

**CAS 2012/A/2731 Brazilian Olympic Committee & Brazilian Taekwondo Confederation
& Márcio Wenceslau Ferreira v. World Taekwondo Federation & Comité Olímpico
Mexicano & Federación Mexicana de Taekwondo & Damian Alejandro Villa Valadez**

ARBITRAL AWARD

rendered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Romano **Subiotto QC**, Solicitor-Advocate, Brussels, Belgium, and
London, United Kingdom

Arbitrator: Mr. Olivier **Carrard**, Attorney-at-law, Geneva, Switzerland

Arbitrator: Prof. Denis **Oswald**, Attorney-at-law, Colombier, Switzerland

Ad hoc clerk: Ms. Aude **de Crayencour**, Attorney-at-law, Brussels, Belgium

in the arbitration between

BRAZILIAN OLYMPIC COMMITTEE, Rio de Janeiro, Brazil

BRAZILIAN TAEKWONDO CONFEDERATION, Rio de Janeiro, Brazil

MÁRCIO WENCESLAU FERREIRA, Rio de Janeiro, Brazil

Represented by Mr. Marcelo Franklin, Attorney-at-law, Rio de Janeiro, Brazil

- Appellants -

and

WORLD TAEKWONDO FEDERATION, Seoul, Korea

Represented by Mr. Seung Yul Lee, Attorney-at-law, Seoul, Korea

COMITÉ OLÍMPICO MEXICANO, Mexico D.F., Mexico

Represented by Juan Francisco Garcia Guerrero, Legal Director, Mexico D.F., Mexico

FEDERACIÓN MEXICANA DE TAEKWONDO, Mexico D.F., Mexico

& DAMIAN ALEJANDRO VILLA VALADEZ, Mexico D.F., Mexico

Represented by Mr Raul Pastor Escobar and Mr Rene De Liux Campos Garcia, Attorneys-at-
law, Mexico D.F., Mexico

- Respondents -

I. PARTIES

1. The Brazilian Olympic Committee (“BOC”), the First Appellant, is the National Olympic Committee for Brazil. The BOC is the governing body of Brazilian Olympic sports, and is responsible for enrolling Brazilian athletes in the Olympic Games. The national confederations whose sports are part of the Olympic Program are directly linked to the BOC.
2. The Brazilian Taekwondo Confederation (“BTC”), the Second Appellant, is the governing body of taekwondo in Brazil.
3. Márcio Ferreira Wenceslau, the Third Appellant, (the “Brazilian athlete” or “Ferreira”), is an international level taekwondo athlete from Brazil who was 31 years old at the time of the contest relevant for this case. Ferreira participated in the Pan-American Qualification Tournament for the London 2012 Olympic Games held in Querétaro, Mexico from November 18, 2011 to November 20, 2011 (the “Tournament”). Ferreira has been a professional taekwondo athlete since 2002, and is affiliated with the BTC. The First, Second, and Third Appellants are collectively referred to as the “Appellants.”
4. The World Taekwondo Federation (“WTF”), the First Respondent, is the International Federation (“IF”) governing the sport of taekwondo, and is based in Seoul, Korea. The WTF recognizes, as its members, national taekwondo governing bodies that are recognized by the National Olympic Committees (“NOCs”) of the relevant countries. The WTF oversees competitive taekwondo events internationally, including administration of the Tournament.
5. The Comité Olímpico Mexicano (“COM”), the Second Respondent, is the National Olympic Committee for Mexico. The COM is the governing body of Mexican Olympic sports, and has exclusive powers for the representation of Mexico at the Olympic Games.
6. The Federación Mexicana de Taekwondo (“FMT”), the Third Respondent, is the governing body of taekwondo in Mexico.
7. Damian Alejandro Villa Valadez (the “Mexican athlete” or “Villa”), is an international level taekwondo athlete from Mexico, who participated in the Tournament. Villa is affiliated with the FMT. The First, Second, and Third Respondents are collectively referred to as the “Respondents.” The Appellants and the Respondents are collectively referred to as the “Parties.”

II. FACTUAL AND PROCEDURAL BACKGROUND

8. On November 18, 2012, Ferreira and Villa competed in the bronze medal contest of the Men’s –58 kg event (the “Contest”) at the Tournament. Ferreira defeated Villa 7

points to 6; however, in the last minute of the Contest, the judges awarded 3 points to Villa for a kick to the head, which then changed the final result of the Contest.

