to make decisions regarding the interpretation of the Rules. Any such decisions may be notified to the members by the IAAF Office and shall be reported to the next Congress.

(emphasis added)

III. FACTUAL AND PROCEDURAL BACKGROUND

15. Although this case concerns essentially a pure question of law, an appreciation of its lengthy and complicated history is relevant to an understanding both of the context in which the present appeal arises and of the issues addressed in this Award. That history has been thoroughly traversed by the parties in their written and oral submissions, and is summarized here.

A. The Jerome Young Case

16. On 26 June 1999, Mr. Young provided a urine sample while competing at the United States National Outdoor Championships in Eugene, Oregon. The IOC-accredited laboratory in Indianapolis, Indiana reported that the sample was positive for nandrolone metabolites.

17. On 11 March 2000, a USATF Doping Hearing Panel found Mr. Young guilty of a doping offence. That decision was reversed on 10 July 2000 by a USATF Doping Appeals Board, thus exonerating Mr. Young and rendering him eligible to enter and compete in the Sydney Games. The USATF, IAAF and IOC accordingly allowed Mr. Young to compete in the Sydney Games as a member of the U.S.A. team, which eventually won the gold medal.
18. During the Sydney Games, Mr. Young competed in the semi-final heat for the relay event, on 29 September 2000. He did not compete in the final race on 30 September 2000, which four members of the U.S.A. team (Michael Johnson, Antonio Pettigrew, Alvin Harrison and Calvin Harrison) won.
19. There is no evidence and there has been no suggestion that any member of the U.S.A. team (including Mr. Young) used or ingested any prohibited substance or committed any doping offence during the Sydney Games. Nor is there any evidence, and there has been no suggestion, that any member of the U.S.A. team even knew of Mr. Young's case at the time.
20. The reason for this lay in USATF's rules (since amended) concerning athletes' privacy and the confidentiality of information pertaining to doping cases in which athletes were ultimately exonerated. In July 2002, the IAAF submitted its concerns about the USATF's confidentiality policy to arbitration before a CAS Panel. On 10 January 2003, that Panel held that although IAAF Rules did obligate the USATF to disclose information regarding its drug tests to the IAAF, and that information should have been disclosed, given the passage of time and the equities, including the IAAF's familiarity with the USATF rules in question, the USATF should not in the circumstances be required to disclose the identity, or any information about the drug tests, of athletes who had been exonerated.³
21. In August 2003 – three years after the Sydney Games – the United States media (*Los Angeles Times*) reported Mr. Young's June 1999 doping offense and subsequent exoneration by the USATF Doping Appeals Board.

³ See *IAAF v. USATF*, in Digest of CAS Awards, volume III 2001-2003, M. Reeb (Ed.) Kluwer Law Editions, The Hague, 2004, p. 36 ff.

22. On 30 September 2003, the IOC Executive Board formed a Disciplinary Commission to investigate the circumstances surrounding Mr. Young's entry and participation in the Sydney Games.
23. In early February 2004, USATF released the unredacted decision of its Appeals Board that had exonerated Mr. Young and sent it to the USOC. The USOC forwarded the decision to the IOC and IAAF.
24. On 18 February 2004, the IAAF referred the matter to arbitration before the CAS, requesting that the decision exonerating Mr. Young be overturned.
25. On 29 June 2004, a CAS Panel ruled, *inter alia*, that (1) the USATF Doping Appeals Board had acted erroneously in overturning the 11 March 2000 decision finding Mr. Young guilty of a doping offence; (2) Mr. Young should have been ineligible to compete in international competition for the 2-year period from 26 June 1999 (the date of his urine sample) to 25 June 2001; and (3) Mr. Young therefore should not have been allowed to compete in the Sydney Games.

B. Events Giving Rise to this Arbitration (1): the IOC Disciplinary Commission Requests an Interpretation of IAAF Rules

26. On 2 July 2004, the Secretary of the IOC Disciplinary Commission, François Carrard, wrote to the President of the IAAF, requesting that the IAAF "take its own decision" and advise the IOC concerning the effect of the IAAF Rules that were in existence in 2000. The letter explained that the *Olympic Movement Anti-Doping Code* requires that "[i]n the event that a competitor who is a member of a team is found guilty of doping, the relevant rules of the International Federation concerned shall be applied". The IOC letter further stated that following the IAAF's decision, "the IOC will in future consider the matter."

C. Events Giving Rise to this Arbitration (2): the IAAF Takes Up the Matter

27. On 5 July 2004, the IAAF convened an Extraordinary Council Meeting for 18 July 2004, to consider the action which it should take in the light of the decision in the Jerome Young case and further to the correspondence received from the IOC Disciplinary Commission.

