

CAS A1/2006

FINAL ARBITRAL AWARD

Pronounced by the
COURT OF ARBITRATION FOR SPORT
OCEANIA REGISTRY
Ordinary Division

Sitting in the following composition:

Panel:

The Hon John Winneke AC QC
Sole Arbitrator

In the matters of:

AUSTRALIAN WEIGHTLIFTING FEDERATION

AUSTRALIAN SPORTS COMMISSION

Applicants

Represented by Mr Ian Fullagar, Lander & Rogers Lawyers
and

MR. CORRAN HOCKING

Respondent

Represented by Mr. Peter Fitzgerald, Oakley Thompson Lawyers

AND

INTERNATIONAL WEIGHTLIFTING FEDERATION

Applicant

Represented by Mr Ian Fullagar, Lander & Rogers Lawyers
and

MR. CORRAN HOCKING

Respondent

Represented by Mr. Peter Fitzgerald, Oakley Thompson Lawyers

Date and place of hearing: The matter was determined by written documentation submitted by the parties

Date of Award: 1 August 2006

1. **PRELIMINARY**

1.1 On 9 October 2005 Mr Corran Hocking (the **Athlete**) provided a positive urine sample at the 2005 Commonwealth, Oceania & Pacific Weightlifting Championships. He received an "Infraction Notice" from the International Weightlifting Federation (the **IWF**) alleging a breach of its Anti-Doping Policy. Subsequently, on 30 October 2005, the Athlete provided a positive urine sample at the Australian Weightlifting Championships, and received an "Infraction Notice" from the Australian Weightlifting Federation (the **AWF**) alleging a breach of its Anti-doping Policy. Further, on 24 January 2006, the Athlete received an "Infraction Notice, from the Australian Sports Commission (the **ASC**) which alleged a breach of its Anti-Doping Policy based on the return of a positive sample of the Australian Weightlifting Championships on 30 October 2005.

1.2 At all material times, the ASC provided to elite athletes (under the auspices of the Australian Government) financial and other support for the purposes (inter alia) of assisting those athletes to integrate their sporting commitments and aspirations with their education and career goals. Accordingly, on 18 March 2005, the ASC – pursuant to a written agreement – agreed to provide athlete "Direct Athlete Support" (**DAS**) for the financial years ending June 2005 and June 2006. On 4 April 2005, and in pursuit of the agreement, ASC paid to

notice to the Athlete that has terminated the Athlete's Agreement and requires repayment of the \$10,000 to DAS. In support of these submissions, the ASC contends that its new anti-doping policy, by article 13.10, prescribes that any athlete who has been declared "ineligible" cannot receive funding or assistance from the ASC, and that any "DAS Athlete" will have his Athlete's Agreement terminated from the date of commencement of the period of ineligibility; and will be required to repay to the ASC all financial assistance given to that person.

3.3 Finally, the ASC submits that Article 11 of its Anti-Doping Policy makes it clear that, when the ADP has been violated, the athlete is to be brought before a "Hearing Body" for a hearing to adjudicate whether a violation of the ASC Anti-Doping Policy has occurred and, if so, what sanction in accordance with the Article 13 should be imposed. A "hearing body" for this purpose, includes this Court and, so it is submitted, the CAS has the power to order repayment of the DAS as a form of "sanction". Indeed, so the ASC submits, the repayment of the DAS is inextricably intertwined with the finding of the anti-doping violation; and that it would be nonsense if the same body that has jurisdiction to make that finding does not have jurisdiction to order repayment of the DAS.

4. CONCLUSION

4.1 In my view the submissions made on behalf of the ASC are compelling. It seems to me to be quite clear that the CAS (the forum to which the parties have consented) has the jurisdiction to order repayment of the DAS payment, as a consequential order to the consent orders that the athlete had violated the relevant anti-doping policies in breach of his agreement. I can see nothing in the procedural rules of the CAS Code of Sports-related Arbitration, 2004 Edition (the **Code**) which would preclude the making of such an award in favour of a person who has "joined in" the proceedings as an "interested party" (cf R.41.3). Indeed, the only issue which now remains to be decided between the parties to this case is the issue between the ASC and the Athlete as to the repayment of the DAS. There can be no doubt that the CAS has, in appropriate circumstances, the power to resolve "sports related" disputes relating to pecuniary matters (cf Code: R27), and I can see no reason why it cannot exercise that power in favour of a party described as an "interested party".

