COURT OF ARBITRATION FOR SPORT APEALS DIVISION LAUSANNE

Ms Andrea Anderson and others Appellants

AND

International Olympic Committee Respondents

CAS 2008/A/1545

Doping violation by relay team member—admission re use of prohibited substance prior to, during and after the 2000 Olympic Games—disqualification—annulment of team result by IOC—appeal

This was an appeal against the annulment of team results in the 2000 Olympics by the members of the US 4 × 100m and 4 × 400m women's relay teams following formal admissions by Marion Jones, a team member, that she had used a prohibited substance prior to, during and after the 2000 Olympic Games and acceptance of sanctions by her. The International Olympic Committee (IOC) Executive Board disqualified her from all track and field events she had competed in at Sydney, including the relays. She filed no appeal and these results became final. The IOC granted the USOC permission to file written submissions in relation to the possible disqualification of both relay teams. The USOC accepted that the medals were unfairly obtained. The IOC relied on a previous determination of CAS to the effect that at the relevant time there were no rules allowing the IAAF to disqualify a team where one member was disqualified. The IOC Disciplinary Committee had found that the current circumstances were substantially different. The IOC Executive Board adopted the recommendations of the IOC Disciplinary Committee and disqualified the teams.

The athletes appealed, arguing that there was no jurisdiction to make the determination, that their rights to due process, fundamental fairness and natural justice had been denied, and that the issue under consideration had been decided in an earlier case, invoking principles of collateral estoppel and stare decisis.

HELD:

1. Preliminary Motion for Summary Disposition based on Rule 25.2.2.4 of the Olympic Charter, which provided that '… no decision taken in the context of the Olympic Games can be challenged after a period

of three years from the day of the closing ceremony of such Games' rejected.

2. There was jurisdiction for the appeal under R47 of the CAS Code and the arbitration clause in the Olympic Charter. Swiss law was the applicable law and the relevant rules were the IOC and IAAF Rules in effect during the 2000 Sydney Olympic Games and not those in effect later, such as the WADA Code.

3. The Appellants' due process rights were not infringed by not giving them a full right to be heard in determining the disqualification. The CAS appeal process under Art 57 of the CAS Code was a full de novo hearing and cured any infringement of a right to be heard or to be fairly treated by a sporting organisation during its internal disciplinary proceedings (citing CAS 2003/O/486 Fulham FC v Olympique Lyonnais; CAS 2009/A/1880-1881 Sion & El Hadary v FIFA & Al-Ahly SC; TAS 2004/A/549 Deferr & RFEG c. FIG, among other examples). The Panel proceeded to rule on the merits.

4. The Panel noted that:

   (i) there was sufficient evidence that Ms Jones committed a doping offence during the Sydney Olympic Games;

   (ii) this was a disciplinary case not a doping case despite the fact that at least one other member of the teams had been found guilty of using the same drug as Ms Jones in 2002 and 2003;

   (iii) the outcome depended on the applicable rules only and not other issues bound up with the fight against doping as had been argued by the IOC.

5. The IOC Executive Board had the authority to impose a sanction of disqualification on a team in addition to individual competitors under Rule 23 of the 2008 Olympic Charter. However the question here was whether the IOC properly exerted this power. Rule 23.2 of the Olympic Charter provided that measures or sanctions could be adopted in the context of the Olympic Games only on condition that the sanctioned individual competitor or team had violated any applicable sports regulation or decision issued by the IOC or any IF or NOC; or any applicable public law or regulation; or committed any form of misbehaviour.

6. This meant that the relevant offences and sanctions must be clearly and previously defined, precluding the adjustment of existing rules to apply them to situations or behaviours that the legislator did not intend to penalise. CAS Awards had consistently held that sports organisations could not impose sanctions without a proper legal or regulatory basis

and that sanctions must be predictable (citing USA Shooting & Q v UIT CAS 94/129; Rebagliati v IOC CAS OG 98/002; R v FISA CAS 2001/A/330; TFF Liebherr Ochsenhausen v ETTU).

7. The IOC's case therefore depended upon whether there was on 30 September 2000 an express and clear rule providing for such a disqualification.

8. The IOC rules in force at the time were OMAC Chapter II Article 3, paragraphs 3 and 4, which provided that where a competitor who is a member of a team commits a doping infraction, 'the relevant rules of the International Federation concerned shall be applied' in respect of invalidation of results. The IAAF rules were thus the relevant rule. The Panel rejected the Respondent's argument that the OMAC Explanatory Memorandum should be used to give the IOC a legal basis to disqualify the team.

9. The IAAF rules in force at the time had already been subject to a decision in relation to the men's 4 × 400m relay team of which Jerome Young was a member. He was disqualified for a doping offence. A CAS Panel (the Jerome Young Panel) decided, on the basis of the IAAF rules in force at the time, to overturn the IAAF decision to annul the results of his team (CAS 2004/A/725).

10. The IOC argued that the present case was distinguishable on the basis that Jones ran in two finals and admitted doping during the Games, while Young did not run in the finals and took the substance prior to the Games. The Panel found that the contribution of an athlete running in a heat is equally essential and valuable to the final result, and that no evidence had been presented to show the distinction between the impact of the different timing. The case thus addressed exactly the same issue as the Jerome Young case.

11. The Panel was not automatically bound to decide in the same way on the basis of stare decisis or collateral estoppel. However, the Panel agreed with other CAS Panels that:

> … CAS rulings form a valuable body of case law and can contribute to strengthen legal predictability in international sports law. Therefore, although not binging, previous CAS decisions can, and should, be Taken into attentive consideration by subsequent CAS panels, in order to help developing legitimate expectations among sports bodies and athletes
> (quote from UCI v Jogert & NCF CAS 97/76, and citing to IAAF v USA Track & Field and Jerome Young (CAS 2004/A/628).

12. The Jerome Young Panel found that there was no IAAF regulation in force at the time of the Sydney Olympic Games which provided for the

annulment of results obtained by a relay team where one member was disqualified for doping.

13. The Panel rejected arguments based on Rule 59.4, which was found to concern disqualification, ineligibility and annulment of performance results of individual athletes only. The Panel concurred with the findings of the Jerome Young Panel on this issue.

14. The Panel rejected other bases for such sanctions. No general principle of lex sportiva existed which might support the outcome here, although the Panel was careful to state that such a principle might serve as a legal basis to impose a sanction at some point if convincingly demonstrated and able to pass a predictability test. There was no definite pattern in international sports law that could support the view that a team should inevitably be disqualified because one of its members was disqualified for doping during a competition.

Appeal allowed; decision set aside

CAS 2008/A/1545 Andrea Anderson, LaTasha Colander Clark, Jearl Miles-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, Passion Richardson v/ IOC

AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Massimo **Coccia**, Professor and Attorney-at-Law, Rome, Italy

Arbitrators: Mr Yves **Fortier** Q.C., Attorney-at-Law, Montreal Canada
Mr Hans **Nater**, Attorney-at-Law, Zurich, Switzerland

in the arbitration between:

Ms ANDREA ANDERSON
Ms LATASHA COLANDER CLARK
Ms JEARL MILES-CLARK
Ms TORRI EDWARDS
Ms CHRYSTE GAINES
Ms MONIQUE HENNAGAN
Ms PASSION RICHARDSON

Represented by Mr Mark S. Levinstein and Mr Patrick Houlihan, Attorneys at Law, Williams & Connolly LLP, Washington DC, U.S.A.

-Appellants-

and

INTERNATIONAL OLYMPIC COMMITTEE (IOC), Lausanne, Switzerland

Represented by Mr François Carrard, Attorney at Law, Carrard & Associés, Lausanne, Switzerland, and Mr Howard Stupp, IOC Director of Legal Affairs, Lausanne, Switzerland

-Respondent -

I. PARTIES

1. Ms Andrea Anderson, Ms LaTasha Colander Clark, Ms Jearl Miles-Clark, Ms Torri Edwards, Ms Chryste Gaines, Ms Monique Hennagan and Ms Passion Richardson (the "Appellants" or the "Athletes") are seven athletes from the United States of America. They all competed at the 2000 Sydney Olympic Games in the women's 4 × 100 metres relay event (hereinafter simply "4×100m") and 4 × 400 metres relay event (hereinafter simply "4×400m") as members of the U.S. Olympic track and field team sent by the United States Olympic Committee (the "USOC").

2. The International Olympic Committee (the "IOC" or the "Respondent") is the organisation responsible for the Olympic movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games.

II. BACKGROUND FACTS

3. The background facts stated herein constitute a brief summary of the main relevant facts, as established on the basis of the parties' written submissions, set forth for the sole purpose of this award. Additional facts will be set out, where material, in connection with the discussion of the parties' factual and legal submissions.