28. Following the 5 July 2004 notice convening the Extraordinary Council Meeting, the IAAF General Secretary received a request from USATF that one of the Athletes attend the Council meeting to represent the interests of the U.S.A. team members. The IAAF communicated to the Athlete concerned that he would be welcome to attend the meeting. However, for reasons unknown, the Athlete did not attend.
29. By letter dated 17 July 2004, USATF sent the IAAF a written submission in the matter, stating, *inter alia*, that fairness demanded that Jerome Young alone, and not his innocent teammates, should forfeit the gold medal won by the U.S.A. team.
30. The USATF letter was circulated to IAAF Council members in advance of the Extraordinary Council Meeting and formed part of the material which was considered by the IAAF Council on 18 July 2004.
31. Two days prior to the Extraordinary Council Meeting, a “Briefing Note to Council” was prepared for the assistance and use of the Council members at their 18 July 2004 meeting (the “IAAF briefing note”⁴). The IAAF briefing note set out the history of the Jerome Young case, the action required of the IAAF Council, the relevant IAAF Rules, and how relevant previous cases had been dealt with.
32. In the section entitled “Action required of the IAAF Council”, the IAAF briefing note states:
 5. The IAAF considers ... that it is being requested to inform the IOC as to the relevant IAAF Rules concerning athletes who are found guilty of doping who are members of a team; alternatively, to advise the IOC as to the IAAF’s interpretation of the relevant IAAF Rules as to the consequences of Jerome Young’s doping offence and deemed ineligibility from competition in the Sydney Olympic Games on the result of the winning US Men’s 4x400m Relay Team.
 6. The IAAF Council has the power, where necessary, to make decisions regarding the interpretation of IAAF Rules.

⁴ The Briefing Note does not identify its author.

33. In the following section, entitled “IAAF Rules”, the IAAF briefing note explains, *inter alia*:

15. In the 2000 Rules [which were the IAAF Rules in force at the time of the Sydney Olympic Games], there was still no specific provision for what should happen when a competitor who had been a members of a team (either of a relay team or otherwise) was found guilty of doping.

34. The IAAF briefing note goes on to explain:

16. For the first time, the 2004-2005 Rules make express provision for what happens when an athlete who is a member of a relay team is found guilty of doping.

35. On 18 July 2004, the Extraordinary Council Meeting was held in Grosseto, Italy. As recorded in the "Note of the deliberations of the Extraordinary IAAF Council Meeting held in Grosseto on 18 July" (the "Note of the deliberations") subsequently prepared by the IAAF General Secretary, the meeting was opened by the IAAF President. The meeting was then addressed by the IAAF legal counsel, Mr. Huw Roberts, in the following terms:

The IAAF Legal Counsel presented the IAAF Council with a summary as follows:

- (i) He recited the basis facts of the Jerome Young case;
- (ii) He emphasised the IOC's involvement in the matter, in particular, the Disciplinary Commission that had been established by the IOC Executive Board pursuant to Rule 25 of the Olympic Charter to investigate all aspects of Jerome Young's participation in the Sydney Olympic Games, including all possible consequences for all concerned parties;
- (iii) He summarised the recent CAS decision and its consequences for Mr. Young; he stressed, reading out in full the relevant paragraph from the CAS award (paragraph 99), that the CAS Panel had considered that it had no jurisdiction to consider the question of the gold medals of

the other members of the USA Relay Team. This was a matter, the CAS Panel had stated, for the IOC and/or the IAAF.

(iv) He stated that the Council was now being asked by the IOC Disciplinary Commission to interpret the IAAF Rules at the relevant time concerning athletes who had been a member of a relay team being found guilty of doping. He said that the IOC had informed the IAAF that, on receipt of the IAAF's position, the IOC would in turn review the matter.

(v) He said that the IAAF Council was therefore required to interpret the 1998/1999 Rules as regards the consequences of Jerome Young's doping offence and consequential ineligibility to compete in Sydney on the USA Relay Team's result. He reminded the Council that it had the power under the IAAF Constitution to interpret IAAF Rules.

(vi) He recited the relevant passages in IAAF Rules in turn.

(vii) He urged the Council to take all factors into consideration in interpreting the relevant IAAF Rules, including the fairness issues that had been raised in the USATF letter.

(viii) He referred the IAAF Council to a consideration of the IAAF "precedent" in the file. He commented specifically only on the facts of the Dennis Mitchell case, stressing that this was the only "precedent" from the relevant time period.

(ix) He referred to the USATF letter and recommended that its contents be considered when reaching a decision. He summarised the main points arising from the letter.

(x) Finally, he stressed that all the IAAF Council was required to do was to interpret the relevant IAAF Rules in 1999 as regards the consequences of Jerome Young's ineligibility on the USA Relay Team. The IAAF Council was not being asked to reach a decision on the withdrawal of the gold medals of the USA Relay Team Members. This was a matter exclusively for the IOC.

