

COURT OF ARBITRATION FOR SPORT (CAS)

TRIBUNAL ARBITRAL DU SPORT (TAS)

Ad hoc Division – Sydney Olympic Games

CAS arbitration N° SYD 13

FINAL AWARD

in the arbitration between

Bernardo Segura

(the "Applicant")

and

International Athletics Amateur Federation (IAAF)

(the "Respondent")

and,

Mexican Olympic Committee (MOC)

Mexican Athletics Federation

Robert Korzeniowski

Noé Hernández

Vladimir Andreyev

(the "Interested Parties")

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1. FACTS

1. The Applicant seeks a declaration that he was wrongfully disqualified from the 20km walk event, and that he be declared the winner thereof.

2. On 22 September 2000, the Applicant crossed the finish line first but was subsequently notified that he was disqualified for having committed three infractions during the course of the event, the last one occurring four minutes from the finish. As a result, the first three places were attributed to Mssrs. Korzeniowski, Hernández, and Andreyev, respectively. An appeal to the Respondent's Jury of Appeals was unsuccessful.

2. PROCEDURE

3. The application which instituted the present proceedings was filed in the evening of 27 September 2000.

4. A hearing was conducted in the afternoon of 28 September 2000. The following persons were present :

For the Applicant :	Mr. Ricardo Contreras Hernández, President, MOC
	Mr. Felipe Muñoz, Chef de mission, Mexico
	Mr. Antonio Villanueva, Mexican Athletics Federation
	Mr. Pedro Hernández, Counsel to the Applicant
For the Respondent :	Mr. Istvan Gyulai, IAAF General Secretary
	Mr. Robert Hersh, IAAF Council Member
	Mr. Jack Agrios, Counsel

5. None of the three other athletes summoned as interested parties appeared, although a document signed by Mr. Noé Hernandez was produced which recited that his interests were represented by the MOC.

3. THE PARTIES' ARGUMENTS

6. The Applicant contends that the disqualification was communicated too late, with the result that he should be reinstated as the winner.

7. The Respondent answers that the decision to disqualify the athlete is not reviewable by a CAS Panel. In any event, the decision was not communicated too late in the circumstances. Finally, even if the disqualification were deemed to be tardy, the

consequence could not be to reinstate the Applicant to the detriment of the non-infringing competitors.

4. LEGAL ANALYSIS

4.1. *Legal framework*

8. These proceedings are governed by the CAS Arbitration Rules for the Games of the XXVII Olympiad in Sydney (the "ad hoc Rules") of CAS enacted by the International Council of Arbitration for Sport ("ICAS") on 29 November 1999. They are further subject to Chapter 12 of the Swiss Private International Law Act of 18 December 1987 as a result of the express choice of law contained in Article 17 ad hoc Rules and the choice of Lausanne, Switzerland, as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to Article 7 of the ad hoc Rules.

9. The jurisdiction of the ad hoc Division is based on the entry form signed by all participants in the Olympic Games and on Rule 74 of the Olympic Charter.

10. Article 17 of the ad hoc Rules requires the Panel to 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."

11. According to Article 16 of the ad hoc Rules, the Panel has "full power to establish the facts on which the application is based."

4.2. *Merits*

12. Racewalkers are required to keep at least one foot on the ground at all times, and to keep their front leg unbent from the moment of impact until it reaches a vertical position (IAAF Rule 230(1)).

13. To ensure that these requirements are respected, the Respondent places a number of judges at different positions on the circuit, which is located outside the Olympic Stadium. One of them is appointed Chief Judge.

14. When a judge considers that an athlete is, or may be close to, infringing the rules, he may choose to issue either a *caution* or a *warning*. The two are very different, and their difference must be understood.

15. A caution is given directly to the competitor, in the form of a sign which indicates which rule he may be infringing, or, as the relevant rule (IAAF Rule 230(3)) puts it, "in danger" of infringing. The same judge may not give two cautions to the same competitor relating to the same type of infringement.

16. A warning is issued when a judge considers that there is an infringement sufficient to justify a "proposal for disqualification". Each judge may issue only one warning. If a competitor is the subject of warnings from three different judges, Rule 230(4)(b) provides that he "shall be disqualified and informed of his disqualification by the Chief Judge". Warnings are *not* given to competitors, but are posted on a signboard. The reason a judge should not give such a warning directly to an athlete is that the athlete is not intended to know the identity of the judge in question. Otherwise the athlete would know that he could proceed in blatant disregard of the rules whenever he is present in that judge's sector, because the judge could not add any sanction whatever to the warning already issued.

17. An athlete may or may not be attentive to the appearance of warnings on the signposts. He is not under the duty to scrutinise the signposts. In theory, he could be entirely unaware that any warnings have been issued until the Chief Judge shows him a red sign, which means that there have been three warnings and that he is disqualified.

