



World Triathlon Tribunal
Avenue de
Rhodanie 54 1007
Lausanne, Switzerland

Tribunal/2023/04
Katie Zaferes vs World Triathlon Competition Jury

DECISION

rendered by the

WORLD TRIATHLON TRIBUNAL

sitting in the following composition:

Chair of the Panel:	Axel Beijersbergen van Henegouwen	(The Netherlands)
Members of the Panel:	Henrik Jansson	(Sweden)
	Tania Hoffmann	(Luxembourg)

in the appeal proceedings between

Ms. Katie Zaferes (USA)
Appellant

Against

World Triathlon Competition Jury
Elite Women's Triathlon
2023 World Triathlon Cup Viña del Mar
Respondent

I. PARTIES

1. The Appellant, Ms. Katie Zaferes (hereinafter “*Zaferes*”, “*the Athlete*”, or “*the Appellant*”, is an athlete affiliated with the recognised national governing body in the USA for the sports of triathlon.
2. The Respondent, the World Triathlon Competition Jury (hereinafter “*CJ*” or “*the Respondent*”) is the recognised body for World Triathlon Events and other Games that do not include the Olympics Games and is constituted of three persons appointed by the World Triathlon Technical Delegate.

II. BACKGROUND FACTS AND PROCEEDINGS BEFORE THE WORLD TRIATHLON TRIBUNAL

3. The Panel has considered all the facts, allegations, arguments, and evidence submitted by the Parties. This decision contains the available relevant and material facts, allegations, and arguments of the Parties, and the Panel has based its decision on the evidence presented before it.
4. The Elite Women’s race of the 2023 World Triathlon Cup Viña del Mar (hereinafter “*the Race*”) took place on 12 November 2023 in Viña del Mar, Chile.
5. The running section of the race was composed of 2 (two) laps, and during the first lap, the Appellant, as well as 3 (three) other athletes, did not follow the prescribed run course and took a wrong path.
6. The Appellant crossed the finish line in first position.
7. The 3 (three) other athletes who did not follow the prescribed run are:
 - 7.1. Tereza Zimovjanova (CZE), who crossed the finish line in 2nd position.
 - 7.2. Anna Godoy Contreras (ESP), who crossed the finish line in 4th position
 - 7.3. Mathilde Gautier (FRA), who crossed the finish line in 5th position.
8. After the race, a protest was initiated before the CJ against the Referee’s decision not to disqualify the Appellant and the 3 other athletes who did not follow the prescribed run course.
9. The CJ was composed of the following members:
 - 9.1. Esteban Benitez (MEX), Technical Delegate, CJ Chair;
 - 9.2. Leslie Buchanan (CAN), World Triathlon Executive Board representative, CJ member;
 - 9.3. Agustin Riveros (CHI), National Federation representative, CJ member.

10. The CJ held a hearing and decided to disqualify the Appellant and the other three (3) athletes who did not follow the prescribed run course stating that: *“The Competition Jury decided that the Competition Rule 2.1.a.xiii was broken and that the four athletes in question should be disqualified”*.

11. The Appellant submitted a protest after being aware of the result being changed by the CJ’s decision. In the protest, the other three (3) disqualified athletes were called as witnesses.

12. The CJ decided that the disqualification was maintained.

III. PROCEEDINGS BEFORE THE WORLD TRIATHLON TRIBUNAL

13. On 5 December 2023, the Appellant filed a *“Level 2 Appeal”* to the World Triathlon Tribunal, in accordance with Article 13.2 of the World Triathlon Competition Rules (hereinafter *“the Rules”*).

14. In her Appeal, substantially, the Athlete claims that the CJ did not follow the procedural rules in the decision-making process that led to her disqualification.

15. More specifically, the Appellant claims that the CJ decision is based on:

- i. the CJ did not provide the Appellant with an opportunity to be heard in the initial protest;
- ii. the course and Local Organiser Committee deficiencies led to the error in running route that ultimately resulted in disqualification;
- iii. the decision of the CJ to disqualify the Appellant is not an adequate response to the action.

