

Arbitration Tribunal
International Triathlon Union (ITU)
Avenue de Rhodanie 54
1007 Lausanne, Switzerland

ITU-AT/002-2016: FETRI vs. Alistair and Jonathan Brownlee and Competition Jury of the Elite Men ITU
World Triathlon Championship Final Race held on Cozumel – Mexico on 18 September 2016

DECISION

delivered by the

ITU ARBITRATION TRIBUNAL

sitting in the following composition:

President of the Panel: **Timo Pennanen**, Attorney-at-Law in Kuopio, Finland

Members of the Panel: **Kevin S. Sullivan**, Attorney-at-Law in Massachusetts, United States of America
Philippe Renz, Attorney-at-Law in Bern, Switzerland

in the appeal proceedings between

Spanish Triathlon Federation (FETRI), Calle Ferraz 16 -3a dcha, 28008 – Madrid, Spain,

Appellant

against

Alistair Brownlee, alistairbrownlee@btinternet.com
Jonathan Brownlee, jonnybrownlee@btinternet.com

And

Competition Jury of the Elite Men ITU World Triathlon Championship Final Race held on Cozumel – Mexico on 18 September 2016, Avenue de Rhodanie 54, 1007, Lausanne, Switzerland (ITU HQ Office),

Respondents

I. PARTIES

1. The Appellant, the Spanish Triathlon Federation (hereinafter “FETRI”), is the recognized national governing body in Spain for triathlon and its related disciplines, with headquarters in Calle Ferraz 16, 3^odcha. 28008, Madrid.
2. The Respondent, Alistair Brownlee is a British triathlete competing at the international level.
3. The Respondent, Jonathan Brownlee is a British triathlete competing at the international level.
4. The Respondent, The Competition Jury is the recognized body for Olympic Games and The Elite Races of the World Triathlon Grand Final constituted of five person selected by the ITU Technical Delegate.

II. BACKGROUND FACTS

5. The Panel has considered all the facts, allegations, arguments, and evidence submitted by the parties. This decision contains the relevant and material facts, allegations, and arguments of the parties as well as the Panel’s reasoning behind this decision.
6. The Elite Men ITU World Triathlon Championship Final Race took place on 18 September 2016 in Cozumel - Mexico.
7. According to FETRI’s Factum Jonathan Brownlee led the race. As he approached the finish line, he appeared to be experiencing health problems that prevented him from running normally. He could not keep his balance. Subsequently, the eventual race winner passed him. Jonathan Brownlee then stopped at a refreshment point and with the assistance of “a member of the organization”¹ remained standing. At that moment, Alistair Brownlee arrived. Alistair Brownlee proceeded to grab and accompany Jonathan Brownlee, holding, dragging, and pushing Jonathan Brownlee toward the finish line. An instant before crossing the finish line, Alistair Brownlee deliberately pushed Jonathan Brownlee so that he (Jonathan) finished in second place. The Appellants have not disputed these facts.
8. The Race Referee acknowledged that Jonathon Brownlee clearly accepted assistance from Alistair Brownlee, but reasoned that nothing in the ITU Competition Rules prohibit one athlete from accepting assistance from another athlete. In fact, Appendix K, rule 7 of the Competition Rules states that an athlete can receive assistance from another athlete.
9. On 18th of September 2016, FETRI filed a protest seeking to disqualify Jonathan Brownlee. According to the Protest, FETRI claimed that ITU Competition Rule, Appendix K, rule 7 provides that no assistance is acceptable during a race, Jonathan Brownlee accepted assistance, Jonathan Brownlee would not have crossed the finish line without assistance, and Jonathan Brownlee must be disqualified.

¹ FETRI’s Factum does not specify this ITU member by title or otherwise.

10. No protest was filed against Alistair Brownlee.
11. The ITU Competition Jury heard the Protest, deliberated, and rendered a decision.
12. The Minutes of the Competition Jury reflect that it understood and considered FETRI's position that:
 - a. An athlete must complete the course by himself.
 - b. The assistant that Jonathan Brownlee received changed the results because he would not have been able to finish the race without assistance.
 - c. The intention of Appendix K, rule 7 of the ITU Competition Rules is to permit assistance such as sharing water bottle, but not the type of assistance that Jonathan Brownlee received.
 - d. The Competition Jury recognized that the assistance Jonathan Brownlee received was an extreme form of assistance, which was perhaps not intended in the ITU Competition Rule, however the Rule allows for assistance from one athlete to another athlete.
13. The ITU Competition Jury unanimously decided to reject FETRI's protest for the following reasons:
 - a. Although the assistance that Jonathan Brownlee received was an extreme form of assistance that may not have been intended to be permitted, the rule allows for an athlete to receive assistance from another athlete.
 - b. Neither the Race Referee nor the Competition Jury are able to change the rule to address this unusual situation.

