

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION PANEL
AAA CASE NO. 01-15-0003-8649**

JEAN LOPEZ, CLAIMANT

v.

USA TAEKWONDO, INC, RESPONDENT

FINAL REASONED AWARD

I. Procedural Background

This is a “right to participate” dispute brought pursuant to Section 9 of the bylaws of the United State Olympic on an expedited basis subject to the expedited provisions of the Commercial Arbitration Rules of the American Arbitration Association (AAA).

On June 6, 2015, Jean Lopez filed a Section 9 complaint in which he alleged that he had been improperly removed as the Pan American Games Team Coach by USA Taekwondo (USAT). Lopez asserted that his removal was allegedly based on his having received a “yellow card” while coaching at the USAT Team Trials in Las Vegas in February 2015; but Lopez contends he was not given a yellow card; that procedures were not properly followed for the issuance of a yellow card; that he was not sanctioned at that event and that he should be reinstated as coach for the Pan American Games Team.

This Arbitrator was appointed on June 23, 2015. A preliminary hearing was held by conference call on June 24, 2015 at which time the Arbitrator set the hearing for the following day, June 25, 2015. Counsel for USA Taekwondo objected to holding the

hearing on June 25 on the grounds that there was no need for such expedition in this case because contrary to Jean Lopez's contention that the selection of the team coach had to be done by the end of June, the actual deadline for selection was July 14, 2015. The Arbitrator considered USAT's objection and rejected it given the fact that even with a July 14 deadline expedition was still required to meet that date.

During the evidentiary hearing on June 25, 2015. Counsel for Lopez and for USAT both participated and adduced evidence from live witnesses. The hearing lasted approximately 4 hours. At the conclusion of the hearing, the Arbitrator directed the parties to file written closing arguments by midnight Eastern Daylight Time on June 29, 2015. The parties complied with the order and the hearing was declared closed on June 30, 2015.

II. FACTS

The USAT Team Trials were held in Las Vegas in February 2015. It was there that Lopez's conduct was a cause of concern. Jean Lopez was coaching his brother Steven Lopez in a match in which Jean Lopez disputed a call made by the center referee. A video review was demanded and John Holloway, the video review official, rendered his opinion. Jean Lopez became upset, started yelling, and accused Holloway of cheating. Lopez stood up from his coaching chair and walked into the competition area yelling at Holloway. Lopez also started yelling at Anne Chase who was at the match in her capacity as chair of the referees committee. While Lopez continued to yell, Holloway took out a yellow card and waved in directly at Lopez. Lopez did not stop yelling until the event organizer, Jeanna Mendoza, threatened to call security. The

Center Referee never pulled a yellow card on Lopez and did not penalize Jean Lopez's athlete for Jean Lopez's conduct.

The CEO of USAT, Bruce Harris, was not at the team trials at the time of the Lopez match but when one of the staff members told him what had happened he called for the convening of an Extraordinary Sanctions Committee (ESC) to review Lopez's conduct and to recommend appropriate actions.

The ESC consisted of six individuals: two coaches, one athlete, and three tournament officials, Rex Hatfield, Anne Chase, Jenna Mendoza, Sang Cha, Jason Poos, and Carly Berger. The two coaches, Cha and Poos, recused themselves from voting on sanctions against a fellow coach. Rachel Isaacs was present as an observer for the USOC. Rex Hatfield chaired the committee. The ESC called witnesses to investigate the matter but they did not call Jean Lopez. They met and deliberated on the first day without reaching a conclusion regarding sanctions. By the time the ESC convened on the second day, Bruce Harris had arrived in Las Vegas but he did not participate in the committee's deliberations. On the second day of deliberations, the ESC decided to suspend Lopez for 6 months, require him to pay a monetary fine, and require him to make a public apology to the referees. The ESC did not make a written report of its conclusions and recommendations, nor did the committee publish its results, nor did the committee notify Jean Lopez in writing of its conclusions.

The ESC's conclusions were communicate orally to USAT CEO Bruce Harris by the committee's chair, Rex Hatfield. Harris then sent for Jean Lopez to discuss the committee's recommendations. Lopez arrived with his brothers Steven and Mark. Also present were Rex Hatfield and Rachel Isaacs of the USOC.

Harris told Lopez what the ESC had recommended; Lopez contended that it would be unfair to impose such sanctions on him. He said that an immediate suspension would mean that he could not continue to coach his athletes at the team trials nor at an upcoming international event. Lopez argued that a monetary fine would limit his ability to travel and to coach his athletes. Essentially, Lopez laid out his side of the argument to Harris. After hearing from Lopez, Harris decided to impose only the public apology. Lopez made the apology.

