



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1365 WADA v/FILA & Mohamed Ibrahim Abdelfattah

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Professor Massimo Coccia, Attorney-at-law, Rome, Italy

Arbitrators: Mr Quentin Byrne-Sutton, Attorney-at-law, Geneva, Switzerland
Mr Jacques Baumgartner, Attorney-at-law, Lausanne, Switzerland

in the arbitration between:

World Anti-doping Agency (WADA),
Represented by, Mr Francois Kaiser, Attorney-at-law, Lausanne, Switzerland

– *Appellant* –

and

INTERNATIONAL FEDERATION OF ASSOCIATED WRESTLING STYLES (FILA),
Represented by Mr Michel Dusson, FILA Secretary General, Corsier-sur-Vevey, Suisse

– *Respondent 1* –

and

MOHAMED IBRAHIM ABDELFAH, H
Represented by Mr Gordon Stipic, Attorney-at-law, Karlsruhe, Germany

– *Respondent 2* –

I. THE PARTIES

1. The World Anti-Doping Agency (hereinafter “WADA” or the “Appellant”) is an independent international anti-doping agency, constituted as a foundation under Swiss Law and having its headquarters in Montreal, Canada, whose aim is to promote, coordinate and monitor, at the international level, the fight against doping in sports in all its forms.
2. The International Federation of Associated Wrestling Styles or Fédération Internationale des Luttes Associées (hereinafter “FILA” or the “Respondent”) is an association having its headquarters in Switzerland and recognized by the International Olympic Committee as the international sports federation governing all forms of wrestling worldwide.
3. Mr Mohamed Ibrahim Abdelfattah (hereinafter also the “Wrestler” or “Mr Abdelfattah”) is an international-level wrestler of Egyptian nationality affiliated to the Egyptian Wrestling Federation, which in turn is a member of FILA.

II. BACKGROUND

4. The circumstances stated below are a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings.
5. In July 2007 the Wrestler was staying at the US Olympic Training Center in Colorado Springs, USA, for rehabilitation training subsequent to a knee surgery.
6. On 24 July 2007, the Wrestler received a visit from two doping control officers from the United States Anti-Doping Agency (“USADA”), who told him that they were acting on behalf of WADA and that he had to undergo an out-of-competition anti-doping test.
7. However, due to facts that are disputed between the parties and need not be discussed and determined in this award, the out-of-competition anti-doping test did not take place.
8. With a letter dated 31 July 2007 (which was faxed to WADA on 2 August 2007) the FILA President, Mr Raphaël Martinetti, informed the Egyptian Wrestling Federation as follows:

«On 24th July 2007 your wrestler Mohamed Ibrahim Abdelfattah, who was training in Colorado Springs (USA), refused to provide urine sample to USADA agents acting as representative of WADA.

This constitutes a breach of Anti-Doping rules and consequently we are sanctioning the wrestler Mohamed Ibrahim Abdelfattah with a warning».
9. On 17 August 2007, FILA informed by e-mail WADA that the decision to inflict a warning to the Wrestler had been adopted by the FILA Executive Committee.

10. On 23 August 2007, WADA filed with the CAS a statement of appeal against the FILA's decision of 31 July 2007 (the "Appealed Decision"). On 3 September 2007, WADA filed its appeal brief.
11. On 4 September 2007, FILA wrote to the CAS essentially asserting that it was not going to defend the Wrestler's position in front of the CAS and that it had no objection to the possible infliction on him of a two-year suspension.
12. On 11 September 2007, upon transfer of the file from the FILA administration, the FILA Sporting Judge, having taken into account the USADA's report on the facts and the explanation of the Wrestler and his national federation, stated that the whole dossier had to be re-examined and, as a result, decided to impose on the Wrestler a provisional suspension as of 24 July 2007 until the final decision of the CAS.
13. In the following days the FILA President appointed a Hearing Commission in order to hold a hearing in Baku, Azerbaijan and review the Sporting Judge's decision of 11 September 2007. On 16 September 2007, the Hearing Commission heard the Wrestler and his counsel and decided to confirm the provisional suspension of the Wrestler until the final judgement.
14. On 25 September 2007, FILA wrote the following letter to the CAS:

«Further to the receipt of copy of the Appeal Brief filed by the World Anti-Doping Agency, FILA has relayed the investigation file concerning the wrestler Mohamed Ibrahim Abdelfattah to the FILA Sporting Judge who decided to suspend Mohamed Ibrahim Abdelfattah on a provisional basis as of 24th July 2007 pending the full examination of the file and his final decision.

