



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/7789 Kacper Falon v. Polish Anti-Doping Agency & World Anti-Doping Agency (WADA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Jeffrey G. Benz, Attorney-at-Law and Barrister in London, United Kingdom

in the arbitration between

Kacper Falon, Bialystok, Poland

Represented by Dr Marcin Ungier & Mr Maciej Bielecki of Uniger Gliniewicz and Partners Law Firm in Warsaw, Poland

Appellant

and

Polish Anti-Doping Agency, Warsaw, Poland

Represented by the Polish Anti-Doping Agency in Warsaw, Poland

Respondent 1

World Anti-Doping Agency, Montreal, Canada

Represented by Mr Ross Wenzel of the World Anti-Doping Agency and Mr Adam Taylor & Mr Anton Sotir of Kellerhals Carrard in Lausanne, Switzerland

Respondent 2

I. PARTIES

1. Kacper Falon (“Appellant” or “Mr Falon”) was at all relevant times a professional football player playing for Miejski Klub Pitkarski Pogon Siedlce (“Club”), which is affiliated to the Polish Football Association and competes in the third tier of the Polish football leagues.
2. The First Respondent, Polish Anti-Doping Agency (“POLADA” or “First Respondent”) is the World Anti-Doping Agency (“WADA”)-recognized National Anti-Doping Organization (“NADO”) for Poland, based in Warsaw. POLADA promulgates the Polish Anti-Doping Rules (“POLADA ADR”).
3. The Second Respondent, WADA, is a Swiss private foundation. It is the international independent agency that heads the world’s anti-doping movement in sport (including promulgating a standard anti-doping code, guidelines and standards for operating under that code, education programs, research, and other functions), and is recognized as such by governments and the International Olympic Committee (“IOC”) and the IOC’s recognized organizations. WADA promulgates the World Anti-Doping Code (“WADA Code”).
4. Appellant, the First Respondent, and the Second Respondent shall be referred to herein in the singular as “Party” and collectively as “Parties.”
5. What is before the Sole Arbitrator at the moment is a request by WADA to bifurcate the proceedings to address jurisdiction first and then, if jurisdiction is found to be present, to address the merits. The Sole Arbitrator agrees with this approach and this Award addresses only the issue of jurisdiction.

II. FACTUAL BACKGROUND

A. Background Facts

6. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced from the Parties’ written submissions. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in the Award only to the submissions and evidence the Sole Arbitrator considers necessary to explain the reasoning.
7. The facts recited below are the barest needed to address the jurisdictional issue. The underlying record is far more rich factually, but the Sole Arbitrator has not referenced facts that are not relevant to addressing the jurisdictional issue.
8. On 16 October 2019, at a location provided by the Club, and as directed by their coach, seven Club players were given an intravenous transfusion, the total volume of which was 1000ml. The transfusion consisted of a “multi-electrolyte physiological fluid”

containing glucose, magnesium and vitamins. No evidence was given that any prohibited substances were present. The infusions were given at the Medical and Diagnostic Center in Siedlce, a regional multi-center provider of outpatient services, which suggested to Mr Falon that the procedure was correct and proper in accordance with the relevant anti-doping regulations. Mr Falon accepted, in the end, that this was a prohibited method that was administered to him.

9. Disciplinary proceedings were ultimately initiated against Mr Falon before the Polish Commission Against Doping in Sport, pursuant to the Polish Anti-Doping Rules. On 5 December 2019, temporary disqualifications were imposed on the relevant athletes, including Mr Falon.