Lopez testified that he understood that if he made the apology no sanction would be imposed. Lopez said too that he never would have agreed to an apology if he had thought that the effect of making the apology would disqualify him from coaching the Pan American team.

In April 2015, Patrick Wentland, the high performance director for USAT, notified Jean Lopez that Lopez had been selected to coach the USAT team for the Pan American games. The notification was not in writing. When asked why Lopez had been named coach if he had been sanctioned in Las Vegas, Wentland testified that when he called Lopez to name him as Pan Am Games Team coach, he did not think about what had happened in Las Vegas.

On May 21, 2015, Wentland sent Jean Lopez an email with a copy to Stephen Hess, USAT's lawyer, which advised Lopez as follows:

“On advice of council, USA Taekwondo has removed your name from the Coaching staff for the Pan Am Games. This relates directly to the Pan Am Games Coach Selection Procedures that state that a coach for the Pan Am Games cannot have received a suspension, sanction or a yellow card within the last year.”

Then, by letter dated June 5, 2015, Stephen Hess, USAT's attorney, explained the basis for Jean Lopez's removal as coach:

"As you are aware, as a consequence of your conduct during an event in Las Vegas, you were issued a yellow card. I understand that you do not believe that you were issued a yellow card. Nonetheless, the tournament officials convened a Competition Supervisory Board pursuant to the World Taekwondo Federation rules, and the Board – acting as the Extraordinary Sanctions Committee – recommended a suspension of six months, you met with the Tournament Director before several witnesses and a lesser sanction was imposed of a warning and an order to issue an official apology. According to your testimony at the prior hearing, you delivered the apology in accordance with the agreed disposition. The WTF Rules list "warning and order to issue official apology" as one of the permissible "sanctions" for official misconduct."

Within days of receiving the forgoing letter from Stephen Hess, Jean Lopez filed his section 9 claim and these proceedings were initiated.

III. Questions in Dispute

1. Was the question whether Jean Lopez was issued a yellow card and sanctioned in Las Vegas in February 2015 resolved in a separate prior arbitration that has preclusive effect in the present arbitration and requires that this arbitration be resolved in favor of USAT?
2. Did the Video Replay Official in Las Vegas, John Holloway, have authority to issue a yellow card to Jean Lopez?
3. Did the Extraordinary Sanctions Committee that was convened in Las Vegas in February 2015 violate Jean Lopez's rights by failing to give him notice and an opportunity to be heard?

4. Did the Extraordinary Sanctions Committee ever actually impose any sanctions on Jean Lopez?
5. Did the CEO of USAT have the authority to order Jean Lopez to apologize to the referees in Las Vegas?
6. Did the apology that Jean Lopez made to referees amount to an agreed sanction?

IV. Analysis

A. Preclusive Effect of the Prior Arbitration

USAT contends that the question whether Jean Lopez was issued a yellow card at the Team Trials in Las Vegas was resolved in a separate prior arbitration styled Jean Lopez et al v USA Taekwondo, Inc., AAA Case No. 01-15-0003-4488 Decided on June 15, 2015 by Jeffrey G. Benz, Arbitrator. That hearing concerned sanctions that had been imposed on Jean Lopez because of his conduct at a match that occurred on April 11, 2015. In the factual summary of Arbitrator Benz's reasoned award he wrote about the events that had occurred in February 2015 and which are the subject of the instant arbitration:

“1.14 In February 2015, Mr. Lopez engaged in such egregious misconduct in protesting rulings by the referee that he was given a “yellow card,” which is a formal request for the imposition of sanctions under WTF rules. After completion of the match, a Competition Supervisory Board was convened. The CSB, acting as the Extraordinary Sanctions Committee pursuant to WTF Rules Article 20, Rule 2.3, interviewed the participants and witnesses to the asserted misconduct and determined that Mr. Lopez's behavior was so extreme that it warranted a suspension of six months.

1.15 Mr. Lopez appealed the recommendation to the tournament's Technical Director, Bruce Harris. Mr. Harris is

a very high-ranking international referee, as well as the CEO of USA Taekwondo. During the meeting, Mr. Jean Lopez and his siblings Mark Lopez and Steven Lopez (the latter of whom competed in and lost the match at which Jean Lopez was shown a yellow card) implored Mr. Harris not to impose the six month suspension recommended by the CSB. In support of their plea, Mark Lopez and Steven Lopez argued that the loss of their coach at an upcoming open tournament in Egypt would punish them as competitors unfairly. Mr. Harris accepted the Lopezes' collective plea and allowed Jean Lopez to escape with an apology to the referees together with a warning that his behavior was intolerable and that he would not be able to talk his way out of more severe sanctions should he fail to comport himself in accordance with the rules."