9. On November 25, 2011, the BTC requested, by letter, that the Pan-American Taekwondo Union (“PATU”) carefully review the Contest between Ferreira and Villa during the Tournament. The BTC requested issuance of a wild card for the Brazilian athlete in an attempt to rectify the alleged mistaken result.
10. On December 2, 2011, the BOC sent a letter to the President of the PATU stating that the Contest had been subject of an appeal by the BTC because of the alleged mistaken result. The BOC expressed its interest in the review of the Contest’s result, and its support of the BTC’s appeal for Ferreira to qualify for the London 2012 Olympic Games.
11. On January 24, 2012, the BOC’s President sent a letter to the President of the WTF announcing its appeal of the results of the Contest, and requested the WTF to carefully review the Contest. The BOC’s President alleged that the judges made a serious mistake during the last seconds of the Contest, which led to an unfair result. According to the BOC’s President, Ferreira was in the lead when, with just three seconds left, Villa attempted a kick to Ferreira’s head, and the judges wrongly considered it to be a valid kick when in fact the kick did not hit Ferreira. The BOC’s President informed the WTF that both the BOC and BTC appealed to the PATU, but the PATU did not answer. The BOC requested Ferreira’s qualification for the London 2012 Olympic Games men’s –58kg division.
12. On February 9, 2012, the President of the WTF answered, by letter (the “WTF Decision”), explaining that: (i) following the receipt of the letter of complaint, he consulted with the Technical Delegate, the Referee Chairman, and the Sports Director to investigate the issue; (ii) there are two ways to review the judging of a taekwondo match, *i.e.*, to request a video review, and the judges’ request for a review of the decision; (iii) the quota for coaches’ review is limited to one appeal per athlete in each match; (iv) immediately after the Contest, three judges gathered together to review the score and confirmed the results; (v) the coach of the Brazilian athlete had used his quota for video review and could not make another appeal; (vi) the WTF has introduced technology after the Beijing 2008 Olympic Games to enhance a fair and transparent judging system; (vii) unintentional mistakes have been corrected immediately during the Contest either by the coach’s request or by the judges themselves; and (viii) when the above mentioned two steps have been completed, there should be no further step to argue a judges’ decision.
13. On February 10, 2012, the BOC expressed its disagreement, by letter, of the final decision taken by the WTF and requested that the WTF review its position by no later than February 24, 2012.
14. On February 24, 2012, the WTF acknowledged, by letter, receipt of the letter dated February 10, 2012 and considered that the issues surrounding the situation rested on

the decision of the officials on the field of play, which cannot be made outside the rules of the sport, along with CAS precedents. The WTF therefore considered that the decision regarding the Brazilian athlete could not be challenged at this stage and that the Brazilian coach had already used his quota for appeal. The WTF further informed the BOC that it cannot give special consideration to one country in such a situation and that doing so would be a violation of its obligations under the Olympic Charter.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. The BOC, the BTC, and the Brazilian athlete appealed against the WTF Decision by a Statement of Appeal and Appeal Brief of February 29, 2012, in which the WTF, the COM, and the FMT were identified as respondents.
16. The BOC, BTC, and the Brazilian athlete's Statement of Appeal and Appeal Brief contained the following Request for Relief:

The Appellants hereby respectfully request CAS to rule as follows:

a. Declare the Appeal is admissible;

b. The appealed decision is set aside, in order to declare the victory of Brazilian athlete, and ensure his qualification for the London Olympics 2012;

c. Alternatively, determine that the Respondents give a wild card for the participation of Márcio Wenceslau Ferreira on the London Olympics games;

d. Declare that the competition judges incurred in an error in procedendo on this case;

e. The Respondents shall bear all costs of the proceedings including a contribution to Appellants legal fees.

17. Along with their Statement of Appeal and Appeal Brief, the Appellants requested the procedure be expedited, in view of the London 2012 Olympic Games which start on July 27, 2012. The Respondents agreed that the procedure be expedited.
18. By letter dated March 22, 2012, the WTF requested a ten-day extension of the deadline to file its Answer. By letter dated March 27, 2012, the CAS informed the WTF that the deadline to file the WTF's Answer Brief was suspended until a determination on the extension's request was made by the President of the CAS. By letter dated March 29, 2012, the CAS informed the Parties that the President of the CAS Appeals Arbitration Division had rejected the First Respondent's request for extension of the deadline to file its Answer and that the deadline to file the Answer resumed upon receipt of the fax.
19. On March 30, 2012, the First Respondent filed its Answer, which contained the following Request for Relief:

For all these reasons, Respondent 1 submits the following pleas in the CAS 2012/A/2731 proceeding:

- 1. That the Panel declares the appeal as non-admissible.*
- 2. That the Panel declares itself as not competent to judge the present proceeding.*
- 3. That the Panel confirms the decision issued by the World Taekwondo Federation.*
- 4. That the Panel rejects and dismisses the appeal in its entirety.*
- 5. That the Panel orders Appellants, jointly and severally, to pay any and all arbitration costs (administrative costs and fees and disbursements of the Arbitrators).*
- 6. That the Panel orders Appellants, jointly and severally, to fully compensate Respondent 1 for all its costs and expenses in connection with the present proceedings, including attorney's fees and such other costs as Respondent 1 may specify in due course.*

20. On March 28, 2012, the Second Respondent filed its Answer, which contained the following Request for Relief:

We kindly request to the Honorable Panel of Arbitrators:

- 1. To refrain from hearing the present Appeal due to a lack of jurisdiction as this is a controversy of technical nature.*
- 2. To take into consideration and to evaluate the causes not to proceed made valid in the present response to the Appeal.*
- 3. To absolve the Mexican Olympic Committee from being a part of the Demand, as supposed facts for that circumstance do not apply.*
- 4. To confirm the decision issued by the WTF.*
- 5. To condemn the Appellants to pay to the CAS and to the Respondents the total sum of the arbitration costs, as well as all other accessory costs.*

21. On March 30, 2012, the Third and Fourth Respondents filed their Response, which contained the following Request for Relief:

The Respondents hereby respectfully request CAS to rule as follows:

- a) To refrain from ruling on the present appeal due to the lack of jurisdiction.*

b) To dismiss the appeal since it tries to revert a field of play decision and this Court's doctrine and jurisprudence have always stated that such type of opinions are out of scope of performance.

c) To confirm the decision issued by WTF.

d) To condemn the Appellants, jointly and severally, to pay any and all arbitration costs (administrative costs and fees and disbursements of the Arbitrators).

e) To condemn the Appellants, jointly and severally, to fully compensate Respondents 3 and 4 for all its costs and expenses in connection with the present proceeding, including attorney's fees and such other costs as Respondent 1 may specify in due course.