(emphasis in the original)

36. There then ensued a general discussion among Council members. As stated at paragraph 9 of the General Secretary's note:

The broad views of the council were:

(i) That the spirit and intent of the relevant IAAF Rules was to annul all Jerome Young's results in the 2-year period of his ineligibility, including the USA 4x400m Relay Team result at the Sydney Olympic Games.

(ii) That the natural consequence under the relevant IAAF Rules of the annulment of an individual's results was the annulment of any relay result in which the athlete had competed. Every member of a winning relay team is awarded a gold medal whether they participate only in the preliminary rounds or in the final. This shows that a relay is one event composed of the preliminary rounds and a final. If an athlete is ineligible to compete as part of the team in a preliminary round, the team's performance in the overall event must be affected.

(iii) That, in interpreting the relevant IAAF Rules, the IAAF had to act consistently with the IAAF's past practice. This meant the IAAF annulling the relay result as well as the individual results.

(iv) The principle of fairness affected all athletes; not only those in the USA Team, but also those who competed in the team that finished 9th in the semi-finals and never made it to an Olympic Final and those who competed in the team that finished 4th in the final and never obtained an Olympic medal.

(v) Jerome Young's appearance in the Sydney Games was caused by the fault of USATF; USATF had, [despite reminders from the IAAF Council,] failed to comply with IAAF Rules in notifying the IAAF of its doping decisions; had they done so, Jerome Young would never had been allowed by the IAAF to compete in Sydney."

37. The IAAF President then summed up the discussion and called for a vote to be taken as to whether the results of the USA team should be modified. In a secret ballot, the meeting voted 16-1 in favour of annulling the result (with one abstention). The motion was therefore passed.

D. The IAAF Decision Appealed From

38. On 18 July 2004, further to the Council meeting, the IAAF issued a press release confirming the Council's decision. The press release states:

IAAF Statement following Extraordinary meeting –

Ineligibility of Jerome Young

Sunday 18 July 2004

Grosseto – IAAF Council, following its extraordinary meeting in Grosseto, Italy, this morning has interpreted its rules during the period of time in question (1998-1999) as follows:

As a consequence of Jerome Young's ineligibility to compete following his doping offence, all relevant results are annulled, including those achieved as part of a relay team during the period of ineligibility from 26 June 1999 to 25 June 2001.

(emphasis added)

39. On the same date, the IAAF President wrote to the Secretary of the IOC Disciplinary Commission. His letter reads:

I write as promised to inform you of the outcome of the IAAF's Extraordinary Council Meeting which was held this morning in Grosseto.

Further to the request of the IOC Disciplinary Commission by letter dated 2 July 2004, the IAAF Council has interpreted the relevant IAAF Rules that were in force at the time that Mr. Young committed a doping offence on 26 June 1999. Its interpretation is that, as a consequence of Jerome Young's ineligibility to have competed at the Sydney Olympic Games in 2000, the result of the USA Men's 4x400m Relay Team is

annulled and the final placings are revised accordingly. I rest at your disposal for any further information that you may require.

The IAAF understands from your letter dated 2 July 2004 that the IOC Disciplinary commission will now review the matter itself and, in accordance with the IOC Executive Board Decision dated 30 September 2003, the IOC will take a decision as to the consequences of the Council's interpretation for all parties concerned. I rest at your disposal for any further information that you may require.

40. On 20 July 2004, the Secretary of the IOC Disciplinary Commission requested a copy of the full IAAF decision and the documents supporting that decision. He wrote:

On behalf of the IOC Disciplinary Commission, I thank you for your communication of July 18, 2004 relating to the above matter.

In order to be able to proceed further, the IOC Disciplinary Commission would like to receive from the IAAF, at the earliest, a full copy of the IAAF Council's decision in the above matter, together with the file including all documents in support of such decision.

41. On 28 July 2004, the IAAF President responded to the IOC Disciplinary Commission enclosing a copy of the IAAF General Secretary's "Note of the deliberations." The IAAF President explained:

As you are rather aware, the IAAF Council is an administrative body rather than a judicial body and, as such, it does not produce written reasons for its decisions. I attach, however, for the IOC's benefit in the enclosed file (at Appendix 1) a note of the Council's discussions which led to the Council's interpretation of its Rules in Grosseto.

[...]

I trust that the IOC Disciplinary Commission now has all the information that it needs in order to conduct its anticipated review of this matter. The IAAF now awaits, in accordance with the IOC Executive Board Decision dated 30 September 2003, the IOC's decision as to the consequences of the Council's interpretation for all parties concerned.