III. PROCEEDINGS BEFORE THE ITU ARBITRATION TRIBUNAL

14. On the 10th of October 2016, FETRI filed an Appeal to the ITU Arbitration Tribunal seeking to disqualify Jonathan Brownlee and Alistair Brownlee.
15. On the 14th of October of 2016, Jonathan Brownlee and Alistair Brownlee accepted the composition of the ITU Arbitration Tribunal Panel and filed their response to the Appeal.
16. On the 20th of October, the ITU Arbitration Panel extended the time within which the ITU Competition Jury, Jonathan Brownlee, and Alistair Brownlee may respond to FETRI's Appeal until the 10th of October 2016.
17. On the 28th of October, the ITU Competition Jury submitted its Response.
18. The Arbitration Panel's Procedural Order on the 31st of October 2016, ordered the Spanish Triathlon Federation to file any response it deemed necessary to the ITU Competition Jury's Response within 7 days.
19. The Spanish Triathlon Federation filed its response on the 7th of November 2016.

IV. LEGAL ANALYSIS

A. JURISDICTION

20. The ITU Arbitration Tribunal has jurisdiction of this Appeal under:

- Article 37.3 of the ITU Constitution, which provides that: *“The Arbitration Tribunal will resolve any appeal to decisions from the Competition Juries or from any ITU panels other than the Discipline Tribunal, as outlined in the ITU Competition Rules.”*
- Article 2.2 of the ITU Disciplinary Rules that provides the Arbitration Tribunal *“recognizes recourses submitted to it according to article 37 paragraphs 37.3 and 37.4 of the ITU Constitution.”*
- Article 13.2. (b) (i) of the ITU Competition Rules, stating that *“Decisions from any Competition Jury and any ITU Panel (except the ITU AD Hearing Panel) may be appealed to the ITU Arbitration Tribunal”.*

21. Based on those provisions, the ITU Arbitration Tribunal has jurisdiction to decide this Appeal.

B. ADMISSIBILITY

22. The Spanish Triathlon Federation filed its Appeal by mail to the ITU headquarters on the 10th of October 2016, 22 days after the contested decision.

23. Article 31 of the ITU Disciplinary Rules requires the appeal to be submitted by mail or by email at ITU headquarters, no more than thirty (30) days following the communication of the contested decision to the Appellant. Article 13 (2) (b) (ii) of the ITU Competition Rules contains the further condition that only appeals supported by a National Federation will be admitted.

24. Therefore, the report was timely submitted by FETRI, a National Federation, and the Appeal is admissible.

C. SCOPE OF PANEL’S REVIEW

25. According to Article 16 of the ITU Disciplinary Rules, *“The Panel has full power to review the facts and the law”.*

D. APPLICABLE LAW

26. Pursuant to Article 34 of the ITU Constitution, *“The governing law of the ITU shall be Swiss law”.* Article 1 of the ITU Disciplinary Rules states that *“These rules set out the applicable procedure before the ITU, within the limitations of Swiss law”.*

27. As the Protest and Appeal against Alistair Brownlee and Jonathan Brownlee concern their behaviour during a competition, the ITU Competition Rules and ITU Disciplinary Rules govern.

E. DISCUSSION

28. The main issue to solve is whether the assistance provided by Alistair Brownlee to Jonathan Brownlee was in accordance with the ITU rules or not.
29. There can be no doubt and it is not disputed by the parties that this assistance was observed by the Race Referee present on the field of play.
30. The decision of the Race Referee not to penalize Jonathan Brownlee for accepting assistance from his brother constitutes a field-of-play decision. That decision was made by the Race Referee in the performance of his duties and within the discretion inherent to his function.
31. According to the case law of the Court of Arbitration for Sport (see e.g. 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 correct rule to the factual circumstances.
32. In the present case, there is no evidence that indicates the Race Referee acted in bad faith or in an arbitrary manner. In fact, none of the parties raised it. What remains to analyze is whether or not the Race Referee's decision not to impose any penalty was made in bad faith, arbitrary, made by application of a wrong rule, or made by failing to apply the correct rule to the factual circumstances.
33. The following ITU Competition Rules are the sole ITU regulations that describe the assistance an athlete may and may not receive on the field of play:
- Article 2.1 (a) (viii): *"Athletes will ... compete without receiving assistance other than from event personnel and officials";*
 - Article 2.2. Outside assistance:
 - "a.) The assistance provided by event personnel or Technical Officials is allowed but is limited to providing drinks, nutrition, mechanical and medical assistance, upon the approval of the Technical Delegate or Race Referee. Athletes competing in the same race may assist each other with incidental items such as, but not restricted to, nutrition and drinks after an aid station and pumps, tubular tires, inner tubes and puncture repair kits;*
 - b.) Athletes may not provide any item of equipment to an athlete competing in the same race which results in the donor athlete being unable to continue with their own race. This includes but is not restricted to shoes, complete bicycle, frame, wheels and helmet. The penalty for this will be disqualification of both athletes."*
 - Article 25, Appendix D, defines what "Assistance" and "Aid/Outside Assistance" are:
"Assistance: Any attempt by an unauthorised or unofficial source to help or to stabilise an athlete."

“Aid/Outside Assistance : Any kind of material support or personal assistance received by the athlete. Depending on its nature, it may be allowed or forbidden.”

