



**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**

sitting in the following composition:

President: The Hon. Dr Annabelle Bennett  
Arbitrators: Ms Carine Dupeyron  
Ms Kristen Thorsness OLY

**AWARD**

in the arbitration between

Nayoka Clunis  
.....(the "Applicant")

and

Jamaica Athletics Administrative Association (JAAA)  
..... (the "Respondent")

and

World Athletics  
Jamaica Olympic Association  
International Olympic Committee  
Iryna Klymets  
Ukrainian Athletic Association  
.....(the "Interested Parties")

## **I. PARTIES**

1. The Applicant is Nayoka Clunis (Applicant or Athlete).
2. The Respondent is the Jamaica Athletics Administrative Association (JAAA).
3. The First Interested Party is World Athletics (WA).
4. The Second Interested Party is the Jamaica Olympic Association (JOA).
5. The Third Interested Party is the International Olympic Committee (IOC).
6. The Fourth Interested Party is Iryna Klymets.
7. The Fifth Interested Party is the Ukrainian Athletic Association (UAA).

## **II. FACTS**

8. The relevant facts for this dispute will be referred to by the Panel in the jurisdiction section of this Arbitral Award.

## **III. THE GROUNDS OF THE APPEALED DECISION**

9. The Applicant did not identify a specific decision to be challenged.

### **THE CAS PROCEEDINGS**

10. On 18 July 2024 at 08:30 (time of Paris), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondent.
11. On 18 July 2024 at 14:24 (time of Paris), the CAS Ad Hoc Division notified the Application to the Respondent and the Interested Parties and invited them to file their respective written submissions by 19 July 2024 at 18:00 (time of Paris).
12. On 18 July 2024 at 15:55 (time of Paris), the CAS Ad Hoc Division notified the Parties of composition of the Arbitral Tribunal:
  13. President: The Hon. Dr Annabelle Bennett
  - Arbitrators: Ms Carine Dupeyron  
Ms Kristen Thorsness OLY
14. On 18 July 2024 at 18:20 (time of Paris), Ms Dupeyron communicated a disclosure for the attention of the parties and interested parties but confirmed that she considered herself independent and impartial to hear the case.
15. On 18 July 2024 at 22:42 (time of Paris), the CAS Ad Hoc Division invited the parties and interested parties to state whether they had an objection to the appointment of Ms

Dupeyron as arbitrator by 19 July 2024 at 14:00 (time of Paris). The Applicant confirmed that she had no objections and none of the Parties or Interested Parties raised an objection to such appointment.

16. Within the given time limit, the Interested Parties filed their written submissions. However, the Respondent did not file any written submissions within the given time limit.
17. On 20 July 2024 at 16:00 (time of Paris) a hearing was held by videoconference with the participation of the following persons, in addition to the Panel and Antonio de Quesada, Head of Arbitration to the CAS:

For the Applicant:

- Ms Nayoka Clunis (the Applicant)
- Dr Emir Crowne (Counsel)
- Mr Sayeed Bernard (Counsel)

For the JAAA:

- Mr Mike Morgan (Counsel)
- Mr Ben Cisneros (Counsel)

For the IOC:

- Mr Antonio Rigozzi (Counsel)
- Mr Eolos Rigopoulos (Counsel)

For the WA:

- Ms Catherine Pitre (Counsel)
- Mr Carlo de Angeli (Expert)
- Mr Marton Gyulai (Expert)

For the JOA:

- Mr Ian Wilkinson KC

18. There were no objections to the composition of the Panel. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and confirmed that their right to be heard and to be treated equally was respected.

#### **IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF**

19. 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**

20. The Applicant's submissions may be summarised, in essence, as follows:

- Because of an administrative error and the impact of Hurricane Beryl, the JAAA neglected to submit the Athlete's name to WA for the Paris Olympic Games.
- This situation is exceptional. Here, a qualified and selected athlete stands to lose her spot at the Olympics due to events that were entirely outside of her control. Yet she is the one who would suffer (and has suffered) the most. This cannot be right.
- It is the very reason the CAS Ad Hoc Division exists: to provide swift justice for Olympics disputes and situations that would otherwise go unremedied.

