



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

**COURT OF ARBITRATION FOR SPORT (CAS)
Ad Hoc Division – Games of the XXXIII Olympiad in Paris**

CAS OG 24/18 Italian Swimming Federation v. World Aquatics

sitting in the following composition:

Sole Arbitrator: Ms Kristen Thorsness, OLY, USA

AWARD

in the arbitration between

Italian Swimming Federation

("Applicant")

v.

World Aquatics

("Respondent")

and

Hungarian Water Polo Association

Italian Olympic Committee

International Olympic Committee

("Interested Parties")

I. PARTIES

1. The Applicant is the Italian Swimming Federation.
2. The Respondent is World Aquatics (“WA”).
3. The First Interested Party is the Hungarian Water Polo Association.
4. The Second Interested Party is the Italian Olympic Committee.
5. The Third Interested Party is the International Olympic Committee.

II. FACTS

A. Background Facts

6. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator by way of a chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
7. On 7 August 2024, during the Paris Olympic Games, a men’s water polo quarterfinal match was played between teams from Italy and Hungary (the “Game”).
8. With 2 minutes and 22 seconds remaining in the second quarter of the Game, Italian player Francesco Condemi took a shot on the Hungarian goal. His shot entered the Hungarian team’s net, but his throwing hand struck one of the Hungarian players in the face. Before allowing the goal, the two referees officiating the Game reviewed Mr. Condemi’s actions using Video Assisted Review (“VAR”) technology.
9. After reviewing the VAR, the referees ruled that Mr. Condemi committed a “violent action” under Part Six, Article 9.14 of the World Aquatics Competition Regulations (the “Regulations”), when he struck the Hungarian player.
10. Part Six, Articles 9.1 and 9.14 of the Regulations state:
“It shall be an exclusion foul to commit any of the following offences (Part Six, Article 9.4 to 9.18) which shall be punished (except as otherwise provided by the Rules) by the award of a free throw to the opposing team and the exclusion of the player who committed the foul. [...] To commit a violent action, including kicking, striking, or attempting to kick or strike with malicious intent an opponent. [...] Should this occur during the game, the offending player shall be excluded from the remainder of the game and must leave the competition area and a penalty throw awarded to the opposing team. The offending player may be substituted when four minutes of actual play have elapsed.”
11. Accordingly, the referees disallowed the goal and Mr. Condemi was excluded from the remainder of the Game. Italy played “short-handed” one player for four (4) minutes and was then able to return to full strength for the rest of the Game.

12. The Game ended in a tie score at the expiration of regular time, and Hungary won 12-10 after a penalty shootout.
13. Immediately after the Game concluded, the Team Leader of the Italian team filed a protest with the Game referees, pursuant to Part One, Article 13 of the Regulations, asserting that Mr. Condemi did not intend to strike the Hungarian player, and the contact was innocently a part of Mr. Condemi's follow-through from his shot on goal. The Italian team argued that this penalty changed the outcome of the game, which should be replayed in its entirety or from the time that Mr. Condemi was excluded.
14. The referees reviewed the protest but rejected it and informed the Italian Team Leader of their decision.
15. The Italian Team Leader then notified WA that he wished to appeal the rejected protest to a Jury of Appeal under the Regulations Part One, Article 13.2, and the matter was forwarded to World Aquatics' Jury of Appeal. On 8 August 2024, the six-member Jury of Appeal – all members of World Aquatics' Bureau – met to consider the appeal and took testimony from Mr. Condemi, Italian team personnel, and one of the Game referees. The outcome of that appeal is described in Section III, below.
16. In a separate, parallel, proceeding, World Aquatics' Management Committee for Water Polo at the Olympic Games, Paris 2024 considered whether Mr. Condemi's exclusion for violent action merited any exclusion for additional games, pursuant to the Regulations Part Six, Article 16.3.7, which states:

“For any offense potentially leading to a player or team official being excluded from the remainder of a game, the Management Committee of the tournament shall assess all circumstances of the offense, in particular its gravity, and decide whether the player or team official shall be excluded from additional games in the tournament within 24 hours after the end of the game, with notification to the player, team official and team. The Management Committee shall also refer the matter to the Aquatics Integrity Unit if they consider that consequences beyond the tournament should be considered. For the sake of clarity, the Management Committee is entitled to review official video of any match of the tournament to decide whether the player or coach shall be excluded from other games in the tournament, regardless of whether or not the offense was sanctioned by the referee during the match.”
17. On 8 August 2024, the Management Committee – none of whom were members of the Jury of Appeal here – found that it would not impose additional game exclusions on Mr. Condemi because they *“can't conclude that there was a malicious intent”* when Mr. Condemi struck the Hungarian player. The Management Committee noted that they had reviewed *“the available video of the action”*.
18. In its 8 August 2024 written Decision (the “Appealed Decision”), the Jury of Appeal noted that the Game referees' decision was entitled to *“a significant degree of deference”* and that it cannot *“substitute its view of the protest for that of the Referee unless the Applicant presents clear evidence that the Referee's decision was made arbitrarily, irrationally, or in abuse of the discretion afforded to the Referee. The test shall be recognized as a high test for an appellant to overcome.”*

19. The Jury of Appeal further noted that it “*shall not step into the shoes of the referee,*” and *that the referees had to judge the situation with the limited video footage available as well as their own observations of the particular moment, including the significant injury in [sic] the face of the Hungarian player.*”
20. The Jury of Appeal concluded that it could not find that the Game referees acted irrationally, arbitrarily or in abuse of their discretion, even if the Jury of Appeal might have reached a different decision after reviewing video that was not available to the Game referees during the Game.
21. The Jury of Appeal also cited Part Six, Article 20.7.5 of the Regulations which states that “[t]he result of a match should not be invalidated because of [...] wrong decision(s) involving the VAR [...].” Therefore, it denied the Italian team’s appeal.

III. THE CAS PROCEEDINGS

22. On 9 August 2024 at 8h00 (Paris time), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondent with respect to the Decision.
23. On 9 August 2024 at 9h58 (Paris time), the CAS Ad Hoc Division notified the Parties and Interested Parties of:
 - a. the appointment of the Sole Arbitrator Kristen Thorsness, OLY (USA); and
 - b. the deadline for Respondent and Interested Parties to file their responses to the Application via email to the CAS Ad hoc Division by 11h00 (Paris time) on 9 August 2024.
24. Also on 9 August 2024 at 9h58 (Paris time), the Parties and Interested Parties were polled to determine whether any of them desired a hearing on this matter. None of them asked for a hearing. At 11:46 (Paris time), the Parties were informed that the Sole Arbitrator considered herself sufficiently well-informed to decide this matter on the submitted papers.

IV. THE PARTIES’ SUBMISSIONS AND REQUESTS FOR RELIEF

25. The Parties’ submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.

A. The Applicant

a. Applicant’s Submissions

26. The Applicant’s submissions may be summarized, in essence, as follows:
27. The Jury of Appeal “*is willing to accept Mr. Condemì’s lack of intent but notes that the referees had to judge the situation with the limited video footage available as well as their*

own observations of the particular moment, including the significant injury in the face of the Hungarian player”; and

28. The Referees’ decision was arbitrary, irrational and abusive, as evidenced by the Management Committee’s decision not to impose additional games of exclusion.

b. Applicant’s Requests for Relief

29. The Applicant’s request for relief is as follows

- 1) *Cancellation of the sanctions against Mr. Condemi;*
- 2) *Cancellation of the final result of the Game; and*
- 3) *Replaying the Game starting from 2 minutes and 22 seconds remaining in the second quarter.*