4. The U.S. women relay teams at the 2000 Sydney Olympic Games included the Athletes and Ms Marion Jones (hereinafter also "Ms Jones").

5. On 30 September 2000, the Olympic finals of the women's 4×100m and 4×400m track and field relays took place in Sydney.

6. The two U.S. women's relay teams respectively finished in the third place in the 4×100m race, winning the bronze medal, and in the first place in the 4×400m race, winning the gold medal.

7. On 8 October 2007, as a consequence of the so-called BALCO scandal – for a background of which see the awards CAS 2004/O/645 *USADA v. Montgomery* and CAS 2004/O/649 *USADA v. Gaines* – and of Marion Jones's acknowledgement that she had lied when she had previously denied drugs use, Ms Jones signed in front of the United States Anti-Doping Agency ("USADA") a document entitled "*Acceptance of Sanction*". Ms Jones confessed in that document that she had committed a "*doping offense arising from [her] use of a prohibited substance known as the 'clear' beginning on or about September 1, 2000 to July 2001*".

8. In particular, Ms Jones admitted that she had "*used the prohibited substance known as the 'clear' prior to, during and after the 2000 Olympic Games*". As a consequence of her violation of anti-doping rules, Ms Jones accepted various sanctions, including "*disqualification of all competitive results*

obtained on or subsequent to September 1, 2000, including forfeiture of all medals, results, points, and prizes" and "*agreed to return all medals won by [her] at the 2000 Sydney Olympic Games*".

9. By letter of 28 November 2007, the President of the International Association of Athletics Federations ("IAAF") Mr Lamine Diack informed the President of the IOC Dr Jacques Rogge that the IAAF Council had decided, with regard only to IAAF competitions, the annulment of all the individual results achieved by Ms Jones on or after 1 September 2000 and of all the relay teams' results in which Ms Jones had competed on or after 1 September 2000. With regard to the results achieved and medals obtained at the Sydney Olympic Games, the IAAF left any decision to the IOC. Indeed, Mr Diack wrote to Dr Rogge as follows:

> «*As regards Ms Jones' participation at the 2000 Sydney Olympic Games, it is the IAAF's understanding that the IOC Executive Board will decide, in accordance with Rule 23.2.1 of the Olympic Charter, on the measures and sanctions to be taken against Ms Jones and the USA women's 4×100m and 4×400m relay teams in which she competed at the Sydney Games. The IAAF Council's recommendation to the IOC Executive Board in this regard is to disqualify Ms Jones and both relay teams in which she competed and to insist upon the return of all medals and diplomas. I would be grateful if you could inform me of the IOC Executive Board's decision as soon as it is taken*».

10. On 12 December 2007, the IOC Executive Board decided to disqualify Ms Marion Jones from all track and field events in which she had competed at the 2000 Sydney Olympic Games, including the 4×100m and 4×400m relay races. No appeal was filed by Ms Jones against this IOC decision, which thus became final.

11. On 12 December 2007, the IOC Disciplinary Commission granted to the USOC the opportunity to file written submissions regarding the possible disqualification of both U.S. women relay teams.

12. On 31 January 2008, the USOC wrote to the IOC asserting that the medals won by both the 4×100m and 4×400m relays were "unfairly obtained". However, the USOC reminded the IOC that, with regard to Jerome Young's relay teammates, a CAS panel had already ruled (CAS 2004/A/725 *USOC, M. Johnson, A. Pettigrew, A. Taylor, A. Harrison & C. Harrison v. IAAF & IOC*, award of 20 July 2005, hereinafter simply "CAS 2004/A/725") that at the time of the 2000 Olympic Games there were no applicable rules entitling the IAAF to disqualify the relay team and had thus upheld the results of the men's 4×400m relay event. According to the USOC, by virtue of the precedential weight appropriately afforded to CAS rulings, that 2005 CAS award was directly applicable to the new matter concerning Marion Jones' relay teammates and dictated the necessary outcome of the case.

13. The USOC also attached to its letter to the IOC a submission on behalf of seven relay teams' members requesting that the IOC disciplinary proceedings be terminated immediately and the results and medals of Marion Jones's relay teammates confirmed.

14. On 9 April 2008, the IOC Disciplinary Commission sent its "recommendations" to the IOC Executive Board. The IOC Disciplinary Commission found that the facts and circumstances of this case were substantially different from those of the Jerome Young relay team's case because in the latter case no doping offence was committed during the Games and because Mr Young did not run in the final. The IOC Disciplinary Commission also indicated that the 1999 Explanatory memorandum concerning the Application of the OMAC (hereinafter the "OMAC Explanatory Memorandum") allowed the disqualification of the entire relay team whenever a doping offence was committed by one of the relay team members.

15. Accordingly, the IOC Disciplinary Commission recommended the following:

> «*I. The USOC relay teams to be disqualified from the following events in which they competed at the 2000 Sydney Olympic Games in the sport of athletics:*
>
> - 4 × 100 meters relay-women-USOC relay team, where the team placed third; and
> - 4 × 400 meters relay-women-USOC relay team, where the team placed first.
>
> *II. The USOC to be ordered to return to the IOC all medals and diplomas awarded to all members of both USOC relay teams in the above noted events, it being acknowledged that USOC has already returned to the IOC the medals won by Ms Jones in such events.*
>
> *III. The International Association of Athletics Federations ("IAAF") to be invited to postpone any further adjustment of results until further notice from the IOC.*
>
> *IV. The issue of awarding new medals and diplomas as a consequence of this decision to be addressed by the IOC Executive Board in due course pending further information*».

16. On 10 April 2008, upon consideration of the IOC Disciplinary Commission's recommendations, the IOC Executive Board decided to adopt, without any modifications, the said recommendations and, thus, to disqualify the entire USOC 4×100m and 4×400m women relay teams (the "Appealed Decision").

17. The Appealed Decision was notified to the Athletes on the same day.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 30 April 2008, the Athletes filed an appeal with the Court of Arbitration for Sport (the "CAS") requesting the CAS to overturn the Appealed Decision.

19. On 18 June 2008, the CAS Court Office informed the parties, on behalf of the Deputy President of the Appeals Arbitration Division, that the Panel appointed to decide the case was composed by Mr Massimo Coccia, Rome, Italy (President), Mr Yves Fortier, Montreal, Canada (appointed by the Appellants), and Mr Hans Nater, Zurich, Switzerland (appointed by the IOC).

20. On 3 October 2008, the Athletes filed with the CAS a "Motion for Summary Disposition in favour of the Appellants" (the "Motion") by which they requested a preliminary decision on Rule 25.2.2.4 of the Olympic Charter in effect in 2000 (the "2000 Olympic Charter"), according to which "*no decision taken in the context of the Olympic Games can be challenged after a period of three years from the day of the closing ceremony of such Games*". The Athletes also requested a stay of all further proceedings while the Panel considered the Motion. According to the Athletes, a preliminary decision on the three-year limitation (hereinafter also referred to as the "three-year rule") provided by Rule 25.2.2.4 of the 2000 Olympic Charter, and later by Rule 6.4 of the Olympic Charter in force in 2008 (the "2008 Olympic Charter"), could permit the annulment of the Appealed Decision without any need to further proceed on the merits of the case.

21. On 15 October 2008, the Panel dismissed the Appellants' Motion, stating that the Code of Sports-related Arbitration (the "CAS Code") did not provide for a "motion for summary disposition" and did not grant a legal basis permitting the Panel to summarily dispose of the case.

22. On 22 October 2008, the Athletes filed their Appeal Brief, confirming their position on Rule 25.2.2.4 of the 2000 Olympic Charter and submitting their position on the merits of the case.

23. On 17 November 2008, the IOC submitted its Answer Brief, opposing the Athletes' positions on the three-year rule and on the merits of the case.

24. On 22 December 2008, the CAS Court Office informed the parties that the Panel had determined that the issues related to the interpretation and application of the three-year rule could be severed from the other legal issues and be decided on a preliminary basis. The parties were also informed that the Panel deemed itself sufficiently informed to deliberate and issue a partial award on the three-year rule without holding a hearing, in accordance with Article R57 of the CAS Code. Accordingly, the parties were informed that "*should the Panel decide in favour of the Appellants on this issue, the award will terminate the case without dealing with the merits; on the other*

hand, should the Panel decide in favour of the Respondent, a hearing will be held in Lausanne on the merits of the case", thus dismissing the Appellants' request that the Panel clarify some other issues of the case.

25. On 7 January 2009, the IOC submitted an "application for additional submission prior to partial award" for the determination of the applicable rules and potential consequences thereof.

