

Tribunal Arbitral du Sport



Court of Arbitration for Sport

CAS Mediation Rules

(in force as from 1 September 2013; amended on 1 January 2016)

Pursuant to Articles S2 and S6 paragraphs 1 and 10 of the Code of Sports-related Arbitration, the International Council of Arbitration for Sport adopts the present Mediation Rules (the “Rules”).

A. DEFINITIONS

Article 1

CAS mediation is a non-binding and informal procedure, based on an agreement to mediate in which each party undertakes to attempt in good faith to negotiate with the other party with a view to settling a sports-related dispute. The parties are assisted in their negotiations by a CAS mediator.

In principle, CAS mediation is provided for the resolution of contractual disputes. Disputes related to disciplinary matters, such as doping issues, match-fixing and corruption, are excluded from CAS mediation. However, in certain cases, where the circumstances so require and the parties expressly agree, disputes related to disciplinary matters may be submitted to CAS mediation.

Article 2

A mediation agreement is one whereby the parties agree to submit to mediation a sports-related dispute which has arisen or which may arise between them.

A mediation agreement may take the form of a mediation clause in a contract or a separate agreement.

B. SCOPE OF APPLICATION OF RULES

Article 3

Where a mediation agreement provides for mediation under the CAS Mediation Rules, these Rules shall be deemed to form an integral part of such mediation agreement. Unless the parties have agreed otherwise, the version of these Rules in force on the date when the mediation request is filed shall apply.

The parties may however agree to apply other rules of procedure.

C. COMMENCEMENT OF THE MEDIATION

Article 4

A party wishing to institute mediation proceedings shall address a request to that effect in writing to the CAS Court Office.

The request shall contain: the identity of the parties and their representatives (name, address, email address, telephone and fax numbers), a copy of the mediation agreement and a brief description of the dispute.

The day on which the mediation request is received by the CAS Court Office shall be considered as the date on which the mediation proceedings commence.

The CAS Court Office shall immediately inform the parties of the date on which the mediation commences, and shall fix the time limit by which the parties shall pay their share of the administrative costs and the advance of costs pursuant to Article 14 and Appendix I of the Rules.

If the parties agree to submit an ordinary / appeal arbitration procedure to mediation, the CHF 1,000 (one thousand Swiss francs) Court Office fee paid by the Claimant / Appellant in the arbitration procedure shall be credited to the mediation procedure and used to cover the administrative costs for the mediation.

If the advance of costs is not paid by both parties and if one party does not agree to pay the share of the other party (-ies), the mediation procedure is immediately terminated.

D. APPOINTMENT OF THE MEDIATOR

Article 5

The ICAS draws up the list of mediators available to be appointed in CAS mediation procedures. The personalities whom the ICAS appoints appear on the list of mediators for a four-year period, and are thereafter eligible for reselection.

Article 6

Unless the parties have jointly selected a mediator from the list of CAS mediators, the mediator shall be appointed by the CAS President, after consultation with the parties, from among the list of CAS mediators.

In accepting such appointment, the mediator undertakes to devote sufficient time to the mediation proceedings to permit them to be conducted expeditiously.

The mediator shall be and must remain impartial, and independent of the parties, and shall disclose any facts or circumstances which might be of such nature as to call into question her/his independence in the eyes of any of the parties. Notwithstanding any such disclosure, the parties may agree in writing to authorize the mediator to continue his mandate.

In the event of an objection by any of the parties, or at her/his own discretion if she/he deems herself/himself unable to bring the mediation to a successful conclusion, the mediator shall cease her/his mandate and inform the CAS President accordingly, whereupon the latter will make arrangements to replace her/him, after consulting the parties and offering them the possibility to appoint another CAS mediator.

E. REPRESENTATION OF PARTIES

Article 7

The parties may be represented or assisted in their meetings with the mediator.

If a party is being represented, the other party, the mediator and the CAS must be informed beforehand as to the identity of such representative.

The representative must have full written authority to settle the dispute alone, without needing to consult the party she/he is representing.

F. CONDUCT OF MEDIATION

Article 8

Unless the parties have agreed to conduct the mediation in a particular manner, the mediator shall determine how the mediation will proceed, after consultation with the parties and taking due consideration of the CAS Mediation Guidelines.

Upon her/his appointment, the mediator shall establish the terms and timetable for submission by each party of a statement summarizing the dispute, including the following details:

- a brief description of the facts and points of law, including a list of the issues submitted to the mediator with a view to resolution;
- a copy of the mediation agreement.

Where the parties agree to submit an ordinary / appeal arbitration case to mediation, the mediator may consider the request for arbitration / statement of appeal as one party's summary of its dispute and may invite only the other party to submit its summary of the dispute.

Each party shall cooperate in good faith with the mediator and shall guarantee her/him the freedom to perform her/his mandate to advance the mediation as expeditiously as possible. The mediator may make any suggestions she/he deems appropriate in this regard. The mediator may at any time communicate separately with the parties if she/he deems it necessary to do so.

G. ROLE OF THE MEDIATOR

Article 9

The mediator shall promote the settlement of the issues in dispute in any manner that she/he believes to be appropriate. To achieve this, the mediator will:

- a. identify the issues in dispute;
- b. facilitate discussion of the issues by the parties;
- c. propose solutions.

However, the mediator may not impose a solution of the dispute on either party.

H. CONFIDENTIALITY

Article 10

The mediator, the parties, their representatives and advisers, and any other person present during the meetings between the parties shall sign a confidentiality agreement and shall not disclose to any third party any information given to them during the mediation, unless required by law to do so.

Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, a party shall not compel the mediator to divulge records, reports or other documents, or to testify in regard to the mediation in any arbitral or judicial proceedings.

Any information given by one party may be disclosed by the mediator to the other party only with the consent of the former.

But for personal notes of the Mediator or the Parties, no record of any kind such as audio or video recording, transcript or minutes shall be made of the meetings.

Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, the parties shall not rely on, or introduce as evidence in any arbitral or judicial proceedings:

- a. views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- b. admissions made by a party in the course of the mediation proceedings;
- c. documents, notes or other information obtained during the mediation proceedings;

- d. proposals made or views expressed by the mediator; or
- e. the fact that a party had or had not indicated willingness to accept a proposal.

I. TERMINATION

Article 11

Either party or the mediator may terminate the mediation at any time.

The mediation shall be terminated:

- a. by the signing of a settlement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile;
- c. by a written declaration of a party or the parties to the effect that the mediation proceedings are terminated;
- d. where one of the parties, or both, refuse(s) to pay its (their) share of the mediation costs within the time limit fixed pursuant to Article 14 of the Rules.

J. SETTLEMENT

Article 12

The settlement is drawn up by the mediator and signed by the parties and the mediator.

Each party shall receive a copy thereof. In the event of any breach, a party may rely on such copy before an arbitral or judicial authority. In the event of any breach, the parties may agree that the case be resolved by CAS arbitration, in accordance with the Code of Sports-related Arbitration.

A copy of the settlement is submitted for inclusion in the records of the CAS Court Office.

K. FAILURE TO SETTLE

Article 13

The parties may have recourse to arbitration when a dispute has not been resolved by mediation, provided that an arbitration agreement or clause exists between the parties.

The arbitration clause may be included in the mediation agreement. In such a case, the expedited procedure provided for under article R44, paragraph 4 of the Code of Sports-related Arbitration may be applied.

In the event of a failure to resolve a dispute by mediation, the mediator shall not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute. However, if all parties have explicitly agreed so in writing once the mediation procedure is terminated, it is possible for the mediator to subsequently act as arbitrator for the same dispute and issue an arbitral award in accordance with the CAS Arbitration Rules ("Med-Arb procedure"). Such mediator can only act as an arbitrator if she/he is also on the list of CAS Arbitrators.

L. COSTS

Article 14

Each party shall pay the CAS administrative costs within the time limit provided in Article 4 of the Rules. In the absence of such payment, the mediation proceedings will not be initiated.

The parties shall pay their own mediation fees and expenses.

Unless otherwise agreed between the parties, the final costs of the mediation, which include the CAS administrative costs of CHF 1,000, the costs and fees of the mediator calculated on the basis of the CAS fee scale set out in Appendix I, and a contribution towards the CAS expenses will be borne by the parties in equal shares. At the outset of the mediation proceedings, the CAS Court Office shall require the parties to deposit an equal amount as an advance towards the costs of the mediation.

At the conclusion of the mediation, any portion of the advance of costs which is not used, shall be reimbursed to the parties in equal shares or in the proportion in which the parties paid the advance of costs.

APPENDIX I

SCHEDULE OF MEDIATION COSTS

(in force as from 1 January 2016)

CAS Administrative costs

The CAS administrative costs for a mediation are fixed at CHF 1,000.

Each party involved in a dispute submitted to CAS mediation must pay the CAS administrative costs in equal shares of CHF 500 (five hundred Swiss francs) in order for the mediation to be set in motion. If the advance of costs is not paid by both parties and if one party does not agree to pay the share of the other party (-ies), the mediation procedure is immediately terminated. If the parties agree to submit an ordinary / appeal arbitration procedure to mediation, the CHF 1,000 (one thousand Swiss francs) Court Office fee paid by the Claimant / Appellant in the arbitration procedure shall be credited to the mediation procedure and used as administrative costs for the mediation.

Mediator's costs and fees

The amount of fees to be paid to the mediator is fixed by the Secretary General of the CAS on the basis of the work provided by the mediator and on the basis of time reasonably devoted to her/his task. CAS mediators are paid an hourly rate of CHF 200, exclusive of VAT.

For cases with disputed value up to CHF 50,000, the mediator's fees shall be capped at a maximum of CHF 2,000, exclusive of VAT.

For cases with disputed value up to CHF 150,000, the mediator's fees shall be capped at a maximum of CHF 4,000, exclusive of VAT.

In addition to the payment of fees, the mediator is justified in requesting the reimbursement of her/his costs upon presentation of receipts as follows:

- Air travel: up to 2500 km per journey: price of an economy class ticket (determined by the CAS);
more than 2500 km: price of a business class ticket (determined by the CAS);
- Travel by train: price of a first class return ticket;
- Travel by car: price of a first class return rail ticket;
- Hotel accommodation: price of a hotel room, superior category, up to a maximum of CHF 350 per night.
- Meals: maximum of CHF 150 per day.
- In the absence of receipts, any telephone, fax, postage, photocopying or other secretarial costs are reimbursed, up to a maximum of CHF 200.

If a mediator does not file a summary of her/his work and time spent on the case, or the receipts for the reimbursement of her/his expenses, within 30 days of the termination of the mediation, the mediator is conclusively deemed to have waived her/his costs and fees and the ICAS/CAS is entitled not to pay her/him any indemnity.

National taxes, such as VAT, if any, related to the amounts paid by the CAS shall be paid in equal share by the Parties upon request by the mediator.