22. The Appellants appointed Prof. Denis Oswald as Arbitrator. The Respondents appointed Mr. Oliver Carrard as Arbitrator. By letter dated May 7, 2012, the CAS advised the Parties that the President of the CAS Appeals Arbitration Division nominated Romano Subiotto, QC, as President of the Panel.
23. By letter dated April 4, 2012, the Third and Fourth respondents expressed their preference to issue an award based on the parties' written submissions. By letter dated April 9, 2012, the WTF informed the CAS that it preferred the Panel issue an award based on the written submissions. By letter dated April 9, 2012, the Appellants expressed their preference for a hearing to be held in Lausanne. By letter dated May 10, 2012, the Appellants informed the CAS of their availability for a hearing to be held on June 13, 2012. By letter dated May 16, 2012, the CAS informed the Parties that, in view of the Respondents' silence, the hearing was provisionally confirmed for June 13, 2012 at the CAS Headquarters. By letter dated May 22, 2012, the FMT and the Brazilian athlete objected to the holding of a hearing in the present matter. By letter dated May 23, 2012, the WTF explained to the CAS that it was not available for a hearing on June 13, 2012 but it would be available for a hearing sometime after June 18, 2012. By letters dated May 25, 2012 and May 29, 2012, the COM objected to a hearing being held on June 13, 2012 and reiterated that it wished the award to be rendered based on the Parties' written submissions. On May 31, 2012, the Appellants informed the CAS that a hearing was important to them. In a letter dated June 1, 2012, the CAS informed the Parties that the Panel had decided to hold a hearing on June 13, 2012 in Lausanne, Switzerland. By letter dated June 4, 2012, the Appellants informed the CAS that they agreed that the present proceedings be solved based on the Parties written submissions. By letter dated June 5, 2012, the WTF informed the CAS that it could not be present for a hearing on June 13, 2012. On June 5, 2012, the FMT and the Brazilian athlete informed the CAS that only two people representing them would be attending the hearing. By letter dated June 7, 2012, the WTF informed the CAS that no hearing was necessary.

24. In a letter dated June 8, 2012, the CAS informed the Parties that the hearing scheduled on June 13, 2012 was cancelled and, pursuant to Article R44.2 of the Code, the parties were advised that the Panel deemed itself to be sufficiently well informed with respect to the present matter and, therefore, decided not to hold a hearing.

IV. JURISDICTION, APPLICABLE LAW, AND ADMISSIBILITY

A. JURISDICTION

25. Article R47 of the Code of Sports-related Arbitration (the “Code”) provides as follows:

Article R47 Appeal

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Player has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

26. The Appellants claim that the CAS has jurisdiction mainly on the basis of Article 59 of the Olympic Charter of July 7, 2007, which provides that “*any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports Related Arbitration*”. The Appellants argue that the WTF and the NOCs are bound by the Olympic Charter. In addition, the Appellants claim that Article 51 of the BOC Bylaws provides that CAS shall resolve disputes.

27. Former Article 59 of the Olympic Charter, which is, as of July 8, 2011, Article 61(2), provides as follows:

Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports Related Arbitration.

28. According to CAS jurisprudence, only “Olympic” athletes, *i.e.* athletes duly accredited by the International Olympic Committee, can rely on Article 61(2) of the Olympic Charter in order to submit an appeal to the CAS. On the other hand, athletes with a mere interest in taking part in the Olympic Games, such as the Brazilian athlete, cannot rely on Article 61(2) to justify the jurisdiction of the CAS. As a result, the Panel cannot rely on Article 61(2) to declare itself competent in the present case.¹

¹ CAS 2000/A/297; CAS 2000/A/288.

29. The Second Respondent contests CAS's jurisdiction mainly on the basis of Article 21(7) of the WTF Competition Rules.
30. The Third and Fourth Respondents argue that the CAS does not have jurisdiction because (i) the letter addressed to the President of the WTF in January 2012 was not a formal request for a dispute resolution pursuant to the WTF Statutes, and (ii) the Appellants failed to comply with the WTF Bylaws of Dispute Resolution & Disciplinary Actions of August 1, 2011 (the "2011 WTF Bylaws"), according to which the Appellants should have addressed their complaint to the Secretary General within 20 days with a \$500 processing fee. The Third and Fourth Respondents therefore argue that the Appellants have not exhausted the legal remedies available to them prior to the Appeal.
31. Article 21(7) of the WTF Competition Rules provides as follows:

The decision of the Review Jury is Final; no further appeals during the contest or protest after the contest will be accepted.

32. Pursuant to Article R47 of the Code, the CAS has the power to adjudicate appeals against a sports organization only if three conditions are met:² (i) there must be a decision of a federation, association or another sports-related body; (ii) the internal legal remedies must have been exhausted prior to appealing to the CAS; and (iii) the parties have agreed to the competence of the CAS.

The existence of a decision

33. The First, Third, and Fourth Respondents argue that the WTF Decision is an act of courtesy and not a decision amenable to challenge before the CAS.
34. According to CAS jurisprudence, a decision is a unilateral act sent to one or more determined recipients and is intended to produce legal effects.³ In addition, the form of communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal.⁴ A ruling issued by a sports-related body refusing to deal with a request can be considered a decision under certain circumstances.⁵
35. According to Article 4(1)(b) of the 2011 WTF Bylaws, "*within ten working days the Secretary General shall determine whether or not to proceed with an investigation*

² See e.g., CAS 2008/A/1583; CAS 2008/A/1584; CAS 2008/A/1699; CAS 2009/A/1869.

³ CAS 2004/A/659; CAS 2005/A/; CAS 2008/A/1634.