16. By means of her Appeal, the Appellant requests the World Triathlon Tribunal to:

- i. *“Cancel without delay the decision of the Competition Jury to disqualify the Appellant and the three other athletes disqualified for not following the prescribed course from the 2023 World Triathlon Cup Vina del Mar, Chile”*;
- ii. *“Reinstate the results as initially approved by the Head Referee”*;
- iii. *“Re-allocate the World Ranking points as per the results initially approved by the Head Referee”*;
- iv. *“Allocate the prize money of the race according to the results initially approved by the Head Referee”*.

17. On 11 December 2023, the Chair of the World Triathlon Tribunal issued a Procedural Order (hereinafter **“PO”**) N 1 indicating the composition of this World Triathlon Tribunal Panel (hereinafter **“Panel”**). The parties did not raise any objection to the composition of the Panel.

18. On 18 December 2023, the Panel issued a PO N 2, requesting the Appellant to provide further information after sharing the remaining Protest forms and minutes of the CJ. The Appellant did not provide further information and comments.

19. On 20 December 2023, the Panel issued a PO N 3, requesting the CJ to share their comments and submission on the Appeal with the Panel.

20. On 22 December 2023, the CJ submitted its considerations to the Panel, stating that the CJ operated and rendered its decision in good faith and that the disqualification of the Athlete was the appropriate decision in that situation.

21. On 2 January 2024, the Panel came back to the Appellant with a PO N 4, requesting to lay out comments on what had been previously submitted by the CJ.

22. On 4 January 2024, the Appellant submitted the response to the PO N 4, reaffirming its position.

23. On 8 January 2024, the Panel issued a PO N 5 requesting for the final comments of the CJ. The CJ did not provide any answer to such PO.

IV. LEGAL ANALYSIS

A. JURISDICTION

24. The World Triathlon Tribunal has jurisdiction over this Appeal under:

24.1 Article 50.7 of the Constitution, which states that *“A panel or Single Judge shall decide all cases brought before the Tribunal in accordance with the Constitution, Rules, Regulations and Codes and the Law.”*

24.2 Article 2.2 of the Disciplinary Rules (hereinafter the **“DR”**), which states: *“The ITU Arbitration Tribunal recognizes recourses submitted to it according to (the applicable articles outlined in) the Constitution.”*

24.3 Article 13 (b) of the Competition Rules, states that *“Decisions from any Competition Jury and the World Triathlon Technical Committee may be appealed to the World Triathlon Tribunal, except field of play decisions.”*;

25. Based on these provisions, the Panel has jurisdiction to decide this Appeal.

B. APPLICABLE LAW

26. Pursuant to Article 62.1 of the Constitution, *“The governing law of World Triathlon shall be Swiss law”*.

27. Article 1 of the DR states that *“These rules set out the applicable procedure before the ITU, within the limitations of Swiss law”*.

28. As the Appeal against the CJ concerns a decision regarding an incident during a competition, the Competition Rules and DR govern this matter.

C. SCOPE OF PANEL'S REVIEW

29. According to Article 16 of the DR *"The Panel has full power to review the facts and the law"*.

D. ADMISSIBILITY

30. Article 13.2 of the CR defines the procedure for Level 2 Appeals as follows:

"Level 2 Appeal Procedure:

The following procedure will be followed in the event of a Level 2 Appeal:

- (i) Decisions from any Competition Jury and the World Triathlon Technical Committee may be appealed to the World Triathlon Tribunal;*
- (ii) Appeals may be submitted up to thirty natural days after the Competition Jury met or within thirty natural days of the Competition Jury or Technical Committee decision;*
- (iii) Appeals must be submitted in writing to the World Triathlon Secretary General and will be accompanied by a fee of \$ 500 USD which will only be refunded if the appeal is successful;*
- (iv) Level 2 appeal decisions may be appealed to CAS (Level 3 of Appeal)*

31. Article 31.2 of the DR requires the Appeal to be submitted by mail or by email to World Triathlon headquarters, no more than thirty (30) days following the communication of the contested decision to the Appellant.

32. The conditions set above being fulfilled, the Panel determines that this Appeal is admissible.

E. DISCUSSION

33. The Panel has analysed the CJ's decision and statements, as well as the information and statements submitted by the Appellant.

