



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 24/14 Marta Vieira da Silva, Comitê Olímpico do Brasil (COB) & Confederação Brasileira de Futebol (CBF) v. FIFA

sitting in the following composition:

Sole Arbitrator: Laila El Shentenawi, Egypt

AWARD

in the arbitration between

Marta Vieira da Silva

("First Applicant")

Comitê Olímpico do Brasil (COB)

("Second Applicant")

Confederação Brasileira de Futebol (CBF)

("Third Applicant")

v.

Fédération Internationale de Football Association (FIFA)

("Respondent")

and

International Olympic Committee (IOC)

("Interested Party")

I. PARTIES

1. The First Applicant is Marta Vieira da Silva (“Player”).
2. The Second Applicant is Comitê Olímpico do Brasil (“COB”).
3. The Third Applicant is Confederação Brasileira de Futebol (“CBF”).
4. The Respondent is Fédération Internationale de Football Association (“FIFA”).
5. The Interested Party is the International Olympic Committee (“IOC”).
6. The First, Second and Third Applicants are hereinafter jointly referred to as the “Applicants”.
7. The Applicants and the Respondent are jointly referred to as the “Parties”.

II. FACTS

A. Background Facts

8. 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 and Interested Party. Additional facts may be set out, where relevant, in the legal considerations of the present award. Although all the facts, evidence, submissions, pleadings and legal arguments submitted by the Parties and Interested Party in the present proceedings have been considered, only to the submissions and evidence the Sole Arbitrator considers necessary to explain the reasoning of this award are mentioned.
9. On 31 July 2024, a match was played between the teams of Brazil and Spain in the context of the Women’s Olympic Football Tournament in the Games of the XXIII Summer Olympics, Paris (“Match”).
10. During the Match, an incident occurred between the Player and a player from the Spanish team resulting in the Player being sent off in the minute 45+6.
11. The referee characterised in his report the incident as a type “H” offence, *i.e.*, a serious foul play, stating that:

“Player nr.10 Brazil was sent off min 45+5 for serious foul play. For a tackle where she endangering the safety of her opponent, with a high foot and showing studs.” (Referee’s Report, Match No 17, Page 2/8)
12. Similarly, the Match Commissioner indicated in his report that:

“In the 45th+6 of the first half the player No 10 MARTA of Brazil was sent off for a serious foul play.” (Commissioner’s Report, Match No. 17, Page 4/8)

13. On 1 August 2024, the Secretariat of the FIFA Disciplinary Committee informed Applicants that the incident constituted a potential breach of Article 14.1(e) of the FIFA Disciplinary Code (“FDC”) and the proposed sanction in accordance with Article 58 of the FDC is a two match suspension including an automatic suspension following her sending off during the Match. The CBF rejected the proposed sanction on behalf of the Player and the matter was referred to the FIFA Disciplinary Committee for a decision.
14. On 2 August 2024, the FIFA Disciplinary Committee issued its decision on case FDD-19032 (“Decision”) stating the following:

“The Respondent, Marta Vieira da Silva, is suspended for two (2) matches, including the automatic match suspension which shall be served during the match France v. Brazil to be played on 3 August 2024 in the frame of Women’s Olympic Football Tournament Paris 2024. The remaining suspension will be served during the next official match of the representative team of Brazil, irrespective of the competition, in accordance with art. 69 par. 1 and 2.e of the FIFA Disciplinary Code.”

15. The Decision further stated that:

“According to art. 61(1)(c) of the FDC, read together with arts. 47(2) and 50(3) of the FIFA Statutes, this decision is final and binding and may not be appealed to the FIFA Appeal Committee or the Court of Arbitration for Sport (CAS).”

