

Symposium on Dispute Resolution in Sports

Arbitrating Sports Disputes: A World View

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Foreword

ARBITRATING SPORTS DISPUTES: A WORLD VIEW

Michael S. Straubel*

In an Olympic year, as the saying goes, "they come out of the woodwork." Translated, the saying means that otherwise average athletes achieve extraordinary performances as they bid for Olympic glory. The same can be said, "they come out of the woodwork," about doping accusations, team membership fights, and eligibility disputes. There is just something about an Olympic year.

During this past Olympic year, and for several years leading up to the 2000 Olympic Games, a sharp growth in sports disputes has brought increased attention to the methods used to settle these disputes and accusations. High profile cases such as Mary Slaney,¹ Matt Lindland,²

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¹ Mary Slaney, perhaps America's most accomplished distance runner of her time, tested positive for testosterone at the 1996 United States Olympic Trials. Her ratio of testosterone to epitestosterone exceeded the permissible 6-1 standard. Despite this test result, she was allowed to compete in the 1996 Olympic Games and the 1997 Indoor World Championships. It was not until May of 1997 that the disciplinary-arbitration process came to a head. Suspended by the International Amateur Athletic Federation ("IAAF"), Slaney was prohibited from competing in the United States Championships pending a hearing before United States Track & Field ("USAT&F"). At that hearing, Slaney convinced the hearing panel that her positive test results were the result of naturally occurring physiological causes (such as menstruation). However, the IAAF refused to accept the USAT&F ruling and banned Slaney for two years. Representatives of USAT&F and Slaney refused to participate in the IAAF proceeding on the assertion that the IAAF proceedings were unfair. See Philip Hersh, *Slaney is Cleared of Doping Charges*, CHI. TRIB., Sept. 17, 1997, § 4, at 1-3; *IAAF Strips Medal from Slaney*, AP, April 27, 1999.

² At the Greco-Roman Wrestling Olympic Trials in Dallas on June 24, 2000 Keith Sieracki won the final and deciding match against Matt Lindland by a 2-1 score. Immediately after the match, Lindland protested that Sieracki had been improperly awarded points for a trip (tripping is illegal in Greco-Roman Wrestling). The protest was denied and Lindland appealed to USA Wrestling's Greco-Roman Sports Committee. That appeal was denied on

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Linford Christie,³ Christie Witty, and Andreea Raducan⁴ have called into question the process, the institutions, and the protections of the sporting world's arbitration systems. In particular, Mary Slaney's and Linford Christie's fight with the IAAF highlighted the growing gulf between the common law countries and the sports establishment.⁵ Matt Lindland's

July 19, 2000. Lindland then appealed, as is permitted by the Amateur Sports Act to the United States Olympic Committee ("USOC"). That appeal was heard by an arbitrator from the American Arbitration Association in Chicago. On August 9, 2000 that arbitrator, Daniel T. Burns, ruled that USA Wrestling had not followed proper procedures in denying Lindland's protest appeal and ordered a rematch of the Olympic Trials finals. Lindland won the rematch 8-0.

After the rematch, Sieracki took his turn at the appeal process and a second arbitration was held in Denver. On August 24, 2000, arbitrator Bruce Campbell ruled in favor of Sieracki. Within hours of that decision, the Seventh Circuit Court of Appeals ruled that the decision of the first arbitration should stand, effectively vacating the second arbitration decision.

Despite the ruling of the Seventh Circuit, the USOC named Keith Sieracki to the Olympic Team. On August 28, 2000, a Federal District Court in Chicago ordered the USOC to place Lindland on the Olympic Team. The USOC complied, but appealed to the Seventh Circuit Court of Appeals. The Seventh Circuit upheld the District Court's order. Later on September 6, 2000, the U.S. Supreme Court denied the USOC's request for a stay of the order. Lindland would later take the Silver Medal in Sydney. See Gary Mihoces, *Grappling with a Decision*, USA TODAY, September 14, 2000, at C1.

³ Linford Christie, the 1992 Olympic Champion in the 100 meters from the United Kingdom, tested positive for nandrolone in 1998. During hearings before British Athletics (the track and field governing body for the United Kingdom), Christie argued that he did not intentionally take any banned substances. British Athletics, relying both on Christie's testimony and on a scientific study which indicated that legal dietary supplements could unknowingly produce a positive test for nandrolone, lifted Christie's suspension. The IAAF refused to accept the conclusion of the study and British Athletics. Christie's two-year suspension was reinstated. See BBC, *British Trio Rocked By Doping Bans*, (August 21, 2000), available at <http://www.bbc.com>.

⁴ After winning the all-around women's gymnastic gold medal of the Sydney Olympics, Andreea Raducan tested positive for the stimulant psydoephedrin. According to Raducan, who was sixteen years old at the time, her team physician gave her an over-the-counter cold medication prior to the competition for a cold. She claimed to have no knowledge that the medication contained a banned substance. As a result of the positive test, the International Olympic Committee ("IOC") stripped her of the medal. Arguing that she did not intend to take the banned substance, Raducan appealed the IOC's decision to the Ad Hoc Division of the Court for the Arbitration of Sports, sitting in Sydney. In an unanimous decision, the Court upheld Raducan's challenge to the IOC's application of the strict liability standard. See NBC, *Raducan Appeal Denied*, available at <http://sydney2000.nbcolympics.com/> (last visited March 27, 2001).

⁵ In both Mary Slaney's and Linford Christie's cases, in addition to others like C.J. Hunter, athletes and sports organizations from common law countries have raised doubts about the fairness of some practices and presumptions used in doping control. Specifically, Mary Slaney questioned the apparent conclusive nature of the testosterone to epitestosterone ratio presumption of illegal doping. She maintained, that in practices, the presumption was treated as conclusive and irrefutable, which worked to place an unfair burden on the athlete. Further, use of the strict liability principle to sanction athletes, in the absence of a

fight with Keith Sieracki for a spot on the United States Wrestling squad heading to Sydney revealed the inadequacies of the USOC's process.⁶ Further, and most notably, Andreea Raducan's lose of her Gold Medal raised questions about the strict liability regime.

It was against this back drop that leading academics and practitioners in the field of sports arbitration gathered in Chicago. Of that gathering, it can be said that the opinions were strong, the discussion enlightening, the proposals insightful, and the stories compelling. If there was a single conclusion to be drawn from the conference, it would be that the world of sports arbitration is still very much under construction. Its institutions are under rapid evolution and its jurisprudence is still in its infancy. These articles that follow, based upon presentations at the conference, offer some insight into the nascent world of sports arbitration and offer some innovative solutions to its growing pains.

I would like to express my deep thanks to the speakers who gave their time and expertise. The conference was a success because of their efforts.

finding of intent to take illegal drugs - or in the face of a finding of no intent to take illegal drugs, has been challenged in the United Kingdom, Australia, Germany, as well as the United States.

⁶ Matt Lindland's case revealed the current USOC process to lack certainty, finality, and quality of decision.

