

World Triathlon Tribunal
Avenue de Rhodanie 54
1007 Lausanne, Switzerland

**Tribunal 2020/02 - Anna Godoy Contreras (ESP) & FETRI vs World Triathlon
Competition Jury
of the Elite Female ETU CUP race held in Barcelona, Spain on 25 October 2020**

DECISION

rendered by the

WORLD TRIATHLON TRIBUNAL

sitting in the following composition:

Monique Houten (Belgium), Chair of the Panel

David Markham (Canada), Member of the Panel

Angelo Rigopoulos (Italy), Member of the Panel

in the appeal proceedings between

Anna Godoy Contreras (Spain)

Appellant

AND

Spanish Triathlon Federation (FETRI)

Appellant

AGAINST

Competition Jury of the
Elite Female ETU CUP race
held in Barcelona,
Spain on 25 October 2020

Respondent

I. PARTIES

1. The Appellants, Anna Godoy Contreras (hereinafter “Godoy” or “the Athlete”), and the Spanish Triathlon Federation (hereinafter “FETRI”) are an athlete with the recognised national governing body in Spain for Triathlon and its Related Multisports and, respectively, the national governing body in Spain for Triathlon and its Related Multisports.
2. The Respondent, the World Triathlon Competition Jury (hereinafter “the Competition Jury”) is the recognised body for World Triathlon Events and other Games that do not include the Olympic Games and is constituted of three persons appointed by the World Triathlon Technical Delegate.

II. BACKGROUND FACTS

3. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions, the exhibits filed and the statements produced by the Parties in the course of the proceedings. While the Panel has considered all the facts, allegations, legal arguments and pieces of evidence submitted by the Parties in these proceedings, it refers in the present decision only to those it considers necessary to explain its reasoning.
4. The Elite Female ETU CUP race (“the Race”) took place on 25 October 2020 in Barcelona, Spain.
5. Godoy finished the race at the second position and Mathilde Gautier (FRA) (hereinafter “Gautier”) in the first position.
6. Shortly after the race, Godoy, lodged a protest before the Competition Jury against Gautier. Godoy accused Gautier of unsportsmanlike conduct due to a maneuver performed by the latter that allegedly prevented the Athlete from overtaking Gautier.
7. The Competition Jury, composed of three members, heard the Protest, deliberated, and rendered a decision.
8. The Minutes of the Competition Jury reflected that:
 - a. The Competition Jury could not see from the first video available any infringement. From the second video available the Competition Jury could see “*a little extrange (sic) movement*”;
 - b. Godoy alleged that Gautier moved in order to prevent that she could be overtaken;
 - c. Gautier explained that it was a natural movement, i.e. it was not intentional;
 - d. The Competition Jury concluded that it “*don’t (sic) see an intentional movement*”;
 - e. The Competition Jury rejected therefore the protest of Godoy.

III. PROCEEDINGS BEFORE THE WORLD TRIATHLON TRIBUNAL

9. On 2 November 2020, the Appellant filed a "Level 2 Appeal" in accordance with Article 13(1) of the World Triathlon 2020 Competition Rules (hereinafter: "the Competition Rules") with the World Triathlon Tribunal.

10. Godoy's Appeal is based primarily on an alleged violation of the following rules:

A. Article 1.2(a) of the Competition Rules according to which:

"The World Triathlon Competition Rules are intended to:

(i) Create an atmosphere of sportsmanship, equality, and fair play;

(ii) Provide safety and protection;

(iii) Emphasise ingenuity and skill without unduly limiting the athlete's freedom of action;

(iv) Penalise athletes who gain an unfair advantage."

B. Article 1.4(b) of the Competition Rules according to which:

"An athlete must not be permitted an advantage not intended by a rule, or to conduct him/herself in a dangerous way. To implement this, every infringement related in the World Triathlon Competition Rules has a sanction attached. Technical Officials base their judgments on whether an advantage, not intended by the Rules, has been gained"

C. Article 3.7(a)(i) of the Competition Rules according to which:

"A disqualification is a penalty appropriate for severe rule violations, such as but not limited to, repeated bike draft infringements, and/or dangerous or unsportsmanlike conduct."