16. On 4 August 2024, the grounds for the Decision were notified to the Player via the CBF.

III. THE CAS PROCEEDINGS

17. On 5 August 2024, at 15h22 (Paris time), the Applicants filed an Application with the CAS Ad hoc Division against the Respondent with respect to the decision.
18. On 5 August 2024, at 15h52 (Paris time), the CAS Ad hoc Division notified the Application to the Respondent and invited the latter to file its Answer by 21h00 (Paris time).
19. On 5 August 2024, at 19h18 (Paris time), the CAS Ad hoc Division notified the Parties of composition of the Arbitral Tribunal:

Sole Arbitrator: Laila El Shentenawi, attorney-at-law in Egypt

20. On 5 August 2024, at 19h47 (Paris time), the CAS Ad hoc Division notified the Respondent’s Answer to the Applicants and, taking notice of the jurisdictional objection raised, as well as of the Respondent’s position that a hearing would be unnecessary in the present case, the CAS Ad hoc Division invited the Applicants to provide their comments on said issues by 5 August 2024 at 21h30 (Paris time). Upon request by the Applicants, said time-limit was extended until 5 August 2024 at 22h30 (Paris time).
21. On 5 August 2024, at 22h37 (Paris time), the CAS Ad hoc Division notified the Respondent of the Applicants’ position with regard to the jurisdictional objection and the necessity of holding a hearing – which contained a request for the production of a document by the IOC – and confirmed that a hearing would be held by video-conference on 6 August 2024, at 10h00 (Paris time). In the same message, the CAS Ad hoc Division

advised the Parties that the IOC was included as an Interested Party and would have the opportunity to make any comments on the matter at the hearing, should it deem necessary.

22. On 5 August 2024, at 22h38 (Paris time), the CAS Ad hoc Division forwarded a copy of Parties' submissions and relevant documents to the IOC.
23. On 6 August 2024, at 09h39 (Paris time), the IOC submitted a letter with its comments on the matter; also at 09h39 (Paris time) the Applicants filed the annexes that have been missing from their submission.
24. On 6 August 2024, at 10h00 (Paris time) a hearing was held via videoconferencing with the participation of the following persons, in addition to the Sole Arbitrator and Mr Giovanni Maria Fares, Counsel to the CAS:

For the Applicants:

- Ms Marta Vieira da Silva, Applicant
- Mr Bichara Abidão Neto, legal counsel
- Mr Victor Eleuterio, legal counsel
- Mr Felipe Pestana, legal counsel
- Mr André Mattos, legal counsel
- Ms Regina Sampaio, legal counsel
- Mr Luciano Hostins, legal counsel
- Mr João Paulo Di Carlo, legal counsel
- Ms Antonia Silva, witness
- Ms Franziska Becskehazy, interpreter

For the Respondent:

- Mr Miguel Liétard Fernández-Palacios, legal counsel
- Ms Cristina Pérez González, legal counsel

For the International Olympic Committee (IOC):

- Mr Antonio Rigozzi, legal counsel

25. During the hearing, Ms Antonia Silva gave testimony as a witness called by the Applicants. The Player was as well called for a party testimony.

26. The Parties confirmed that there were no objections to the appointment of the Sole Arbitrator.
27. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Sole Arbitrator and confirmed that their right to be heard and to be treated equally was respected. The hearing was concluded at 12h45.
28. On 6 August 2024, at 15h48 (Paris time), the operative part of the award was notified to the Parties by the CAS Ad hoc Division.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

29. 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 Applicants

a. Applicants' Submissions

30. The Applicants' submissions may be summarized, in essence, as follows:

Jurisdiction

31. In their Application, the Applicants addressed that the jurisdiction of CAS derives from *inter alia* Rule 61.2 of the Olympic Charter.
32. The Applicants further stated that the athletes signed an arbitration agreement contained in the entry form for the Paris Olympic Games 2024.
33. The Applicants referred as well to Article 1 of the CAS Arbitration Rules for the Olympic Games addressing the jurisdiction of the CAS and referring to Article 61 of the Olympic Charter.

Merits

34. The Applicants submitted that the incident does not fall under Article 14.1(e) of the FDC as it does not amount to a serious foul play. According to the Applicants, the Player was not careless or reckless and had no intention to harm anyone. Furthermore, the opponent did not suffer any injury and continued playing in the Match. Moreover, the Player mitigated the situation by apologising and accepting the sending off immediately.
35. The Applicants claimed that the incident should be categorised as "unsporting behaviour" and not "serious foul play". Accordingly, they claim that the relevant article to be applied on the incident is Article 14.1(b) rather than Article 14.1(e) of the FDC. By applying Article 14.1(b) the suspension might be reduced to 1 match.
36. The Applicants did not request the Sole Arbitrator to alter the decision by the referee from a red card to a yellow card and limited their request to the suspension.

b. Applicant's Requests for Relief

37. The Applicant's request for relief is as follows:

"The Player, COB and CBF request CAS to uphold this appeal, setting aside the Appealed Decision and replacing by a new one, which establishes that the Player shall only serve a maximum of 1 (one) match suspension (including the automatic suspension already served in the match of 3 August 2024 against the French National Team) in connection with her sending off in the Match, authorising her participation in Brazil's next match against Spain on 6 August 2024 at 21:00 (Paris time)."