E. Events Subsequent to the IAAF Decision

42. On 15 September 2004, USOC's General Counsel addressed a letter to the IOC Disciplinary Commission, with copy to the IAAF. In that letter, USOC stated:

The July 2004 announcement of the International Association of Athletics Federations ("IAAF"), after its Extraordinary Council Meeting in Grosseto, Italy, recommending that the IOC remove the medals from the members of the US Relay Team is a purely advisory opinion that is not responsive to the requests from the International Olympic Committee ("IOC") Disciplinary Commission, and is of no force and effect with respect to the medals earned by the members of the US Relay Team.

The IAAF announcement cannot be considered to have any effect on the other members of the US Relay Team. Issues concerning Mr. Jerome Young have already been decided by the Court of Arbitration of Sport ("CAS"), but the CAS Panel expressly refused to suggest that its decision should have any effect on the other members of the US Relay Team.⁵ In addition, the USOC believes that neither it nor the affected members of the US Relay Team are required or should have to appeal the IAAF's recommendation to CAS. As explained by IOC President Jacques Rogge in July 2004, no adverse action can be taken against any athlete until the IOC, not the IAAF, affords him a hearing.

We ask respectfully, that the IOC either confirm that no appeal is necessary at this time, or that the IOC undertake to make a decision on this matter after offering an opportunity to be heard and considering our views.

43. USOC's letter concluded:

We respectfully request that the IOC immediately send the USOC a letter confirming either that no CAS statement of appeal is due at this time, and

⁵ See CAS Decision ¶ 99 ("It was urged upon the Panel that the consequence of finding that Mr. Young had been guilty of a doping offense ... would be that the other members of the United States relay team would inevitably lose their Gold Medals... [T]he Panel does not necessarily accept that in the unusual circumstances of the present case this consequence must follow.").

that no adverse consequences will flow from a failure by the USOC or any members of the US Relay Team to now appeal the IAAF decision to CAS, or that the IOC will make a decision on this issue after seeking and hearing the views of the USOC and its athletes. Otherwise, we will be forced to proceed with arbitration before CAS of the issue of the many issues involved, including whether there is even an arbitrable dispute, and, if necessary, the merits of the underlying issue.

44. On 17 September 2004, the IOC replied to USOC's letter. The position expressed by the IOC in that reply is for all intents and purposes identical to the position articulated by it in these proceedings. That position is as follows:

It is the IOC's position that the procedure relating to the above mentioned case, implies two separate consecutive decisions, namely a first decision by IAAF on the results, which was taken on July 18, 2004 (hereafter: "the IAAF decision") and a second decision on possible withdrawal and reallocation of medals and diplomas to be taken by the IOC Executive Board (hereafter: "the IOC decision) once the IAAF decision is final and enforceable). By-law to Rule 57 of the applicable Olympic Charter provides that the IFS (in this instance IAAF) have the right and responsibilities "to establish the final results and ranking of Olympic competitions".

Therefore, the IOC Executive Board has decided to wait until such IAAF decision is final and enforceable before taking its own decision – which will relate on medals and diplomas – in this matter.

The IOC has been informed by the IAAF that the letter of July 18, 2004 constitutes the IAAF decision. The IOC accepts this and will not challenge the IAAF decision.

As to possible appeals or other forms of arbitration, relating to the IAAF decision, by any other party concerned, including USOC and all concerned athlete, the IOC considers that it has no authority to make any statement, as such particular matter is governed by the IAAF rules and regards IAAF, the concerned parties and, as the case may be, CAS. Therefore, the IOC expresses no opinion of any kind on this issue,

limiting itself to reserving its own rights depending upon further developments. It is up to all concerned parties to take whatever steps they consider as appropriate in order to protect their rights.

In order to avoid any confusion and misunderstanding, the IOC has decided to wait until the IAAF decision is final and enforceable before taking its own decision. The IOC considers that the IAAF decision shall be final and enforceable either after the expiry of the applicable deadline provided for in order to appeal to the CAS against the IAAF decision or, if there is such an appeal, once the CAS decision itself is final and enforceable. At such point in time, the procedure described under point 5 below will be followed.

Once the IOC is satisfied that the IAAF decision is final and enforceable, the Disciplinary Commission will further investigate the matter and prepare its final report to the IOC Executive Board which will then in turn take the decision on medals and diplomas. You will be informed as soon as such procedure will proceed. The Disciplinary Commission will offer to the USOC and the concerned athletes to be heard and to express your and their views before filing its report to the IOC Executive Board.

For your information, I have of course communicated the contents of your letter of September 15, 2004 and its exhibits to the IOC President and administration, as well as to the members of the Disciplinary Commission. We count on USOC and you to keep the concerned athletes informed of all developments in this matter.

I hope that my answers are clear. I am at your disposal for any further clarification.

F. Commencement of this Arbitration

45. As explained more fully in the following section of this Award, the present arbitration was commenced by the filing of Appellants' Statement of Appeal with the CAS on 27 September 2004.