⁴ CAS 2008/A/1634.

⁵ CAS 2005/A/899; CAS 2007/A/1251; CAS 2008/A/1634.

related to the complaint. The decision to proceed is solely at the discretion of the WTF. Once the decision is made, the WTF shall do one of the following: (i) decide not to proceed and issue a letter to the Complainant describing why the Complaint is not being investigated, and if appropriate request additional information in order to reconsider the action; or (ii) decide to proceed and give notice to the Complainant and the accused regarding the initiation of an investigation, and the details of the subsequent process, in compliance with Article 5 (Principles) below.”

36. In the present case, by letter dated February 9, 2012, the President of the WTF decided not to proceed and described why the complaint was not being investigated. The Panel finds that by responding in such manner to the BOC, the WTF clearly manifested that it would not entertain the request, thereby ruling on the admissibility of the request and directly affecting the BOC, the BTC, and the Brazilian athlete’s legal situation. Thus, despite being formulated in a letter, the WTF’s refusal to entertain the BOC’s request was, in substance, a decision.⁶

The exhaustion of the internal legal remedies

37. Article 21(7) of the WTF Competition Rules provides as follows:

The decision of the Review Jury is Final; no further appeals during the contest or protest after the contest will be accepted.

38. Article 1(1)(b) of the 2011 WTF Bylaws provides as follows:

Unless otherwise provided herein resolutions or actions under these Bylaws are final.

39. As the First and Second Respondent argue, the WTF Decision is final and not subject to appeal—all available legal remedies within the WTF have thus been exhausted. But that does not mean that an appeal to CAS is excluded.⁷

The consent to arbitrate

40. The Parties can agree to arbitrate either by submitting to the Statutes and Regulations of the body taking the contested decision, or by concluding an arbitration clause.
41. In the present case, Article 1 and 6 of the 2011 WTF Bylaws explicitly provide for the possibility of filing an appeal to the CAS.

⁶ See e.g. CAS 2007/A/1251.

⁷ See e.g. CAS 2008/A/1699.

42. Article 1(1) of the 2011 WTF Bylaws provides that:

(A) Unless otherwise provided herein appeal under these Bylaws are the sole means for resolution by any persons subject to WTF statutes, regulations, etc., of relevant WTF-related disputes or disciplinary actions.

(B) Unless provided herein resolutions or actions under these Bylaws are final.

(C) If provided for herein, appeal of resolutions or actions made under the Bylaws can be made only to the Court of Arbitration for Sport (CAS).

43. Article 6(1) of the 2011 WTF Bylaws adds that:

As provided in Article 1.1 (c) above, decisions and actions under these Bylaws are appealable to CAS unless:

(A) the dispute centers on the appropriate interpretation of a WTF Statutes, Competition Rules, or other codes or bylaws; or,

(B) the final decision expressly states that the issue(s) is(are) “deemed resolved and closed”.

44. The Panel considers that, in the present case, the dispute does not focus on the interpretation of WTF Statutes, Competition Rules, or codes or bylaws, but on whether they have been properly applied by the judges during the Contest. The Panel further notes that the Decision does not expressly state that the issue is “deemed resolved and closed.”

45. In addition, the Panel notes that Article 1(1)(c) of the WTF Bylaws of Dispute Resolution & Disciplinary Actions, provides, as of April 2, 2012, that “*Except as provided herein, appeal of resolutions or actions made under these Bylaws can be made only to the Court of Arbitration for Sport (CAS)*”. Article 6(1)(f) adds that “*(F) Appeal of the decision of the Appeal Panel (or the decision by the WTF to not consider a timely-filed appeal) may be made only to the CAS*”. Article 7(4) further provides that: “*For the avoidance of doubt it is hereby confirmed that decisions made under the WTF Competition Rules and Interpretations are directly appealable to the CAS under the provisions of those rules*”. The Panel acknowledges that these provisions are not applicable to the present case. However, the Panel considers that these may usefully guide the Panel as to the CAS’ jurisdiction to hear WTF-related disputes.

46. However, the BOC and the COM have not submitted themselves to the Statutes and Regulations of the WTF. Neither did they conclude an arbitration agreement with the Respondents to arbitrate matters such as the current one. The Panel therefore

considers that it does not have jurisdiction to the extent that the appeal is filed by the BOC, and the appeal is dismissed to the extent that it is addressed against the COM.

47. Given that the Contest aimed at determining the athletes' qualification for the London 2012 Olympic Games, the Panel considers that it has jurisdiction to hear the appeal of the BTC and Ferreira to the extent that it is filed against the WTF, the FMT, and Villa. Nevertheless, in exercising such jurisdiction, the Panel has to verify whether and to what extent the "field of play" decision doctrine applies, so as to preclude the examination of the merits of the dispute.

B. APPLICABLE LAW

48. Article R58 of the Code provides as follows:

Article R58:

This Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

49. The Decision, against which the appeal was brought, was issued under the WTF rules and regulations, and there is no dispute as to the applicability of the WTF rules and regulations.

C. ADMISSIBILITY

50. The WTF argues that the appeal is not admissible because it was filed 80 days after the deadline. According to the WTF, pursuant to Article 21(7) of the WTF Competition Rules, the decision of the review jury is final and the latter decision is thus the necessary starting point of the admissibility of the appeal.

51. The Third and Fourth Respondents argue that the Appellants presented their statement to the CAS after the period provided by the Code. According to the Third and Fourth Respondents, the Contest took place in November 2011 and, in January 2012; they sent a letter to the president of the WTF. The Third and Fourth Respondents allege that, given that the Appellants have not followed the procedure provided in the 2011 WTF Bylaws, the starting date is November 18, 2011 and the Appeal was therefore filed after the deadline.

