



World Triathlon Tribunal
World Triathlon
Avenue de Rhodanie 54
1007 Lausanne, Switzerland

DECISION

delivered by the World Triathlon Tribunal

sitting in the following composition:

Philippe Renz, Attorney-at-Law in Bern, Switzerland - President of the Panel

Ize Matebese, Attorney-at-Law in Lagos, Nigeria – Member of the Panel

Kevin S. Sullivan Attorney-at-Law in Chelmsford, MA, USA – Member of the Panel

In the appeal proceedings between

Luxembourg Triathlon Federation

Appellant

And

Triathlon Ireland Federation

Appellant

Against

**Competition Jury of the Elite Men ITU Panamerican Cup race held in Habana, Cuba on
February 23, 2020**

Respondent



I. PARTIES

1. The Appellants, the Luxembourg Triathlon Federation and the Triathlon Ireland Federation (hereinafter “The Luxembourg Federation” and “The Ireland Federation”, or the “Appellants”), are respectively the national governing bodies in Luxembourg and Ireland for triathlon and its related disciplines.
2. The Respondent, the World Triathlon Competition Jury (hereinafter “Competition Jury”) of the International Triathlon Union (hereinafter “ITU”), is the body of ITU which was in charge of receiving, addressing and judging potential complaints at the ITU Panamerican Cup race Series in Habana, Cuba, on February 23, 2020.

II. BACKGROUND FACTS

3. Though lacking the “*references identifying the source of each fact and the brief legal justification*” required by Articles 33 and 35 of the World Triathlon Disciplinary Rules (hereinafter “the Disciplinary Rules”), 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 as well as the Panel’s reasoning behind this decision.
4. The Elite Men ITU Panamerican Cup race (hereinafter “the Race”) took place on February 23, 2020 in Habana, Cuba.
5. During the Elite men race, several athletes cut the first swim buoy reducing their swim course. But no athletes were disqualified.
6. Right after the finish of the race, seven (7) athletes: Bob Haller, Diego Moya, Federico Scarabino, Juan Jose Andrade, Luciano Tacone, Russel White, Walter Schafer filed separately a Protest Form to the Competition Jury of the Race.
7. In the Protest Form, they all protested “*against the course*” as well as “*against another athlete or a Technical Official*”.
8. The protesters provided the same information in their Protest Forms: “*the first swim buoy has been cut by many athletes during the swim*”. They also listed all the athletes who made a protest to the Competition Jury as witnesses.
9. The three members of the Competition Jury, following the procedures set out in ITU Competition Rules, heard the protests, deliberated, and rendered a decision.
10. The Minutes of the Competition Jury reflected that:
 - a. They heard the protests of all seven (7) athletes and gave them the opportunity to give their accounts of the incident.

- b. The Competition Jury interviewed the Chief Swim Judge. He stated that they were *“not able to film the turn of buoys because of the drift of the buoy due to the wind when the race had started”*. He had to go *“into the water to hold the buoy and did see athletes cutting the course and tried to call their attention with a whistle but could not see who they were”*. He finally declared to *“have seen some athletes with the US uniform at the front of the pack turn correctly on the first buoy”*.
- c. The Competition Jury retired to review and decide the case.
- d. The Competition Jury concluded that: *“considering that the swim team had not enough resources to fully cover the course as lack of kayaks/paddle boards and considering there actually was a cut of the course by some athletes that could not be identified since neither party had evidence (video).”*
- e. The Competition Jury decided not to proceed with the protests and to give the athletes their money back.
- f. The Competition Jury explained the decision to the protesters and informed them as well of their right to proceed to a higher level of appeal according to the rules.

III. PROCEEDINGS BEFORE THE WORLD TRIATHLON TRIBUNAL

11. On March 10, 2020 the Luxembourg Triathlon Federation filed a “Level 2 Appeal” with the World Triathlon Tribunal (hereinafter “the Tribunal”), as referred in article 13.7 of the World Triathlon Competition Rules.
12. The Luxembourg Federation asked the “Tribunal to reconsider the outcome and official results of the” Race. In summary the arguments of the Luxembourg Federation are the following:
 - a) During the Race, many competitors observed other athletes cut the course during the swim leg;
 - b) The World Triathlon officials present and Chief of Swim also confirmed that observation;
 - c) The Luxembourg Federation does not understand the Competition Jury’s decision in light of the many witnesses quoted in the protests: Fernando MAARTINEZ (Chief Swim), Diego MOYA, Luciano TACONE, Juan ANDRADE, Walter SCHAFER, Federico SCARABINO, Viviane SLONIEVICZ, Stephen DELANEY;
 - d) The referee’s decision to reject the appeal was taken because it was impossible to identify the athletes who cut the swim course, despite the fact that the cheating was obvious.
 - e) ITU points gained are crucial in the perspective of athlete qualification for the Olympic Games in Tokyo;
 - f) Several crucial rules were not taken seriously during this race, including the absence of numbers on the swim caps and the absence of video, which made the

identification of the athletes during the swimming part impossible and provided the opportunity for cheating.