26. On 20 January 2009, the CAS Court Office informed the parties that the Panel, considering the legal issues to be discussed and determined in order to deliberate on the three-year rule, had decided to allow the parties to file additional briefs on the said issues. In this connection, the Panel submitted to the parties a list of potential issues to be determined, asking them to express their positions on those issues.

27. On 9 February 2009, the Appellants and the Respondent submitted their additional briefs.

28. On 4 May 2009, the CAS Court Office informed the parties that the Panel, having considered the parties' additional submissions, pursuant to Articles R44.3 and R56 of the CAS Code, requested the Respondent to provide further information on the legislative history of Rule 25.2.2.4 of the 2000 Olympic Charter.

29. On 27 May 2009, the Appellants filed a submission concerning the legislative history of the three-year rule included in Rule 25.2.2.4 of the 2000 Olympic Charter.

30. On 29 May 2009, the CAS Court Office informed the parties that the Panel had decided that the Respondent, together with its submission on the legislative history of Rule 25.2.2.4 of the 2000 Olympic Charter, would be allowed to comment on the Appellants' submission of 27 May 2009.

31. On 9 June 2009, the IOC submitted its observations and comments on the legislative history of Rule 25.2.2.4 of the 2000 Olympic Charter and on the Appellants' submission of 27 May 2009.

32. On 10 June 2009, the Appellants filed a response to the Respondent's submission of 9 June 2009.

33. On 15 June 2009, the Appellants submitted a further "Response to International Olympic Committee's exhibits and observations concerning the legislative history of Rule 25.2.2.4 of the Olympic Charter".

34. On 17 June 2009, the CAS Court Office indicated to the parties that, pursuant to Articles R56 and R57 of the CAS Code, the Appellants' unauthorized submissions of 10 and 15 June 2009 were deemed inadmissible and thus stricken from the record. However, the Panel also authorized the Appellants to comment on the Respondent's authorized submission and evidence

concerning the legislative history of the three-year rule, authorizing at the same time the IOC to file an answer. Moreover, the Panel confirmed that it would not hold a hearing to address this specific issue and considered to be sufficiently informed to issue a partial award on the basis of the written submissions of the parties. The Panel also declared that the proceedings as to the threeyear rule would be considered as closed after the filing of the above authorized submissions.

35. On 25 June 2009, the Appellants filed their authorized "Response to International Olympic Committee's exhibits and observations concerning the legislative history of Rule 25.2.2.4 of the Olympic Charter".

36. On 3 July 2009, the Respondent submitted its authorized reply to the Appellants' response of 25 June 2009.

37. On 18 December 2009, the Panel issued a partial award ruling as follows:

«*1. Rule 25.2.2.4 of the Olympic Charter in effect in 2000 did not preclude the IOC from taking a decision concerning the medals awarded for the women's 4×100 and 4×400 athletics relay races of the Sydney Olympic Games of 2000.*

2. *The exception submitted by Ms Andrea Anderson, Ms LaTasha Colander Clark, Ms Jearl Miles-Clark, Ms Torri Edwards, Ms Chryste Gaines, Ms Monique Hennagan and Ms Passion Richardson on the basis of Rule 25.2.2.4 of the Olympic Charter in effect in 2000 and of Rule 6.4 of the Olympic Charter in effect in 2008 is dismissed.*

3. *The CAS retains jurisdiction to adjudicate on the merits the appeal submitted by Ms LaTasha Colander Clark, Ms Jearl Miles-Clark, Ms Torri Edwards, Ms Chryste Gaines, Ms Monique Hennagan and Ms Passion Richardson against the decision of the IOC Executive Board of 10 April 2008.*

4. *All further decisions are reserved for the subsequent stages of the present appeal arbitration proceedings.*

5. The costs connected with the present partial award shall be determined in the final award».

38. The hearing took place on 10 May 2010 at the CAS premises in Lausanne, Switzerland. The Panel was present, assisted by Ms Louise Reilly (Counsel to the CAS). The hearing was attended: (a) for the Appellants by counsel Messrs Mark Levinstein and Patrick Houlihan of Williams & Connolly LLP, Washington, D.C. (USA); (b) for the Respondent by counsel Mr François

Carrard of Carrard & Associés, Lausanne (Switzerland), Mr Howard Stupp, IOC Director of Legal Affairs, and Mr André Sabbah of the IOC Department of Legal Affairs.

39. After the parties' final pleadings, the Panel closed the hearing and announced that it would deliberate and deliver in due course the reasoned award. Upon closure, both sides expressly acknowledged that their right to be heard and to be treated equally had been respected by the CAS during these arbitration proceedings.

IV. OVERVIEW OF THE PARTIES' POSITIONS ON THE MERITS

40. The following overview of the parties' positions on the merits of the case is in summary form and does not purport to include the details of every contention set forth by the parties. However, the Panel has carefully considered all the parties' submissions, even if there is no specific reference to those submissions in this award.

IV. 1 THE APPELLANTS

41. The Athletes argue that the IOC violated their rights to due process, fundamental fairness and natural justice through proceedings conducted in violation of the Olympic Charter.

42. In particular, according to the Appellants, the IOC knowingly and repeatedly disregarded the Olympic Charter and violated their right to be heard in the following ways:

    a) the IOC consistently refused to acquaint the Athletes with the charges and evidence against them;

    b) the Athletes were not granted any meaningful opportunity to tender a defence, in writing or in person;

    c) the IOC Disciplinary Commission and Executive Board were composed of individuals who had prejudged the matter, as demonstrated by some public statements;

    d) the Executive Board never adopted a valid decision.

43. The Appellants underscore that the Olympic Movement Anti-Doping Code (the "OMAC") – in force on January 1, 2000 and thus applicable to this matter – provides that "*[i]n the event that a competitor who is a member of a team is found guilty of doping, the relevant rules of the International Federation concerned shall be applied*" (Chapter II, Article 3.4).

44. The Athletes argue that, as a consequence of such OMAC provision, at the time of the Sydney Olympic Games all international federations in the

Olympic Movement were explicitly on notice that they were responsible for writing clear rules about the consequences of doping violations on team members. However, as acknowledged by the IAAF's own legal counsel in July 2004, until March 1, 2004 the IAAF did not enact any specific provision for what should happen to the teammates when a member of a relay team (or of any other kind of team) was found guilty of doping. Accordingly, the Athletes cannot be stripped of their medals without an explicit rule providing for the annulment of the results of the whole relay team.

45. The Appellants maintain that the exact issue presented here – i.e. whether, under the rules in effect on 30 September 2000, the relay teammates of an athlete who is found to have committed a doping violation may be disqualified and lose their medals and results – was already decided in the case CAS 2004/A/725 concerning Jerome Young's relay teammates. The Athletes contend that the principles of "collateral estoppel" and "*stare decisis*" render that precedent binding on the IOC and on this CAS panel.

46. According to the Appellants, there is no distinction between this matter and the matter of Jerome Young's teammates that justifies a different result. They argue that the fact that Ms Jones ran in the final while Jerome Young only ran in the preliminary and semifinal heats is irrelevant because (i) nothing in the CAS 2004/A/725 award turned on whether Mr Young ran in the final, and (ii) Mr Young ran in the two races that got the U.S. team to the final and if his disqualification were to disqualify the whole team his teammates would have never qualified for the final and would have lost their medals anyway.

47. The Appellants also contend that it does not matter that Jerome Young's positive test for steroids occurred before the Olympic Games while Ms Jones admitted being doped "during" the Games because (i) nothing in the CAS 2004/A/725 award turned on whether Mr Young was taking steroids prior to or during the 2000 Olympic Games, and (ii) steroids aid increasing muscle mass and they are typically taken during training periods in order to boost the athlete's performance during the ensuing competitions.

48. The Athletes assert that, contrary to the IOC's opinion, there is nothing "absurd" about not punishing the other members of a team if one teammate has cheated; in fact, the World Anti-Doping Code (hereinafter the "WADA Code"), in reference to so-called "Team Sports", requires a violation by more than one athlete for a team to be disqualified.

49. In this connection, the Athletes also observe that for team events in sports that do not fall within the WADA Code's definition of "Team Sports" – such as athletics relays – Article 11 of the current WADA Code makes reference to the applicable rules of the concerned International Federation. It is the Appellants' understanding that most international federations have chosen not to punish innocent teammates.

50. In particular, the Athletes point out that the IAAF rules in force at the time of the 2000 Olympic Games did not authorize then, and thus do not authorize now, punishing the relay teammates of a doped athlete.

51. Moreover, the Athletes argue that the OMAC Explanatory Memorandum, invoked by the IOC to justify the Appealed Decision, cannot override the express provision of the OMAC that "*the relevant rules of the International Federation concerned shall be applied*". In addition, they argue that the IOC cannot be permitted to interpret its rules differently in two virtually identical cases, given that throughout the CAS proceeding concerning Jerome Young's teammates the IOC was adamant that, pursuant to Article 3.4 of the OMAC, the issue was governed by the IAAF rules.