In Baku FILA organized a Hearing Commission, formed of four members and headed by a lawyer. The athlete and his Counsellor provided their explanations and information to the members. The provisional suspension was maintained. We attach herewith the minutes of the meeting of the FILA Hearing Commission which took place on 16th September 2007.

Consequently, this wrestler was not authorized to participate in the 2007 senior World Championship organized from 17th to 23rd September 2007 in Baku (AZE).

By this letter FILA is requesting the suspension of the appeal procedure started by WADA pending the final decision to be taken by the FILA Sporting Judge».
15. On 28 September 2007, the FILA Sporting Judge received again the file from the FILA administration and adopted the decision to inflict on Mr Abdelfattah a suspension of six months from all national and international competitions. This Sporting Judge's decision was notified to WADA on 4 October 2007.
16. On 1 October 2007, the Wrestler filed with the CAS his answer requesting to be acquitted of the anti-doping rule violation charge. Prior to his defence on the merits, the Wrestler raised the preliminary objection that WADA's appeal to the CAS was premature, and thus inadmissible, because his case was still pending in front of the FILA disciplinary bodies.
17. On 4 October 2007, WADA objected to the request of suspension of the CAS procedure submitted by FILA on 25 September 2007.

18. On 11 October 2007 the CAS Court Office communicated to the parties that, as there was no agreement between them, the CAS procedure was not going to be suspended.
19. On 15 October 2007, FILA filed with the CAS its answer where, in particular, it stated as follows:

«In view of the athlete's explanations, FILA considered that this misunderstanding could be assimilated to a missed test due to an absence of the athlete and consequently a warning could be imposed to Mohamed Ibrahim Abdelfattah, before the completion of the investigation file.

Meanwhile, WADA lodged an appeal to CAS against this decision, arguing that the sanction should be increased.

Consequently, FILA reopened the file and on 11th September 2007, the FILA Sporting Judge reviewed the file and decided to impose the provisional suspension of the wrestler as of 24th July 2007.

In order to safeguard the wrestler's rights to a fair hearing, FILA decided to organize urgently a hearing with the FILA Hearing Committee. The athlete, his representative attended the hearing on 16th September [...]. After the hearing, the FILA Hearing Committee decided to maintain the provisional suspension. Consequently, the wrestler could not participate in the 2007 senior World Championship.

The whole file was sent again to the FILA Sporting Judge for his final decision. After reviewing the whole file and considering article 10.4.3 of the FILA Anti-Doping Regulations, the FILA Sporting Judge took the decision to impose a 6 month suspension period to the athlete Mohamed Ibrahim Abdelfattah (Egypt).

As a conclusion, FILA leaves it to CAS to decide about a fair sanction to be imposed to Mr Abdelfattah, considering the second judgement of 6 months ineligibility imposed by the FILA Sporting Judge to Mohamed Ibrahim Abdelfattah on 28th September 2007».
20. On 23 October 2007, WADA lodged an appeal to the FILA Federal Appeal Commission against the decision of the FILA Sporting Judge dated 28 September 2007, requesting the FILA appellate body to rule that *“the appeal of WADA is admissible”* and that the Wrestler *“is sanctioned with a two-year period of ineligibility”* for having avoided a doping control.
21. By letter dated 7 November 2007, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel to hear the appeal had been constituted as follows: Prof. Massimo Coccia, President of the Panel; Mr Quentin Byrne-Sutton, arbitrator appointed by the Appellant; and Mr Jacques Baumgartner common arbitrator appointed by the Respondents.
22. On 13 November 2007, WADA informed the CAS of its appeal to the FILA Federal Appeal Commission and requested the Panel not to convene a hearing and to suspend the procedure while waiting for the outcome of the pending FILA proceedings.

23. On 22 November 2007, the Panel informed the parties that it had taken note of the exception of inadmissibility raised by Mr Abdelfattah with respect to the issue of exhaustion of internal remedies and that it had determined to address and decide this procedural issue on a preliminary basis, granting a short time limit to the parties to specify their respective positions. The Panel also requested the parties to express their view on the possible issuance of a preliminary decision without holding a hearing.
24. FILA, WADA and the Wrestler filed their respective submissions within the set time limit of 27 November 2007.
25. In accordance with Article R57, second paragraph, of the Code of Sports-related Arbitration (the “CAS Code”), after having consulted the parties, the Panel has determined to be sufficiently well informed to deal with and decide any preliminary procedural issues without holding a hearing. The present award is thus rendered after consideration of the written documents on file.