B. Proceedings Below

10. A disciplinary hearing was held on 11 December 2019, before the Disciplinary Panel of the First Instance, wherein all of the athletes involved accepted that they had committed an anti-doping rule violation by receiving the infusions. The Disciplinary Panel of the First Instance accepted the players' explanations and admissions as credible and limited their sanction to two years but went on to find that the players had offered substantial assistance and suffered from youth, lack of education, and inexperience in anti-doping matters, and issued a reduced sanction of six months ineligibility.
11. On 20 May 2020, WADA lodged an appeal to the POLADA Disciplinary Panel of the Second Instance. WADA's position on the merits was that the reduction from four years to two years was ungrounded given that the violation had been found to be intentional, and that the further reduction based on substantial assistance was also without basis.
12. The Disciplinary Panel of the Second Instance held its hearing on 15 January 2021 and issued its decision on 20 January 2021, wherein the Disciplinary Panel determined that a four-year period of ineligibility was to be imposed. The complete decision with reasons was delivered to the Appellant on 9 February 2021.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

13. Mr Falon filed his Statement of Appeal before CAS on 2 March 2021 pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration ("CAS Code").
14. On 5 May 2021, the CAS Court Office confirmed the Parties' agreement to proceed with a sole arbitrator in lieu of a three-arbitrator panel.
15. On 28 June 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 of the CAS Code, had decided to appoint Mr Jeffrey Benz, Attorney-at-law and Barrister, United Kingdom, as the Sole Arbitrator in the present proceeding.
16. On 9 July 2021, WADA lodged a letter in response, challenging jurisdiction, and seeking bifurcation, and an extension of time to file its Answer until after the issues of bifurcation and jurisdiction were determined.

17. On 12 July 2021, POLADA lodged a letter in response, essentially supporting WADA's positions, and challenging jurisdiction while seeking bifurcation.
18. On 27 July 2021, the CAS Court Office communicated to the Parties that the time for filing answers by the Respondents was suspended and that the Appellant could file a response to the jurisdictional challenging letters of the Respondents by 5 August 2021.
19. On 5 August 2021, Mr Falon lodged a further submission in response to those of WADA and POLADA on the issue of jurisdiction.
20. On 30 December 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to bifurcate the present proceedings and rule on the issue of CAS jurisdiction on a preliminary basis. In the same letter, the Parties were invited to declare by 6 January 2022 whether they wished a hearing (by video-conference) limited to the issue of CAS jurisdiction or would prefer the Sole Arbitrator to issue an Award on this preliminary issue on the basis of the Parties' written submissions.
21. On 2 February 2022, the CAS Court Office informed the Parties that the Sole Arbitrator, pursuant to Article R57 of the CAS Code, who had considered the Parties' positions with respect to a hearing limited to the issue on CAS jurisdiction, deemed himself sufficiently well-informed to rule on the issue of CAS jurisdiction on a preliminary basis based solely on the Parties' written submissions, without the need to hold a hearing on this issue.
22. This decision followed.

IV. SUBMISSIONS OF THE PARTIES

23. Mr Falon's submissions, in essence, may be summarized as follows:
 - On the merits, the penalty imposed on appeal below was too harsh and the first instance-imposed penalty of six months ineligibility was the proper sanction.
 - Jurisdiction is proper here because:
 - o Article 13.2.3.2 of the POLADA ADR identifies the parties who may appeal to CAS and Mr Falon is included among the parties who may file an appeal with CAS;
 - o Article 13.6.1 of the POLADA ADR provide the time limit for appeal and that was met here.
24. Mr Falon requests the following relief:
 - a. That his appeal is admissible;
 - b. That the "*Decision of POLADA's Disciplinary Panel of the Second Instance dated 20 January 2021 . . . is revoked or set aside,*

or

declare [sic] ineligible for a period of two years beginning from 5 December 2019 and a suspension to be applied for a period of 18 months of the period of ineligibility on the basis of Substantial Assistance,

or

according to Article 10.6.1.1 of the World Anti-Doping Code 2021 – declare [sic] ineligible for a period of maximum two years, starting from 5 December 2019, on the basis of No Significant Fault or Negligence.”;