52. The Athletes also argue that Ms Jones's declaration of acceptance of sanctions – an unsworn statement – does not constitute sufficient evidence of a case of "doping during a competition" and the Panel cannot rely blindly upon it without further confirmatory evidence.

53. Furthermore, according to the Appellants, under the relevant IAAF rules, an athlete's confession to having committed a doping offence is not usable after six years; accordingly, Ms Jones's admission may not be used as a base for a sanction against her relay teams.

54. In conclusion, the Athletes request that the Panel overturn the IOC Executive Board's decision to annul the relay results and withdraw their medals. Furthermore, the Appellants request that the Panel order the IOC to reimburse the Appellants' legal costs, in an amount of at least USD 200,000.

IV. 2 THE RESPONDENT

55. The IOC states that the Olympic Charter undoubtedly confers on the IOC Executive Board the authority to adopt measures and sanctions in the context of the Olympic Games for any violation of any applicable regulation or in the case of any form of misbehaviour. In particular, in accordance with Rule 23.2.1 of the Olympic Charter, the IOC is entitled to take measures and sanctions with regard not only to individual competitors but also to "teams". The IOC Executive Board is also entitled under the Olympic Charter to delegate its powers to a disciplinary commission.

56. The IOC maintains that it never violated the Appellants' due process rights as it conducted the disciplinary procedure in accordance with all applicable rules. According to the IOC, disciplinary proceedings are neither trials nor judicial procedures and the right to be heard may very well be exercised through written submissions. In particular, the IOC underscores that Bye-law 3 to Rule 23 provides that the right to be heard is equally respected granting either the right "*to appear personally*" or the right "*to submit a*

defence in writing". As the Athletes' submission, sent through the USOC, as well as the subsequent letters and documents sent by their counsel were duly taken into account by the IOC, the Athletes' right to be heard was respected.

57. In any event, according to the IOC, the CAS appellate procedure provides for a *de novo* review of the Athletes' case, which cures any possible procedural violation.

58. The Respondent also argues that there can be no doubt that Marion Jones took the prohibited substance known as the Clear "*prior to, during and after the 2000 Olympic Games*", given that she explicitly admitted such conduct in writing. Her written confession is admissible evidence under Article 3.2 of the WADA Code, which allows proving an anti-doping rule violation "*by any reliable means, including admission*".

59. According to the IOC, the IAAF rules should not govern the case at stake because the OMAC Explanatory Memorandum expressly provides, with regard to the invalidation of team results, that if an International Federation has not implemented the OMAC "*the events in which the doped athlete has participated are considered lost or the team is disqualified*".

60. The Respondent then submits that the case of Marion Jones's teammates must be distinguished from the case of Jerome Young's teammates (CAS 2004/A/725), because they are fundamentally different:

    a) In the case of Jerome Young's teammates, no doping offence of any kind was committed during the 2000 Sydney Olympic Games themselves. The offence was committed by Jerome Young before the Olympic Games; therefore, the results obtained by the men relay team were not affected by a doping offence. On the contrary, Marion Jones admitted to have committed a doping offence "*during*" the Games, thus affecting the performance of her relay teams.

    b) Jerome Young committed the offence prior to the Sydney Olympic Games, thus under the sole sanctioning authority of the IAAF; Marion Jones committed the offence during the Games, thus under the sanctioning authority of the IOC. As a consequence, the fact that at the time of the Games there was no existing IAAF rule providing for possible disqualification of the whole relay team does not deprive the IOC from its right to exercise its own authority and disqualify the whole relay teams pursuant to its own rules, such as the OMAC Explanatory Memorandum.

    c) Jerome Young ran only in the qualification heat and in the semi-final but did not run in the final, whereas Marion Jones ran in both finals that allowed the US women relay teams to obtain the medals.

61. The IOC also argues that a distinction must be drawn between team sports such as basketball, where even if one athlete is doped the results of the team depend on many more independent variables, and an athletics relay event, where four athletes run four equal parts of the track and one doped athletes directly affects the final result of the relay team.

62. The IOC contends that any other interpretation of the rules could lead to absurd results, such as seeing a relay team "sacrificing" a doped athlete in order to allow the other team members to win a medal. The IOC asserts that it would be absolutely shocking and intolerable for the whole sports community if a relay team including a doped athlete were allowed to keep the team result and that this would send the worst possible message because it would mean that we are condoning cheats. According to the IOC, accepting the Appellants' arguments could transform the fight against doping into a pure mockery.

63. The Respondent concludes requesting that the Athletes' appeal be dismissed and that the Appellants be ordered to pay the Respondent's costs and expenses arising out of the arbitration, in an amount which should not be below CHF 20,000.

V. DISCUSSION

V. 1 JURISDICTION

64. The jurisdiction of the CAS, which is not disputed, derives from Article R47 of the CAS Code and from the arbitration clause pointing to the CAS set forth in the Olympic Charter.

65. Article R47 of the CAS Code so provides:

> «*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 Appellant 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*».

66. Rule 59 of the 2008 Olympic Charter (in force at the time of the Athletes' appeal) and Rule 74 of the 2000 Olympic Charter (in force at the time of the Sydney Olympic Games) identically provide the following arbitration clause:

> «*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*».

67. There is no question that both the Respondent, that has enacted the Olympic Charter, and the Appellants, who have explicitly accepted the Olympic Charter by signing the registration form for the Sydney Olympic Games, are bound by the above quoted arbitration clause set forth in Rule 59. It is also undoubted that the present dispute has arisen in connection with the 2000 Sydney Olympic Games and that, prior to the appeal, the Appellants have exhausted all legal remedies available to them within the IOC's system.

68. It follows that the CAS has jurisdiction to decide on the merits of the present dispute and that the provisions of the CAS Code govern the procedure.

69. Under article R57 of the CAS Code, the Panel has the full power to review the facts and the law and, thus, to hear the case *de novo*.

V. 2 APPLICABLE LAW

70. Article R58 of the CAS Code provides as follows:

> «*The 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.*»

71. The Panel observes that this case arises from a sanction imposed by the IOC on the Appellants' relay teams in connection with an anti-doping rule violation committed by their teammate Marion Jones at the time of the 2000 Sydney Olympic Games. Accordingly, the "applicable regulations" in this case are the IOC rules (the Olympic Charter, the OMAC and the like), which have been accepted by the Athletes when they took part in the Sydney Olympic Games and whose application has been invoked by both sides. The IAAF rules are also applicable insofar as allowed, mandated or referenced by the IOC rules.

72. The Panel then notes that the Appealed Decision was issued by the IOC. As the IOC is an association constituted under Swiss law and domiciled in Lausanne, Switzerland, pursuant to the above quoted Article R58 of the CAS Code, Swiss law applies subsidiarily to the present dispute.

73. As to the different versions of the applicable rules, the Panel determines that it must necessarily apply to the Athletes the IOC and IAAF rules in effect during the 2000 Sydney Olympic Games, and not those entered into force at a later stage (such as, for example, the WADA Code). In the Panel's view, intertemporal issues are governed by the general principle of law "*tempus regit actum*", which holds that any determination of what constitutes a

sanctionable rule violation and what sanctions can be imposed must be done in accordance with the law in effect at the time of the allegedly sanctionable conduct and new rules and regulations do not apply retrospectively to facts occurred before their entry into force.

74. The Panel takes comfort from the fact that its opinion is consistent with numerous CAS precedents. See e.g.:

> *«under Swiss law the prohibition against the retroactive application of Swiss law is well established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred*» (Award CAS 2000/A/274, *Susin v. FINA*, para. 208);
>
> «*as a general rule, transitional or inter-temporal issues are governed by the principle "tempus regit actum", holding that any deed should be regulated in accordance with the law in force at the time it occurred*» (Award CAS 2004/A/635 *Espanyol de Barcelona v. Club Atlético Velez Sarsfield*, para. 44);
>
> «*The succession in time of anti-doping regulations poses the problem of the identification of the substantive rule which is relevant for the answer to such question. In this respect the Panel confirms the principle that "tempus regit actum": in order to determine whether an act constitutes an anti-doping rule infringement, it has to be evaluated on the basis of the law in force at the time it was committed. In other words, new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future*» (Advisory Opinion CAS 2005/C/841 *CONI*, para. 51).

V. 3 ADMISSIBILITY OF THE APPEAL

75. The appeal is admissible as the Appellants submitted it within the deadline provided by article R49 of the CAS Code and complied with all the other requirements set forth by article R48 of the CAS Code.

