



**Arbitration CAS ad hoc Division (O.G. Atlanta) 96/002 A., W. and L. / NOC Cape Verde (NOC CV), award of 27 July 1996**

Panel: Mr. Michael Beloff (England), President; Mr. Christopher Campbell (USA); Prof. Mingzhong Su (China)

*Exclusion of three participants  
Procedure applicable in the matter of exclusion from the O.G.*

- 1. The Rule 66 of the Olympic Charter vests the IOC alone with the responsibility of determining who should be entitled to an accreditation card for the Olympic Games and thus, by implication, from whom such cards should be removed.**
- 2. The withdrawal of an accreditation for the Olympic Games is invalid if effected without the consent of the IOC Executive Board.**

On 24 July 1996, the Cape Verde NOC procured the removal of the accreditations of A., athlete, W., medical advisor, and L., coach, (“the claimants”) by fax to the Director of NOC Services Olympic Village, ACOG, as a result of which he was denied access to his living quarters in the Olympic Village, and to other sites and events placed by the IOC, under the responsibility of ACOG.

The Cape Verde NOC (“the respondent”) decided to dismiss the claimants on the grounds they had disrupted its organization, and questioned the authority of its President and Secretary General on many occasions. In particular, the respondent alleges that A. carried the flag at the Opening Ceremony contrary to a decision of the respondent that the flag bearer would be the Chef de Mission of the NOC.

A., W. and L. seek to obtain from the CAS ad hoc Division a ruling requiring the respondent to procure his reinstatement into the Olympic Village. The athlete A. is entered for the heats of the 110 meters hurdles, which are due to take place on 28 July 1996, event in which he was selected by the Respondent to compete.

By fax received on the 26 July 1996 at 5:15 p.m., the claimants forwarded his application to the Court of Arbitration for Sport (CAS), ad hoc Division in Atlanta (“AHD”). On the same day, at 9:00 p.m., the Panel of arbitrators in charge of the case granted a temporary stay of the Order dismissing the claimants from the Olympic Village.

## LAW

1. These proceedings are governed by the Rules for the Resolution of Disputes Arising During the Olympic Games (the “ad hoc Rules”) of CAS enacted by the International Council of Arbitration for Sport (ICAS) on 28 September 1995. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration because the seat of the ad hoc Division and of its panels of Arbitrators was established at Lausanne, Switzerland, by a decision issued by the President of the AHD on 11 July 1996.
2. The jurisdiction of the ad hoc Division arises out of Rule 74 of the Olympic Charter (see also Rule 1.2).
3. Under Article 17 of the ad hoc Rules, the Panel must decide a dispute “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*”.
4. Under Article 16 of the ad hoc Rules, the Panel has “*full power to review the facts on which the application is based*”.
5. Relevant Rules of Olympic Charter

### **Rule 31 Mission and Role of the NOCs**

*31.3 The NOCs have the exclusive powers for the representation of their respective countries at the Olympic Games ...*

#### *Bye Law to Rule 31*

*8. The NOCs perform the following tasks:*

*8.1 They constitute, organize and lead their respective delegations at the Olympic Games and at the regional, continental or world multi-sports competitions patronized by the IOC. They decide upon the entry of athletes proposed by their respective national federations. Such selection shall be based not only on the sports performance of an athlete but also on his ability to serve as an example to the sporting youth of his country.*

### **Rule 41 Chef de Mission**

*2.1 During the period of the Olympic Games, the competitors, officials and other team personnel of an NOC are placed under the responsibility of a chef de mission, ...*

*Rule 49* **Entries**

- 49.1 *Only NOCs recognized by the IOC may enter competitors in the Olympic Games. The right of final acceptance of entries rests with the IOC Executive Board.*
- 49.2 *An NOC shall only exercise such attributions upon the recommendations for entries given by national federations.*

*Bye-law to Rule 49*

7. *The withdrawal of a duly entered delegation, team or individual shall, if effected without the consent of the IOC Executive Board, constitute an infringement of the Olympic Charter and shall be the subject of disciplinary action.*

*Rule 50* **Infringement of the Olympic Charter**

*The IOC Executive Board may withdraw accreditation from any person who infringes the Olympic Charter.*

*Rule 66* **Accreditation Card**

- 66.1 *The accreditation card gives, to the degree necessary in each case and as indicated thereon, access to the sites and events placed, by the IOC, under the responsibility of the OCOG. **The IOC determines the persons entitled to such cards** (Panel's underlining) and sets the conditions of their granting and procedures for their issuance. It is the duty of the OCOG to deliver the cards to the persons entitled to them.*

*Bye-law to Rule 69 Opening and Closing Ceremonies*

- 69.1.3 *Each delegation, dressed in its official uniform, must be preceded by a name-board bearing its name and must be accompanied by its flag, **to be carried by a member of the delegation** (Panel's underlining).*
6. This Panel confirmed in evidence to the Panel that no consent had yet been sought or obtained from the Executive Board of the IOC for the withdrawal of the claimants.
7. It appeared to the Panel in the light of the admitted facts that (i) A. was a duly entered individual (ii) no consent of the IOC Executive Board for his withdrawal had been obtained, that the purported withdrawal of his accreditation (and from participation in the event for which he had been selected) was invalid and of no effect. This conclusion flowed irresistibly from the facts referred to and the provisions of Bye-law 7 to Rule 49.
8. The same conclusion inevitably followed in the case of W. and L. as individuals or members of a duly entered delegation (which the respondent accepted them to be).
9. The conclusion was fortified by the provisions of Rule 66 of the Charter which vested the IOC uniquely with responsibility to determine who should be entitled to the card of accreditation and, by necessary implication, from whom they should be removed.

10. This Panel emphasizes that in the light of the above it is not required to, and has formed no final view on the underlying merits of the dispute between the claimants and the respondent. It was clear both from the documents referred to, and the oral evidence, that each side has acutely different perceptions of the conduct and attitude of the other. The claimants' application betrayed a misunderstanding of the provisions of the Olympic Charter as to flag-carrying at the Opening Ceremony. Bye-law 1.3 to Rule 69 makes it clear that a member of the national delegation, who need not be an athlete, should enjoy the privilege of carrying the flag. This misunderstanding and the consequent decision of A. to carry the flag himself contrary to the wishes of the respondent, was a predictable source of mutual hostility.
11. The Panel regards it as a matter of extreme regret that, whatever the rights and wrongs of the dispute, the historic first participation of an athlete of the Cape Verde island in a track event in the Olympic Games, should be put at risk by controversies off the field of play. If, even at this late hour, the parties could compose their differences with honor, in the Panel's view the paramount interests of the Olympic Games in Atlanta would be well served.

**The CAS ad hoc Division rules:**

The fax sent by the President of the NOC Cape Verde, dated 24 July 1996, which purported to dismiss the claimants as official members of the Cape Verde delegation, is invalid and of no effect. They each shall continue to have all rights and privileges accorded to their official status in these Olympic Games, unless and until such status is altered by the IOC Executive Board.