34. It is the Appellant who asks the Panel to:

1. Cancel without delay the decision of the Competition Jury to disqualify the Appellant and the three other athletes disqualified for not following the prescribed course from the 2023 World Triathlon Cup Vina del Mar, Chile;
2. Reinstate the results as initially approved by the Head Referee
3. Re-allocate the World Ranking points as per the results initially approved by the Head Referee
4. Allocate the prize money of the race according to the results initially approved by the Head Referee.

35. Before the Panel can make a substantive assessment on these points, it will have to determine whether it is entitled to make a substantive assessment on the disqualification.

36. In doing so, the Panel wishes to take into account the principle of Field of Play doctrine (hereinafter "**FoP**") as also established in the Court of Arbitration for Sport (hereinafter "**CAS**") case law.

37. In doing so, the CAS has ruled in previous rulings that:

38. According to established CAS jurisprudence, however, the field of play doctrine permits (full) review of "*field of play*" decisions "*in so far as the rules of the game themselves provide*" and where the rules provide for the possibility of review of the decision "*immediately after, or even proximate to the competition*" after the match, the CAS has been clear that "*prima facie the same doctrine applies*".

39. The Panel in CAS 2010/A/2090, paras 35(6) and 38 determined that: "The Competition Jury makes what are quintessentially field of play decisions. If there were no internal mechanisms for appeal, but an appeal was directed to CAS, CAS would not interfere other than if bias or other equivalent mischief or error of law were identified. The Appeals Commission (again on the same hypothesis that an appeal from its decision was directed to CAS) would enjoy the same qualified immunity from CAS review. Appeals to the Commission are at large: it determines appeals proximately to the competition. Its decisions could therefore be classified as field of play decisions".

40. In the present case, the Panel finds that the FoP Doctrine clearly applies. The decision by the Race Referee was taken on the playing field. It is true that this decision was appealable to the Competition Jury but since the latter made its decision on the day of the Race, it was in proximity of the competition and, thus, equally enjoys immunity according to the FOP Doctrine. The World Triathlon Tribunal, on the contrary, is not entitled to review filed-of-play decisions according to the World Triathlon rules and regulations.

41. In order to decide the case, the Panel believes that the legal issues revolve around the following elements:

- a. ***Is the decision of the CJ a "Field of Play decision"?***
- b. ***If yes, are there grounds for the Tribunal to review such a decision of the CJ?***
- c. ***If there are such grounds, what are the consequences of such review?***

42. Accordingly, the above questions are analysed below:

- a. ***Is the decision of the CJ a "Field of Play decision"?***

43. The Panel took note of the argument put forward by the Appellant: the CJ did not respect the right to be heard, the disqualification was not an adequate response to the action and the deficiencies of the LOC.

44. According to the Competition Rule 12.9 (h), "*the Competition Jury decisions, made in accordance with the Competition Rules, are field of play decisions*";

45. Competition Rule 13.1(b.) precludes appeals to the Tribunal from Field of Play decisions of the Competition Jury.

46. Competition Rule 11.4(c)(ii) states:

“The Competition Jury has the authority to modify the competition results as a consequence of its decision on the appeal or protest. This results modification is a Field of Play decision;”

47. The Panel notes that it is clearly established in the CJ duties that in case of appeals or protest, any decision taken by such a body to modify the results is a Field of Play decision. In this case, the CJ took the decision to modify the results of the competition by disqualifying the Appellant. According to Article 11.4(c)(ii) of the Rules, such a decision is therefore considered as a Field of Play decision.

48. Having established that the decision of the Competition Jury amounted to a Field of Play decision, it is necessary to explore the circumstances under which such a decision can be reviewed by the Panel.

b. Are there grounds for the Tribunal to review such a decision of the CJ?

49. Was the decision of the CJ to issue disqualifications to the Appellant justified by the events of the competition?

50. The Panel wishes to refer to the established jurisprudence of the CAS (see CAS 2004/A/727; CAS OG/12/010):

“decisions of referees are not reviewable unless there is evidence that the referee rendered (i) a decision in bad faith, (ii) an arbitrary decision or (iii) a decision, made not in appreciation of the state of affairs on the field at the time but in application of a wrong rule, or made by failing to apply the corrected rule to the factual circumstances.”

