

Hollow victory for Marion Jones' Sydney 2000 relay team members

Jörg Probst

Ten years ago we were all marvelling at Marion Jones' fabulous performances at the Sydney Olympic Games, including her contributions to the US 4x100m and 4x400m relay teams, which won the U.S. bronze and gold respectively. In 2007 Marion Jones' lost all her medals, and all her performances from 1 September 2000 onwards were annulled by the IAAF and the IOC, after she admitted to having used performance enhancing drugs.

In 2008 the IOC followed the recommendation by the IAAF to disqualify retrospectively both these relay teams, and Marion Jones' team mates had to return their medals, too. However, Andrea Anderson, LaTasha Colander Clark, Jearl Miles-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, and Passion Richardson appealed that decision by the IOC, and on 16 July 2010 the Court of Arbitration for Sport (CAS) published its final decision on the matter.ⁱ It upheld the appeal and reversed the IOC's decision, which means that the US women's relay team results stand and all team members except Marion Jones can keep their medals.

Whilst this decision may seem to defy commonsense, the three panel members explain in their reasons for their decision how they arrived at their conclusion, and it becomes clear that there could be no other outcome in this case.

Both parties try to rely on the previous CAS decision involving Jerome Young

The IOC tried to justify its 2008 decision to annul the results of the two relay teams by distinguishing this case from the case involving Jerome Young, another US sprinter who was proven to have used a performance enhancing substance during the Sydney 2000 Olympic Games, where he was a 4x400m team member. CAS decided in 2004 that Jerome Young's team members were allowed to retain their medals. The IOC argued that in the 2004 case Jerome Young's team members were allowed to retain their medals because Jerome Young only ran in the preliminary round and the semi-final, but not in the final, whereas Marion Jones did compete in the finals and so significantly influenced the end result.

The seven appellants, on the other hand, relied on the Young decision as a precedent CAS should follow, because of the similarities of their case with that of Jerome Young.

The court made it clear that unlike other courts it is not bound to follow its own previous decisions, although it would take into consideration the reasoning in that case; neither did it accept the IOC's suggestion that this case was fundamentally different from the Young case.

Athletes not afforded natural justice by IOC?

The athletes complained that they were denied the right to be heard, as the IOC hadn't told them what the charges against them were, and it hadn't afforded them the opportunity to express their viewpoint and defend themselves.

They also complained that the IOC members who arrived at the decision had made public statements that demonstrated they had prejudged the matter. The appellants also argued that the IOC never arrived at a valid decision.

In response to these complaints, the court relied on CAS rule 57 which states that the CAS appeal procedure cures any defect regarding the right to be heard, as CAS considers the case afresh, and "the panel shall have full power to review the facts and the law." Also, in the course of the CAS proceedings both parties agreed that they had been provided the opportunity to be heard fully.

IOC stumbles over its own rules

The key question in this case really was: did the IOC have the power to strip a whole team of its medals?

Rule 23 of the Olympic Charter as in force in 2008 gave the IOC the power to strip athletes of their medals, but teams could only be disqualified where the athlete or team:

"-has violated any applicable sports regulation or decision ('[...] in the case of any violation of the Olympic Charter, of the World Anti-Doping Code, or of any other decision or applicable regulation issued by the IOC or any IF or NOC [...]),

-has violated 'any applicable public law or regulation', or

-has committed 'any form of misbehaviour'."

However, the court was of the view that "this provision of the Olympic Charter is to be properly read in accordance with the 'principle of legality'[...], requiring that the offences and the sanctions be clearly and previously defined by the law and precluding the 'adjustment' of existing rules to apply them to situations or behaviours that the legislator did not clearly intend to penalize."

CAS panel members have applied this legal principle consistently and developed what they call the "predictability test." All this means that any sanctions imposed by sporting organisations can only be valid if there are clear rules in place that make the sanctions a predictable, foreseeable consequence of certain actions, or, in other words, athletes cannot be punished for actions that were not punishable at the time the actions took place. We are all familiar with this concept, because essentially the same principle applies in our criminal justice system. It is up to the legislators to enact laws that make certain actions punishable and to define what the penalty for those actions should be.