- c. That, *“Any period of provisional suspension or ineligibility effectively served by [Mr] Falon, before the entry into force of the decision of the CAS shall be credited against the total period of ineligibility to be served by the Appellant.”;*
 - d. That, *“The Appellant is granted a contribution to its legal and other costs.”;* and
 - e. That, *“POLADA and WADA bears [sic] all costs of this arbitration, including all legal fees and other expenses incurred by the Appellant in connection with its [sic] request.”*
25. POLADA, echoing submissions made days earlier in this case by WADA, and summarized below, asserts that CAS lacks jurisdiction because Mr Falon is a national level athlete without a right to appeal.
26. POLADA’s request for relief is that the Sole Arbitrator *“reject an [sic] appeal filed by [Mr] Falon cause [sic] principles described in R 47 of Code: Procedural Rules of CAS has [sic] not been met, due to lack of legal grounds.”*
27. WADA’s submission, in response to the Statement of Appeal, was that the CAS lacks jurisdiction and that the proceedings should be bifurcated, and the issue of jurisdiction should be addressed first. In support of its request for a finding of lack of jurisdiction, WADA argues that Mr Falon is a national level athlete and that national level athletes only have a right of appeal to a national-level reviewing body, and a further right of appeal to CAS is available only to certain international Anti-Doping Organizations but not to athletes. WADA argues that it is undisputed that Mr Falon is not an international-level athlete with a right of appeal against the second instance body here under the applicable rules.
28. WADA’s requests for relief appear to be dismissal on the basis of lack of jurisdiction, and that *“the Appellant should bear the full CAS arbitration costs and make a significant contribution to the legal and other costs of WADA in connection with these proceedings.”*
29. In response, Mr Falon lodged a letter that sets forth his position on his right to avail himself of CAS on appeal. In that letter, Mr Falon asserts in summary that:

- a. There is a discrepancy in the wording of the POLADA ADR in Polish, and the English language of the WADA Code, that suggests that Mr Falon’s position on jurisdiction is correct;
- b. The use of the word “also” in the list of those entitled to appeal to CAS in the POLADA ADR means that that list is in addition to the prior list, which prior list includes the athlete here;
- c. POLADA had made an announcement on 22 December 2020 wherein it indicated, among other things, that “*In disciplinary cases handled by the Disciplinary Panel of the First Instance, an appeal may be made to the Disciplinary Panel of the Second Instance. The next step will be only CAS . . . The Arbitration Tribunal for sport at the Polish Olympic Committee is excluded from the procedure.*” Mr Falon argues that this indicates that CAS is the next stop for all, or at least his, appeal emanating from the Disciplinary Panel of the Second Instance.”
- d. POLADA in the decision of 18 May 2021, issued after Mr Falon’s request for reduction in the period of ineligibility, a basis for rejection was stated by POLADA that the decision of the Disciplinary Panel of the Second Instance was not yet final because of the appeal filed by Mr Falon with CAS, and that this somehow indicates acceptance by POLADA of CAS jurisdiction.
- e. A situation where POLADA’s own internal dispute bodies were the only avenues to challenge decisions taken by POLADA “*would not be fair.*”

V. JURISDICTION

30. Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

31. As a starting point, the Sole Arbitrator must look to the relevant rules that ground this appeal to determine if jurisdiction is present.
32. Since the adoption of the World Anti-Doping Code (“WADA Code”) in 2003, national-level athletes have had a right of appeal only to a national-level reviewing body. A further right of appeal to the CAS is available only to certain international Anti-Doping Organisations (but not to athletes).
33. In particular, Article 13.2.3 of the 2021 WADA Code provides that “[f]or cases under Article 13.2.2 [i.e. when the case does not involve an international-level athlete], WADA, the International Olympic Committee, the International Paralympic Committee, and the

relevant International Federation shall also have the right to appeal to CAS with respect to the decision of the appellate body". (emphasis added). See also Article 13.2.3 of the 2003 WADA Code, which provides that "[f]or cases under Article 13.2.2, WADA and the International Federation shall also have a right to appeal to CAS with respect to the decision of the national-level reviewing body".