V.4 THE THREE-YEAR RULE ISSUE

76. With respect to the so-called three-year rule issue, reference is made to the Partial Award dated 18 December 2009, in which the Panel disposed of such matter ruling that the Olympic Charter did not time-bar the IOC from withdrawing from the Appellants the medals awarded for the women's 4×100m and 4×400m relays of the Sydney Olympic Games of 2000 (see *supra* at 37).

V. 5 THE APPELLANTS' DUE PROCESS RIGHTS

77. The Appellants claim that the IOC seriously infringed their due process rights, in particular not granting them their full right to be heard. As a consequence, the Appellants contend that the Appealed Decision should be annulled.

78. The Panel does not agree with this Appellants' submission. There is an established CAS jurisprudence based on Art. R57 of the CAS Code ("*The Panel shall have full power to review the facts and the law*"), according to which the CAS appeal arbitration procedure cures any infringement of the right to be heard or to be fairly treated committed by a sanctioning sports organization during its internal disciplinary proceedings. Indeed, a CAS appeal arbitration procedure allows a full *de novo* hearing of a case with all due process guarantees, granting the parties every opportunity not only to submit written briefs and any kind of evidence, but also to be extensively heard and to examine and cross-examine witnesses or experts during a hearing. The Panel harbours no doubt that in the present CAS procedure the Appellants were given ample latitude to fully plead their case and be heard; accordingly, the Panel deems as cured any possible violation that might have occurred during the IOC proceedings, with no need to address the grievances raised by the Appellants.

79. The Panel can rely on many CAS awards in support of the above position. For instance, in CAS 2003/O/486 *Fulham FC v. Olympique Lyonnais* the panel clearly stated:

> «*In general, complaints of violation of natural justice or the right to a fair hearing may be cured by virtue of the CAS hearing. Even if the initial "hearing" in a given case may have been insufficient, the deficiency may be remedied in CAS proceedings where the case is heard "de novo"*» (para. 50).

80. In the recent case CAS 2009/A/1880-1881 *FC Sion & El-Hadary v. FIFA & Al-Ahly SC*, the panel stated as follows:

> «*the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation's (or other sports body's) internal procedure. [...] it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision*» (paras. 142, 146).

81. In TAS 2004/A/549 *Deferr & RFEG c. FIG*, the Panel stated:

> «*le TAS jouit, sur le fondement des dispositions de l'article 57 du Code de l'arbitrage, d'un plein pouvoir d'examen. Ce pouvoir lui permet d'entendre à nouveau les parties sur l'ensemble des circonstances de faits ainsi que sur les arguments juridiques qu'elles souhaitent soulever et de statuer définitivement sur l'affaire en cause ainsi d'ailleurs, que le demande l'appelant en l'espèce. Un tel système, où la Formation examine l'ensemble des griefs de fait et de droit soulevés par les parties permet de considérer comme purgés les vices de procédure ayant éventuellement affecté les instances précédentes. Ce principe a été confirmé par le TAS à de nombreuses reprises*» (para. 31).

82. The same notion that violations of due process rights during intra-association disciplinary proceedings do not suffice in and of themselves to annul a disciplinary decision appealed before the CAS – owing to the fact that CAS proceedings do grant those rights – has been repeated over and over by further CAS panels, among which the following can be mentioned: CAS 2006/A/1153 *WADA v. Assis & FPF* at para. 53; CAS 2008/A/1594 *Sheykhov v. FILA* at para. 109; TAS 2008/A/1582 *FIFA c. URBSFA & Micha'l Wiggers* at para. 54; CAS 2008/A/1394 *Landis v. USADA* at para. 21; TAS 2009/A/1879, *Valverde c. CONI* at para. 71.

83. Therefore, given the authority granted to the Panel by Article R57 of the CAS Code to fully review the facts and the law *de novo*, the Panel considers that any possible infringements of the Appellants' due process rights committed by the IOC are hereby cured and thus irrelevant. As a result, the Panel may proceed to rule on the merits of the case.

V. 6 THE MERITS

84. The issue to be solved in this case is whether, under the applicable rules in force at the time of the 2000 Sydney Olympic Games, the results obtained by the US track and field teams in the women's 4×100m and 4×400m relay events should be annulled and the medals withdrawn from those teams because one team member – Ms Marion Jones – has been subsequently disqualified due to an admitted anti-doping rule violation.

A. Preliminary remarks

85. Preliminarily, the Panel wishes to address two points raised, respectively, by the Appellants and by the Respondent.

86. First, the Panel finds that there is sufficient evidence that Ms Jones committed a doping offence during the Sydney Olympic Games. The Panel does not agree with the Appellants' position that the Panel should not rely, without further confirmatory evidence, upon Ms Jones's "declaration of acceptance

of sanctions", which would not constitute sufficient evidence of her doping offence *during* the Olympic Games because it was not a sworn statement and she did not draft the declaration herself. The members of the Panel do not doubt the veracity of Ms Jones's admission and deem it very credible evidence, given that such admission cost her five Olympic medals (not to mention a prison term and financial losses). In the Panel's view, it is utterly irrelevant whether she actually drafted the text of the declaration on her own and whether the declaration was sworn or not. It suffices to remark that Ms Jones personally and unconditionally signed her declaration and explicitly admitted in writing that she had doped not only "*prior to*" and "*after*" but also "*during*" the 2000 Olympic Games.

87. Second, the Panel underscores that this is certainly a disciplinary case but it is not a doping case. Before this Panel there is no evidence whatsoever that any of the Appellants committed a doping offence at the Sydney Olympics or knew that their teammate Ms Jones was cheating. The Panel is obviously mindful of the fact that at least one of the Appellants – Ms Chryste Gaines – was found guilty in 2005 of the doping offence of having used during the years 2002 and 2003 the same prohibited substance (the Clear) whose use was later admitted by Ms Jones (see the award dated 13 December 2005 in the case CAS 2004/O/649 *USADA v. Ch. Gaines*). Therefore, it is certainly a possibility – to which the Respondent alluded at the hearing – that prior to or during the 2000 Sydney Olympic Games not only Ms Jones but also some other relay teammate used a prohibited substance. However, this Panel must judge on the basis of the evidence before it. It would be a giant step backwards, which would eventually backfire and possibly deliver a fatal blow to any serious fight against doping and to the CAS's reputation if a CAS panel were to adjudicate cases relying on mere suspicions and insinuations.

88. As a result, absent any evidence before this Panel of any misbehaviour of the Appellants, this case merely turns on the legal consequences for the team – under the rules in force in 2000 – after one of the team members has been disqualified for a doping offence which occurred during the team competition. It is a recurring situation, which in some sports leads to the disqualification of the whole team and in other sports does not affect the team's results; the outcome simply depends on the applicable rules. In the Panel's view, therefore, this case does not directly concern the fight against doping and this award, contrary to the Respondent's assertions, may not be taken as sending messages of any kind, let alone wrong messages, with regard to the fight against doping.

B. The IOC's power to impose the sanctions on the Appellants

89. Rule 23 of the 2008 Olympic Charter (in force on 10 April 2008, at the moment of the adoption of the Appealed Decision disqualifying the two US women's relay teams) provides as follows:

«*In the case of any violation of the Olympic Charter, the World Anti-Doping Code, or any other regulation, as the case may be, the measures or sanctions which may be taken by the [IOC] Session, the IOC Executive Board or the [IOC] disciplinary commission referred to under 2.4 below are:*

[…]

2. In the context of the Olympic Games, in the case of any violation of the Olympic Charter, of the World Anti-Doping Code, or of any other decision or applicable regulation issued by the IOC or any IF or NOC, including but not limited to the IOC Code of Ethics, or of any applicable public law or regulation, or in case of any form of misbehaviour:

2.1 with regard to individual competitors and teams:

temporary or permanent ineligibility or exclusion from the Olympic Games, disqualification or withdrawal of accreditation; in the case of disqualification or exclusion, the medals and diplomas obtained in relation to the relevant infringement of the Olympic Charter shall be returned to the IOC. […]».

90. In light of this provision, the Panel has no doubts that the IOC Executive Board has the authority to impose on a "team" – in addition to individual competitors – the sanction of disqualification and to order the team members to return their medals and diplomas to the IOC. The Panel thus concurs with the Respondent's opinion that the IOC Executive Board had the power to adopt the Appealed Decision and to disqualify the two US women's relay teams which competed at the 2000 Sydney Olympic Games.

91. However, a different matter is whether in the present case the IOC properly exerted the disciplinary power granted to it by the Olympic Charter.

