

CAS 2017/A/5280 Danis Zaripov v. International Ice Hockey Federation

CONSENT AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

between

Danis Zaripov, Kazan, Russia

Represented by Mr Christopher P. Moore, Attorney-at-Law, Cleary Gottlieb Steen & Hamilton LLP, London United Kingdom

Appellant

and

International Ice Hockey Federation, Zurich, Switzerland

Represented by Mr Horst Lichtner, Secretary General

Respondent

I. BACKGROUND

A. The Parties

1. Mr Danis Zaripov (the “Player” or the “Appellant”) is a Russian professional ice hockey player born on 26 March 1981. The Appellant has been a player registered for ice hockey clubs participating in the Kontinental Hockey League (the “KHL”), an international league created to further the development of hockey throughout Russia and other nations across Europe and Asia.
2. The International Ice Hockey Federation (“IIHF” or the “Respondent”) is the governing body of international ice hockey and inline hockey. As such, IIHF has *inter alia* the responsibility to pursue all potential anti-doping rule violations within its jurisdiction according to the IIHF Disciplinary Code (the “DC”), adopted to implement IIHF’s responsibilities under the World Anti-Doping Code. The IIHF has its seat in Zurich, Switzerland.

B. The Dispute between the Parties

3. On 29 January 2017, the Player underwent an in-competition anti-doping control after participating in the KHL match (the “Match”) between Metallurg Magnitogorsk (his club of the time) and CSKA.
4. On 3 March 2017, the IIHF notified the Player that the analysis of the A-sample collected at the Match had been reported to be positive for the presence of Hydrochlorothiazide and Pseudoephedrine, two prohibited substances according to the List of prohibited substances and methods established by the World Anti-Doping Agency for 2017.
5. On 10 April 2017, the IIHF informed the Player that the B-sample analysis confirmed the adverse analytical finding reported for the A-sample.
6. On 16 April 2017, the Player advised the IIHF that he wished to have his case submitted to the IIHF Disciplinary Board for adjudication.
7. On 18 May 2017, the Player filed a letter containing explanations and requested a hearing.
8. On 23 May 2017, the Player informed the IIHF that he accepted a provisional suspension effective as of the same day.
9. On 21 July 2017, a hearing was held before the IIHF Disciplinary Board. The Player did not attend.
10. On 24 July 2017, the new club of the Player received copy of a decision, dated 21 July 2017, adopted by the IIHF Disciplinary Board (the “Decision”), holding as follows:
 - “1. *Mr. Danis ZARIPOV is suspended from the participation in all competitions or activities authorized and organized by IIHF or any IIHF Member National Association.*

2. *The period of ineligibility amounts to 2 (two) years (24 months), commencing on May 23, 2017 (date of provisional suspension), ending on May 22, 2019”.*

II. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 11 August 2017, pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), the Player filed with the Court of Arbitration for Sport (the “CAS”) a statement of appeal against the IIHF to challenge the Decision.
12. The statement of appeal contained the appointment of Mr Jeffrey G. Benz and the following request for relief:

“Mr Zaripov respectfully requests that the CAS Panel eliminate or, alternatively, reduce, the sanction set forth in the Decision”.
13. On 22 August 2017, the Respondent designated Mr Ulrich Haas as an arbitrator.
14. On 12 October 2017, the Parties jointly informed the CAS Court Office that settlement negotiations were ongoing and therefore requested a stay of the proceedings pending such negotiations.
15. On 13 October 2017, therefore, the Parties were advised by the CAS Court Office that the procedure was suspended.
16. On 24 October 2017, the Parties informed the CAS Court Office that they were hopeful to reach an amicable resolution of the proceedings, and that they intended to request that their settlement be embodied in a consent award. The Parties therefore requested that a Panel of arbitrators be formed, with the appointment of its President, for the sole purposes of issuing a consent award.
17. In a letter of 27 October 2017, the CAS Court Office, noting the Parties’ request, proposed that they agree to refer the procedure to a sole arbitrator, appointed to enter the consent award.
18. On 31 October 2017, the Parties informed the CAS Court Office that they agreed to such proposal.
19. On 7 November 2017, the Parties informed the CAS Court Office that they had settled their dispute.
20. On 8 November 2017, the Parties provided the CAS Court Office with copy of the executed settlement agreement (the “Settlement Agreement”), to be incorporated in a consent award *“as soon as practicable”*.
21. On 13 November 2017, pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to hear this case was constituted as follows: Prof. Luigi Fumagalli, Sole Arbitrator.