51. Competition Rules 11.4(c) states the duties of the Competition Jury thus;

- (i) The Competition Jury rules on all appeals and all protests;*
- (ii) The Competition Jury has the authority to modify the competition results as a consequence of its decision on the appeal or protest. This results modification is a Field of Play decision;*
- (iii) The Competition Jury must be available starting before the Athletes' Briefing until after the end of competition;*
- (iv) The Competition Jury Chair is responsible for filing a written statement on all appeals and decisions reached.*

52. The Panel refers to CAS jurisprudence (CAS OG 96/006 and CAS OG00/013) according to which terms such as “arbitrary”, “bad faith”, “breach of duty”, “malicious intent”,

“committed a wrong” and “other actionable wrongs” are used apparently interchangeably, to express the same test. It was found that each of those phrases means more than the decision is wrong or that no sensible person could have reached. If it were, otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel reviews a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those phrases means there must be some evidence of preference for, or prejudice against, a particular team or individual”.

53. The Panel notes the different arguments of the Appellant with regard to the process followed by the CJ as well as the explanations provided by the CJ..

54. The Panel would like to underline that in accordance with CAS 2004/A/704 “An error identified with the benefit of hindsight, whether admitted or not, cannot be a ground for reversing the result of a competition.

55. Furthermore, in the case CAS 2008/A/1641, it is stated that: “except where evidence of some exceptional circumstances -as the existence of bad faith- has been brought by a party, the exclusion of the possibility to review a “field of play decision” by a CAS Panel is not limited to the merits of the decision but covers also the procedural aspects leading to it.”

56. In this respect, the Panel recalls CAS 2008/A/1641, according to which *“Traditionally, doctrine and judicial practice have always deemed that game rules, in the strict sense of the term, should not be subject to the control of judges, based on the idea that the game must not be constantly interrupted by appeals to the judge” (judgment by the Swiss Federal Tribunal ATF 119 II 12/19).*”

57. The Panel fully concurs with the above-mentioned CAS cases and believes that decisions on the field of play shall remain the competence of the officials not only in order to guarantee their autonomy but also due to the relative lack of perspective and/or experience of judicial bodies, in comparison with that of officials.

58. In the absence of any of the criteria enumerated in the case law of CAS referred to above, the Panel does not have a basis to review the Field of Play decision of the CJ.

59. Therefore, and even though there has been some confusion in the process followed by the CJ, the Panel unanimously agrees that the CJ’s decision was not made in bad faith, was not arbitrary, nor was made by applying a wrong rule, or by failing to apply the correct rule. Hence, the CJ’s decision shall be considered a Field of Play decision.

60. For all these reasons, the Panel determines that the decision of the CJ cannot be changed, and thus is confirmed.

61. Against this background, the Panel decides to reject the Appeal.

F. COST

62. The Panel decides not to award costs.

G. APPEAL FEE

63. Article 31.4 DR provides that, with respect to the appeal fee, *"the amount paid will only be refunded if the appeal is successful"*.

64. Since the Appeal is rejected, the Panel finds that the appeal fee shall not be refunded.

ON THESE GROUNDS

65. The Panel rules that:

- a. The Appeal is admissible pursuant to Articles 33 and 34 of the DR and Article 13.2 of the Competition Rules.
- b. The decision under appeal was a Field of Play decision made in good faith, without any evidence that it was made arbitrarily, or with application of an incorrect rule.
- c. The decision of the Competition Jury is binding, and the Appellant's Appeal is rejected.
- d. The appeal fee paid by the Appellant shall not be refunded.

Lausanne, Switzerland, 22 January 2024

WORLD TRIATHLON TRIBUNAL



Axel Beijersbergen van Henegouwen
Chair of the Panel



Henrik Jansson
Member of the Panel



Tania Hoffmann
Member of the Panel

Appeal to the Court of Arbitration for Sport (CAS)

According to Article 52 of the Constitution, final decisions made by World Triathlon under the Constitution may be appealed exclusively to the CAS, which will resolve the dispute definitively in accordance with the CAS Code of Sports-related Arbitration.

Any appeal must be filed with the CAS within twenty-one (21) days of the party's reception of the written, reasoned decision of the World Triathlon Tribunal in question.

Pending resolution of the appeal by the CAS, the decision being appealed shall remain in full force and effect unless the CAS orders otherwise.