G. The CAS Order of Procedure

46. On 2 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 and a timetable for the hearing of the appeal, which was set for 10 May 2005, in London, U.K.

H. The Hearing

47. As set out in the Order of Procedure, the hearing of the appeal took place in London, on 10 May 2005. The hearing commenced at 9:00 and ended at 15:30.

48. The hearing was devoted exclusively to oral submissions by counsel for the parties, and to questions posed to counsel by the Panel members. No witnesses were called to testify by any party.

49. At the end of the hearing, the President of the Panel declared the proceedings closed.

IV. THE PARTIES' SUBMISSIONS

A. The Appellants' Submissions

50. Appellants' Submissions are set out in writing in their Statement of Appeal⁶ and Appeal Brief,⁷ with exhibits, filed in accordance with Articles R48 and R51 of the CAS Code of Sports-related Arbitration (the "CAS Code") respectively. The principal arguments advocated by Appellants in those submissions are:

- The IAAF does not have the power or authority to annul Olympic results; only the IOC may do so.

⁶ The Appellants' Statement of Appeal is comprised of USOC's 15 September 2004 letter to the IOC Disciplinary Commission, discussed above, as well as a letter from Appellants' counsel dated 27 September 2004, addressed to the CAS, which encloses a copy of USOC's 15 September 2004 correspondence and provides additional details related to the appeal and required by the CAS Code. Throughout these proceedings, the date of the Statement of Appeal has been considered to be the date of the second of these letters, that is, 27 September 2004.

⁷ Duly filed on 18 October 2004.

- Even if it had the power to annul Olympic competition results, the IAAF did not properly exercise that power in this case, in that the decision of the IAAF Council was made without a hearing and without regard to the Athletes' rights of due process (natural justice).
- Any attempt to modify the results of the relay event or to rescind the gold medals won by the Athletes is time-barred.
- The decision of the IAAF Council is, in any case, wrong on the merits and should be overturned.

51. The IAAF's position was clarified in a letter addressed to the CAS and the Appellants dated 6 May 2005, just prior to the hearing. Among other matters, that letter made clear that, contrary to what had been alleged in IAAF's Answer, the IAAF accepts that "the nullification of the results of the USA team in the event by the IAAF on 18 July 2004 ('the IAAF decision') is now justiciable before the CAS at the suit of the USA team." This, wrote the IAAF, "will have the following conspicuous advantage [...] it will enable all concerned to focus on the real issue i.e. the merits of the IAAF's decision." A written version of counsel's oral argument for the IAAF was also provided to the Panel and to the other parties at the 10 May 2005 hearing.

B. The IOC's Submissions

52. As set out in its Answer and Request for Stay⁸, and as argued at the hearing, the IOC's central position is that there is no arbitrable dispute between it and the Appellants, as the IOC has yet to make any decision whatsoever concerning the withdrawal and possible reallocation of the gold medals awarded to the USA's Relay Team at the 2000 Sydney Olympic Games (the whole as explained in the IOC's 17 September 2004 letter to USOC, reproduced at para. 43 above). The IOC therefore requests that the appeal against it be stayed.⁹

⁸ Duly filed on 29 November 2004.

⁹ In a decision dated 14 March 2005, the Panel dismissed the IOC's request for a stay of the proceedings against it, but noted that the request would be considered *de novo* at the hearing, should the IOC so request. In the event, the IOC renewed its

C. The IAAF's Submissions

53. The IAAF's submissions in the appeal were thoroughly canvassed in its Answer to the Appellants' Appeal Brief¹⁰ and by counsel at the hearing.

54. The principal submissions of the IAAF can be summarised as follows:

- The IAAF has the sole authority to determine the results of the relay event (subject to appeal to the CAS).
- The IAAF has validly and correctly, on the proper interpretation of its relevant rules, nullified the results of the U.S.A. team in the relay event.
- There are no other grounds (for example, lapse of time or lack of due process) upon which the IAAF decision can be overturned.
- Sole authority to determine whether or not the gold medals awarded to the U.S.A. team should be returned resides with the IOC (subject to appeal to the CAS), which has yet to address the issue.
- USOC has no standing to appeal the IAAF decision.

V. DECISION

55. At the end of the day, the task of the Panel was rendered much simpler than it might otherwise have been, thanks to the structure and clarity of counsel's submissions, especially their oral submissions at the 10 May 2004 hearing. Moreover, notwithstanding the small multitude of issues raised in the parties' submissions (summarised above) either supporting or challenging various aspects of the decision taken by the IAAF Council on 18 July 2004, "the real issue" (to quote the IAAF) boils down to the merits of the IAAF decision. In view of the Panel's determination of that issue, which is discussed below, all

request at the 10 May 2004 hearing. For the reasons explained below, the IOC's request need not be considered by the Panel.