18. Rule 230(4)(e) is explicit to the effect that red signs "may only be used by the Chief Judge".

19. The problem in this case is that the warnings were issued late in the race, and that the Applicant was informed of the disqualification about a quarter of an hour after he had finished as the apparent winner. The Applicant concedes that he was aware of the first warning (issued at 13:51 hours). The Respondent concedes that, particularly given the placement of the signposts, the Applicant may not have seen the posting of the second warning (issued at 13:59 hours). It seems clear that he could not have seen the third warning, because it came at 14:05 hours, when the athlete had completed his circuits and was on his way to the finish line in the Stadium, which he reached at 14:09 hours.

20. The Panel accepts that Mr. Segura crossed the finish line in the sincere belief that he was the winner of the race. He was immediately interviewed by the media, and took a congratulatory telephone call from the President of Mexico.

21. According to the Respondent, the Chief Judge was outside the Stadium at the time Mr. Segura approached the finish line. He was occupied with another case of disqualification. Under such circumstances, Rule 230(4)(d) provides that:

> *"If it is impractical to inform the competitor of the disqualification during the race, disqualification shall be given immediately after the competitor has finished."*

22. The Respondent does not take issue with the proposition that the Chief Judge was unable to inform Mr. Segura of his disqualification before the finish line, but rather insists that the Respondent violated its rules by allowing the disqualification to stand even though it was not communicated to the athlete *immediately* after the race as required by Rule 230(4)(d).

23. The Respondent's first objection is that this is a matter which is not reviewable by CAS arbitrators.

24. CAS arbitrators do not review the determinations made on the playing field by judges, referees, umpires, or other officials who are charged with applying what is sometimes called "rules of the game". (One exception among others would be if such rules have been applied in bad faith, e.g. as a consequence of corruption.) If they happen to have been present at the relevant event, CAS arbitrators were mere spectators with no official role. Moreover, they are not, unlike on-field judges, selected for their expertise in officiating the particular sport.

25. The Respondents are therefore correct when they assert that this Panel does not have the function of reviewing, as a technical matter, the determination that Mr. Segura on three occasions failed to comply with the rules of racewalking.

26. But in this respect, the Respondent has no case to meet, because the Applicant clearly stated his acceptance of the fact that this Panel is not asked to question, let alone overrule, the three warnings.

27. The issue is rather whether the Respondent dealt with the consequences of the three warnings in some way that fundamentally violated its own rules and the rights of the Applicant.

28. The Panel clearly has jurisdiction to examine such contentions, as counsel to the Respondent implicitly recognised when admitting, as an example, that a CAS Panel might overturn a result if the relevant Federation failed to provide the required team of officials for an event.

29. The question to be examined here is whether the Applicant's disqualification was invalid because it was not notified to the athlete "immediately" after the race.

30. Everyone agrees that the circumstances were unfortunate and caused considerable embarrassment to Mr. Segura, and great chagrin to untold numbers of Mexican sports fans. In hindsight, one could think of a number of ways in which the regrettable sequence of events could have been avoided. In the absence of proof of bad faith or malice, however, the Panel is most reluctant to give a precise and imperative meaning

to the word "immediately" in the context of a combination of circumstances which it is difficult, if not impossible, to reconstitute. Certainly, the Respondent's has provided a plausible explanation to the effect that the one person who could issue the disqualification at the "right" time (the Chief Judge) was otherwise and legitimately occupied at some distance, that it took him some time to reach the finish line after the Applicant had crossed it, and that he was moreover understandably hesitant to interfere in the midst of an interview. The word "immediate" must, without any doubt, be read as qualified by a notion of "reasonable under the circumstances", and the Panel is unwilling to hold that the Respondent, whatever new practices might be suggested to avoid repetition of this incident, acted outside the limits of reasonable conduct.

31. The fundamental flaw of this application, however, lies elsewhere: it is its failure to justify the remedy sought by Mr. Segura. Even if it were plain that the Respondent had violated an explicit rule – such as would be the case if Rule 230(4)(d) provided that disqualifications should be given no later than five minutes after the finish – it needs to be shown that the rules would then compel a reversal of the announced results. The Applicant has shown no foundation for such an outcome.

32. The IAAF Rules to not provide that disqualifications are invalid if they are not communicated "immediately." The Panel believes that it would be intolerable to disregard the unchallenged finding that on three occasions three separate judges found the Applicant to have infringed the rules. The Panel must have regard to the interest of competitors who did *not* infringe the rules, and who are entitled to the benefits of their effort. The undoubted disappointment and embarrassment suffered by Mr. Segura do not begin to outweigh the fact that he merited disqualification under the applicable rules; his competitors are entitled not to be deprived of their places.

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5. DECISION

1. The application is dismissed

2. The disqualification of Bernardo Segura in the 20 km walk event is upheld

Sydney, 30 September 2000

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

President of the Panel

Jan **Paulsson**

Jean-Philippe **Rochat**
Arbitrator

Thomas **Lee**
Arbitrator