- g) The Luxembourg Federation suggests either cancelling all the points assigned for the Race or assigning the same average points to all athletes who finished the Race.

13. On March 24, 2020 the Ireland Federation filed a “Level 2 Appeal” with the World Triathlon Tribunal as referred in article 13.7 of the World Triathlon Competition Rules.

14. The Ireland Federation appealed the results and points awarded for the Race. It seeks to have the athletes who completed the course awarded the placings and points they would have been awarded if the athletes who failed to follow the prescribed course had been disqualified. In summary the appeal is based on the following breaches of the World Triathlon Competition Rules:

- a) Section 4.1.b: “*athletes must follow the prescribed swim course*”. Athletes and race officials agree that many athletes did not follow the swim course;
- b) Section 33 Appendix K Penalties and Violations: Rule 2. “*Failing to follow the prescribed course.*”

Penalties

- “*Warning and re-enter the competition by the same point*”
- *If not: DSQ*”;

- c) Section 1.1.2. Intention:

“a) *The World Triathlon Competition Rules are intended to:*

- (i) *Create an atmosphere of sportsmanship, equality and fair play;*
- (ii) *Provide safety and protection;*
- (iii) *Emphasise ingenuity and skill without unduly limiting the athlete’s freedom of action;*
- (iv) *Penalise athlete who gain an unfair advantage.*”

15. On April 12, 2020 the Chair of the Tribunal issued a Procedural Order to the Parties by email indicating the composition of the Panel and the following, in accordance with article 25.2 of the Disciplinary Rules:

- *A deadline of April 15, 2020 for the Luxembourg Federation and the Ireland Federation to determine the composition of the Panel.*
- *A deadline of April 22, 2020 for World Triathlon Competition Jury of the Elite men Race and to the World Triathlon Technical Committee to determine on the facts, violation of rules and arguments exposed by the Luxembourg and Ireland Federations;*
- *A deadline of April 22, 2020 for the World Triathlon Technical Committee to give its opinion on a potential complete cancellation of the results of the Race as well as on the points which could be awarded to the athletes who took part in the Race;*

16. The Parties did not raise any objections to the composition of the Panel.
17. On April 22, 2020 the World Triathlon Technical Committee submitted the following information in response to the Procedural Order:
- a) The Technical Committee has reviewed the document from the Luxembourg Federation. It has been raised by them that several rules have been not taken seriously such as: inexistence of numbers on swim caps; and no video recording of the swim was available;
 - b) The Technical Committee considers *“neither of these are rules and therefore cannot be determined as not aligned with the World Triathlon rule book. Both of these are recommendations in the Event Organisers Manual, the master reference documents for delivering Events. Importantly this document is set out to deliver Events at the very top level and it specifically allows discretion by the Technical Delegate to scale down or amend as circumstances require. As the Race being a Continental Cup does not have the funding and infrastructure to be delivered to the same standard as a World Triathlon Series Event”*.
 - c) The Technical Committee has reviewed the comments made by the Ireland Federation and consider these comments correct.
 - d) The Technical Committee recommends to the Tribunal one of the following actions:
 - (i) *Leave the Race results as valid and therefore the points and prize money do not change;*
 - (ii) *Declare the Race results as invalid (NOTE: this will penalise the athletes who did follow the course);*
 - (iii) *Disqualify all the offending athletes that cut the swim course and reallocate the points and prize money according to the revised results (NOTE: The Technical Committee does not believe this is possible as it is clear that the offending athletes could not be clearly identified).*
18. On April 23, 2020 the Competition Jury submitted the following information in response to the appeal of the Luxembourg and Ireland Federations:
- a) The Competition Jury apologies that they *“were not able to provide a faire race for the Elite Men in Cuba”*;
 - b) The Local Organising Committee and the Technical Delegate of the Race *“did everything possible to work without radios and diesel for the boat, with small swimming buoys, without any number on the swim caps. They also did the maximum without the safety personnel in the water (that never showed up), also with some change in the bike course”*;
 - c) The athletes who cut the swim course *“could not be penalised or disqualified because we were not sure who and how many had cut the swim course. I did ask the Cuban TV, the World Triathlon Media Team and Coaches for video on that specific sport with no positive results.”*
 - d) The Competition Jury *“considered that with no evidence we could not penalise athletes nor cancel the Race, and we understood that there would be greater implications due to the Olympic year”*.



19. Therefore, the information and evidence before the Panel was limited to:

- a) Athlete's February 23, 2020 Protest Forms filed to the Competition Jury;
- b) The February 23, 2020 Meeting Minutes of the Competition Jury;
- c) The March 10, 2020 Level 2 Appeal by Luxembourg Federation;
- d) The March 24, 2020 Level 2 Appeal by Ireland Federation;
- e) The Competition Jury's April 23, 2020 additional information;
- f) The Technical Committee April 22, 2020 additional information;

IV. LEGAL ANALYSIS

A. JURISDICTION

20. The Tribunal has jurisdiction of this Appeal under:

- Article 51.1.b of the World Triathlon Constitution, which provides that: "*... the dispute or difference, to refer the matter to the World Triathlon tribunal which shall decide the dispute or difference.*"
- Article 2.2 of the World Triathlon Disciplinary Rules that provides that the "*The World Triathlon Tribunal recognises recourses submitted to it...*".
- Article 13.2.(b) (i) of the World Triathlon Competition Rules, states that "*... any athlete may appeal the decision of the Head referee to the World Triathlon Appeal Panel*".