###### **b. Applicant's Requests for Relief**

21. The Applicant requests the CAS Ad Hoc Division to:

- direct that her name be included on the appropriate list (and anything incidental thereto);
- direct the JAAA to implement remedial measures to ensure this does not happen again, for the athlete's sake and the wider sporting community; and/or
- any other relief or remedy the Panel may deem just in the circumstances.

##### **B. The Respondent**

###### **a. Respondent's Submissions**

22. The Respondent did not file written submissions but appeared and made submissions at the hearing. The Respondent confirmed that the Applicant was not included in the Event Entry System due to error.

###### **b. Respondent's Requests for Relief**

- The Respondent requested at the hearing that the Athlete be included by WA in the Event Entry System.

##### **C. The Interested Parties**

23. The IOC contested the jurisdiction of the CAS Ad hoc Division for the following reasons:

- the IOC notes that the Applicant bases the jurisdiction of the CAS Ad Hoc Division on “the arbitration clause inserted in the official entry form of the O.G.”,<sup>1</sup> which does invoke Article 61 of the Olympic Charter. However, the Applicant does not produce a duly executed entry form and the IOC understands that she was not provided with any such form;
- the IOC notes that the Applicant does not list a specific decision she is challenging; and
- the Applicant’s own Application Form confirms that the dispute arose before 16 July 2024, as it indicates that “this is a ‘dispute arising on the occasion of, or in connection with, the Olympic Games’ (and one which has continued into the 10 days preceding the Opening Ceremony [...])”. Indeed, by stating that the dispute “has continued into the 10 days preceding the Opening Ceremony”, the Applicant acknowledges that the dispute came into existence earlier than that.

24. WA opposed to the Applicants application for the following reasons:

- WA has, in accordance with its published qualification system, communicated eligible and qualified athletes for entry to the Member Federations and to the IOC on 5 July 2024.
- In accordance with its published qualification system, WA has reallocated the place to the next qualified athlete and would oppose another athlete and Member Federation being penalised as a result of the omission of the JAAA.

25. JOA stated that it is “*purely a conduit for the decisions of WA in facilitating completion of Jamaica’s athletics competition list for the OG but it did not refer to the merits of the case*”.

## **V. JURISDICTION AND ADMISSIBILITY**

26. 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”.*

27. 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.”*

28. This Panel has been formed under the Arbitration Rules applicable to the CAS ad hoc division for the Olympic Games (“the Rules”). Article 1 of the Rules provides that the relevant dispute must **arise** during the Olympic Games or **during a period of ten days preceding the Opening Ceremony of the Olympic Games** (emphasis added).
29. The Opening Ceremony for the Paris Olympic Games is 26 July 2024.
30. The IOC has specifically raised the question of jurisdiction, submitting that the dispute is not covered by Article 61 of the Olympic Charter and that the dispute did not arise during the relevant 10-day period.
31. To determine whether the Panel has jurisdiction, it is necessary to consider the chronology of relevant events concerning the Athlete, as ascertained from the evidence provided by the Athlete in her Application, together with some additional evidence provided during the hearing.

### **Chronology**

32. 20 December 2022: WA published its qualification system for the Paris Olympic Games. This provided, inter alia, that there would be 32 entries in field events (including the hammer throw) for each of the men’s and women’s categories.
33. 19 June 2024: the WA Competition Department held an information session for Member Federations regarding the qualification system, relevant deadlines and reallocation procedure.
34. 2 July 2024: WA confirmed the list of athletes qualified by Entry Standard and the World Rankings and qualified those athletes through that system. Ms Clunis was identified as eligible for nomination through her World Ranking position, which was 23rd. In that communication, WA reminded Member Federations to submit their pre-entries with a deadline of 4 July 2024, midnight Monaco time. That communication stated that athletes who were not included in the Event Entry System would not be considered for the Paris Olympic Games. It also stated that, by submitting the pre-entries, the Member Federations would allow WA to know which qualified athletes were going to participate in each event and that it would, therefore, reallocate any unused quota places to the next best available athlete by world rankings.