52. Article R49 of the Code provides as follows:

Article R49

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

53. The Panel finds that the starting date to take into consideration regarding the admissibility of the appeal to the CAS is the date of the appealable decision, *i.e.*, the WTF Decision.
54. The Decision was taken on February 9, 2012. The Statement of Appeal was filed on February 30, 2012. The appeal was therefore filed within the deadlines provided by Article R49 of the Code. It complied with all other requirements of Article R48 of the Code. It follows that the Appeal is admissible.

D. SUBMISSIONS OF THE PARTIES

55. The summary below refers to the substance of the Parties' allegations and arguments without listing them exhaustively in detail.
56. In its discussion of the case and its findings under Section V of this Award, the Panel has nevertheless examined and taken into account all of the Parties' allegations, arguments, and evidence on record, whether or not expressly referred to.

E. THE BOC, THE BTC, AND FERREIRA'S APPEAL

57. According to the Appellants, the WTF Decision is incorrect. First, the Appellants argue that, according to the official tournament videotape, it is not possible to see the judges gathering together at the end of the Contest in order to define whether the score was correct. Second, the Appellants disagree with the WTF assumption that a taekwondo match result cannot be changed post-Contest, given that all the parties involved in the case are bound by the Olympic Charter, which submits any dispute to the CAS. Third, the Appellants consider that the WTF Decision's allegation that all unintentional mistakes have been corrected immediately during the Contest either by coaches' requests or by the judges themselves was not observed. Fourth, the Appellants submit that the judges made numerous mistakes during the Contest, which clearly demonstrates that Ferreira's right to a fair and transparent judging system was not observed in the case at hand, and it is contrary to the Olympic spirit.
58. According to the Appellants, all the arbitration problems occurred during the third and final round. The Appellants argue that the judges' mistakes were, *inter alia*, as follows: (i) the Brazilian athlete kicked the head of the Mexican athlete with about 40-45 seconds left in the Contest, but the points were not confirmed by the judges due to poor field of view, which could have been remedied by videotape; (ii) when the

Brazilian athlete kicked the head of the Mexican one, at about the 55th second in the Contest, the Mexican athlete asked its coach to use an appeal card, which should have resulted in a loss of one point; (iii) after the rejection of the request for annulment of said points, the Mexican athlete attacked and pushed the Brazilian athlete but he was not punished; (iv) 14 seconds before the end the Contest, the Brazilian athlete hit the head of the Mexican athlete, but was not confirmed by the judges in spite of the clear view on the videotape; (v) during a suspension of the match, the Mexican athlete attacked the Brazilian athlete, which should have been punished and resulted in the award of another point to the Brazilian athlete; (vi) in the last second of the fight, the Mexican athlete attempted a kick to the head of the Brazilian athlete and the judges erroneously confirmed the point, even though the kick missed the Brazilian athlete; (vii) the judges failed to properly compute the points corresponding to the Mexican athlete's kick correctly since a valid turning kick to the head is worth four points, pursuant to Article 12 of the WTF Competition Rules.

59. The Appellants consider that, according to professional taekwondo judges who will testify in these proceedings, all arbitration errors were corrected, the final score of the Contest would be 11 for Ferreira against 4 for Villa. The Appellants therefore consider that a fair and transparent system was not implemented, and that the judges erroneously computed the points. The Appellants allege that the judges have not been punished.
60. The Appellants claim that this case is different from others given that, pursuant to Article 21(8) of the WTF Competition Rules, changes of the results based on videotape evidence are allowed. The Appellants consider that, in the present case, due to the clear mistakes of the judges, they should have corrected the final scores of the Contest.
61. According to the Appellants, the Brazilian athlete and his coach asked the judges to review the outcome of the Contest, while still in the Contest area, but there was no further review and the Brazilian team was expelled from the area by controlling agents of the Tournament. The Appellants allege that there was therefore an *error in procedendo* within the organization of the Tournament.
62. The Appellants submit that, pursuant to Article 21, item 10(5)(7)(1) and 10(5)(7)(2) of the WTF Competition Rules, the errors should have been corrected and the outcome of the Contest should have been amended. The Appellants further submit that it is the duty of the WTF to apply the rules and review the outcome of the dispute, pursuant to Article 27 of the Olympic Charter.
63. The Appellants submit that the CAS is not required to interpret the technical rules of taekwondo. According to the Appellants, the outcome of the Contest is simple, given that, *inter alia*, the videotape and sequence photographs clearly show that the Mexican athlete's final kick did not reach the Brazilian athlete's head.

64. The Appellants therefore request the Panel to: (i) set aside the decision; (ii) declare victory of the Brazilian athlete; (iii) ensure his qualification for the London 2012 Olympic Games; (iv) give the Brazilian athlete a wild card to participate in the London 2012 Olympic Games; and, (v) declare that the competition judges committed an *error in procedendo*.