B. The Respondent

a. Respondent’s Submissions

30. The Respondent’s submissions may be summarized, in essence, as follows:

- The Decision of the Jury of Appeal is not subject to appeal;
- The Regulations preclude the possibility of replaying a match due to error involving VAR;
- CAS jurisprudence consistently rejects review of similar field of play decisions;
- It is logistically impossible to replay the Game; and
- Deference must be given to the decision of the Game referees.

b. Respondent’s Requests for Relief

31. The Respondent requested the following relief:

- 1) *The appeal should be rejected.*

C. The Interested Parties

32. The IOC asserted that this is a “text-book” field of play matter that is not subject to CAS review, and that there was no evidence that the referees’ decision was made arbitrarily, in bad faith or as a result of fraud or corruption so as to give rise to CAS review.

33. The Hungarian Water Polo Association asserted that the referees’ call did not impact the outcome of the match because the two-point score differential at the time of Mr. Condemi’s exclusion remained at the end of the four-minute penalty period. It further argued that the decision based on VAR cannot be reviewed.

V. JURISDICTION AND ADMISSIBILITY

34. Rule 61.2 of the Olympic Charter provides as follows:

“61 Dispute Resolution

2. 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 (CAS), in accordance with the Code of Sports-Related Arbitration”.

35. As noted above, World Aquatics asserts that the decision of the Jury of Appeal is not subject to appeal. In support of this position, WA cites World Aquatics Competition Regulations 13.2.1 which states that “[t]he decision of the Jury [of Appeal] is final.” However, “final” does not necessarily mean “unappealable.”
36. Significantly, sections 31.1 and 31.2 of World Aquatics’ Constitution state that: “*World Aquatics recognises the Court of Arbitration for Sport (CAS), with seat in Lausanne, Switzerland, as exclusive court to resolve **any** kind of disputes between World Aquatics, World Aquatics Members, members of World Aquatics Members, Continental Organisations, National Aquatics bodies, Athletes, Officials and any person or organisation subject to this Constitution and/or any World Aquatics rule or regulation. [...] Provided no internal legal remedy is available, any appeal against a final decision of World Aquatics shall be submitted to the exclusive jurisdiction of CAS within twenty-one (21) Days from the date of the decision being appealed. [...] World Aquatics is entitled to file an appeal to CAS against any final and binding decision of a body of World Aquatics”* (emphasis added). These provisions explicitly recognize the propriety of appealing “final” decisions to CAS.
37. Moreover, CAS has consistently ruled that “International Federations (IF) cannot limit the jurisdiction conferred to CAS under the Olympic charter in their regulations when it comes to Olympic competition (see, e.g., CAS OG 2000/010 and 2000/011, para. 33, *et seq.*). So, too, the arbitration clause contained in the Olympic charter and confirmed in the entry form for the Paris Olympics 2024 is drafted in broad terms and includes any dispute that arises during the Olympic Games to be resolved by arbitration. Such arbitration jurisdiction is binding on all Parties.
38. The fact that the WA Competition Regulations provide that a decision of a Jury of Appeal is “final” does not derogate from the jurisdiction awarded in the Olympic Charter to the CAS. The arbitration clause contained in the Olympic Charter, binds the International Federations and the National Olympic Committees by reason of their recognition of the IOC. Jurisdiction is given to the CAS with respect to disputes arising out of or in connection with the Olympic Games by the Olympic Charter and not by the rules of the various International Federations, which cannot, therefore, limit that jurisdiction (see, CAS 2008/A/1641, para. 11).
39. Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter referred to as the “CAS Ad Hoc Rules”) provides as follows:

“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective."

40. Accordingly, the Sole Arbitrator finds that the conditions for the jurisdiction of the CAS Ad hoc Division have been met here.
41. The Decision was rendered on 8 August 2024, when the World Aquatics Jury of Appeal issued its final decision rejecting the Italian team's protest.
42. In view of the above, the Sole Arbitrator finds that the application filed by the Applicant is admissible.