According to USAT, the foregoing language basically disposes of the present matter because the foregoing language states that Jean Lopez was sanctioned in February 2015 and if that is true then he is disqualified to serve as Coach of the USAT team in the Pan American games.

The arbitral regime is a dispute resolution system, it is not a court system which is why procedures that are routinely used in court do not translate precisely to an arbitrated matter. Except in rare situations that are provided for in specific arbitral rules, each arbitration is a de novo proceeding. The arbitrators are called upon to exercise their independent judgment; the arbitrators are not controlled by what others may think or feel about the dispute that is under consideration. Arbitrators can consider the reasoning of other arbitrators in similar cases but the requirement of independence requires an arbitrator to make up his or her own mind.

Further, though some of the parties from the previous arbitration are also in this arbitration the parties are slightly different. In addition, the issue in the previous arbitration is not the same as the issue in this arbitration. Moreover, contrary to USAT's

argument, this Arbitrator does not agree that the language set forth about was essential to the ruling made in the previous arbitration. In the previous arbitration at page 3, Arbitrator Benz said this:

“Although the suspension immediately at issue in this case arose from a single tournament (April 11, 2015), the propriety of the sanction can be understood only in the context of previous incidents involving Mr. Lopez that demonstrate his knowledge of the consequences of his misconduct.”

In the previous arbitration the reason for describing events from the team trials was to provide context. In this arbitration the events that occurred at the team trials are at the very heart of the case and have been scrutinized in this case in a way that did not occur in the previous matter. Therefore, though Arbitrator Benz’s comments are instructive they are not controlling and not case dispositive in this proceeding.

B. Who Had the Authority to Issue A Yellow Card During The Competition In Las Vegas in February 2015

The Coach Selection Procedures for the 2015 Pan American Games dated December 11, 2014 and in effect during the USAT team trials in Las Vegas in February 2015 state, at paragraph 1.7, that coaches must, “Be in good standing with USAT and the IF without prior suspensions or misconduct resulting in a yellow card and/or sanction within the past year.” This provision makes clear that if a coach gets a yellow card for misconduct -- that alone -- can disqualify that coach from participating in the Pan American Games. This provision also makes clear that if that same coach received a sanction for misconduct though he did not receive a yellow card that coach would still be disqualified from participating in the Pan American Games. We focus now on whether Jean Lopez got a yellow card in Las Vegas.

John Holloway, who testified for USAT and who – as video replay official – pointed a yellow card at Lopez, admitted in his testimony that if a person with no authority to issue a yellow card tried to do so then the attempt to issue the yellow card would be meaningless. To dramatize the point, what would it mean for one of the ushers at the arena to take out a yellow card and point it at coach; it would be meaningless.

Lopez argues that his opposing coach did not see him do anything to warrant a yellow card, and the Center referee did not issue him a yellow. Lopez cites Article 14 of the Competition rules which set forth Prohibited Acts and Penalties. The USA Taekwondo Competition Rules & Interpretation in force as of January 1, 2015 were in effect at the time of the team trials in Las Vegas in February 2015. Article 14 of the Competition Rules is titled “Prohibited acts and Penalties.” Item 1 provides that “Penalties shall be declared by the referee.” Item 5.3 provides that

“When a coach or contestant commits excessive misconduct and does not follow the referee’s command the referee may declare a sanction request by raising a yellow card. In this case the Competition Supervisory Board shall investigate the coach’s behavior and determine whether a sanction is appropriate.”

In the explanation section that follows Article 14, provision xi at page 22 talks further about misconduct of contestant or coach and says, in pertinent part, that “The determination of the seriousness of the misconduct is solely at the referee’s discretion.” In this case, though Jean Lopez was yelling and screaming in the presence of the referee, the referee did not issue a yellow card and did not penalize the athlete.

Article 20 of the Competition Rules is titled "Technical Officials." Included in the descriptions contained in that Article is one for the Review Jury. This was the role that John Holloway was playing at the time he drew the yellow card and waved it at Jean Lopez. The duty of the Review Jury is to "review an instant replay and inform the referee of the decision within one (1) minute." Art. 20, 3.3. The Review Jury or video replay official as Holloway was also referred to in the testimony, is not authorized to issue a yellow card.

During the hearing, several of the witnesses for USAT testified that in February 2015 it was the interpretation of USAT that a video replay official had the authority to issue a yellow card but that the current interpretation is that only the referee can issue a yellow card. If that was the interpretation in February 2015 it is nowhere evident in the Competition Rules & Interpretation. For several of the rules there are footnotes that contain a lengthier explanation of the rule. There is no such footnote for the provision that says the referee may issue a yellow card. This Arbitrator is of the opinion that the video replay official had no authority to issue a yellow card and thus the gesture had no official meaning and cannot serve as a basis for disqualification of Jean Lopez under paragraph 1.7 of the coach selection procedures for the 2015 Pan American Games.