III. JURISDICTION AND APPLICABLE LAW

26. The jurisdiction of the CAS in the present matter is not disputed and derives from Article R47 of the CAS Code, together with Article 36 of the FILA Constitution, Article 14 of the FILA Disciplinary Regulations and Article 13.2 of the FILA Anti-Doping Regulations.
27. It follows that the CAS has jurisdiction to decide the present dispute.
28. As to applicable law, in accordance with Article R58 of the CAS Code, the Panel holds that the present dispute must be decided applying primarily FILA statutes and regulations and, complementarily, Swiss law.

IV. DISCUSSION

IV.1 Admissibility of WADA’s appeal

29. Article R47 of the CAS Code provides as follows:

«An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body»

30. Therefore, a CAS panel may adjudicate an appeal only if the statutes or regulations of the concerned sports organization “do not provide any internal stage of appeal and do not set forth any legal remedy other than an appeal to the CAS” (CAS 2004/A/748 *ROC & Ekimov vs. IOC, USOC & Hamilton*). In other words, a decision must be “final” to be appealable, otherwise the appeal is inadmissible.

31. The Panel notes that the present appeal procedure was brought by WADA to CAS against the Executive Committee's decision of 31 July 2007. If, under FILA rules, WADA had some internal legal remedies available to it against the Appealed Decision, WADA's appeal would not be admissible.
32. The Panel remarks that in the present case, with reference to the same basic facts – USADA's attempt to carry out on 24 July 2007 an out-of-competition anti-doping control on Mr Abdelfattah –, there have been thus far four FILA disciplinary decisions and a further one is currently pending:
 - (a) The Executive Committee's decision of 31 July 2007 (the Appealed Decision), giving the Wrestler a warning;
 - (b) The Sporting Judge's decision of 11 September 2007, placing him under provisional suspension;
 - (c) The Hearing Commission's decision of 16 September 2007, confirming the provisional suspension;
 - (d) The Sporting Judge's decision of 28 September 2007, imposing on the Wrestler a sanction of six months' ineligibility; and
 - (e) The Federal Appeal Commission's impending decision upon WADA's appeal against the Sporting Judge's decision of 28 September 2007.
33. The Panel notes that WADA lodged its statement of appeal against the Appealed Decision on 23 August 2007. Subsequently, while this CAS procedure was already pending, FILA set in motion the other disciplinary proceedings listed above at 32(b), (c), (d) and (e).
34. After thorough examination of the documents submitted by the parties and all available FILA rules and regulations, it seems to the Panel that none of the other disciplinary proceedings and decisions may be considered as an appellate review of the Appealed Decision. This is acknowledged by FILA itself, which has clearly stated that, as a consequence of WADA's stance, it "*reopened the file*" (see FILA's submission of 15 October 2007, *supra* at 19) thus starting against the Wrestler a new disciplinary procedure altogether.
35. Indeed, the Panel is not able to pinpoint in the FILA Constitution and Regulations any internal legal remedy against decisions taken by the FILA Executive Committee. Nor can it be said that, in principle, all FILA Executive Committee's or FILA Bureau's decisions might be reviewed by the FILA Congress. In this respect, the Panel recalls that another CAS Panel has stated that an international federation's rule granting the opportunity to submit a given matter to the international federation's congress is not "*an actual 'remedy' in the strict legal sense, because it does not grant [...] the right to call an extraordinary Congress. Nor waiting a couple (or more) years for the next ordinary Congress, with no specific procedure, may amount to a 'remedy'. To be such, the internal remedy must be readily and effectively available to the aggrieved party and it must grant access to a definite procedure*" (CAS 2003/O/466 *NISA vs. ISU*).
36. Therefore, the Panel is of the view that, after the Executive Committee adopted the Appealed Decision, WADA had no legal remedy available to it in order to preserve its rights other than an appeal to the CAS. In other words, the Appealed Decision was a "final" decision within the FILA legal system; hence, WADA complied with

the requirement of exhaustion of legal remedies set out by Article R47 of the CAS Code.

37. As a result, the Panel holds that the present appeal lodged by WADA is admissible and the preliminary exception raised by the Wrestler must be rejected. However, having examined the documents submitted by the parties and all available FILA rules and regulations, it seems to the Panel that the competence and power of the Executive Committee to adopt the Appealed Decision was quite dubious and that, necessarily, this issue must be determined on a preliminary basis in this award prior to addressing the merits of the case.

