



World Triathlon Tribunal
Avenue de
Rhodanie 54 1007
Lausanne, Switzerland

Tribunal/2023/07
FETRI 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

Federación Española de Triatlón
Appellant

Against

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

I. PARTIES

1. The Appellant, the Federación Española de Triatlón (hereinafter "*FETRI*", "*the NF*", or "*the Appellant*"), is the national governing body for the sports of triathlon in Spain.
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 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.
4. After the race, a protest was initiated before the CJ against the Referee's decision not to disqualify Ms. Anna Godoy Contreras (hereinafter "*the Athlete*"), who crossed the line in 4th position, and the 3 other athletes who did not follow the prescribed run course.
5. 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.
6. The CJ held a hearing and decided to disqualify the Athlete and the other three (3) athletes who did not follow the prescribed run course stating that: "*The Competition Jury decided that based on the rules that the four athletes should be DSQ*".
7. On 7 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*").
8. In its Appeal, substantially, the FETRI claims there was an organizational error in the Elite Women Race which resulted in the Athlete not following the prescribed course.
9. By means of its Appeal, the Appellant requests the World Triathlon Tribunal to:
 - i. "*grant Anna Godoy in the ranking the points that, according to the regulations, they would have achieved if they had not been disqualified*";
 - li. "*recognize to Anna Godoy the right to receive an amount equal to the amount of the prize they would have obtained if they had not been disqualified, which must be awarded by the organization (3,000 USD)*".

10. 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.

11. 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.

12. On 20 December 2023, the Appellant replied to the PO N 2 reiterating that: *"We are facing a procedure in which it must be determined whether there was an error or organizational negligence that ended up affecting the result of the competition and, in such case, the affected or harmed athletes must be compensated in some way, without altering the result of the competition"*.

12. On 20 December 2023, the Panel issued a PO N 3, requesting the CJ to share with the Panel their reply on the Appellant's Appeal, in order for the Panel to have a clearer view on the situation.

13. On 22 December 2023, the CJ gave its considerations to the Panel, stating that the proper course was presented to the Athletes at the Pre-race Briefing.

14. 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.

15. On 4 January 2024, the Appellant submitted the response to PO N 4.

16. On 9 January 2024, the Panel issued a PO N 5 requesting the CJ for the final clarification. The CJ did not provide any answer to such PO.

III. LEGAL ANALYSIS

A. APPLICABLE LAW

17. Pursuant to Article 62.1 of the World Triathlon Constitution (hereinafter "*Constitution*"), *"The governing law of World Triathlon shall be Swiss law"*.

18. Article 1 of the Disciplinary Rules (hereinafter "*DR*") states that *"These rules set out the applicable procedure before the ITU, within the limitations of Swiss law"*.

B. JURISDICTION

19. Article 50.7.(a) of the Constitution defines the role of Panels and Single Judge of the World Triathlon Tribunal and states: *"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"*. This article clearly establishes that the role of a Panel or a Single Judge is to apply the Constitution, Rules, Regulations and Codes and the Law. On the contrary, it is not their place to make new ones.

20. Article 51.3 of the Constitution states that *“Disputes and Appeals related to Events sanctioned and recognised by World Triathlon shall be referred to the Tribunal and determined in accordance with the Rules where provided for”*. In addition, to the above-mentioned article of the Constitution, it is intelligible that the Panel shall have jurisdiction over a matter only if there are Rules to be applied.

21. In light of the above, it shall be stressed that Article 34.3.(c) of the Constitution provides that one of the Powers and Responsibilities of the World Triathlon Executive Board is to *“adopt, amend and repeal Rules, Regulations and Codes”*.

22. Moreover, Article 34.3.(e) grants the World Triathlon Executive Board the power to: *“consider and make resolutions to Congress for amendments to the Constitution”*. In accordance with Article 23 (b), the World Triathlon Congress will then have the power to amend the Constitution.

23. The power to modify the World Triathlon Constitution, Rules, Regulations and Codes thus rests with the World Triathlon Executive Board and the World Triathlon Congress and, in no case, with the World Triathlon Tribunal.

24. Article 6.1 of the DR lists the sanctions the World Triathlon Tribunal is entitled to impose. According to Article 6.1.(d) of the DR, *“overturning a result”* is one of them. However, in its Appeal, the Appellant clearly requests compensation for the damages caused by the disqualification of the Athlete, *“without altering the competition results”*.

25. More specifically, the Appellant requests the Panel to grant the Athlete the ranking points and the cash prize money she would have received if she had not been disqualified.

26. Following the above-mentioned articles of the Constitution and the Disciplinary Rules, by no means does the World Triathlon Constitution, Rules, Regulations and Codes grant the World Triathlon Tribunal the possibility to distribute ranking points or cash prize money, as requested by the Appellant.

27. The aforementioned documents, which collectively form the terrain on the basis of which the World Triathlon Tribunal has jurisdiction and will have to exercise its judgement, do not constitute the scope for reviewing and or assessing duties and responsibilities of (in this case) an organisation.

28. The Tribunal has no power to oblige an organisation to proceed with the payment of prize money (once again), especially when the outcome of the race organised by that organisation remains unchanged.

29. The appeal is aimed at awarding ranking points and paying out the prize money as "compensation" for the unlawful situation caused, in the complainant's view, by the CJ.

30. In doing so, the appeal sought to circumvent the doctrine of FOP, but the Tribunal feels it must rule that the core of the appeal is inextricably linked to it.

29. 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.

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

31. 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*”.

32. 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”.

33. 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

34. The Panel insists on the fact that only the World Triathlon Executive Board has the power to adopt and amend the Rules, Regulations and Code. Additionally, in the case of the Constitution, the power to amend it rests with the World Triathlon Congress.

35. In view of all the above, the World Triathlon Tribunal, and therefore this Panel, has no jurisdiction to decide on this Appeal.

C. COST

29. The Panel decides not to award costs.

D. APPEAL FEE

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

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


ON THESE GROUNDS


32. The Panel rules that:


- a. The Panel has no jurisdiction to decide on this Appeal, pursuant to Article 50.7.(a); 51.3; 34.3.(c); 34.3.(e) and 23.(b) of the Constitution and Article 6.1 of the DR.
- b. Therefore, the Appeal is rejected because of lack of jurisdiction.

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.