B. The Respondent

a. Respondent's Submissions

38. The Respondent's submissions may be summarized, in essence, as follows:

Jurisdiction

39. The Respondent contested the jurisdiction of the CAS and based its argument on Article R47 of the CAS Code according to which appeals against FIFA decisions may be filed if the FIFA codes and regulations so allow. In this context, the Respondent relies on Article 50.3(b) of the FIFA Statutes which provides that the CAS "*does not deal with appeals arising from suspensions of up to four matches or up to three months...*". Accordingly, the Respondent claimed that the Sole Arbitrator does not have jurisdiction given that the suspension in the current case is for less than 4 matches.

Merits

40. The Respondent argues that the Decision was correct.

41. It stated that the referee's and the commissioner's reports clearly described the incident which corresponds to a "*serious foul play*" as regulated by the FIFA Disciplinary Code and as identified in Article 12 of the IFAB Laws of the Game. The same was addressed by the FIFA Disciplinary Committee and the evidence "*clearly showed that the Player committed a high tackle by raising her leg with cleats up, partially hitting the opposing player and endangering her safety*".

42. The Respondent stated that there are no mitigating circumstances to reduce the sanction, as claimed by the Applicants, and that the latter have not presented evidence that allows to reduce the sanction.

b. Respondent's Requests for Relief

43. The Respondent's request for relief is as follows:

"43. Based on the foregoing, FIFA respectfully requests the CAS Sole Arbitrator to issue an award:

(a) Declaring that it does not have jurisdiction to entertain the Application.

Subsidiarily,

(b) Rejecting the requests for relief sought by the Applicants;

In any event,

(c) Confirming the Appealed Decision;

(d) Ordering the Applicants to bear the full costs of these arbitration proceedings (if any).

44. On the basis of Article 15(C) CAS Ad Hoc Rules, FIFA reserves the right to supplement or amend its arguments and/or the request for relief at a hearing (if held).

45. For the sake of good order, FIFA already advances that it considers a hearing unnecessary in this matter, especially in light of the strictly legal discussion (i) on the (lack of) jurisdiction, for which the Sole Arbitrator is allowed to issue preliminary relief (Article 186(3) Swiss Private International Law Act and, mutatis mutandis, Articles R39 and R55 CAS Code), and (ii) the nature of the disciplinary breach by the Player, which requires no factual clarification or any testimony to this effect.”

C. The IOC

44. The IOC submitted an email with comments on the matter.

45. The IOC stated that the CAS has jurisdiction over “[a]ny dispute arising on the occasion of, or in connection with, the Olympic Games” (Rule 61.2 of the Olympic Charter) and that CAS has consistently decided that “International Federations (IF) cannot “limit that jurisdiction” in their regulations, when it comes to Olympic competition (Arbitration CAS ad hoc Division (OG Tokyo) 20/010 & 20/011, para 33 et seq.). Therefore the jurisdiction is not in question.”

46. The IOC added that such jurisdiction does not prevent an international federation from excluding the review of matters like field of play.

V. JURISDICTION AND ADMISSIBILITY

47. The Applicants are of the view that the jurisdiction of the CAS is based on, *inter alia*, the Olympic Charter, the CAS Arbitration Rules for the Olympic Games and the arbitration clause contained in the entry form for the Paris Olympic Games 2024, signed by the Player. On the other hand, the jurisdiction of the CAS is challenged by the Respondent on the ground that, *inter alia*, the sanction is limited to the suspension of two matches (including the automatic match suspension which was served during the match France v. Brazil) which does not meet the requirements provided for under Article 50.3(b) of the FIFA Statutes 2024 and, therefore, does not allow the Applicants to appeal the Decision.

48. 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”.

49. 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.”