F. THE WTF'S RESPONSE

65. The WTF submits that the appeal should be rejected in accordance with the field of play doctrine, which is well established within the jurisprudence of the CAS. According to the WTF, the Appellants seek to overturn determinations made on the field of play by a referee and three judges who were applying the rules governing the sport of taekwondo. The Appellants consider that, should the Panel rule in favour of the Appellants, it would necessarily substitute its determinations for those of the on-site competition management officials. The WTF therefore alleges that the present case falls within the field of play decision doctrine. The Appellants further argue that, in order for a field of play decision to be reviewed by the Panel, there must be evidence of bad faith. However, according to the WTF, the Appellants do not even attempt to allege any exceptional circumstances in order for the Panel to be able to review a field of play decision.
66. Additionally, the WTF also submits that the appeal should be rejected as the Appellants have failed to identify reversible errors within the meaning of the rules governing taekwondo. The WTF contests the Appellants' alleged errors confirmed by alleged expert witnesses. The WTF considers that if it had received the submissions of the alleged experts directly, there would have been concerns about the impartiality and qualifications of the experts appointed by the Appellants, and the methodology used by the Appellants would have been rejected. First, the list of six experts provided by the Appellants contains four experts from Brazil, which leads to an obvious conflict of interest. Second, the witnesses are not qualified to act as officiating experts. Third, according to the WTF, Article 21(10) of the WTF Competition Rules is relevant for competitions in which instant video replay is not used and, in the present case, instant video replay was used. Article 21(10) is therefore irrelevant.
67. Finally, according to the WTF, the frame-by-frame video review of the Contest undertaken by the Appellants, long after the competition has been completed, is unacceptable. The WTF submits that accepting such a digitally enhanced post-hoc review would make any officiating decision open to challenge, even long after an event has been completed, on the sole basis of an image taken without consideration to the context of the rules of taekwondo. Accepting such a review would, according to the WTF, make it impossible to effectively govern sports.
68. The WTF submits that the Appellants do not provide any basis within the rules of taekwondo to overturn the challenged decision.

69. The WTF alleges that a thank-you letter was sent to the WTF President on November 21, 2011, wherein which six signatories/countries that failed to qualify any athlete for the London 2012 Olympic Games, thanked the WTF President for the “*incredible success with the combination of fair refereeing and good PSS system*” that took place at the PATU Qualifier. The WTF finally submits that there is no basis within the rules governing taekwondo to reverse the outcome of the challenged Contest.
70. The WTF submits that a wild card to participate in the London 2012 Olympic Games should not be granted to the Brazilian athlete. According to the WTF, the nature of a wild card is to ensure universality of the London 2012 Olympic Games by providing access to the Games to small NOCs that have smaller delegations, which is not the case of Brazil. The WTF further alleges that it is not, by itself, in a position to accept or reject the request for allocation of wild cards.
71. The WTF therefore requests the Panel to declare the Appeal non-admissible, to declare that the Panel does not have jurisdiction, to confirm the Decision and to dismiss the Appeal.

G. THE COM'S RESPONSE

72. The COM argues that the CAS lacks jurisdiction to hear the Appeal given that it cannot intervene in matters of technical competitive nature.
73. The COM alleges that, according to Article 30(1) of the WTF Statutes, Article 2 of the 2011 WTF Bylaws, and Article 21 of the WTF Competition Rules, the Brazilian athlete has exhausted the only possibility of protest granted to him by the WTF Competition Rules, by protesting during the 51st second of the first round of the Contest.
74. The COM argues that the video provided by the Appellants is wrongly edited given that it does not show the Brazilian athlete's coach protest.
75. In addition, the COM provides that, pursuant to Article 26 of the Olympic Charter, “*each IF maintains its independence and autonomy in the administration of the sport.*”
76. The COM further submits that the Appellants did not comply with the 2011 WTF Bylaws. According to the COM, (i) the Appellants have not submitted their appeal to the WTF within 20 days following the incriminatory acts; (ii) the BOC did not accredit its legal personality as a representative of Ferreira before the WTF; (iii) the resource processed with the WTF was not addressed to the Secretary General of said Sports Organism as provided by the 2011 WTF Bylaws; and (iv) the Appellants have not paid the processing fee of \$500.

77. The COM alleges that the Appellants' appreciations of the facts that occurred during the Contest are merely subjective and occurred in a similar manner for both contestants. According to the COM, the WTF Competition Rules provide that the decisions of the judges cannot be revised unless corruption or bad faith is proved. However, the Appellants acknowledge that there was no bad faith of the judges when they issued their decision.
78. The COM finally argues that the Video provided by the Appellants as evidence is edited for the convenience of the Appellants.
79. The COM therefore requests the Panel to refrain from hearing the Appeal due to lack of jurisdiction, to absolve the COM of being part of the Appeal, and to confirm the WTF Decision.

H. THE FMT AND VILLA'S RESPONSE

80. The Third and Fourth Respondents also argue that the Panel should abstain from ruling in the present case, given that the Decision is a field of play decision. According to the Respondents, the Decision is beyond the Panel's jurisdiction because the Decision taken by the referees was not a product of fraud, corruption, and partiality or referee misconduct. The Respondents rely on CAS OG 96/006.
81. In addition, the Third and Fourth Respondents allege that ruling in favour of the Appellants would be against the WTF's Statutes and WTF's Competition Rules. Pursuant to Article 23 of the WTF's Statutes, "*all championships promoted or sanctioned by the WTF shall observe the Competition Rules of the WTF*", and according to Article 25 of the Olympic Charter, "*IFs are independent and autonomous in the administration of their sport.*" The Third and Fourth Respondents further submit that, according to Article 20(4)(5) of the Competition Rules, "*decisions made by referees and judges shall be conclusive and they shall be responsible to the Competition supervisory Board for the content of those decisions.*"
82. The Third and Fourth Respondents argue that, pursuant to Article 30 of the WTF's Statutes and Article 6 of the 2011 WTF Bylaws, the appropriate interpretation of WTF's Competition Rules is out of the CAS' jurisdiction.
83. The Third and Fourth Respondents mention that the Appellants themselves acknowledged not believing in bad faith, which is one of the very few conditions under which the CAS would consider reviewing the results of a field of play decision.
84. The Third and Fourth Respondents argue that the Olympic Charter is not applicable in the present case, given that no qualification for the London 2012 Olympic Games is at stake.

