



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1413 WADA v/ FIG & N. Vysotskaya

ARBITRAL AWARD

Pronounced by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President:

Mr Martin Schimke, Attorney-at-law, Düsseldorf, Germany

Arbitrators:

Mr Quentin Byrne-Sutton, Attorney-at-law, Geneva, Switzerland
Mr Denis Oswald, Attorney-at-law, Peseux, Switzerland

Ad hoc Clerk:

Mr Fabrizio La Spada, Attorney-at-law, Geneva, Switzerland

in the arbitration between

World Anti-Doping Agency, Montreal, Canada

Represented by Mr François Kaiser, Attorney-at-law, Lausanne, Switzerland

as Appellant

and

Fédération Internationale de Gymnastique (FIG), Montier, Switzerland

Represented by Mrs Sara Ellen Hübscher, attorney-at-law, Lyss, Switzerland

and

Ms Nadzeva Vysotskaya, c/o Belarus Gymnastics Federation, Minsk, Belarus

as Respondents

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1. THE PARTIES

1. The World Anti-Doping Agency ("the Appellant" or "WADA") is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.
2. The Fédération Internationale de Gymnastique ("the FIG") is the International federation governing gymnastics. Its seat is in Moutier, Switzerland.
3. Ms Nadzeya Vysotskaya ("the Gymnast" or "Ms Vysotskaya") is a Belarus gymnast, affiliated to the Belarus Gymnastic Federation, itself a member of the FIG.

2. THE FACTS

4. In May 2006, Ms Vysotskaya participated to the artistic gymnastics world cup in Ghent, Belgium.
5. On 15 May 2006, she underwent a doping test, which returned positive results to Furosemide. The tests were performed by DoCoLab at the University of Gent, a WADA-accredited laboratory.
6. On 12 September 2006, the FIG Disciplinary Commission provisionally suspended the Gymnast.
7. On 11 October 2006, the General Secretary of the Belarus Gymnastics Federation signed the following declaration, on FIG's letterhead:

"I, Andrey Fedorov, General Secretary of the Belarus Gymnastics Federation herewith confirm, that I have spoken to our gymnast Nadzeya Vysotskaya by telephone and that she has declared:

1. *Not to want to be present or represented at the hearing of the FIG Disciplinary Commission in Geneva, 1st November 2005;*

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2. *Not to have requested an analyses of the B sample;*
3. *Not to have requested a TUE exemption for the use of Furosemide;*
4. *To have written an explanation of the case, which can be used as statement for the FIG Disciplinary Commission "*

8. In her explanation letter, which is dated 5 August 2006, Ms Vysotskaya stated the following:

"I am writing this letter in response to the official letter about my doping test results that were taken on 13th May 2006 during the World Cup competition in Ghent (Belgium).

I was sincerely shocked by the results of the doping control. I would like to declare with all the responsibility that I have never taken any prohibited medicine during my whole sports career. While preparing to the competition I thoroughly controlled my diet and any taken medicine, because I know the importance of that competition to my sports career.

I realized that I could have neglected the storage conditions of sports drinks during the competition. I ask that you kindly take into consideration my inexperience and lack of competence. I would like to state once again that I have never taken any forbidden substances in my whole life. I would never consciously do it as I truly believe and have always thought doping to be totally unacceptable.

I ask you to treat this situation with understanding. I can only promise that I will pay painstaking attention not to make such mistakes in future and that it was a severe lesson for me."

9. On 12 November 2006, the FIG Disciplinary Commission issued the following decision against Ms Vysotskaya ("the Decision"):

"Vu les articles 2.1.1 et 10.5.1 du Code Mondial Anti-Dopage de l'AMA, la Commission disciplinaire décide de suspendre mademoiselle Nadzeva

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Vysotskaya (BLR) à partir du 13 mai 2006 jusqu'au 31 décembre 2007."

10. On 20 September 2007, the FIG sent an email to WADA, apologizing about the fact that the former forgot to communicate to the latter a copy of the Decision:

"Il semble que j'avais oublié de vous faire parvenir une copie de la décision de la Commission Disciplinaire concernant le cas susmentionné, et je vous prie de bien vouloir m'en excuser.