4.2 As I read them, the submissions made on behalf of the Athlete do not challenge the fact that the ASC is entitled to recover the DAS payment; but merely the Court's jurisdiction to order its repayment. However the challenge to the Court's jurisdiction does not descend to any particularity in support of the assertion; save that it appears to be a contention that an order of the type sought by the ASC cannot, or should not be made in favour of an "interested" or "affected" party;

but should only be made in favour of a party who is an application for substantive relieve. It is that submission which I do not accept.

4.3 It is next submitted on behalf of the Athlete that – assuming this Court has jurisdiction to entertain the ASC's claim, the Court has no power to make the orders which the ASC seeks. It is submitted that neither the Athlete's Agreement nor the ASC Anti-Doping Policy confer jurisdiction on this Court to make such an order. In support of this contention, the Athlete relies upon a decision made in this Division of CAS on 20 December 2005 in *ASC & Ors v Baggaley* (CAS A3/2005). In that case the Court has concluded that the ASC's "Athlete's Scholarship Agreement" did not confer jurisdiction on CAS to enforce the terms of the agreement; and that the provisions of Article 13 of the ASC's anti-doping policy were not sufficiently explicit to confer jurisdiction on the Court to order re-payment of expenses received. The Court went on to conclude that, even if it had jurisdiction to order repayment, it would not have done so in the peculiar circumstances of that case.

4.4 It follows from the narrative in the preceding paragraph that the reasoning of the Court in *Baggaley* was not essential to its ultimate determination. The fact is that, in the matter before me, the Athlete's Agreement has in the events that have occurred terminated, and the ASC has required repayment of the DAS made. In those circumstances, I am of the view that this Court has jurisdiction, not

only to entertain the ASC application to order the repayment of the DAS; but also has jurisdiction to make an order to that effect. In this respect, I refer to comments which I made in October 1999 in an application before CAS brought by *ASC & Others v O'Shannessey* (CAS A10, A11, A12/1999). In that case, a cyclist had been in receipt of benefits and financial assistance from the ASC (of similar type to those being here considered) before being declared ineligible for anti-doping policy infractions. The ASC sought relief (by way of sanctions) directing the respondent to repay funding and grants paid to him since May 1998. At para 12(g), (P.28) of the reasons, I said:

"Although each of the AOC, ACF and ASC has sought relieve under the relevant clauses of their policies that directions be given to the respondent to repay funding and grants paid to or received by him from the various bodies since 1998 (in the case of ACO and ACP) and financial assistance given since March 1999 (in the case of ASC), I do not propose to exercise the powers which I undoubtedly have, to grant such relief in the circumstances of this case." (my emphasis).

4.5 I still regard the CAS as having the power to grant the relief which is sought in this case. I do not necessarily regard the grant of such relief as the imposition of a "sanction" within the meaning of the ASC Anti-Doping Policy. Rather, I see it as the appropriate enforcement of the agreement as made between the Athlete on the one hand, and the ASC on the other, in the events which have happened. It is,

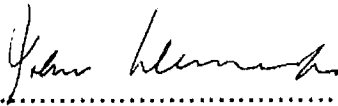
in my view, open to CAS to determine a dispute as to such enforcement.

5. The Award

5.1 It follows from the reasons which I have given that the Court has jurisdiction to entertain this applicant from the ASC; and has jurisdiction to make an order (or award) that the respondent Athlete repay to the ASC the DAS payment of \$10,000 which was made by the ASC to the Athlete in April 2005; and which the ASC now requires to be repaid.

5.2 The formal order which I make is that the respondent Athlete repay to the ASC the DAS payment (\$10,000) made to the respondent by the ASC in April 2005; such payment to be made within 30 days or such other time as the ASC permits.

Dated: *1st* day of August 2006


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THE HON. J.S. WINNEKE A.C. QC
(ARBITRATOR)