92. In this regard, pursuant to the above quoted Rule 23.2 of the Olympic Charter, the IOC may properly exert such disciplinary power, and adopt "*measures or sanctions*" in "*the context of the Olympic Games*", only on condition that the sanctioned individual competitor or team:

- has violated any applicable sports regulation or decision ("[…] *in the case of any violation of the Olympic Charter, of the World Anti-Doping Code, or of any other decision or applicable regulation issued by the IOC or any IF or NOC […]*"),
- has violated "*any applicable public law or regulation*", or
- has committed "*any form of misbehaviour*".

93. In the Panel's opinion, this provision of the Olympic Charter is to be properly read in accordance with the "principle of legality" ("*principe de légalité*" in French), requiring that the offences and the sanctions be clearly and previously defined by the law and precluding the "adjustment" of existing rules to apply them to situations or behaviours that the legislator did not clearly intend to penalize. CAS arbitrators have drawn inspiration from this general principle of law in reference to sports disciplinary issues, and have formulated and applied what has been termed as "predictability test". Indeed, CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis and that such sanctions must be predictable. In other words, offences and sanctions must be provided by clear rules enacted beforehand.

94. In the seminal award of 23 May 1995, CAS 94/129 *USA Shooting & Q. v. UIT*, the panel declared the following:

> «*The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable*» (para. 34, emphasis added).

95. In another well-known award issued on 12 February 1998 by the CAS ad hoc Division at the Nagano Olympic Games (CAS OG 98/002 *Rebagliati v. IOC*), the panel stated as follows:

> «*The Panel recognizes that from an ethical and medical perspective, cannabis consumption is a matter of serious social concern. CAS is not, however, a criminal court and can neither promulgate nor apply penal laws. We must decide within the context of the law of sports, and cannot invent prohibitions or sanctions where none appear. [...] It is clear that the sanctions against Rebagliati lack requisite legal foundation*» (para. 26, emphasis added).

96. In CAS 2001/A/330, R. v. FISA, award of 23 November 2001, the panel explicitly stated that the sanctions imposed by a sports federations were valid if they could withstand the "predictability test":

> «*In the present case, the Panel is in no doubt that the sanction imposed was based upon valid provisions of the FISA Rules which were then in force. Those provisions were well-known and predictable to all rowers […]. In the circumstances, therefore, the Panel has no hesitation in finding that the sanction contained in FISA's Rules satisfied what might be called the "predictability test"*». (para. 17, emphasis added).

97. In CAS 2007/A/1363 *TTF Liebherr Ochsenhausen v. ETTU*, award of 5 October 2007, in line with many CAS awards, the sole arbitrator protected

"*the principle of legality and predictability of sanctions which requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision*" (para. 16, emphasis added).

98. In the present case, therefore, the IOC's case depends on whether there was on 30 September 2000 an express and clear rule providing that the two relay teams could be disqualified if one of their members committed a doping offence.

C. The Olympic Movement Anti-doping Code and its Explanatory Memorandum

99. It is common ground between the parties that the IOC anti-doping rules in force at the time of the 2000 Olympic Games were set out in the OMAC, whose Chapter II is entitled "*The offence of doping and its punishment*" and sets forth the principal governing rules in this case.

100. Within Chapter II of the OMAC, paragraphs 3 and 4 of Article 3 deal with the consequences of a doping offence in terms of invalidation of the results obtained in the competition during which the doping offence was committed:

> *«3. Any case of doping during a competition automatically leads to invalidation of the result obtained (with all its consequences, including forfeit of any medals and prizes), irrespective of any other sanction that may be applied, subject to the provisions of point 4 of this article.*
>
> *4. In the event that a competitor who is a member of a team is found guilty of doping, the relevant rules of the International Federation concerned shall be applied».*

101. In the Panel's opinion, the OMAC evidently distinguishes between individual results and team results and provides that individual results are automatically invalidated (Article 3, para. 3), while the invalidation of team results depend on the rules of the interested International Federation (Article 3, para. 4). Accordingly, pursuant to the OMAC this case should turn on the IAAF rules applicable at the time.

102. However, the Respondent argues that the IAAF rules should be left out of the picture because the quoted paragraphs 3 and 4 of Article 3 of the OMAC's Chapter II have been superseded by the following paragraph of the OMAC Explanatory Memorandum, which would provide the IOC with a legal basis to disqualify the team relying only on its own rules:

> *«For competitors who are members of a team, paragraph 4 refers only to paragraph 3. This means that the rules of the International Federation concerned only govern the question of any invalidation of the result obtained by the team. For everything else, the athlete in question is sanctioned individually, according to the rules of the Code, in the same way as any athlete accused of doping. If the IF concerned has not adopted the implementing provisions of the Code in this area, the events in which the doped athlete has participated are considered lost or the team is disqualified, according to the sports and the competition format.»*

103. The Panel does not agree with the Respondent's construction.

104. First of all, the Panel observes that Article 2 of Chapter VII of the OMAC provides that the OMAC "*may be modified only by the IOC Executive Board, upon recommendation of the Council of the International Independent Anti-Doping Agency [i.e. the WADA] after consultation of the parties concerned*". As acknowledged by the Respondent's counsel at the hearing, the OMAC Explanatory Memorandum was not formally approved or adopted by the Executive Board. By reason of this significant formal deficiency, the Panel finds that the OMAC Explanatory Memorandum, no matter how interpreted, may not be taken as modifying or superseding the OMAC.

105. Second, by its own language, the OMAC Explanatory Memorandum openly states that it is not meant to "*deal with matters that would require substantive amendments to the Code, but is intended to provide certain interim clarifications pending the development of experience with the new document and formal modifications to the Code based on such experience*" (last paragraph of the OMAC Explanatory Memorandum's Introduction). Therefore, even if one were to disregard the said formal deficiency, the OMAC Explanatory Memorandum is a document that may merely clarify an OMAC's provision and not modify or supersede it. In this respect, the Panel is not prepared to follow the IOC's interpretation (see *supra* at 59) of the last sentence of the quoted paragraph of the OMAC Explanatory Memorandum (*supra* at 102), because such construction would preclude the application of "*the relevant rules of the International Federation concerned*" (i.e. the IAAF rules) and this would modify, rather than merely clarify, the OMAC.

106. Third, the second sentence of the OMAC Explanatory Memorandum's paragraph cited by the IOC specifically and unambiguously states that "*the rules of the International Federation concerned [...] govern the question of any invalidation of the result obtained by the team*" (see *supra* at 102). In the Panel's view, this language, coupled with the above quoted paragraph 4 of Article 3 of the OMAC's Chapter II makes absolutely clear the IOC

legislator's wish to leave the matter of the invalidation (or not) of team results to the discretion of the interested International Federations. In this respect, the Panel evokes the generally recognized interpretive principle "*in claris non fit interpretatio*", meaning that when a rule is clearly intelligible, there is no need of looking for an alternative or imaginative interpretation.

107. Fourth, the Panel observes that even that last sentence of the above quoted passage of the OMAC Explanatory Memorandum, on which the IOC especially relies (see *supra* at 59), is far from clear in underpinning the IOC's case because: (i) its language, especially if read in the context of the whole paragraph, is obscure and ambiguous; (ii) no evidence whatsoever has been submitted that the IAAF "*has not adopted the implementing provisions of the [OMAC] in this area*"; (iii) it is unclear what the "*area*" is or how it is defined; (iv) the expression "*according to the sports and the competition format*" may be taken to mean that, again, the solution could be different from sport to sport and from competition to competition, depending on the specific rules governing a given sport or a given competition; (v) even the IOC's counsel conceded at the hearing that the OMAC Explanatory Memorandum "could be drafted better" and that the quoted paragraph "is not the easiest rule to interpret". In sum, even if one were to ignore the fact that the OMAC Explanatory Memorandum may not lawfully override the OMAC, the lack of clarity of the last sentence of the paragraph invoked by the IOC prevents anyways the Panel from interpreting it in favour of the IOC, in light of the interpretive principle "*contra stipulatorem*" (widely recognized in Swiss law and in CAS jurisprudence) and of the said predictability test.

108. Finally, the Panel notes that the IOC itself has asserted, in a letter dated 2 July 2004 from the Secretary of the IOC Disciplinary Commission to the President of the IAAF, that the OMAC requires that the issue of team results in case of a doped team member be addressed on the basis of the rules adopted by each International Federation. Contrary to what the Appellants argue, this does not preclude the IOC from making a different case before this Panel: however, this shift from its original stance certainly does not strengthen the Respondent's case.

109. As a result of the above considerations, the Panel holds that, under the IOC rules in force at the time of the Sydney Olympic Games, the fate of team results in case of a disqualification for doping of a team member depends on the rules of the concerned International Federation. Therefore, the Panel concludes that the matter at issue must be solved in accordance with IAAF rules.