- Article 32, Appendix K, defines the penalties and violations in terms of assistance:

“7. Accepting assistance from anyone other than a Technical Official, race official or other athlete: If it is possible to amend and return to the original situation Stop and go - If not: DSQ”

“25. Outside assistance.

To give another athlete a complete bike, frame, wheel(s), helmet, bike shoes or any other item equipment which results in the donor athlete being unable to continue with their own race: - DSQ of both athletes”

34. The assistance an athlete is allowed to accept from another athlete, as in the present case, is governed by Article 2.2 (a) and (b). This article, however, only regulates the case of an athlete providing an item of equipment or nutrition to another athlete. It does not expressly permit or prohibit any physical assistance.
35. The question as to whether physical assistance from an athlete to another athlete is tolerated or not is not clear from the aforementioned provisions. There is no provision prohibiting such physical assistance. Furthermore, Article 2.1 only forbids assistance from event personnel and officials; it does not prohibit assistance from another athlete. On the other hand, Article 2.2. (b) expressly allows assistance by one athlete to another athlete. Therefore, the assistance given by Alistair Brownlee to Jonathan Brownlee is not forbidden by the current rules. Thus, the Panel finds that the Race Referee’s decision not to sanction this assistance was not made in bad faith, arbitrary, made by application of a wrong rule, or made by failing to apply the correct rule to the factual circumstances
36. The question as to whether this assistance represents an «unfair advantage», as raised by FETRI, will now be analysed. The following provisions of the ITU Competition Rules are applicable:

- *Article 1.2: Intention*

a.) The ITU Competition Rules are intended to:

(iv) Penalise athletes who gain an unfair advantage.

- Article 2.1 (a) (xi): *“Athletes will... not attempt to gain an unfair advantage from any external vehicle or object”.*
- Article 3.1 (e): *“The Technical Officials are allowed to assess penalties, even if the infringement is not listed, if the Technical Official deems an unfair advantage has been gained, or if a dangerous situation has been created intentionally.”*
- Article 32, Appendix K, defines the penalties and violations in the case of an unfair advantage:

“26. Attempt to gain unfair advantage from any external vehicle or object: - DSQ”

37. Article 2.1 does not apply to the present case, since the assistance of Alistair Brownlee to his brother did not involve “any external vehicles or object”. That leaves only Article 3.1 (e) for consideration. The question is therefore whether, although no rule expressly prohibits physical assistance from one athlete to another athlete, the absence of an “unfair advantage” ruling by the Race Referee was made in bad faith, arbitrary, made by application of a wrong rule, or made by failing to apply the correct rule to the factual circumstances
38. Even if certain rules of the ITU Competition Rules such as Article 6 (vii) might be interpreted to imply that an athlete should not accept assistance from another athlete, that potential interpretation, as discussed in paragraph 35 above, would conflict with the potential interpretation of Article 2.2. As a result, there is a gap in the current competition rules. The Race Referee exercised reasonable discretion when applying the existing rules related to assistance. If desired, ITU may revise the ITU Competition Rules to fill the gap. Therefore, the Panel decides that the absence of an “unfair advantage” ruling was not the result of bad faith, arbitrary, made by applying a wrong rule, or made by failing to apply the correct rule.
39. For all these reasons, the Panel considers that the decision of the Race Referee cannot be changed, the decision of the Competition Panel is confirmed, and the appeal is dismissed.
40. Consequently, the remaining subsidiary issues, including the question of the admissibility of FETRI's request to sanction Alistair Brownlee, are not essential to the resolution of this appeal and will not be reached.

V. COSTS

41. According to Article 24.2 (f) of the ITU Disciplinary Rules, the Panel’s decision shall contain the “*decision as to the amount and payment of costs*”. Article 27.2 of those Rules states that “*Costs may be awarded by the Panel to one of the Parties, considering the legitimacy of the arguments, as well as the conduct of the Parties*”.
42. The Panel decides that, because the ITU Competition Rules do not either explicitly permit or prohibit the assistance at issue in this Appeal, no costs of this Appeal shall be assessed.

ON THESE GROUNDS

The Panel of the ITU Arbitration Tribunal rules that:

1. The Appeal made by FETRI against Mr. Alistair Brownlee and Mr. Jonathan Brownlee concern a Field-of-Play decision, decided by the Referee without bad faith, arbitrary or wrong application of the Competition Rules.
2. The Referee decision and its confirmation by the ITU Competition Jury is binding, the Appeal by FETRI is dismissed.
3. FETRI is not ordered to pay any procedural costs to the ITU.
4. All other motions or requests for relief are dismissed.

Made in Lausanne, on 7 December 2016

ITU ARBITRATION TRIBUNAL



Timo Pennanen
President of the Panel



Kevin Sullivan
Member of the Panel



Philippe Renz
Member of the Panel

Appeal to CAS

According to Articles 38 and 39 of the ITU Constitution, and Articles 45 of the ITU Disciplinary Rules, any dispute relating to their application or interpretation, after internal recourses have been exhausted, may be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration. The request for arbitration must be filed with CAS no later (21) twenty-one days following the receipt of the decision that is the subject of the arbitration procedure.