The IOC's case therefore rested entirely on whether at the relevant date there was a rule in place that allowed it to disqualify the entire team if one team member was found guilty of a doping offence.

The anti-doping rules that applied during the Sydney Olympic Games were the Olympic Movement Anti-Doping Code (OMAC) and an explanatory memorandum (EM).

Section 3 of Chapter II of the OMAC stated:

"[...]

3. Any case of doping during a competition automatically leads to invalidation of the result obtained (with all its consequences, including forfeit of any medals and prizes), irrespective of any other sanction that may be applied, subject to the provisions of point 4 of this article.

4. In the event that a competitor who is a member of a team is found guilty of doping, the relevant rules of the International Federation concerned shall be applied."

When these two paragraphs are read together, the panel understandably comes to the conclusion that the IOC makes a distinction between punishments for individuals and punishments for team sports, and consequently for team sports the rules of the international federation, in this case the IAAF, are to apply.

The IOC argued that these provisions were overcome by a paragraph in the EM, which reads:

"For competitors who are members of a team, paragraph 4 refers only to paragraph 3. This means that the rules of the International Federation concerned only govern the question of any invalidation of the result obtained by the team. For everything else, the athlete in question is sanctioned individually, according to the rules of the Code, in the same way as any athlete accused of doping. If the IF concerned has not adopted the implementing provisions of the Code in this area, the events in which the doped athlete has participated are considered lost or the team is disqualified, according to the sports and the competition format."

However, the CAS panel did not follow this argument. This is partly because the EM contained a formal defect: the EM was never formally approved and adopted by the Executive Board of the IOC. Further, the EM explicitly stated that its purpose was only to clarify the OMAC, and could not substantively change the code.

Also, the second sentence quoted above clearly states that the rules of the international federation are to apply for team sports. The court also pointed out that the last sentence of the relevant extract of the EM is unclear. Further, the IOC itself admitted that the EM could have been better drafted. And finally, the IOC, in a letter from the Secretary of the IOC Disciplinary Commission addressed to the IAAF President, stated that the OMAC requires

that the rules of the international federation apply in relation to how team results are affected where one of the team members is disqualified for a doping violation.

It cannot surprise, then, that the court concluded that the IAAF rules in force as at 2000 apply in this case.

The simple fact of the matter is that as at 2000, neither the IOC rules nor the IAAF rules prescribed the consequences that would follow for the team as a whole if a relay team member was disqualified for a doping violation. The IOC tried to argue that IAAF rule 59.4 should apply. However, that rule, as in force in 2000, clearly only refers to individual athletes, and CAS had already decided in the Young case that this rule could not be applied.

When commonsense cannot prevail

The last straw the IOC was clutching onto was the commonsense argument that it would be absurd to allow the other team members to retain their medals when one member of the team was admittedly doped, as that athlete clearly influenced the outcome of the races. The IOC also tried to distinguish a relay event from other team sports events, because in a relay event the contribution of the doped athlete is so obviously influential on the result of the whole team.

The court recognised in this argument some sort of *lex sportiva*, or fundamental law of sport. Although the panel acknowledged that the concept of a *lex sportiva* is not without its merits, the IOC did not produce any convincing arguments in favour of such a principle and it also stated that in any event such a law would have to pass the predictability test.

The panel also noted that even the current WADA code would not support such a law. In relation to team sports, the WADA code stipulates in article 11.2 that

“if more than two members of a team in a Team Sport are found to have committed an anti-doping rule violation during an Event Period, the ruling body of the Event shall impose an appropriate sanction on the team (e.g., loss of points, Disqualification from a Competition or Event, or other sanction) in addition to any Consequences imposed upon the individual Athletes committing the anti-doping rule violation.”