¹⁰ Duly filed on 29 November 2004.

of the other issues raised by the parties fall away. It is accordingly to the issue of the merits of the IAAF decision that the Panel now turns.

A. The Merits of the IAAF Decision

56. The question to be answered is whether, under IAAF Rules in force at the time of the 2000 Sydney Olympic Games, the results obtained by the U.S.A. team in the relay event should be annulled. It is the unanimous opinion of the Panel that they should not be annulled.

57. IAAF Rule 59.4, which the IAAF puts before the Panel as the principal governing rule in the circumstances, is set out in full at paragraph 12 above. For ease of reference, it is reproduced here:

If an athlete is found to have committed a doping offence and this is confirmed after a hearing or the athlete waives his right to a hearing, he shall be declared ineligible. In addition, where testing was conducted in a competition, the athlete shall be disqualified from that competition and the result amended accordingly. His ineligibility shall begin from the date of suspension. Performances achieved from the date on which the sample was provided shall be annulled.

58. It was urged upon the Panel with great conviction and eloquence by the IAAF's counsel that IAAF Rule 59.4 provides a clear statement of a rule providing for the annulment of the results of the U.S.A. team in the circumstances of this case – that is, a rule to the effect that *where an athlete tests positive in an earlier competition and is subsequently declared ineligible, and his results from the date of the provision of his sample through to the imposition of his ineligibility are annulled (as in the case of Mr. Young), the result of any relay team in which he has competed during such period (e.g., the results of the U.S.A. team at the Sydney Olympic Games) shall also be annulled.*

59. The IAAF argues that the express provisions of IAAF Rule 59.4 must be "complemented" by anything which is necessarily to be implied in them, and that they must be construed "purposively". It maintains that Rule 59.4 is to be complemented, for example, by provisions such as those contained in IAAF Rules 170 (17) and (18), which govern the composition of a relay team and the nature and timing of permitted substitutions to a team.

It contends that the annulment of the U.S.A. team's winning results "follows inexorably" from the last sentence of Rule 59.4, which states that "[p]erformances achieved from date the sample was provided shall be annulled," in that:

There is no distinction drawn between performance in individual or in relay results. Young's performance in the first round and semi-final stage of the 4 x 400 men's relay (which occurred ... during his period of ineligibility) are annulled. It follows inexorably that (i) the other results of the squad in which he [Mr. Young] ran (the qualification round squads) are annulled, since the squad had to compete 4 not 3 legs (in qualification) (ii) the results of the squad in which he did not run (the final squad) are also annulled, since that squad's right to participate and participation in other final depended upon the results of the earlier squad being valid.

Alternatively since the word "performances" is not limited to the athlete's own performances it should be construed as applying to the performances of a team in which the athlete participated.

60. More broadly, the IAAF contends that the applicability of the relevant rules in the circumstances of the present case, and the consequent annulment of the results obtained by the U.S.A. team in the relay event is implicit in order to give efficiency to the Olympic Movement Anti-doping Code and related rules. In the submission of the IAAF, "it would be perverse and undermine the force of the Anti-doping Code if results achieved through reliance on an ineligible athlete, whether [results] of the athlete or of his team, should stand".
61. In sum, the IAAF takes the position that both a purposive and even a literal interpretation of IAAF Rules require that the results of the gold medal-winning U.S.A. team be annulled. The proposition, it says, is straightforward: Jerome Young was ineligible to compete at the Sydney Olympic Games; his results are annulled; therefore the results of the four-some in which he ran must also be annulled; and the results achieved by the four U.S.A. team members who ran in the final race of the relay event must similarly be annulled, since they only made it to the finals due to the results achieved by the U.S.A. team in earlier heats, in which Mr. Young ran. "In team sports," the IAAF submits (with reference to the CAS

award OG 1998/004-005 Czech Olympic Committee, Swedish Olympic Committee and S. v/ IJHF, published in the Digest of CAS Awards, volume I 1986-1998, p. 435ss.), "the chain is no stronger than its weakest link."¹¹

62. As stated above, the argument is not without force or logic. However, in the view of the Panel, even when articulated in its most simple and compelling fashion, its shortcomings are apparent.
63. On its face, Rule 59.4 concerns the disqualification, ineligibility and annulment of performance results of *individual* athletes, in cases where that athlete has been found guilty of a doping offence; it does not concern teams or team results. (In fact, as explained below, the IAAF Rules did not contain any express provisions covering the sort of situation at issue in this case until they were amended in 2004-2005.)
64. IAAF Rule 59.4 plainly deals with, and is plainly intended to deal *only* with, the situation of "an athlete" who is found to have committed a doping offence. It speaks to "the athlete" being disqualified and to the period of "his" ineligibility as well as to the annulment of his performances achieved as from the date on which his positive sample was provided.
65. To take a rule that plainly concerns individual ineligibility and the annulment of individual results, and then to stretch and complement and construe it in order that it may be said to govern the results achieved by teams, is the sort of legal abracadabra that lawyers and partisans in the fight against doping in sport can love, but in which athletes should not be required to engage in order to understand the meaning of the rules to which they are subject.
66. In seeking a proper interpretation of relevant IAAF Rules and their application in the circumstances of this case, one returns inevitably to the observations contained in the IAAF briefing note prepared for IAAF Council members in advance of their 18 July 2004 deliberations and decision. Whereas the alleged clarity of the relevant IAAF Rules is much to be doubted, this much *is* crystal clear and is stated, correctly, in the IAAF briefing note: "In the 2000 Rules, there was ... no specific provision for what should happen when