D. The IAAF rules and the precedent of CAS 2004/A/725

110. The case turns on the interpretation of the relevant IAAF Rules in force at the time of the 2000 Sydney Olympic Games and their application to the gold and bronze medal-winning US teams in the women's 4×400m and 4×100m relay events.

111. The Panel is mindful of the fact that another CAS panel has already dealt with a similar case with regard to the men's 4×400m relay team of which Jerome Young, later disqualified for a doping offense, was a member (CAS 2004/A/725). In that case the CAS panel decided, on the basis of the IAAF Rules in force at the time of the 2000 Sydney Olympic Games, to overturn the IAAF decision to annul the results of Jerome Young's 4×400m relay team.

112. The IOC vigorously argued that the present case should be distinguished from the case of Jerome Young's relay team; according to the IOC, particular distinguishing weight should be given to the fact that, contrary to Jerome Young, Marion Jones did run in the two finals and to the fact that she admitted being doped during the Olympic Games while Jerome Young took the prohibited substances prior to the Games (see *supra* at 60).

113. However, even if the Panel does not consider the Appellants' well founded observation that the CAS 2004/A/725 award did not deal with (and the outcome of the case did not depend on) those circumstances, the Panel does not agree with this Respondent's submission. Firstly, in order to win a medal a relay team must necessarily pass through the qualifying heat and the semi-final, which are quite risky even for the strongest relay teams (considering in particular how frequently in relay events a team is disqualified because, for instance, the baton is exchanged improperly or dropped). Therefore, the contribution of an athlete who runs only in the qualifying heat or in the semi-final is equally essential and valuable to the final result of the team. Secondly, both Marion Jones and Jerome Young have been found guilty of a doping offence at a later moment and retroactively disqualified from the relay events they had raced in; accordingly, from a legal standpoint the situation is identical, while from a medical standpoint no evidence whatsoever has been presented to show that Marion Jones' cheat improved her performance at the Olympics while Jerome Young's did not.

114. As a result, the Panel is of the opinion that this case must be adjudicated by addressing exactly the same issue that was already addressed in the case of Jerome Young's relay team, i.e. whether the results obtained by a team in a track and field relay event should be annulled because one team member has been subsequently declared ineligible and disqualified from that event due to an anti-doping rule violation.

115. This does not automatically entail that the Panel is bound to decide in the same way as in CAS 2004/A/725 on the basis of either the "*stare decisis*" or the "collateral estoppel" principles, as advocated by the Appellants.

116. On the issue of the precedential value of CAS awards, the Panel shares the view of other CAS panels. In the case CAS 97/176 *UCI v. Jogert & NCF*, award of 15 January 1998, the panel rightly stated as follows:

> «*in arbitration there is no stare decisis. Nevertheless, the Panel feels that CAS rulings form a valuable body of case law and can contribute to strengthen legal predictability in international sports law. Therefore, although not binding, previous CAS decisions can, and should, be taken into attentive consideration by subsequent CAS panels, in order to help developing legitimate expectations among sports bodies and athletes*» (at para. 40).

117. Similarly, in the case CAS 2004/A/628 *IAAF v. USA Track & Field and Jerome Young*, award of 28 June 2004, the panel stated as follows:

> *«In CAS jurisprudence there is no principle of binding precedent, or stare decisis. However, a CAS Panel will obviously try, if the evidence permits, to come to the same conclusion on matters of law as a previous CAS Panel» (at para. 73).*

118. Therefore, although a CAS panel in principle might end up deciding differently from a previous panel, it must accord to previous CAS awards a substantial precedential value and it is up to the party advocating a jurisprudential change to submit persuasive arguments and evidence to that effect. Accordingly, the CAS 2004/A/725 award is a very important precedent and the Panel will draw some significant guidance from it.

119. The Panel observes that in the Jerome Young's relay team's case, the CAS panel found that in the IAAF regulations there was no express rule in force at the time of the Sydney Olympic Games which provided for the annulment of results obtained by a relay team, one of whose members was later disqualified because of a doping offence (see award CAS 2004/A/725 at para. 74).

120. Remarkably, the fact that there was no express IAAF rule regulating that situation, and that a rule for that purpose was enacted only four years later, was acknowledged by the IAAF's own legal counsel in a "briefing note" to the IAAF Council dated 18 July 2004, where the following can be read:

> «*15. In the 2000 [IAAF] Rules there was still no specific provision for what should happen when a competitor who had been a member of a team (either a relay team or otherwise) was found guilty of doping. […]*

> *16. For the first time, the 2004-2005 Rules make express provision for what happens when an athlete who is a member of a relay team is found guilty of doping.*
>
> *17. The 2004-2005 IAAF Rules make it clear that: (i) if an athlete (who is subsequently declared ineligible) tests positive in a relay event, the result of the relay team in which he has competed shall be annulled (Rule 39.2); […]*».

121. Even the IOC's representative acknowledged at the hearing that "there is no express rule" providing for the invalidation of the team results if one team member is disqualified due to a doping offence.

122. During the case CAS 2004/A/725, in the absence of an express IAAF rule, the IAAF's counsel ingeniously tried to rely on IAAF Rule 59.4 (in force during the Sydney Olympic Games), arguing that this provision could be applied to a relay team and could provide the legal basis for the annulment of the results of the US team. IAAF Rule 59.4 is in the following terms:

> *«If an athlete is found to have committed a doping offence and this is confirmed after a hearing or the athlete waives his right to a hearing, he shall be declared ineligible. In addition, where testing was conducted in a competition, the athlete shall be disqualified from that competition and the result amended accordingly. His ineligibility shall begin from the date of suspension. Performances achieved from the date on which the sample was provided shall be annulled».* (emphasis added)

123. The CAS panel rejected the IAAF's argument and determined, for very convincing reasons, that Rule 59.4 only concerned the disqualification, ineligibility and annulment of performance results of individual athletes guilty of a doping offence and it did not concern teams or team results (see award CAS 2004/A/725 at paras. 63 *et seq*.).

124. During the present arbitration, the IOC did not even try to challenge such findings and persuade the Panel that that CAS panel's determination was erroneous. In fact, the Panel concurs with the convincing analysis of the CAS 2004/A/725 panel and sees no reason to reach a different conclusion with regard to IAAF Rule 59.4. This rule simply cannot be applied to the Appellants' relay teams and used to annul such teams' results and withdraw the Athletes' medals.

E. Could the relay teams be sanctioned on the basis of logic and/or of an alleged principle of lex sportiva?

125. It was urged upon the Panel by the IOC's counsel that it would be absurd and even "monstrous" to uphold the appeal and leave the relay teams' results unaffected while one team member was admittedly doped, and that such an outcome would be a "disaster" and would not be understood by the sports world.

126. In short, the IOC seems to rely on logic and/or some sort of general principle of *lex sportiva* which, in order to safeguard sports from cheats, would inexorably require to annul any team results whenever a member of the team is found to have competed while being doped. In particular, the IOC insisted at the hearing that a relay race is a very specific competition which cannot be compared with, and should be distinguished from, other team competitions.

127. The IOC's argument that it would be logical to disqualify a team whose overall performance was boosted in some measure by one doped team member is not without force and is even commonsensical. However, in the view of the Panel, mere logic may not serve as a basis for a sanction because it would not satisfy the said predictability test (see *supra* at 93-96) and it could lend itself to arbitrary enforcement.

128. In contrast, the Panel does not discard the theoretical possibility that an established principle of *lex sportiva* might serve as legal basis to impose a sanction on an athlete or a team. Needless to say, the existence of such principle must be convincingly demonstrated and must also pass the mentioned predictability test.

129. However, no evidence has been submitted to the Panel that could support the notion that *lex sportiva* would invariably require disqualifying not only the individual athlete but also the team to which the doped athlete belongs. To the contrary, the Panel finds that even the current WADA Code – necessarily the starting point for any attempt to demonstrate the existence of a principle of *lex sportiva* in relation to a doping matter – lends no support to such idea. Article 11.2 of the WADA Code so reads:

> «*If more than two members of a team in a Team Sport are found to have committed an anti-doping rule violation during an Event Period, the ruling body of the Event shall impose an appropriate sanction on the team (e.g., loss of points, Disqualification from a Competition or Event, or other sanction) in addition to any Consequences imposed upon the individual Athletes committing the anti-doping rule violation*» (emphasis added).

130. The WADA Code thus provides for team sports – i.e., according to the WADA Code, the sports where the substitution of players is permitted

during a single competition – the following two situations: (i) if one or two members of a team are doped, the team suffers no consequences; (ii) if three or more members of a team are doped, there shall be a sanction against the team but that sanction is not necessarily the disqualification of the whole team. So, for example, given that FIFA adopted almost verbatim the above rule (at Article 59 of the FIFA Anti-Doping Regulations), there might be a football team winning the World Cup with two doped players having a crucial impact on the event (say, scoring one or two goals in the semi-final and final matches) with no penalization for the team as such.