50. The arbitration clause contained in the entry form for the Paris Olympics 2024 and signed by the Player states the following:

“ARBITRATION

The Court of Arbitration for Sport is exclusively competent to finally settle all disputes arising in connection with my participation in the Games Unless otherwise agreed inwriting by the IOC, any dispute or claim arising in connection with my participation at the Games, not resolved after exhaustion of the legal remedies established by my NOC, the International Federation governing my sport, Paris 2024 and the IOC, shall be submitted exclusively to the Court of Arbitration for Sport (“CAS”) for final and binding arbitration in accordance with the Arbitration Rules for the Olympic Games, and the Code of Sports-related Arbitration. The seat of arbitration shall be in Lausanne, Switzerland and the language of the proceedings English. The decisions of the CAS shall be final, binding and non-appealable, subject to the action to set aside to the Swiss Federal Tribunal. I hereby waive my right to bring any claim, arbitration or litigation, or seek any other form of relief, including request for provisional measures, in any other court or tribunal, unless otherwise agreed in writing by the IOC.”

51. The Regulations for the Olympic Football Tournaments Games of the XXXIII Olympiad Paris - Final Competition (December 2023) states in Article 9:

“... 9.3 The Participating Member Associations and Delegation Members acknowledge and accept that, once all internal channels have been exhausted at FIFA, their sole

recourse shall be to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, unless excluded or if the decision is declared final, binding and not subject to appeal. Any such arbitration proceedings shall be governed by the CAS Code of Sports-related Arbitration.”

52. The Sole Arbitrator notes that the arbitration clause contained in the Olympic charter and confirmed in the entry form for the Paris Olympics 2024 are drafted in broad terms and include any dispute that arises during the Olympic Games to be resolved by arbitration. Such arbitration jurisdiction is binding on all Parties.
53. The same is confirmed in the following CAS jurisprudence:

OG 20-010&011

“The fact that the WA Technical Rules provide that there is no appeal to the CAS from a decision of a Jury of Appeal does not derogate from the jurisdiction awarded in the Olympic Charter to the CAS. The arbitration clause contained the Olympic Charter, confirmed in the entry form for the Olympic Games, binds the athletes and also the International Federations and the National Olympic Committees. The athletes are bound by their acceptance on signing the entry form; the International Federations and National Olympic Committees are bound as being deemed to have subscribed to the arbitration clause in the Olympic Charter 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.” Emphasis added

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“The question, however, is, in such context, whether the jurisdiction of the Sole Arbitrator, so founded, is limited by IAAF CR 146.7 and/or by the “field of play” decision doctrine: both the rule and the doctrine, in fact, could seem (and have been invoked) to exclude the possibility for the CAS to entertain an appeal against the Decision issued by the Jury of Appeal of IAAF, as taken on the “field of play”.

The Sole Arbitrator notes, in such respect, that IAAF CR 146.7, as well as the “field of play” decision doctrine, do not directly interfere with the arbitration clause, drafted in broad terms in the Olympic Charter. Article 59 of the Olympic Charter sets a principle which cannot be derogated from by an International Federation, through its internal rules: jurisdiction to CAS, with respect to disputes “arising out of, or in connection with, the Olympic Games”, is given by the Olympic Charter, and not by the rules of the various International Federations, which cannot, therefore, limit it. A different solution, on a more general level, would contradict the spirit of the orderly administration of the Olympic Games, in a single context of legal remedies available for the settlement of disputes to the exclusion of State jurisdiction, underlying the very setting up of the OG Division.” Emphasis added

54. To conclude, the general jurisdiction of the CAS Ad hoc Division during the Olympic Games is clearly established in the present case. However, the question of the scope of review by the same Ad hoc Division needs to be examined in the light of the FIFA regulations and of the CAS case law. In particular, it must be reviewed if the scope of review is restricted by the limitations contained in Article 50.3(b) of the FIFA Statutes

2024, a provision which determines the CAS jurisdiction outside the Olympic Games, stating that “CAS, however, does not deal with appeals arising from: [...] suspension of up to four matches or up to three months (with the exception of doping decisions)”. This issue shall be addressed in the section relating to the merits of the case.

55. In view of the above, the Sole Arbitrator considers that the CAS Ad hoc Division has jurisdiction to hear the present matter.
56. The proceedings before the CAS have been filed on 5 August 2024 to appeal the decision of 4 August 2024. The Application complies with the formal requirements of Article 10 of the CAS Ad hoc Rules and no objections were raised by the Respondent as to the admissibility of the matter. Accordingly, the Sole Arbitrator considers that the application filed by the Applicants is admissible.

