



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-Vevay, Suisse

– *Respondent 1* –

and

MOHAMED IBRAHIM ABDELFAITAH,

Represented by Mr Gordon Stipic, Attorney-at-law, Karlsruhe, Germany

– *Respondent 2* –

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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 “Respondant”) 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.

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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.

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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.