D. Appendix K(6) of the Competition Rules according to which:

*"Blocking, charging, obstructing, or interfering the forward progress of another athlete;
- Unintentionally: warning and amend
- Intentionally: DSQ"*

11. In summary, Appellant claims that the maneuver made by Gautier was anti-regulatory because it voluntarily hindered the appellant from overtaking Gautier.

12. In its Appeal, the Appellant requests the World Triathlon Tribunal to:

i. Establish the existence of a breach of the applicable Regulations by the athlete MATHILDE GAUTIER during ETU Cup Triathlon held in Barcelona on 25/10/2020.

ii. Impose the penalty consisting of disqualification to the athlete MATHILDE GAUTIER in line with the [World Triathlon] Competition Rules and have an unfair incidence in the result of the race.

- iii. Take into account all the consequences of the disqualification of MATHILDE GAUTIER in relation to the classification of the ETU Cup Triathlon held in Barcelona on 25/10/2020.
13. On 15 December 2020, the Chair of the Panel issued a Procedural Order to the Parties by email indicating the composition of the Arbitration Panel and invited the Appellant to submit, by 8 January 2021, a full statement of the facts in accordance with article 33 of the ITU Disciplinary Rules (hereinafter: "DR")¹.
14. The parties did not raise any objection to the composition of the Panel.
15. On 21 December 2020, the Appellant provided within the time limit its full statement and accompanying documents to the Panel.
16. On 24 December 2020, the Chair of the Panel, issued a second procedural order inviting the Respondent to submit, by no later than 8 January 2021, its response in accordance with article 35 of the DR.
17. Despite being invited to do so, the Respondent did not file a response to the procedural order of 24 December 2020.
18. Therefore, the Panel took the decision based on the documents and information at its disposal. Namely, the:
 - a. Protest Form dated 25 October 2020;
 - b. Competition Jury's minutes dated 25 October 2020;
 - c. Appellant's Appeal dated 2 November 2020;
 - d. Two different video footages of the final meters and arrival of the race.

IV. LEGAL CASE MERITS

A. JURISDICTION

19. The World Triathlon Tribunal has jurisdiction of this Appeal under:
 - Article 50.7 of the World Triathlon Constitution (hereinafter: "Constitution"), which provides that: *"A panel or a Single Judge is responsible to handle and decide on all cases brought before the Tribunal in accordance with the Constitution, Rules, Regulations and Codes. Ethical issues shall be handled and decided exclusively by an Ethical Panel, not by a Single Judge. Disciplinary and appeal cases shall be handled and decided by either a Disciplinary or Appeal Panel, or by a Single Judge."*
 - Article 2.2 of the DR that provides that the Arbitration Tribunal recognises recourses submitted to it according to the applicable articles outlined in the Constitution.
 - Article 13.7(i) of the Competition Rules, stating that *"Decisions from any Competition Jury and any World Triathlon panel (except the World Triathlon AD Hearing Panel) may be appealed to the World Triathlon Tribunal;"*
20. Based on these provisions, this Panel has jurisdiction to decide this Appeal.

¹ Any reference hereafter to "ITU" shall be read as "World Triathlon".

B. APPLICABLE LAW

21. Pursuant to Article 63 of the Constitution, "*The governing law of World Triathlon shall be Swiss law*". Article 1 of the DR states that "*These rules set out the applicable procedure before the ITU, within the limitations of Swiss law*".
22. As the Appeal against the Competition Jury concerns a decision regarding an incident during a competition, the Competition Rules and DR govern this matter.