VI. APPLICABLE LAW

57. 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.*"
58. The Sole Arbitrator notes that the “applicable regulations” in this case are those of FIFA, namely: its Statutes, the FDC, the Olympic Football Tournaments Games of the XXXVIII Olympiad Paris 2024 Paris and Circulars sent by FIFA.

VII. LEGAL FRAMEWORK

59. 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.
60. 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*".

VIII. REASONING

61. In analysing the merits of this case, the Sole Arbitrator must apply the “*applicable regulations*” which, as previously noted, include the FIFA Statutes. Article 50.3(b) of such Statutes provides that CAS will not deal with appeals arising from “*suspensions of up to four matches or up to three months...*”. Applicants claim they are not challenging the two-match suspension but, rather, challenging the underlying determination of the applicability of Rule 14.1(e) of the FDC. However, the Sole Arbitrator notes that the natural consequence of this challenge is, in fact, to challenge the two-match suspension. The nexus is direct and cannot be separated. As such, the Sole Arbitrator finds that the appeal must be dismissed considering that the suspension is below 5 matches.

62. In addition, the merits of the case as summarised in the Applicants' arguments all relate to the application of Article 14 of the FDC and the different subparagraphs of the aforementioned provision. The Applicants assert that "*they do not intend to review the decision made by the referee in the field of play, which is final. In this sense, the referee's decision is not called into question*" (Application para. 37). However, Article 14 of the FDC regulates field of play matters. The question of whether the incident may be considered as an "*unsporting behaviour*" or a "*serious foul play*" does not change the fact that both descriptions fall under the category of field of play decisions. Finally, the Applicants' underlying factual arguments are all submitted as proof that the referee's decision that the incident involving the Player was "*serious foul play*" as opposed to "*unsporting behaviour*" was incorrect.
63. When rendering the Decision, the FIFA Disciplinary Committee merely relied on the qualification of the offense contained in the Referee's and Match Officials' Reports as "*serious foul play*" (see para. 26 of the Decision) and applied the minimum sanction provided for under the disciplinary rules for said offense, *i.e.*, Article 14.1(e) of the FDC. As an additional remark, assuming that there would be some latitude to review the FIFA decision challenged, the Sole Arbitrator finds that, in order to change the qualification of the offense from "*serious fouls play*" to "*unsporting behaviour*", she would have to review the conclusions drawn by the referee and match officials and that such conclusions constitute field of play decisions.
64. It is very well established in CAS jurisprudence that, for a CAS Panel to overturn a field of play decision, there must be direct evidence that establishes, to a '*high hurdle*', bad faith or bias (CAS OG 00/013; CAS OG 16/028), or, for example, that the decision was made as a consequence of corruption (CAS OG 00/013) or arbitrarily (CAS OG 12/010). CAS arbitrators are not, unlike on-field judges, selected for their expertise in the particular sport and do not review the determinations made on the playing field concerning the "*rules of the game*" in circumstances where there was no fundamental violation of the Respondent's own rules (CAS OG 00/013).
65. In any event, as the case concerns discussions connected to field of play and the Applicants did not argue – and consequently failed to establish – that one of the special circumstances mentioned above applied to this case, the Sole Arbitrator does not see how Article 14.1(b) would apply instead of Article 14.1(e) of the FDC, as proposed by the Applicants.

IX. COSTS

66. According to Article 22 para. 1 of the CAS Ad hoc Rules, the services of the CAS Ad hoc Division "*are free of charge*".
67. 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*".
68. Consequently, and in spite of the Respondent's request that the Applicants be ordered to bear the full costs of these arbitration proceedings, there shall be no order as to costs.

X. CONCLUSION

69. In view of the above considerations:

- a. the Sole Arbitrator finds that she has jurisdiction to decide on the case; and
- b. the Applicants' application filed on 5 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 Marta Vieira da Silva, Comitê Olímpico do Brasil (COB) and Confederação Brasileira de Futebol (CBF) on 5 August 2024 is dismissed.

Operative part: Paris, 6 August 2024

Award with grounds: Lausanne, 16 August 2024

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Laila El Shentenawi
Sole Arbitrator