34. Since the entry into force of the 2015 WADA Code, this provision was extended to also include the International Olympic Committee and the International Paralympic Committee: "For cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal to CAS with respect to the decision of the national-level appeal body".
35. Article 13.2.3 of the WADA Code is one of the articles that must be implemented by NADOs, such as POLADA, in their respective regulations literally, without any substantive change. See Article 23.2.2 of the 2021 WADA Code. In any event, the Introduction to the WADA Code provides that "[a]ll provisions of the Code are mandatory *in substance* and must be followed as applicable by each Anti-Doping Organization and Athlete or other Person" (emphasis added).
36. Contrary to the position of Mr Falon, and consistent with the 2021 WADA Code, the 2021 POLADA Anti-Doping Rules ("POLADA ADR"), which were in force when the Appealed Decision was issued and when the Athlete filed his appeal before the CAS, do not provide national-level athletes (including the Athlete) with a right of appeal to CAS against the decisions rendered by the POLADA Disciplinary Panel of the Second Instance (*in casu* the Appealed Decision). Rather, they reflect the requirements of the WADA Code with respect to the limited appeal avenues available in national-level cases (as described above):
 - a. It is not disputed that the Athlete is not an international-level athlete and, therefore, Article 13.2.1 of the POLADA ADR does not apply.
 - b. Article 13.2.2 of the POLADA ADR concerns appeals before the POLADA Disciplinary Panel of the Second Instance. It does not contain a list of persons entitled to appeal first-instance decisions.
 - c. Article 13.2.3 of the POLADA ADR is titled "*Persons Entitled to Appeal*". In particular, Article 13.2.3.2 paras. 1 and 2 POLADA ADR read as follows:

"13.2.3.2 Appeals Involving Other Athletes or Other Persons

In cases under Article 13.2.2 [i.e. when the case does not involve an international-level athlete], the following parties shall have the right to appeal: (a) the Athlete or other Person who is the subject of the decision being appealed; [...] (f) WADA.

For cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal to CAS with respect to the decision of the Second Instance Disciplinary Panel.”

- d. Contrary to what is claimed by the Appellant in his Statement of Appeal, Article 13.2.3.2 para. 1 of the POLADA ADR does not deal with appeals to CAS against decisions of the POLADA Disciplinary Panel of the Second Instance. This provision only provides for a list of persons who are entitled to appeal a first-instance decision as per Article 13.2.2, *i.e.* when the case does not involve an international-level athlete. This is also confirmed by the fact that Article 13.2.3.1 of the POLADA ADR expressly refers to “*the right to appeal to CAS*” because it relates to appeals involving International-Level Athletes, *i.e.* appeals under 13.2.1, which, again, provides that “*the decision may be appealed exclusively to CAS*”. All of this reflects the fact that national-level athletes have only a right to appeal the first-instance decision before the POLADA Disciplinary Panel of the Second Instance.
37. Article 13.2.3.2 para. 2 of the POLADA ADR provides that when the case does not involve an international-level athlete, certain international Anti-Doping Organisations (including WADA) “*shall also have the right to appeal to CAS with respect to the decision of the Second Instance Disciplinary Panel*”. In other words, in addition to being able to appeal first-instance decisions as provided in Article 13.2.3.2 para. 1, WADA, the International Federation, the IOC and the IPC may also appeal the second-instance decision to CAS; *a contrario*, it is clear that athletes do not have such a right of appeal.
38. The reference in Article 13.2.2.3.4 POLADA ADR that the decision of the POLADA Disciplinary Panel of the second instance “*may be appealed as provided in Article 13.2.3*” refers to the right of appeal before the CAS as per Article 13.2.3.2 para. 2. As set out above, this does not include a right of appeal for national-level athletes.
39. In any event, the 2021 POLADA ADR, at Article 24.3, provide expressly that the provisions of the POLADA ADR shall be interpreted in a manner that is consistent with application provisions of the WADA Code.
40. With regard to Mr Falon’s argument that the asserted language discrepancies between the POLADA ADR and the WADA Code provide him with a right of appeal to CAS, Article 24.3 of the POLADA ADR makes clear that the POLADA ADR must be interpreted in a manner consistent with the WADA Code. The provisions of Article 13 of the WADA Code could not be clearer in English that the appeal right to CAS does not lie with a national level athlete, and inartful native language translation into Polish, if it even exists here, would, under Article 24.3 of the POLADA ADR, be of no assistance to Mr Falon’s position.