In addition, the panel noted that there is no consensus across various team sports on how a team is sanctioned if one or more team members commit an anti-doping rule violation.

Even the IOC anti-doping rule that was in force for the 2008 and 2010 Olympic Games did not expressly require an entire team to be disqualified if one member was disqualified for a doping offence:

“In Team Sports, if more than one team member is found to have committed an anti-doping rule violation during the Period of the Olympic Games, the team may be

subject to Disqualification or other disciplinary action, as provided in the applicable rules of the relevant International Federation.

In sports which are not Team Sports but where awards are given to teams, if one or more team members have committed an anti-doping rule violation during the Period of the Olympic Games, the team may be subject to Disqualification, and/or other disciplinary action as provided in the applicable rules of the relevant International Federation.” (Article 10 of the 2008 Beijing Anti-Doping Rules and Article 9 of the 2010 Vancouver Anti-Doping Rules)

The panel ruled in favour of the seven appellants. It acknowledged that its decision may seem unfair to the other teams that competed in the relay events at the 2000 Olympics, but that it was up to the IOC and/or the IAAF to enact clear rules in relation to this kind of scenario.

It is worth pointing out that unlike our common law superior courts CAS is not a court that can change the law. It can only interpret existing rules, and the conclusions CAS arrived at are in my view correct, as absurd as this outcome is.

Some final thoughts

The IAAF hasn't commented at all on this case since the judgment was delivered, but since 2004/2005 the IAAF rule book dictates that the entire team is disqualified if one team member is disqualified following a doping offence.

IOC president Jacques Rogge has accepted the ruling and he vowed that the IOC will amend its rules to ensure such farcical outcomes are no longer possible. Yet there doesn't seem to be a consensus even within the IOC that all team members should be stripped of their medals if one team member is disqualified. In the wake of the CAS decision IOC member Anita DeFrantz commented that she was happy for Marion Jones' colleagues because she would have felt sorry for them had they lost their medals because of one athlete's mistake.

But pity is hardly a convincing argument. What if two or even more of the athletes in a relay team that competed at the Sydney 2000 Olympics were proven to have been doped? CAS would have to arrive at the same conclusion: the innocent team member(s) would be allowed to keep their medals. This scenario is not so far-fetched. In fact, the court acknowledged that in 2005 one of the appellants, Chryste Gaynes, was convicted of a doping offence for using the same substance as Marion Jones used, albeit in 2003, and so the assumption had to be made that in 2000 she was running clean. Also, Torri Edwards was banned just before the 2004 Olympic Games for a positive doping test. To take this thought further just for argument's sake: What if all participating athletes in a Sydney 2000 relay team had been convicted of doping at the Games? Would the team result still stand, but all the athletes would lose their medals? Clearly an absurd result.

One might also question the integrity of the seven athletes who fought to keep their medals. How proud can they possibly be of their medals? In 2007 Passion Richardson said

that she should not be punished for the mistake of one team member. Only one member of the 4x100m relay team, Nanceen Perry, did not join the appeal.

Whether one or more athletes of a team are doped and disqualified but contributed to the team's result, the team as a whole has obviously gained an unfair advantage and must be disqualified. After all, any other rule violation would have resulted in disqualification. If only one of the members had ventured outside their lane during any of the races, if the starting athlete had false started once too often, if the baton had changed hands outside the changeover zone, the entire team would have been disqualified.

By the year 2000 the IOC and the IAAF had been fighting doping for twelve years, at least officially. Incredibly, until then neither of these bodies had even contemplated the possibility that a relay athlete might be disqualified for doping, and what that would mean for the end result of a relay event. It will be interesting to see what approach the IOC will take for the 2012 Olympics on doping in team events.

ⁱ CAS 2007/A/1545 Andrea Anderson, LaTashba Colander Clark, Jearl Miles-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, Passion Richardson v/ IOC, 16 July 2010.