VI. APPLICABLE LAW

43. Under art. 17 of the CAS Ad Hoc Rules, the Sole Arbitrator must decide the dispute *"pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate."*
44. These proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003 (amended on 8 July 2021). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PILA"). The PILA applies to this arbitration as a result of the express choice of law contained in art. 17 of the Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS Ad Hoc Rules.
45. The Sole Arbitrator finds that the applicable regulations and law in this case shall be the World Aquatics Constitution, and applicable World Aquatics Rules as interpreted under Swiss law.

VII. DISCUSSION

46. According to art. 16 of the CAS Ad Hoc Rules, the Sole Arbitrator has *"full power to establish the facts on which the application is based"*.

A. Merits

47. There is a significant amount of CAS jurisprudence regarding the Field of Play Doctrine ("FOP Doctrine"). A referee's "judgement call" – the term used for field of play decisions in the applicable rules – arises from an official having directly observed and assessed

events in the course of competition as a violation of the rules of the game. Judgement calls made by game officials at ground level, in the field of play, can only be appealed in limited circumstances.

48. In summary, the principles stated in those CAS cases include the following:
- a. a referee's decision affecting the result of a race or game cannot be reviewed on appeal absent proof of bias, malice, bad faith, arbitrariness or legal error;
 - b. thus, if such a decision is made under the correct race or game rules (that is not made under legal error or without any possible grounds), it can only be reviewed on appeal if there is sufficient evidence of prejudice for or against a competitor;
 - c. the FOP Doctrine is part of the *lex sportiva* compatible with Swiss law and is based on appellate self-restraint, to protect the autonomy of officials, the completion of events without disruption and the certainty of outcomes;
 - d. these principles preclude the appellate review of not only the merits of a "field of play decision" but also the procedural aspects leading to it, and apply to competition-specific sanctions (such as disqualification) although not necessarily where wider interests are concerned (such as suspension from future competitions).
 - e. The prerequisites for the FOP Doctrine to apply are thus (i) that a decision at stake was made on the playing field by judges, referees, umpires and other officials, who are responsible for applying the rules of a particular game and (ii) that the effects of the decision are limited to the field of play (CAS 2017/A/5733, paras. 49-51).
49. In the present case, the Sole Arbitrator finds that the FOP Doctrine applies here. The exclusion decision by the Game referees was taken on the playing field, as was their rejection of the initial appeal immediately after the Game. Even though the referees' decision was appealed to the Jury of Appeals and the Jury of Appeals' decision was made the next day, it enjoys the same protection from CAS scrutiny as does the Game referees' decision as it still concerns the same facts, i.e. a clear field of play decision, which therefore enjoys the same protection from CAS scrutiny as does the Game referees' decision (see, CAS 2017/A/5733, para. 54, CAS 2015/A/4208, paras. 52-58).
50. Applicant's allegations aside, there was no evidence presented to the Sole Arbitrator that any of the individuals involved in any of the decisions here were tainted by bias, malice or bad faith against Mr. Condemi or his team. Even assuming, arguendo, that the Game referees' decision was erroneous, mere error is not automatically arbitrary, irrational or made in an abuse of discretion.
51. Therefore, the Sole Arbitrator finds that this appeal is defeated by the FOP Doctrine and must be dismissed.

VIII. COSTS

52. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division “are free of charge”.
53. According to Article 22 para. 2 of the CAS Ad Hoc Rules, parties to CAS ad hoc proceedings “*shall pay their own costs of legal representation, experts, witnesses and interpreters*”.
54. None of the Parties seek costs. Accordingly, there is no order as to costs.

IX. CONCLUSION

55. In view of the above considerations, the Applicant’s application filed on 9 August 2024 shall be dismissed.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

The application filed by the Italian Swimming Federation on 9 August 2024 is dismissed.

Paris, 11 August 2024

Operative part of the Arbitral Award notified on 9 August 2024.

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Kristen Thorsness, OLY
Sole Arbitrator