III. THE SETTLEMENT AGREEMENT

22. The Settlement Agreement executed on 7 November 2017 between the Player and the IIHF, which has been voluntarily submitted by the Parties to the Sole Arbitrator, and which has been confirmed to represent their agreement containing a complete, comprehensive and final resolution of their dispute, states as follows:

“WHEREAS:

1. *Following a hearing on 21 July 2017 (“Hearing”), the Disciplinary Board of the International Ice Hockey Federation (“IIHF Disciplinary Board”) issued a decision suspending Mr Zaripov from participation in all competitions or activities authorized or organized by the IIHF or any IIHF Member National Association for a period of two years (“Decision”) on the basis of an anti-doping rule violation pursuant to Articles 2.1 and 10.2.2 of the 2015 World Anti-Doping Agency (“WADA”) Code (“WADA Code”).*
2. *The Decision was based on the results of Mr Zaripov’s in-competition doping control test of 29 January 2017, which identified the presence of: (i) approximately 90 micrograms per milliliter of pseudoephedrine, which was below the prohibited threshold of 150 micrograms per milliliter (as set forth in the 2017 WADA Prohibited List) and (ii) trace amounts of hydrochlorothiazide (“HCTZ”).*
3. *It is undisputed that Mr Zaripov did not engage in intentional doping.*
4. *The presence of pseudoephedrine was the result of Mr Zaripov’s intake of a permissible amount of pseudoephedrine in the form of RhinoPRONT, as prescribed by his team doctor.*
5. *However, at the Hearing, at which Mr Zaripov was neither present nor represented, the IIHF Disciplinary Board concluded that it was unable to determine how HCTZ “has or at least could have entered [Mr Zaripov’s] his body.”*
6. *Following the Hearing, the IIHF Disciplinary Board issued a Decision imposing on Mr Zaripov an ineligibility period of two years, commencing on the date of his provisional suspension of 23 May 2017 and ending on 22 May 2019.*
7. *On 11 August 2017, Mr Zaripov filed an appeal (“Appeal”) challenging the Decision before the Court of Arbitration for Sport (“CAS”) in proceedings with the case registration number of CAS 2017/A/5280 (“Proceedings”).*
8. *Following the Appeal, the Parties engaged in extensive settlement negotiations, during which Mr Zaripov provided the IIHF with additional information and evidence that was not available to the IIHF Disciplinary Board at the time that it issued the Decision, including evidence from two expert witnesses who concluded that the source of the HCTZ in Mr Zaripov’s sample was due to the consumption of a contaminated product.*

NOW THEREFORE, the Parties agree as follows:

1. *The Decision is hereby set aside.*
2. *Mr Zaripov did not engage in intentional doping and had no intention to cheat.*