35. 3 July 2024: the Applicant was informed by the JAAA that, based on her WA ranking, she had been selected to compete in the Olympic Games Paris 2024. The Panel notes that there is no dispute that the Athlete was entitled to be selected to represent Jamaica at the Paris Olympic Games
36. 4 July 2024: The Applicant was informed of the deadline for submission of pre-entries. There is no direct evidence of exactly when the JAAA submitted its list but it is not in dispute that it was submitted by the deadline. That list did not include the name of the Athlete.
37. 5 July 2024: WA reallocated places to the next best ranked athletes named by their Member Federations, based on the remaining number of places available. The available place in hammer throw (as the Athlete's name was not on the list submitted by the JAAA) was allocated to another athlete from Ukraine.
38. 5 July 2024: on the same day, WA informed Member Federations and the IOC of athletes qualified and eligible for entry to the Paris Olympic Games.
39. 6 July 2024: the President of the JAAA wrote by email to WA setting out the JAAA's error in not including the Athlete in the Event Entry System which was, he said, due to the inputs being done on the day of the approaching hurricane, Hurricane Beryl. He spoke of the inability to rectify this error prior to submission due to the impact of Hurricane Beryl on electricity and internet access in Jamaica. The JAAA requested that the Athlete be added to the list of pre-entries that had been submitted.
40. 7 July 2024: the JAAA issued a press release containing the names of the track and field athletes selected to represent Jamaica at the Olympic Games Paris. The Athlete's name was included on that list for the Hammer event.
41. 7 July 2024: the Athlete's coach informed the athlete that she was not on Jamaica's list of athletes. The Athlete (apparently by text message) contacted the President and General Secretary of the JAAA, the latter of whom responded that she was aware that the Athlete's name was:

*“inadvertently left off the list of athletes ratified by world athletics for the hammer throw event. As is usual all athletes selected by the JAAA are entered into the WA entry system as soon as the team is selected, days before the final deadline. The list submitted is rechecked before the deadline for changes. Unfortunately due to the intervention of hurricane Beryl and it's (sic) impact on the electricity and internet, we were unable to recheck the list. When we were able to do this we realized the omission and have written to WA about the situation. They are in discussion about the matter and we expect a decision soon”.*
42. 7 July 2024: WA published the final list of athletes certified to compete in the Paris Olympic Games.
43. 8 July 2024: this was the deadline for the Final Entries list of participating athletes in the Paris Olympic Games (at 23:59 Central European Summer time) to be sent to the IOC. This list, relevantly of Jamaican athletes approved and certified by WA, was provided by the National Federation, the Jamaica Olympic Association. The list did not include the name of the Athlete.

44. 8 July 2024: the Director of the Competition and Events Department of WA (“the Director”) responded to the President of the JAAA that WA could not grant the request to include the Athlete’s name as the 32 places in the hammer throw had been completed by the reallocation of 5 July 2024, in accordance with the published qualification system. The Director said that he had discussed the Athlete’s situation with the President of WA but the best solution that he could offer was that WA would include the Athlete if there were to be an entry cancellation or withdrawal in her event, in accordance with the IOC’s Late Athlete Replacement Policy. He asked the President of the JAAA to accept that WA had to follow the rules and regulations.
45. 12 July 2024: the Athlete was informed by the President of the JAAA that he had been speaking with the IOC and WA and that they should be meeting on July 15th or 16th about her matter.
46. 15 July 2024: the President of the JAAA wrote to the Director, referring to the response of 8 July, saying that he writes **“to remind you that this unfortunate situation was due to the devastation caused by hurricane Beryl!”** (emphasis added) and asking again that the Athlete be included in the list of athletes to compete, even if there were no withdrawal or cancellation by another athlete.
47. 16 July 2024: the President of the JAAA informed the Athlete that there was no update. On the same date, the JAAA renewed its request for the addition of the Athlete to its list of pre-entries, regardless of whether a place became available.
48. 18 July 2024: the Athlete filed her Application with the CAS Ad Hoc Division.

**Did the dispute arise within the ten-day period preceding the Opening Ceremony of the Paris Olympic Games?**

49. In the Application, the Athlete has not nominated a decision from which she appeals; the section of the Application asking for the details of the decision challenged, if any, is left blank. It is to be recalled that the Respondent is the JAAA and that the relief sought, while seeking *“any other relief or remedy that the Panel may deem just in the circumstances”* can only be sought against the respondent to the application.
50. From the chronology set out above, it is apparent that the dispute as between the Athlete and the JAAA could be said to have arisen on 4 July 2024 - when the Athlete’s name was omitted from the list sent to WA, on 7 July 2024 – when the Athlete was informed by the JAAA that her name was not on the list sent to WA by the JAAA, or on 8 July 2024 – when WA informed the JAAA that the Athlete’s name could not be added to the list of competitors.
51. It is clear that all of these dates are beyond the time limit required for the Panel of the ad hoc Division for the Paris Olympic Games to have jurisdiction.
52. The Athlete recognises that jurisdiction “is a hurdle”. She submits that she was unaware of the “particulars” of WA’s position prior to the receipt of WA’s submissions to this Panel on 19 July 2024, the day after her Application was filed. Thus, she submits, the dispute only crystallised and therefore only arose on that date, before which she did not know that “the matter was over”. This seems to the Panel to be a reference to the