¹¹ The panel does not refer here to the position of the IOC given that its written and oral submissions in the arbitration were limited to issues *other* than the merits of the IAF decision, which is the sole issue determined by the Panel.

a competitor who had been a member of a team (either of a relay team or otherwise) was found guilty of doping."

67. As explained in the IAAF briefing note, it is not until their amendment in 2004-2005 that IAAF Rules provide expressly for what happens when an athlete who is a member of a relay team is found guilty of doping. According to the briefing note, Rule 39.4 of the 2004-2005 IAAF Rules make it clear "*for the first time*" that:

[I]f an athlete tests positive in an earlier competition or admits doping (and is subsequently declared ineligible) and his results from the date of the provision of his sample through to the imposition of his suspension or ineligibility are annulled, the result of any relay team in which he has competed during such period shall also be annulled.

68. It is immediately apparent that this is in essence the very rule which the IAAF contends existed, whether literally or by implication, at the time of the 2000 Sydney Olympic Games. This is the rule which it attempts to tease out of IAAF Rule 59.4.
69. In fact, IAAF Rule 39.4 says more than even the IAAF briefing note suggests. While it is true that the 2004-2005 IAAF Rules are the "the first time" that the implication for teams whose members may have committed doping offences is spelled out, Rule 39.4 also introduces the concept of *fairness* as a consideration. It reads as follows:

[W]here an athlete has been declared ineligible under R40 below, all competitive results obtained from the date the positive sample was provided (whether in competition or out of competition) or other anti-doping rule violation occurred, through to the commencement of the period of provisional suspension shall, *unless fairness dictates otherwise*, be annulled, with all resulting consequences for the athlete (and, where applicable, any team in which the athlete has competed) including the forfeiture of all titles, awards, medals, points and prize and appearance money.

(emphasis added)

70. The relevant IAAF Rules in force at the time of the Sydney Games contained no such “fairness consideration”. And of course, to construe those Rules, in particular Rule 59.4, in the manner contended for by the IAAF in this arbitration would entail an automatic disqualification or annulment of the results of the entire USA team, without any consideration of fairness to the members of that team. In the view of the Panel, the absence of a “fairness consideration” in Rule 59.4 makes it even less likely that it was intended to apply, by implication, to teams as well as to individuals.
71. The IAAF contends that “this is not a Quigley¹² case.” In a sense, however, this is very much “a Quigley case.” Firstly, the clarity of the relevant anti-doping rules related to team results in force at the time of the Sydney Olympic Games is manifestly in doubt. This explains why the main issue before this Panel is, as the IAAF recognises, the merits of the IAAF decision interpreting those rules.
72. Secondly, the principles underlying the approach adopted by the CAS in *Quigley* and similar cases cannot be ignored, as the IAAF suggests they should be, on the basis that, because the Athletes were entirely ignorant of their teammate's doping offence (given that he had been exonerated at the time, and that exoneration was not overturned until many years later), their behaviour was in no way affected by those rules or their understanding of them.
73. The rationale for requiring clarity of rules extends beyond enabling athletes in given cases to determine their conduct in such cases by reference to understandable rules. As argued by the Appellants at the hearing, clarity and predictability are required so that the entire sport community are informed of the normative system in which they live, work and compete, which requires at the very least that they be able to understand the meaning of rules and the circumstances in which those rules apply.
74. There was simply no express rule in force at the time of the Sydney Games which provided for the annulment of results obtained by a team, one of whose members later was found to have been ineligible to compete at the time. As became apparent in these proceedings, such a rule could only be said to have been produced by what the Panel in the

¹² *U.S.A. Shooting and Q. v/UIT*, CAS 94/129, published in the Digest of CAS Awards, volume I 1986-1998, p. 187ss.

Quigley case referred to as "an obscure process of accretion" – here, as the IAAF would have it, a process of complementation and inference. The Panel consider that the following oft-cited passage from the *Quigley* decision is apposite:

The fight against doping is arduous, and it may require strict rule. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders.

