

COURT OF ARBITRATION FOR SPORT APEALS DIVISION SYDNEY

**Australian Sports Anti-Doping Agency (ASADA)
on behalf of Surf Lifesaving Australia**

Appellant

AND

Lyle Clark, Glen Williams, Randall Martin and Nick Parr

Respondents

CAS 2009/A/2001

*Doping violation by team member—disqualification—forfeiture of result—
impact on team result*

This was an appeal from part of the award by an ordinary member of the Court of Arbitration for Sport on 4 November 2009. Mr Atkins, one of 5 team members of the Currumbin Barbarians Surf Life Saving Club Men's Open Surf Boat Team which won the Open Men's Surf Boat Crew Race in March 2009, had committed two Anti-Doping Rule Violations (ADRVs) in breach of clause 7 of the Surf Life Saving Australia Anti-Doping Policy 2008 (the SLSA Policy). The member disqualified Atkins, and ordered that medals, points, or prizes awarded to him be forfeited. He was ruled him ineligible to compete until 4 May 2011. The result of the Currumbin Crew in the race remained unchanged. ASADA appealed the part of the decision leaving the result unchanged. It sought the disqualification of the team, forfeiture of points, medals or other prizes and the advancement of other placegetters in the event.

HELD:

1. The Panel had jurisdiction to hear the appeal. All parties to the current appeal agreed to the original jurisdiction of CAS to hear ASADA's application and to determine whether there should be consequences or sanctions imposed against the Currumbin Crew as a collective. Articles 16 and 19 of the Policy covered the current situation, with article 19.1 expressly conferring a right of appeal in respect of article 16 decisions in respect of "Affected Parties".
2. In addition, Articles 9 and 11 of the 2009 World Anti-Doping Code (WADC), to which SLSA was a signatory, conferred power upon CAS

to invoke consequences for members of teams otherwise falling within its provisions in addition to those imposed upon the team member who committed the ADRV. The SLSA Policy incorporated these provisions in its articles 17 and 18.

3. Compulsory WADC provisions such as Article 9 provided that an ADRV in “... *Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.*” Article 11 of the WADC dealt with team events and made it mandatory to impose a sanction on the team in addition to any consequences imposed upon the individual athlete if more than two members of the relevant team had committed an ADRV.
4. Articles 9 and 11 of the WADC were intended to exhaustively cover the situation of all sporting activities in which individuals or teams compete with no gap, so that if the relevant participants did not fit within Article 11 they fitted within Article 9, an effect achieved by means of definitions, particularly of “individual sport” and “team sport”. The latter was defined to mean “... a sport in which substitution of players is permitted during a Competition.” “Competition” meant “a single race, match, game or singular athletic contest.” The Panel concluded that a sport may be an “individual sport” even though the participants are not solitary individuals if the rules of the relevant competition do not permit substitutes. In the current circumstances Article 9 applied. It was only if substitution is permitted that the consequences for the team were determined under Article 11.
5. In addition, the result was the result of the team, not that of an individual member. To find otherwise would be an unnatural use of language. It followed that Article 9 conferred power to invoke consequences for members of teams in the current circumstances.
6. As to the merits, the respondents were competing in an “individual sport” within the ambit of Article 9. The ability to substitute a competitor after a false start did not change this position as a false start was no start at all.
7. The costs of CAS were to be borne equally by the parties.

CAS 2009/A/2001 Appeal by Australian Sports Anti-Doping Authority
(ASADA) v Mr Lyle Clark, Mr Glen Williams,
Mr Randall Martin and Mr Nick Parr

FINAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: The Hon Jerrold Cripps QC
Arbitrators: The Hon Justice Henric Nicholas
Mr Alan Sullivan QC
CAS Clerk: Ms Suzie Fraser

between:

ASADA on behalf of Surf Lifesaving Australia (SLSA)
represented by Mr John Marshall SC, Barrister, Sydney, Australia
instructed by Mr Richard Redman, ASADA -Appellant-

and

Mr Lyle Clark, Mr Glen Williams, Mr Randall Martin and Mr Nick Parr
represented by Mr Lachlan Gyles SC and Mr James McLeod of Counsel
on instructions from Mr Gareth Horne, Solicitor, Wotton + Kearney, Lawyers,
Sydney, Australia