3. *The presence of pseudoephedrine during Mr Zaripov's 29 January 2017 doping control test was the result of Mr Zaripov's intake of pseudoephedrine below the prohibited threshold in the form of RhinoPRONT, as prescribed by his team doctor.*
4. *Following the Appeal, Mr Zaripov provided extensive documentary and expert evidence to the IIHF demonstrating that (a) the amounts of HCTZ present in his samples were roughly 1,000 times lower than a small therapeutic dose of HCTZ and totally insufficient to express any therapeutic or masking effect; and (b) the source of HCTZ in his 29 January 2017 doping control test was the result of ingesting contaminated Vitamin C.*
5. *Based on the new evidence provided by Mr Zaripov, which was not available to the IIHF Disciplinary Board when it rendered its Decision, the IIHF determined that Mr Zaripov bears No Significant Fault or Negligence (as this term is defined in the WADA Code) in relation to the anti-doping rule violation referred to in the Decision, and therefore that he has satisfied the requirements for a reduced ineligibility period pursuant to Article 10.5.1 of the WADA Code.*
6. *In application of Article 10.5.1 of the WADA Code, the suspension imposed by the IIHF Disciplinary Board in its Decision shall be reduced to 6 months, running from 23 May 2017, the date of Mr Zaripov's provisional suspension, and shall end on 23 November 2017. Accordingly, Mr Zaripov shall be eligible to participate in all competitions or activities authorized by the IIHF or any IIHF Member National Association at any time on or after 23 November 2017.*
7. *Pursuant to Article 10.12.2 of the WADA Code, upon the Panel entering a Consent Award confirming this Settlement Agreement, Mr Zaripov shall be immediately entitled to return to training for competitions or activities authorized by the IIHF or any IIHF Member National Association.*
8. *Each of the Parties bears its own legal and other costs incurred in connection with the Proceedings and settlement negotiations.*
9. *The Parties request the Panel to issue a consent award confirming the present Settlement Agreement and incorporating the terms hereof ("Consent Award").*
10. *The Consent Award may be disclosed publicly by CAS, the IIHF or Mr Zaripov.*
11. *Attached hereto as Annex A is an agreed press release, which the IIHF shall disclose following the issuance of a Consent Award. The Parties agree that except for the information contained in Annex A and this Settlement Agreement all information regarding the Decision, the Proceedings and settlement negotiations between the Parties shall remain confidential, unless a Party is required to disclose such information by a governmental authority or competent court of law and in which case any such information shall be provided or disclosed only to the extent so required. The Party required to disclose any such information shall also notify the other Party in writing as soon as reasonably possible, and in any event no later than 3 business days before any required disclosure.*
12. *The terms set out in this Settlement Agreement have been agreed as a full, final and unconditional settlement of all claims relating to the subject-matter of the*

Appeal, and upon the issuance of the Consent Award any claims that were or could have been asserted in these Proceedings are fully, finally and unconditionally settled and resolved, with no right to assert any such claim in these or any other proceedings”.

IV. RATIFICATION AND INCORPORATION OF THE SETTLEMENT AGREEMENT

23. Under Swiss law, an arbitration tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties’ settlement, if the contesting parties agree to a termination of their dispute in this manner. The Sole Arbitrator’s ratification of their settlement and its incorporation into this consent award serves the purpose of vesting the settlement with a *res judicata* effect and of enabling the enforcement of their agreement.
24. It is the task of the Sole Arbitrator to verify the *bona fide* nature of the Settlement Agreement to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
25. After reviewing the terms of the Settlement Agreement, the pleadings of the respective Parties and the evidence submitted by them, the Sole Arbitrator finds no grounds to object or to disapprove of the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to its attention.
26. In accordance with the mutual consent of the Parties, the Sole Arbitrator hereby directs the Parties to fully comply with all of the terms of the Settlement Agreement. This Consent Award terminates the CAS arbitration proceedings of this dispute, CAS 2017/A/5280, *Danis Zaripov v/ International Ice Hockey Federation (IIHF)*.

V. COSTS

27. Article 65.1 of the Code reads as follows:

“This Article applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the panel on the issue”.

28. Article R65.2 of the Code provides as follows:

“Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn. [...]”.

29. Article R65.3 of the Code provides:

“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to 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 complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties”.

30. The present arbitration procedure is therefore free, except for the CAS Court Office fee of CHF 1,000 paid by the Appellant, which is retained by the CAS.

31. In the present case, the Parties settled their dispute and waived any reciprocal claims, including those with respect to the costs of the CAS proceedings. In the Settlement Agreement, in fact, the Parties agreed that *“Each of the Parties bears its own legal and other costs incurred in connection with the Proceedings and settlement negotiations”*. As a result, the Sole Arbitrator holds that each of the Parties shall bear the costs sustained for legal representation, expenses or other costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Panel, with the consent of Mr Danis Zaripov and the International Ice Hockey Federation (IIHF), hereby ratifies the Settlement Agreement executed by Mr Danis Zaripov and the International Ice Hockey Federation (IIHF) on 7 November 2017 and incorporates its terms into this consent award.
2. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr Danis Zaripov, which is retained by the CAS.
3. Each party shall bear his/its own legal costs and expenses incurred in connection with the present proceedings.
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 21 November 2017

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
Sole Arbitrator