(emphasis added)

75. In *A.C. v. FINA*,¹³ in which, as in this case, the International Federation in question argued for a “purposive construction” of the relevant rules, the CAS nonetheless granted the Appellant’s appeal in part (as to the sanction). In doing so it cited with approval the approach taken in *Quigley* and further stated that the federation in question bore the responsibility:

[T]o take every step to ensure that competitors under their jurisdiction were familiar with all rules, regulations, guidelines and requirements in such a sensitive area as doping control.

[...]

It is important that the fight against doping in sport, national and international, be waged unrelentingly. The reasons are well known ... It is equally important that athletes in any sport ... know clearly where they stand. It is unfair if they are to be found guilty of offences in circumstances where they neither knew nor reasonably could have known that what they were doing was wrong (to avoid any doubt we are

¹³ CAS 96/149, Award dated 13 March 1997, published in the Digest of CAS Awards, volume I 1986-1998, p. 251 at 261-262.

not to be taken as saying that doping offences should not be offences as a strict liability, but rather that the nature of the offence [as one of strict liability] should be known and understood).

For this purpose, it is incumbent both upon the international and the national federation to keep those within their jurisdiction aware of the precepts of the relevant codes.

(emphasis added)

76. IAAF Rule 59.4 applies plainly to Mr. Young. The same simply cannot be said with respect to the Athletes who are Appellants in this case.
77. For these reasons, the Panel is unanimously of the opinion that the decision taken by the IAAF Council on 18 July 2004 interpreting its rules is incorrect, and should be overturned. The Panel reaches this conclusion with all due respect to the IAAF Council and its role under the IAAF Constitution as the primary decision-maker regarding the interpretation of its Rules.
78. On the basis of IAAF rules applicable at the time of the 2000 Sydney Olympic Games, the results obtained by the Athletes in the men's 4 x 400m relay event at the Sydney Games shall not be amended. Those results therefore stand. Furthermore, it is the understanding of the Panel that only Jerome Young in the US relay team should be stripped of his gold medal pursuant to the CAS award 2004/A/628 of 28 June 2004 (see para. 3 above).

B. Other Issues Raised by the Parties

79. Having so found, the Panel considers it unnecessary for it to consider the other issues raised by the parties in these proceedings. In particular, the Panel considers that there is no need for it to determine, and it refrains from determining:
 - Whether the IAAF has the jurisdiction, power or authority to annul the results of the relay event (the Panel having determined that, even assuming (without deciding) that the IAAF has such jurisdiction, its decision in this case was incorrect);

- Whether the IAAF decision should be overturned on grounds unrelated to the merits of that decision (for example, whether modification of the results of the relay event is time-barred, or whether the IAAF decision is vitiated by a lack of due process);
- Whether or not USOC, as distinct from the Athletes, has standing to appeal the IAAF decision.

80. The Panel also refrains from determining, because it need not in the circumstances determine, the IOC's Request for a Stay of the proceedings as against it.

VI. COSTS

81. As set out in the 2 May 2005 Order of Procedure, Articles R65 *et seq.* of the CAS Code apply in respect of the determination and allocation of the costs of these arbitration proceedings.

82. In accordance with Article R65.2 of the CAS Code, Appellants paid the CAS Court Office fee of CHF 500 on 25 October 2004.

83. Articles R65.1 and R65.3 of the CAS Code provide that, subject to Articles R65.2 (referred to above) and R65.4 (which does not enter into consideration here) the arbitration proceedings shall be free; the costs of the parties, witnesses, experts and interpreters shall be advanced by the parties and in the Award, the Panel shall decide which party shall bear such costs or in what proportion the parties shall share them, taking into account the outcome of the proceedings as well as the conduct and financial resources of the parties.

84. Considering all of these factors and according to the CAS regular practice in relation to costs, the Panel determines that the IAAF shall pay an amount of US\$ 10'000.- to the Appellants Michael Johnson, Antonio Pettigrew, Angelo Taylor, Alvin Harrison and Calvin Harrison as contribution towards their expenses incurred in this arbitration.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Michael Johnson, Antonio Pettigrew, Angelo Taylor, Alvin Harrison and Calvin Harrison on 27 September 2004 is upheld.
2. The IAAF Council decision of 18 July 2004 is hereby overturned.
3. On the basis of IAAF Rules in force and applicable at the time of the 2000 Sydney Olympic Games, the results of the men's 4 x 400m relay event at those Games shall not be amended; those results stand.
4. The award is pronounced without costs, except for the Court Office fee of CHF 500.- already paid by the Appellants and which is retained by the CAS.
5. The IAAF shall pay an amount of US\$ 10'000.- to the Appellants Michael Johnson, Antonio Pettigrew, Angelo Taylor, Alvin Harrison and Calvin Harrison as contribution towards their expenses incurred in this arbitration.

Lausanne, 20 July 2005

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

Kaj Hobér

Yves Fortier
Arbitrator

David Williams
Arbitrator