consequences of the errors by the Respondent and attempts to ask WA to rectify those errors rather than a reference to knowledge of the actions of the Respondent, the JAAA.

53. The Panel cannot accept this submission. The relevant date is when the dispute between the Athlete and the JAAA arose, not when it could be said to have “*crystallised*” by the receipt of submissions from WA as an interested party. A dispute does not arise when all steps to resolve the dispute have failed. The dispute either arose when the Athlete became aware that her name had not been included on the list submitted by the JAAA to WA, or when she first became aware that the mistake would not, or could not, be rectified by WA. The Panel does not need to decide which of these dates apply as both are beyond the 10 days prior to the Opening Ceremony of the Paris Olympic Games.
54. The Athlete and the JAAA then submitted that the dispute arose on 15 July 2024, when the President of the JAAA wrote to WA as set out above, to which there was no response prior to the filing of the Application on 18 July 2024.
55. This clearly cannot be said to be the date when the dispute arose. First, this is not when the dispute between the Athlete and the JAAA arose by reason of the omission of her name. Secondly, jurisdiction cannot be invoked, and a dispute said to have arisen, by repeating a request to resolve a problem. Thirdly, it is clear from the terms of the letter of 15 July 2024 that it refers back to the letter of 8 July 2024 in which WA set out its position and “reminds” WA of its earlier correspondence. Thus, it is effectively a reiteration of the JAAA’s position. In any event, the date of 15 July 2024 is beyond the temporal jurisdiction of the CAS ad hoc Division.
56. The Panel concludes that it has no jurisdiction in this case as the dispute arose prior to a period of ten days preceding the Opening Ceremony of the Paris Olympic Games. Having determined that the Panel does not have jurisdiction for this reason, it is unnecessary to consider whether there is jurisdiction under Rule 61 of the Olympic Charter.
57. The Panel has been urged by the Athlete and by the JAAA to assume jurisdiction to remedy situations “that would otherwise go unremedied” (as sought in the Application) or where it was convenient to do so.
58. The Panel fully recognises and appreciates the unfairness to the Athlete of the events that have occurred and of the impact on her of being deprived of the opportunity to compete in the Paris Olympic Games. Unfortunately, this does not enable the Panel to assume jurisdiction where it does not exist under the Arbitration Rules for the Olympic Games.

#### **Further observations**

59. The Panel did hear from the parties on the merits of the case and submissions from the Athlete and the JAAA as to orders sought to be made against WA and the IOC to increase the quota for the hammer throw and to permit the Athlete to compete in that event, or otherwise to reallocate to her the position previously allocated to the athlete from Ukraine.
60. The Panel does not go into a detailed consideration of those merits but does observe that there is no relief identified by the Athlete as against the Respondent, the JAAA, that

can be said to have any utility at this time in achieving the outcome of allowing her to compete in her event. Submissions were made at the hearing that orders should be made as against WA and the IOC, who participated in the hearing as Interested Parties. No application was made to join them as Respondents.

61. In the circumstances, the Panel does not comment further on the merits.

## **VI. COSTS**

62. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division “are free of charge”.

63. 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*”.

## **VII. CONCLUSION**

64. In view of the above considerations, the CAS Ad Hoc Division has no jurisdiction to hear the Applicant’s application filed on 18 July 2024.

## **DECISION**

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

The CAS Ad Hoc Division does not have jurisdiction to hear the application filed by Nayoka Clunis on 18 July 2024

Award with grounds: Paris, 22 July 2024

## **THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT**

The Hon. Dr Annabelle Bennett  
President of the Panel

Ms Carine Dupeyron  
Arbitrator

Ms Kristen Thorsness OLY  
Arbitrator