85. The Third and Fourth Respondents argue that it is not for the Appellants to determine whether the letter by the WTF was correct since it is within the judges' discretion to gather in order to define whether a score was correctly granted.
86. The Third and Fourth Respondents affirm that it is not mandatory for judges to gather in order to define whether the score was correct.
87. The Third and Fourth Respondents argue that even if the Olympic Charter was applicable to the present case, it cannot be inferred from the Charter that any dispute can be submitted to the CAS.
88. The Third and Fourth Respondents consider that it is not for the Appellants to determine whether mistakes have to be corrected.
89. According to the Third and Fourth Respondents, the Appellants are trying to distract the Panel by alleging that Ferreira was deprived of his right to a fair judging system, where in fact there is no possibility of reviewing a field of play doctrine.
90. The Third and Fourth Respondents argue that it is the nature of any sport that the outcome of a match changes in the final minutes due to the fact that the opponents try to get the biggest amount of points during the last minutes.
91. The Third and Fourth Respondents argue against the Appellants alleged "professional taekwondo judges" statements regarding the Contest. First, the Third and Fourth Respondents submit that there is no mention of whom these alleged "professional taekwondo judges" were. Second, should the alleged facts be true, in *CAS Yang v. International Gymnastics Federation*, CAS is competent regarding field of play decisions only if such decisions are tainted by fraud, arbitrariness or corruption, and none of these conditions were fulfilled in the present case.
92. In any event, the Third and Fourth Respondents submit that: (i) if none of the judges decided to review the last kick of the Mexican athlete, it was because none of them saw it clearly enough to request it and the review mechanism must be used with caution; (ii) the Mexican athlete requested that his coach ask for a review because, after the Brazilian athlete failed to contact the head of the Mexican, the Mexican athlete targeted a kick to the Brazilian athlete which was not scored; (iii) the Mexican athlete sought to continue fighting because it was the nature of taekwondo; (iv) 14 seconds before the end of the match, the Brazilian athlete attempted a kick to the head of the Mexican athlete who successfully blocked it and was therefore not scored by the judges; (v) it was within the judges' jurisdiction to determine, during the Contest whether or not to sanction the Mexican athlete's attack of the Brazilian athlete during a suspension; and, (vi) during the last second of the Contest, the "*Mexican athlete launched a spinning kick and the Brazilian athlete placed himself at a distance necessary for the kick to make contact being moved by the impact what in the context of the match was perceived by the judges as a valid kick to award the points to the attacker*".

93. The Third and Fourth Respondents allege that, if the points were not computed correctly, it would only have affected the Mexican athlete.
94. The Third and Fourth Respondents consider that the submissions of alleged taekwondo professional judges should not be taken into consideration because the judges' names are not mentioned and neither is the methodology used in order to obtain the final score.
95. According to the Third and Fourth Respondents, the Appellants have failed to prove the lack of a transparent judging system.
96. The Third and Fourth Respondents acknowledge that taekwondo accepts the review of certain decisions based on video evidence but it does not accept changes when the Contest has ended and the judges have left the judging arena.
97. The Third and Fourth Respondents argue that 50 seconds before the end of the Contest, the Brazilian coach used his only possibility of appeal as can be seen from the video presented by the Third and Fourth Respondents and not the one provided by the Appellants. The Brazilian team was thus expelled from the area because of their anti-sportive attitude in refusing to leave and accepting the result of the match. No *error in procedendo* was therefore committed.
98. According to the Third and Fourth Respondents, Article 21 items 10(5)(7)(1) and 10(5)(7)(2) are not applicable to the present case because they are only applicable to contests where there are no electronic sensors.
99. The Third and Fourth Respondents object to the evidence offered by the Appellants because (i) the video provided by the Appellants has been amended; (ii) the letters addressed to the WTF and PATU do not prove that legal remedies were exhausted since they do not follow the requisites of the WTF's regulations; (iii) the photos produced by the Appellants only show one angle of the fight; and (iv) the letter issued by the BTC supports the Third and Fourth Respondents' theory and acknowledges that the WTF referees have always acted with great proficiency and responsibility.
100. The Third and Fourth Respondents therefore request the Panel to refrain from ruling on the Appeal due to lack of jurisdiction, to dismiss the Appeal, and to confirm the WTF Decision.

V. LEGAL ANALYSIS

101. According to the Appellants, the Decision is incorrect given that (i) the three judges did not gather together to watch the videotape and confirm the match's results; (ii) the results of the match can be changed pursuant to the WTF Competition Rules and the Olympic Charter; (iii) a fair and transparent judging system was not implemented; and (iv) mistakes committed by the referees have not been corrected. The Appellants also

submit that the WTF Decision is not a field of play decision because the last kick of Villa did not touch Ferreira's head and that there was an *error in procedendo*.