21. Base on those provisions, this World Triathlon Arbitration Panel has jurisdiction to decide this Appeal.

B. APPLICABLE LAW

22. Pursuant to Article 62 of the World Triathlon Constitution, "*The governing law of World Triathlon shall be Swiss law*".

23. Article 1 of the Disciplinary Rules states that "*these rules set out the applicable procedure before World triathlon, within the limitations of Swiss law*".

24. As the Appeal against the Competition Jury concerns a decision regarding an incident during a competition, the World Triathlon Competition Rules and Disciplinary Rules govern.

C. SCOPE OF PANEL'S REVIEW

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



D. ADMISSIBILITY

26. Article 31 of the Disciplinary Rules requires the appeal to be submitted by mail or by email at World Triathlon headquarters, no more than thirty (30) days following the communication of the contested decision to the Appellant.
27. Luxembourg Federation filed its Appeal by mail with the World Triathlon headquarters on the 10th of March 2020, 16 days after the contested decision.
28. Ireland Federation filed its Appeal by mail with the World Triathlon headquarters on the 24th of March 2020, 28 days after the contested decision.
29. The reports were timely submitted.
30. Therefore, the Panel determines the Appeal is admissible.

E. DISCUSSION

31. The Panel has analysed facts, arguments and recommendation of all the parties of this case to determine the following decision.
32. Article 4.1.b of the Competition Rules states: "*Athletes must follow the prescribed swim course*".
33. Section 33 Appendix K 2. of the Competition Rules states: "*Failing to follow the prescribed course:*
 - *Warning and re-enter the competition by the same point*
 - *If not: DSQ;*"
34. Article 1.1.2 of the Competition Rules states: "*a) The World Triathlon Competition Rules are intended to:*
 - (i) *Create an atmosphere of sportsmanship, equality and fair play;*
 - (ii) *Provide safety and protection;*
 - (iii) *Emphasise ingenuity and skill without unduly limiting the athlete's freedom of action;*
 - (iv) *Penalise athlete who gain an unfair advantage.*"
35. Considering these legal provisions and the fact that all parties to this case recognise and agree that an indeterminate number of unidentified athletes cut the swim course during the Race.
36. Considering that the Chief of Swim of the Race saw athletes cutting the swim course and tried to whistle to draw their attention to their mistake.
37. Considering that the Technical Officials of the Race did not disqualify any athletes because of the absence of evidence (video) of the swim course competition and the lack of any other means to determine which athletes did or did not compete the swim course.



38. Considering that the Competition Jury apologized for the lack of fairness in the Race environment.
39. Considering all the above-mentioned, the Panel decides in order to restore an equitable and fair race result for all the athletes:
- a) To admit the appeals and to annul the Competition Jury's decision.
 - b) To overturn the result as allowed in article 6.1.d of the World Triathlon Disciplinary Rules: "*The following disciplinary sanctions may be levied: ... d) Overturning of a result*".
 - c) To withdraw all points and prize money from all athletes who have awarded them at the Race.
 - d) To grant to each athlete who started the race, totalling 33, an equal number of points. The total number of points distributed in this race having been 2514.058 to 18 athletes, the average of these points amounting to 139.6699 will be distributed to each athlete who started the race.
 - e) To grant to each of these athletes an equal amount of prize money. The total prize money distributed being USD 2500, each athlete will receive USD 75.75.

V. COSTS

The Panel decides not to award costs.

VI. APPEAL FEE

- Article 31.4 of the Disciplinary Rules provides that the amount of the appeal fee "paid will only be refunded if the appeal is successful".
- The Panel finds that the Level 2 Appeal is successful and for that reason, decides that the Appellants will be refunded the full fee of the appeal.

ON THESE GROUNDS

The Panel of the World Triathlon Tribunal decides that:

1. The appeals filed by the Luxembourg and the Ireland Triathlon Federation are admitted.
2. The results of the Elite Men ITU Panamerican Cup race held in Habana, Cuba on February 23, 2020, are overturned.
3. All points and prize money granted during the Race are withdrawn from all athletes who received them.



4. A total of 139.6699 points is granted to each athlete who started the Race.
5. A total amount of USD 75.75 is granted to each athlete who started the Race.
6. The full amount of the Appeal fee paid by the Appellants is refunded to them.

Made in Lausanne, on May 4, 2020

WORLD TRIATHLON TRIBUNAL

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Chair of the Panel, Philippe Renz

A handwritten signature in black ink, appearing to read "Ize Matebese", with a stylized flourish at the end.

Ize Matebese, Panel Member

A handwritten signature in blue ink, appearing to read "Kevin Sullivan", with a stylized flourish at the end.

Kevin Sullivan, Panel Member

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 recourses have been exhausted, may be submitted exclusively to the Court of Arbitration for Sport, in accordance with 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.