C. SCOPE OF PANEL'S REVIEW

23. According to Article 16 of the DR "*The Panel has full power to review the facts and the law*".

D. ADMISSIBILITY

24. Article 13.7 of the Competition Rules defines the procedure for Level 2 Appeals as follows:

"Level 2 Appeal Procedure:

The following procedure will be followed in the event of a Level 2 Appeal:

- (i) Decisions from any Competition Jury and any World Triathlon panel (except the World Triathlon AD Hearing Panel) may be appealed to the World Triathlon Tribunal;*
 - (ii) Only appeals supported by National Federation will be admitted;*
 - (iii) Appeals may be submitted up to thirty natural days after the Competition Jury met or within thirty natural days from the Competition Jury or Panel decision;*
 - (iv) Appeals will be submitted in writing to the World Triathlon Secretary General and will be accompanied by a deposit of \$ 500 USD. It will only be refunded if the appeal is successful;*
 - (v) Level 2 appeal decisions may be appealed to CAS (Level 3 of Appeal)"*
25. Article 31.2 of the DR requires the Appeal to be submitted by mail or by email to World Triathlon headquarters, no more than thirty (30) days following the communication of the contested decision to the Appellant.
 26. The conditions set above being fulfilled, the Panel determines this Appeal being admissible.

E. MERITS

27. The Panel has analysed the Competition Jury's decision as well as the information and documentation submitted by the Appellant and the videos at disposal.

28. In order to decide the case, the Panel is of the opinion that the legal issues revolve around the following elements:

A) Is the decision of the Competition Jury a "Field of Play decision"?

B) If yes, are there grounds for the Panel to review such a decision of the Competition Jury?

C) If the case may be, what are the consequences of such review?

29. Accordingly, the above questions are analysed below:

A) Is the decision of the Competition Jury a "Field of Play decision"?

30. According to Article 13.1(b) of the Competition Rules "*Decisions from any Competition Jury and any World Triathlon panel may be appealed to the World Triathlon Tribunal, except:*

(i) *Decisions made by the World Triathlon Anti-Doping Hearing Panel;*

(ii) *Field of Play decisions."*

31. In accordance with Article 11.4(c) of the Competition Rules (emphasis added):

"Duties of the Competition Jury:

(i) *The Competition Jury rules on all appeals and all protests;*

(ii) *The Competition Jury has the authority to modify the competition results as a consequence of its decision on the appeal or protest. This results modification is a Field of Play decision;*

(iii) *The Competition Jury must be available starting before the Athletes' Briefing until after the end of competition;*

(iv) *The Competition Jury Chair is responsible for filing a written statement on all appeals and decisions reached."*

32. The Panel notes that in defining the duties of the Competition Jury, the legislator clearly established that in case of appeals and protests, any decision taken by such a body to modify the results amounts to a Field of Play decision. This means that, by analogy, a decision of the Competition Jury to reject a protest and/or an appeal and thus to confirm the results of a race is equally to be considered a Field of Play decision.

Having established that the Competition Jury decision on the protest is a Field of Play decision, the Panel needs now to analyse the next legal element:

B) Are there grounds for the Panel to review in full such decision of the Competition Jury?

33. Appellant submits that the Panel should review the decision of the Competition Jury in full alleging that Gautier's "*action could only be intentional and the only purpose was to hinder [Godoy] from overtaking her*".
34. Appellant further considers that this one of the "*limited and exceptional*" cases in which a decision of the Competition Jury can be annulled because it is evident that "*the Judge – Referee, first and the Competition Jury, later should have analysed the video of the sprint images and it was possible to verify that the action of [Gautier] was worthy of the disqualification of the athlete*".
35. The Panel notes that the Appellant, whilst acknowledges that the Competition Jury defined Gautier's movement "*A natural movement. Nothing intentional*", it insists that Gautier's action was as anti-regulatory. In doing so, the Appellant raises the following question "*After seeing the images, we must ask ourselves, can anyone really think that [Gautier's] performance to prevent [Godoy] from overtaking her was not voluntary or intentional?*"
36. At this point, in order to answer the main question as to whether there are grounds for the Panel to review the Competition Jury's decision, the members of the Panel wished to refer to the established jurisprudence of the Court of Arbitration for Sport [CAS] (see e.g. CAS 2004/A/727; CAS OG/12/010), in Lausanne, according to which decisions of referees are not reviewable unless there is evidence that the referee rendered (i) a decision in bad faith, (ii) an arbitrary decision or (iii) a decision, made not in appreciation of the state of affairs on the field at the time but in application of a wrong rule, or made by failing to apply the correct rule to the factual circumstances.
37. On this basis, and given that in taking its decision the Respondent acted as a referee of the event, the Panel has now to analyse whether the Competition Jury's decision was (i) rendered in bad faith, (ii) was arbitrary or (iii) was made in application of the wrong rules.
38. In the present case, there is no evidence indicating that the Competition Jury acted in bad faith or in an arbitrary manner. In fact, the Appellant made no such claim.
39. In this respect, the Panel wishes, for the avoidance of doubt, to recall CAS jurisprudence according to which terms "*such as "arbitrary" "bad faith", "breach of duty", "malicious intent", "committed a wrong" and "other actionable wrongs" are used apparently interchangeably, to express the same test (CAS OG 96/006 and CAS OG 00/013). In the Panel's view, each of those phrases means more than the decision is wrong or that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each, of those phrases mean there must be some evidence of preference for, or prejudice against, a particular team or individual.*"