Cette décision a été ratifiée par le Bureau Présidentiel FIG."

11. On 27 September 2007, WADA sent an email to the FIG stating that WADA intended to appeal the Decision and requesting a copy of the complete file relating to the matter.
12. The Decision, as well as the file, were sent by the FIG to WADA by email dated 16 October 2007.
13. On 6 November 2007, WADA appealed the Decision by filing a Statement of Appeal with CAS.

3. SUMMARY OF THE ARBITRAL PROCEEDINGS

14. On 6 November 2007, the Appellant filed a statement of appeal against the Decision, with supporting exhibits. It made the following prayers for relief:

"1. The Appeal of WADA is admissible.

2. The decision of the FIG Disciplinary Commission dated November 12, 2006 in the matter of Nadzeya Visotskaya is set aside.

3. Nadzeya Visotskaya is sanctioned in accordance with articles 10.2 of the FIG Anti-Doping Rules with a two-year period of ineligibility, starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed to or voluntarily accepted by Nadzeya Visotskaya) before the entry into force of the CAS award shall be credited against the total period

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of suspension to be served.

4. All competitive results obtained by Nadeya Visotškaya from December 31, 2007 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

5 WADA is granted an award for costs."

15. In its Statement of Appeal, the Appellant appointed Mr Quentin Byrne-Sutton as arbitrator.

16. By fax dated 12 November 2007, the Respondents jointly appointed Mr Denis Oswald as arbitrator.

17. On 16 November 2007, WADA filed its Appeal Brief, together with supporting exhibits. In the Appeal Brief, the Appellant repeated the prayers for relief set out in the Statement of Appeal.

18. On 7 December 2007, the FIG filed a Statement of Response, together with supporting exhibits. In its submission, it made the following prayers for relief:

"1. The Appeal is rejected.

2. The decision of the FIG Disciplinary Commission dated 12 November 2006 must be confirmed on the basis of Art. 10.5.2 of the FIG Anti-Doping Rules.

3. FIG is to be granted an award for costs."

19. On 7 January 2008, the CAS sent a notice of formation of the Panel to the parties.

20. A hearing was held at CAS premises in Lausanne on 18 March 2008. The members of the Panel were present at the hearing, as well as the CAS Counsel. The Appellant was represented by its counsel. The FIG was represented by its President; the FIG Secretary General and the FIG's counsel were also present. The President of the Medical Commission of the FIG was heard as a witness.

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21. WADA and the FIG had the opportunity to present their case, and the Panel heard detailed submissions from the parties.
22. During the hearing, the FIG mentioned that WADA should have known about the Decision, as information concerning the same had been posted on the FIG's website and was therefore publicly available. The Panel requested the FIG to produce documents, if any, supporting this contention.
23. On 2 April 2008, the FIG produced copies of three press releases, concerning (1) the provisional sanction imposed on the Gymnast, (2) the suspension ordered by the FIG Disciplinary Commission, and (3) the fact that the Decision had not been appealed and that the case was therefore closed. When producing these documents, the FIG stated the following: *"Please find herewith all the documents, which were posted on our official Internet website during two months regarding this case. For your information, those documents were also transmitted to all the sports journalists and authorities' addresses that are available in our database."*

4. POSITION OF THE PARTIES

24. The positions of the parties may be summarized as follows.

4.1 The Appellant

25. Concerning admissibility of the appeal, the Appellant considers that WADA has a right to appeal the Decision to CAS in accordance with Articles 13.2.1 and 13.2.3 of the FIG Anti-Doping Rules ("the Rules"). It further submits that it complied with the time limits set out in Article 13.5 of the Rules.
26. As regards the merits of the matter, the Appellant points out that, in accordance with Article 2.1.1 of the Rules, gymnasts are responsible for any prohibited substance, its metabolites or markers found to be present in their bodily specimens. Moreover, the Appellant states that the Rules include WADA's Prohibited List, and that gymnasts with a documented medical condition requiring the use of a prohibited substance must