41. With respect to the POLADA announcement of 22 December 2020, at least in the English version provided, the point of that announcement appears to be to make clear that the Arbitration Tribunal for sport at the Polish Olympic Committee would be excluded from appeals of doping cases, not as Mr Falon seemingly hopes to pronounce a general rule on the applicability of CAS to all anti-doping cases. In any event, announcements of POLADA on this subject would of no legal moment insofar as the POLADA ADR, which must be interpreted consistently with the WADA Code, make clear that national-level athletes have no right of appeal to CAS.
42. Mr Falon argues that the reference by POLADA in a submission it made before the Disciplinary Tribunal of the Second Instance to the effect that the request made before that tribunal to reduce the sanction length was premature because Mr Falon had filed a CAS appeal somehow indicates an admission that CAS has jurisdiction. On the sparse facts and record presented there is simply no basis for the Sole Arbitrator to find that somehow POLADA has waived its current argument that there is no jurisdiction before CAS, but a reading of the summary suggest that POLADA simply was arguing that the CAS appeal has created uncertainty in the outcome of any concurrent proceeding before the Disciplinary Tribunal of the Second Instance and therefore that proceeding should have to wait until the uncertainty was resolved. Even Mr Falon did not go so far as to assert it was an express waiver of the arguments made by POLADA here. Putting all of that aside, WADA still has the right in this proceeding to assert arguments here about jurisdiction, and indeed the Sole Arbitrator is required to review jurisdiction on his own initiative, so no matter what POLADA might have said below, jurisdiction before CAS remained a ripe issue subject to review and decision. That decision has been made here.
43. Finally, Mr Falon argues, in summary, that with POLADA serving as prosecutor, and administering a first instance and appellate instance tribunal, “*there would be no authority that could control POLADA’s decisions*” and “*such conduct would not be fair.*” These are interesting policy issues to be decided by someone or some entity other than the Sole Arbitrator. The Sole Arbitrator is constrained to examining the relevant provisions conferring, or not conferring, jurisdiction, and any relevant underlying facts. Here, the relevant provisions do not work in favor of Mr Falon’s arguments. Accordingly, this argument is rejected.
44. In summary, in the view of the Sole Arbitrator, it is clear from Article 13 of the POLADA ADR that athletes have no right of appeal against the decision of the second instance body. Moreover, the POLADA ADR state that they must be interpreted in accordance with the World Anti-Doping Code (*see* Article 24.3 of the POLADA ADR). If the Appellant’s interpretation were accepted, it would mean that the POLADA ADR violate a fundamental, mandatory and age-old principle that only certain international Anti-Doping Organisations (and not athletes) can appeal against the decision of the second instance reviewing body in national-level cases. This could not possibly have been the intention of the POLADA ADR drafters.
45. Accordingly, the Sole Arbitrator determines that CAS is not seized of jurisdiction here and the case should be dismissed.

VI. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. CAS has no jurisdiction to hear the appeal filed by Kacper Falon on 2 March 2021.
2. (...).
3. (...).

Seat of arbitration: Lausanne, Switzerland
Date: 20 February 2025

THE COURT OF ARBITRATION FOR SPORT

Jeffrey Benz
Sole Arbitrator