102. The First, Third, and Fourth Respondents argue that the Panel should not review the Decision because the Appeal runs afoul the principle of "field of play" doctrine.
103. Before discussing the substance of the case, the first issue to be addressed in this case is the scope of review entrusted to the CAS in matters of this nature.
104. According to well-established jurisprudence of the CAS, "*CAS arbitrators do not review the determination made on the playing field by judges, referees, umpires, or other officials who are charged with applying what is sometimes called 'rules of the game'*".⁸ In other words, CAS arbitrators should not interfere with the application of the rules governing the play of the particular game—this is to be left to field officials, who are specifically trained to officiate the particular sport and are best placed (being on-site) to settle any questions.⁹ CAS arbitrators are not, unlike on-field judges, selected for their expertise in officiating the sport concerned.¹⁰ This position is consistent with traditional doctrine and judicial practice which have always stated that rules of the game, in the strict sense of the term, should not be subject to the control of judges.¹¹
105. The rationale underlying the CAS' scope of review regarding "field of play" decisions include supporting the autonomy of officials; avoiding the constant interruption of the game by appeals to the judge; seeking to ensure the certainty of the outcome of competition; and, the relative lack of perspective and/or experience of appellate bodies compared to that of match officials.¹²
106. In the present case, the Panel is of the view that the decision taken by the referees during the Contest, and confirmed by the WTF Decision is a purely technical one pertaining to the rules which are the responsibility of the federation concerned. Indeed, the Appellants' main request concerns the alleged errors of the referees while applying the WTF Competition Rules. In particular, the Appellants insist on the alleged wrong computation of points regarding a last kick from the Mexican athlete that changed the outcome of the Contest and on an alleged *error in procedendo*. The Panel takes the view that the WTF Decision was clearly a field of play decision

⁸ CAS OG 96/006, CAS OG 00/013; CAS 2001/A/354 ; CAS 2001/A/355; CAS OG 02/007; CAS 2004/A/727; CAS 06/006; CAS 2008/A/1641; CAS 2008/O/1483.

⁹ CAS 2008/A/1641.

¹⁰ CAS 00/013.

¹¹ CAS 2004/A/727.

¹² CAS 2004/A/704; CAS 2004/A/727; CAS 2010/A/2090.

falling within the WTF competence during the course of an event under its exclusive control.

107. In line with CAS jurisprudence, the exclusion of the possibility to review a decision taken by a field referee is not limited to the merits thereof and also covers the procedural aspects leading thereto.¹³ As a result, the procedural arguments invoked by the Second, the Third and the Fourth Respondents as to the procedural errors regarding the first appeal to the WTF fall within the field of play decision doctrine and thus outside the Panel's scope of review.
108. However, according to CAS jurisprudence, there are exceptions allowing a revision of "field of play" decisions. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith or arbitrariness.¹⁴ There must be evidence of preference for, or prejudice against, a particular team or individual. In line with CAS jurisprudence, the Panel acknowledges that this places a high hurdle on the applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any unsatisfied participant would be able to seek the review of a field of play decision.¹⁵
109. The Panel takes into account that the BTC acknowledged, in its letter dated November 25, 2011 that "*we are not putting the responsibility on WTF referees, which, in our sincere opinion, have always acted with great proficiency and responsibility.*" In addition, the Appellants do not contest the judges and the referee's faith and mention, within their Statement of Appeal that they "*prefer not to believe in bad faith.*" The Panel therefore finds that the Appellants have not discharged them of their heavy burden in proving that the referee and judges acted in bad faith.
110. The Panel wishes to emphasize that every participant in a sport, where judges and referees have to make decisions about events on the field of play, must accept that the judge or the referee sees an incident from a particular point of view, and makes his decision on the basis of what he sees. The Panel acknowledges that mistakes can be made by judges and referees but not every mistake can be reviewed. The field of play decision doctrine prevents the Panel from reviewing a field of play decision on the mere assertion that an applicant disagrees with it.

¹³ CAS 2008/A/1641; CAS 2010/A/2090.

¹⁴ See *e.g.*, CAS OG 00/013; CAS 2001/A/354; CAS OG 02/007; CAS 04/005; CAS 2004/A/727; CAS 2004/A/704; CAS 2008/A/164. Different wording, such as "arbitrary", "bad faith", "breach of duty", "malicious intent", "committed wrong" and "other actionable wrongs" are used to express the same test (CAS OG 96/006; CAS OG 00/013 and CAS OG 02/007).

¹⁵ CAS OG 00/013; CAS 02/007; CAS 2001/A/354; CAS 2004/A/727.

VI. COSTS

111. Pursuant to Article R64.4 of the Code, the CAS Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of the arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters.
112. Pursuant to art. R64.5 of the Code, the Panel shall determine which party shall bear the arbitration costs or in which portion the parties shall share them. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.
113. In the present case, the appeal is to be dismissed. Therefore, the Appellants must bear the entirety of the costs of the present arbitration. Such costs will be determined and notified to Claimant by separate communication from the Secretary General of CAS.
114. Furthermore, given the outcome of the present dispute, the Panel deems that it is fair and reasonable to grant the WTF and the FMT an indemnity with respect to the legal costs incurred for their legal fees. The Appellants are thus jointly and severally condemned to pay an amount of CHF 3.000 to the WTF, CHF 1.500 to the FMT and CHF 1.500 to Villa. The COM must bear its own legal costs, if any.

* *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Brazilian Olympic Committee, the Brazilian Taekwondo Confederation and Márcio Wenceslau Ferreira is dismissed.
2. The decision dated February 9, 2012 of the World Taekwondo Federation's President is upheld.
3. The Appellants shall jointly and severally bear the arbitration costs.
4. The Appellants shall jointly and severally pay CHF 3.000 to the WTF, CHF 1.500 to the FMT and CHF 1.500 to Villa as a contribution towards their legal fees. The COM must bear its own legal costs, if any.
5. Any further claims for relief are dismissed.

Done in Lausanne, Switzerland on 13 July 2012.

THE COURT OF ARBITRATION FOR SPORT

Romano Subiotto QC
President

Olivier Carrard
Arbitrator

Denis Oswald
Arbitrator

Aude de Crayencour
Ad hoc clerk