IV.2 Incompetence of the Executive Committee to adopt the Appealed Decision

38. The Panel notes that the Appealed Decision was adopted by the FILA Executive Committee, that is a body made up of the President, the Secretary General and the four Vice-Presidents of FILA. However, neither the FILA Constitution – see in particular Article 21 on the Executive Committee and Article 36 on disciplinary procedures – nor any other available FILA regulation (such as the Disciplinary Regulations and the Anti-Doping Regulations) appear to vest in the Executive Committee the power and competence to adopt a disciplinary decision against a wrestler charged with a possible out-of-competition anti-doping violation.
39. The Panel finds that, in out-of-competition anti-doping cases involving international level wrestlers (such as Mr Abdelfattah), FILA rules expressly vest in the FILA Sporting Judge (as the first instance judge) and in the FILA Federal Appeal Commission (as the appellate body) the authority to adopt disciplinary sanctions:
«if the wrestler concerned is an international level wrestler [...] in case of out-of-competition testing, the FILA Sporting Judge will decide of the sanction» (Article 12.3.1.b of the FILA Anti-Doping Regulations);
«[...] in cases involving international level athletes, the FILA Sporting Judge's decision may be appealed to the FILA's Federal Appeal Commission» (Article 13.2.1 of the FILA Anti-Doping Regulations).
40. As a result, the Panel is of the view that the Appealed Decision was adopted by a FILA body – the Executive Committee – which clearly did not hold the power and competence to adopt such a disciplinary decision.
41. Accordingly, the Panel holds the Appealed Decision to be null and void.

IV.3 Consequence of the invalidity of the Appealed Decision

42. As a consequence of the invalidity of the Appealed Decision, the Panel has the option to either “*issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*” (Article R57 of the CAS Code).
43. It seems to the Panel that the procedural situation occurred at FILA level, with new disciplinary proceedings currently running before the competent FILA bodies, requires the Panel to refrain from examining the merits and refer the case back to FILA.
44. The Panel sees at least three reasons which clearly call for the referral of the case back to FILA:

- (i) the appeal currently pending in front of the FILA Federal Appeal Commission may smoothly run its full course, exhausting all procedural stages within FILA;
 - (ii) the athlete's right to be heard may be better preserved;
 - (iii) any risk of conflicting decisions is avoided (for example, if this Panel were to acquit the Wrestler and the FILA Federal Appeal Commission were to impose on him an ineligibility period, or viceversa, there could be another appeal to the CAS, perhaps with a different panel and a different outcome).
45. As a result, the Panel determines to refer the case back to FILA, so that the FILA Federal Appeal Commission may adopt a final disciplinary decision with regard to the Wrestler's case. Thereafter, any dissatisfied party will still have the right to appeal before the CAS.

V. COSTS

46. With respect to costs, the CAS Code provides as follows:
- «R65 Disciplinary cases of an international nature ruled in appeal*
 - R65.1 Subject to Articles R65.2 and R65.4, the proceedings shall be free.*
The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS.
 - R65.2 Upon submission of the statement of appeal, the Appellant shall pay a minimum Court Office fee of Swiss francs 500.— without which the CAS shall not proceed and the appeal shall be deemed withdrawn.*
The CAS shall in any event keep this fee.
 - R65.3 The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them 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».*
47. Since this is a disciplinary case of an international nature, no costs are payable to CAS beyond the minimum Court Office fee of CHF 500, already paid by WADA and retained by CAS.
48. Considering that WADA's appeal has been deemed admissible and that the Appealed Decision has been deemed invalid and set aside because it was adopted by an incompetent FILA body, the Panel finds it appropriate that FILA contributes to WADA's legal and other costs, in an amount of CHF 1'500.
49. For his part, the Wrestler had no responsibility for FILA's disregard of its own procedural rules. Therefore, the Panel does not believe that there should be any cost consequences for the Wrestler, apart from bearing his own legal costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal of WADA against the FILA Executive Committee's decision of 31 July 2007 is admissible.
2. The FILA Executive Committee's decision of 31 July 2007 is set aside.
3. The case of Mr Mohammed Ibrahim Abdelfattah is referred back to FILA, so that the FILA Federal Appeal Commission may render its decision within the currently pending appellate procedure.
4. The award is pronounced without costs, except for the Court Office fee of CHF 500 (five hundred Swiss Francs) already paid by WADA and to be retained by the CAS.
5. FILA shall pay an amount of CHF 1'500 (one thousand five hundred Swiss Francs) to WADA as a contribution towards its costs.

Lausanne, 11 December 2007

THE COURT OF ARBITRATION FOR SPORT



Mr Massimo Coccia
President of the Panel