40. What remains for determination of the Panel is whether the Competition Jury's decision to reject the protest was made in application of a wrong rule or made by failing to apply the correct rule to the factual circumstances.
41. From the Appellant's submission, there is no indication that a wrong rule has been applied. In the Appeal, the Appellant recalls the relevant rules that believes are applicable when evaluating the action of the video, however, there is no proof whatsoever that the Competition Jury applied different rules or that failed to apply correct rules.
42. Furthermore, as indicated in the Competition Jury's minutes, the decision to reject the Protest was taken after having watched the two videos.
43. The Panel finds that what Appellant seeks with the Appeal is an additional analysis of the videos and, in particular, the evaluation of whether or not the movement of Gautier's was intentional and anti-regulatory.
44. In this respect, the Panel would like to recall CAS 2008/A/1641 according to which *"Traditionally, doctrine and judicial practice have always deemed that game rules, in the strict sense of the term, should not be subject to the control of judges, based on the idea that "the game must not be constantly interrupted by appeals to the judge" (judgement by the Swiss Federal Tribunal ATF 119 II 12/19)."*
45. The Panel fully concurs with the above-mentioned CAS case and believes that decisions on the field of play shall remain competence of the officials not only in order to guarantee their autonomy but also due to the relative lack of perspective and/or experience of judicial bodies, in comparison with that of officials.
46. Therefore, the Panel unanimously agrees that the Competition Jury's decision was not made in bad faith, was not arbitrary, nor was made by applying a wrong rule, or by failing to apply the correct rule.
47. Having established all the above, the Panel finds that in view of the lack of reasons for the members to review the decision under appeal, the last legal element (i.e., what are the consequences of a potential review) does not need to be examined.

V. COSTS

50. The Panel decides not to award costs.

VI. APPEAL FEE

51. Article 31.4 DR provides that, with respect to the appeal fee, *"the amount paid will only be refunded if the appeal is successful"*.

52. Being the Appeal rejected, the Panel finds that the appeal fee shall not be refunded.

ON THESE GROUNDS

The Panel of the World Triathlon Tribunal rules that:

1. The Appeal is admissible pursuant to Articles 33 and 34 of the DR and Article 13.7 of the Competition Rules.
2. The decision under appeal was a Field of Play decision made in good faith, without any evidence that it was made arbitrarily, or with application of an incorrect rule.
3. The decision of Competition Jury is binding, the Appellant's Appeal is rejected.
4. The appeal fee paid by the Appellant shall not be refunded.

Lausanne, Switzerland, 13th January 2021
WORLD TRIATHLON TRIBUNAL

[REDACTED]
Monique Houten (Jan 21, 2021 19:45 GMT+1)

Monique Houten
Chair of the Panel

[REDACTED]
David Markham
Member of the Panel

[REDACTED]
Angelo Rigopoulos
Member of the Panel

Appeal to CAS

According to Articles 52.1 and 52.2 of the Constitution as well as Article 45 of the DR, final decisions made by World Triathlon under the Constitution may be appealed exclusively to the CAS which will resolve the dispute definitively in accordance with the CAS Code of Sports-related Arbitration. Any appeal request for arbitration must be filed with CAS no later than (21) twenty-one days following the receipt of the decision that is the subject of the arbitration procedure.