131. Some team sports' international federations have been slightly more severe; for example, in basketball, Article 11.2 of the FIBA Internal Regulations Governing Anti-Doping provides that "*[i]f a member of a team is found to have committed an Anti-Doping Rule violation during an Event period, the result of the game shall remain valid. If more than one member of a team is found to have committed an Anti-Doping Rule violation during an Event period, the team may be subject to Disqualification or other disciplinary action*". Hence, if a basketball team wins an event with one doped player dominating the game (say, averaging 30 points and 15 rebounds) there is no penalization for the team as such; even if two or more members of a basketball team commit a doping offence, disqualification of the team is not mandatory and other sanctions might be adopted.

132. By the same token, Article 11 of the World Curling Federation Anti-Doping Rules provides – in a team sport where only four athletes are fielded – that if "*one or more members of a team*" are found to have committed a doping offence the sanction might be a lesser one than the disqualification of the whole team.

133. So, in team sports there is certainly no general consensus that team results must be necessarily annulled if one or more team members are found to be doped. The IOC argues (with no evidence in support of the argument) that one should not look at team sports for comparison purposes, because relays are intrinsically different and the contribution of one athlete to a track and field relay team is much more meaningful than one athlete's contribution in team sports. However, the Panel is not persuaded by this submission. For example, it is notorious that the contribution given by one basketball player to his/her team may sometimes be so momentous that a losing team may become a winning team only because of that player.

134. In any event, the Panel notes that the current version of the WADA Code provides no express rule for team competitions in sports which are not team sports (such as track and field relays), thus leaving each international federation total discretion as to the rules to adopt for its own sport. Indeed, the WADA Code's official comment to Article 9 merely states that "*[d]isqualification or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall*

be as provided in the applicable rules of the International Federation" (emphasis added). So the sanctions related to track and field relay teams might end up being different from those related to, say, swimming relay teams or cross-country relay teams, in case one or more team members were found to be doped.

135. The IOC itself, in its own Anti-Doping Rules enacted for both the 2008 Beijing Olympic Games and the 2010 Vancouver Olympic Winter Games, still avoided to adopt a rule expressly requiring that a team be disqualified if one of its members were to be disqualified for a doping offence, identically providing as follows:

> «*In Team Sports, if more than one team member is found to have committed an anti-doping rule violation during the Period of the Olympic Games, the team may be subject to Disqualification or other disciplinary action, as provided in the applicable rules of the relevant International Federation. In sports which are not Team Sports but where awards are given to teams, if one or more team members have committed an anti-doping rule violation during the Period of the Olympic Games, the team may be subject to Disqualification, and/or other disciplinary action as provided in the applicable rules of the relevant International Federation*» (Article 10 of the 2008 Bejing Anti-Doping Rules and Article 9 of the 2010 Vancouver Anti-Doping Rules, emphasis added).

136. Therefore, if in the future a similar case arises with regard to a team event which occurred at the Beijing or Vancouver Olympic Games, the outcome of the case will still entirely depend not on an (inexistent) IOC rule but on the specific rules on this matter of the concerned International Federation (which, as the just quoted IOC rules allow, might merely provide for "*other disciplinary action*").

137. In conclusion, the Panel sees no definite pattern in international sports law that could support the argument that a general principle of *lex sportiva* has nowadays – let alone in 2000 – emerged and crystallized to the effect that a team should inevitably be disqualified because one of its members was doped during a competition. The matter is still subject to the multifarious rules that can be found in the regulations of the various International Federations.

138. The submission on behalf of the IOC that the Panel should sanction the Appellants' teams on the basis of logic and/or some general principle thus fails.

F. Conclusion on the merits

139. In view of the above discussion, the Panel finds that at the time of the Sydney Olympic Games there was no express IOC rule or IAAF rule that

clearly allowed the IOC to annul the relay team results if one team member was found to have committed a doping offence.

140. In this connection, the Panel concurs with the following passage of the CAS 2004/A/725 award, a statement that this Panel, *mutatis mutandis*, adopts as its own:

> «*The rationale for requiring clarity of rules extends beyond enabling athletes in given cases to determine their conduct in such cases by reference to understandable rules. As argued by the Appellants at the hearing, clarity and predictability are required so that the entire sport community are informed of the normative system in which they live, work and compete, which requires at the very least that they be able to understand the meaning of rules and the circumstances in which those rules apply. […] There was simply no express rule in force at the time of the Sydney Games which provided for the annulment of results obtained by a team, one of whose members later was found to have been ineligible to compete at the time. As became apparent in these proceedings, such a rule could only be said to have been produced by what the Panel in the Quigley case referred to as "an obscure process of accretion" – here, as the IAAF would have it, a process of complementation and inference*».

141. This Panel does not accept, as the IOC would have it, to impose a sanction on the basis of inexistent or unclear rules or on the basis of logic or of an inexistent general principle. The Panel acknowledges that the outcome of this case may be unfair to the other relay teams that competed with no doped athletes helping their performance; however, such outcome exclusively depends on the rules enacted or not enacted by the IOC and by the IAAF at the time of the Sydney Olympic Games. If the IOC does not wish to see in the future an outcome of this type in disputes arising out of other editions of the Olympic Games, it will have to amend its own rules and make sure that they clearly require that teams be always disqualified if one of the team members is disqualified for an anti-doping rule violation.

142. As a result, the Panel is unanimously of the opinion that, on the basis of the IOC and IAAF rules applicable at the time of the 2000 Sydney Olympic Games, the Appealed Decision taken by the IOC Executive Board on 10 April 2008 is incorrect and must be set aside. The Panel reaches this conclusion with all due respect to the IOC Executive Board and its fundamental role under the Olympic Charter.

143. The Panel thus holds that the results obtained by the US teams in the women's 4×400m and 4×100m relay events at the Sydney Olympic Games shall not be disqualified. As a necessary consequence, the Appellants shall not be stripped of their medals and diplomas.

144. Finally, all other requests, motions or prayers for relief submitted by the parties, even though not expressly mentioned in the award, have been taken into account by the Panel and are herewith rejected.

VI. COSTS

145. The CAS Code provides as follows:

> «*R65 Disciplinary cases of an international nature ruled in appeal*
>
> *R65.1 Subject to Articles R65.2 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 the CAS are borne by the CAS.*
>
> *R65.2 Upon submission of the statement of appeal, the Appellant shall pay a minimum Court Office fee of Swiss francs 500.-without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee.*
>
> *R65.3 The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties*».

146. Since this is a disciplinary case of an international nature ruled in appeal, no costs are payable to the CAS beyond the minimum Court Office fees, already paid by the Appellants and to be retained by the CAS.

147. Then, the Panel notes that as a general rule the CAS has discretion in ordering the losing side to pay the prevailing party a contribution toward its legal fees and other expenses incurred in connection with the arbitration proceedings, also taking into account the other criteria set forth by the CAS Code. In the present case, as the appeal has been finally upheld but the Appellants' preliminary objection based on three-year rule was dismissed (partial award of 18 December 2009), the Panel finds it appropriate – in accordance with the regular CAS practice in relation to costs – to order the IOC to bear its own costs and to contribute to the legal and other costs incurred by the Appellants in a total amount of CHF 10,000-.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the Appellants Ms Andrea Anderson, Ms LaTasha Colander Clark, Ms Jearl Miles-Clark, Ms Torri Edwards, Ms Chryste Gaines, Ms Monique Hennagan and Ms Passion Richardson on 30 April 2008 is upheld.

2. The Decision of the IOC Executive Board dated 10 April 2008 is hereby set aside.

3. On the basis of the IOC and IAAF Rules in force and applicable at the time of the 2000 Sydney Olympic Games, the United States' teams that competed in the women's 4×100m and 4×400m athletics relay events at those Games shall not be disqualified; the medals and diplomas awarded to the above noted Appellants in those events shall not be returned to the IOC.

4. All other requests, motions or prayers for relief are dismissed.

5. The award is pronounced without costs, except for the Court Office fee of CHF 500.already paid by the Appellants and which is retained by the CAS.

6. The IOC shall pay a global amount of CHF 10'000.-to the above noted Appellants as contribution towards their expenses incurred in this arbitration.

Done in Lausanne, 16 July 2010

THE COURT OF ARBITRATION FOR SPORT

Mr Massimo **Coccia**

President of the Panel

Mr Yves **Fortier** Q.C.
Arbitrator

Mr Hans **Nater**
Arbitrator