-Respondent-

INTRODUCTION

1. This is an appeal from part of the Award of Mr David Grace QC of 4 November 2009 which was handed down by Mr Grace following a hearing conducted by him pursuant to Article 16 of Surf Life Saving Australia (“SLSA”) Anti-Doping Policy dated December 2008 (“the Policy”).
2. By reason of Article 16 of the Policy, the hearing came before Mr Grace in his capacity as a member of the Court of Arbitration for Sport (“CAS”) and was heard by him in the Ordinary Division of CAS.
3. The matter came before Mr Grace pursuant to a positive test for a Prohibited Substance, namely Stanozolol by one of the five members of the Currumbin Barbarians Surf Life Saving Club Men’s Open Surf Boat Team (“the Currumbin Crew”) following the final of the Open Men’s Surf Boat Crew Race held in the 2009 Australian Surf Life Saving Championships at Scarborough Beach, Western Australia on 22 March 2009 (“the Race”). The Currumbin Crew won that race. Following the race, on 22 March 2009, the Currumbin Crew Members were asked to provide a urine sample for the purposes of doping control. Analysis of the sample provided by one member of the Currumbin Crew, Mr Atkins, indicated the presence of the Prohibited Substance. None of the other members of the Currumbin Crew, who are the present respondents to this appeal, tested positive for any prohibited substance and it is common ground between the parties that none of the respondents was aware of the use by Mr Atkins of the Prohibited Substance or bear any blame whatsoever in respect of this unfortunate episode.
4. On 30 June 2009 ASADA, on behalf of SLSA, issued an Infraction Notice to Mr Atkins pursuant to clause 15 of the Policy. Mr Atkins elected to have the matter referred to a hearing by CAS under the Policy.
5. An Order of Procedure (“O or P”) was agreed by the parties in respect of the original CAS hearing.
6. This O of P was subsequently amended due to the fact that ASADA filed a second Application against the other members of the Currumbin Crew, namely the present respondents to this appeal seeking similar relief to that which it seeks in this Appeal. Mr Grace heard both applications simultaneously and ruled, relevantly, as follows:-
 - (a) CAS had jurisdiction to determine the substantive dispute by Arbitration;
 - (b) Mr Atkins is found to have committed two Anti-Doping Rule Violations (ADRV’s) in breach of clause 7 of the Policy and Article 2 of the World Anti-Doping code (“the WADC”);
 - (c) the result obtained by Mr Atkins in the race is disqualified and any medals, points and prizes awarded to him are forfeited;

- (d) Mr Atkins is ineligible to compete during the period commencing on 5 May 2009 and expiring at midnight on 4 May 2011;
 - (e) the result of the Currumbin Crew in the race remains unchanged and the crew members Lyle Clark, Glen Williams, Randall Martin and Nick Parr are deemed to comprise the winning team.
7. The determinations or rulings which Mr Grace made in respect of the current respondents to this Appeal were made pursuant to the separate Application brought by ASADA against the current respondents and were the subject of a Supplementary Order of Procedure dated 14 September 2009 (“the SOP”). Relevantly, clause 2.1 of the SOP provided as follows:-

“2. *Jurisdiction*

2.1 *The parties agree that the [CAS] has jurisdiction to determine, by arbitration, whether CAS has jurisdiction to determine the substantive dispute which is the subject of:*

- (i) *the application brought by ASADA ... dated 16 July 2009 against Mr Peter Atkins ... pursuant to clause 16 of the [Policy] and*
- (ii) *the Application brought by the [ASADA] dated 9 September 2009 against [Mr Atkins] and Mr Lyle Clark, Mr Glen Williams, Mr Randall Martin, and Mr Nick Parr (the Affected Parties), pursuant to clause 16 of the [Policy] ...,*

and the parties agree to refer the dispute as to jurisdiction to CAS for determination by arbitration, and thereafter if CAS determines that it does have jurisdiction, then the parties agree to refer the substantive dispute to CAS for determination by arbitration”.

8. Article 19 of the Policy provides for appeals to the Appeals Division of CAS. Mr Atkins did not choose to exercise that right of appeal in respect of Mr Grace’s findings against him. However, ASADA lodged an Application on 24 November 2009 seeking to appeal from that part of Mr Grace’s award which held that the result of the Currumbin Crew in the 2009 Championships remain unchanged and that the current respondents are deemed to comprise the winning team.

9. ASADA seeks the following determinations in this Appeal:-

“1) *Overtake Part 5 (page 17) of the decision of the CAS First Instance Tribunal dated 4 November 2009, namely: “The result of the Currumbin Barbarians Surf Lifesaving Club Men’s Open Surf Boat Team in the 2009 Australian Championships race remains unchanged and the crew*