C. Even If the Yellow Card Was Meaningless Was It Proper to Convene An Extraordinary Sanctions Committee To Review Jean Lopez's Conduct At the Team Trials

Lopez contends that because the ESC was convened in response to the Yellow Card from John Holloway and because Holloway had no authority to issue a yellow card then the ESC was improperly convened and any action taken by the committee is unlawful. USAT argues, on the other hand, that the issuance of a yellow card is not the

sole basis for convening the ESC, that the real question is the conduct of Jean Lopez and the authority to review his conduct. Bruce Harris, CEO of USAT, testified that even though he was not in Las Vegas at the time of Jean Lopez's conduct, when he was told what had happened he gave instructions to convene the extraordinary sanctions committee to review what had occurred and to make recommendations. In short, USAT contends that the yellow card is beside the point; that even if the referee did not penalize Jean Lopez for his conduct, USAT had the authority to do so.

The Competition Rules set forth the procedure for convening the ESC and the manner in which that committee must operate. Article 20 regarding Technical Officials also talks about Competition Supervisory Board (CSB). First, the Technical Delegate serves as chair of the CSB. Art. 20, 1.2. Article 20, 2 gives the details of the CSB, qualifications, composition, etc. paragraph 2.3 says in pertinent part that, "CSB shall also concurrently act as the Extraordinary Sanctions Committee during competition with regard to competition management matters."

Article 24 regarding Sanctions provides details about the Extraordinary Sanctions Committee:

1. USAT CEO or Technical Delegate may request that on-spot Extraordinary Sanctions Committee be convened for deliberation when inappropriate behaviors are committed by a coach, official, and/or any member of a Local Organizing Committee.
2. The Extraordinary Sanctions Committee shall deliberate the matter, any may summon person(s) concerned for confirmation of events.
3. The Extraordinary Sanctions Committee shall deliberate the matter and determine disciplinary actions to impose. The result of deliberation shall be immediately announced to the public and reported in writing, together with relevant facts and rationale to USAT CEO. . . .

4. Disciplinary Actions issued by the Extraordinary Sanction Committee may vary according to the degree of the violation.
5. The Extraordinary Sanctions Committee may recommend to USAT that additional disciplinary actions be taken against the members involved, including but not limited to longer-term suspension, lifetime ban, and/or additional monetary fines.
6. Appeal to disciplinary action(s) taken by Extraordinary Sanctions Committee may be made in accordance with Article 6 of USAT Bylaws of Dispute Resolution and Disciplinary Action,.

These rules do not require the issuance of a yellow card as a predicate for convening the Extraordinary Sanctions Committee. The committee can be called into session by either the USAT CEO or the Technical Delegate. There is no requirement in the rules that the CEO must be on cite in order **to have the authority to convene the committee. In this case, the evidence** is that Bruce Harris was told about Jean Lopez's conduct and that he gave instructions by telephone to convene the ESC. That was proper under the rules.

D. When the ESC Convened Did It Violate Jean Lopez's Due Process Rights And Did It Actually Impose Any Sanctions On Lopez

When the ESC convened, it called several witness but it did not call Jean Lopez. Lopez contends that it was improper for the ESC to impose sanctions on him without giving him notice and the opportunity to be heard. Again we turn to the rules and procedures in effect at the time of the team trials. Article 2 of the Competition Rules at paragraph 2, provides that: "All competitions promoted, organized, or sanctioned by USAT shall observe USAT Statutes, the Bylaws of Dispute Resolution and Disciplinary Action, and all other pertinent rules and regulations." The Bylaws of USA Taekwondo, Inc. Amended through June 2014 and in effect at the time of the team trials in Las Vegas provide in Section 4.1 k that "USAT shall comply with Section 8 of

the USOC Bylaws (or any successor to that provision), all other requirements of the USOC Bylaws, and provide fair notice and an opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator or official before declaring such individual ineligible to participate.”

The evidence in this proceeding established that Lopez was not notified of the convening of the ESC nor was he called as a witness or otherwise given an opportunity to be heard. It was only after a decision had already been reached by the ESC that Lopez was contacted by USAT CEO and told what had happened. It was only then that Lopez had a chance to speak in his own defense. The process that USAT followed violated USAT’s rules and thus violated Lopez’s rights. On that basis then, the sanction agreed upon by the ESC was invalid.

But, on the evidence adduced at the hearing the ESC never actually imposed any sanction against Lopez at all. This is so because the Competition Rules, as quoted above in the previous discussion, required the ESC to deliberate, determine the sanction, publicly announce the sanction then put in writing the facts, the rationale underlying the sanction, the sanction and to provide all of this to the CEO. None of this occurred. There was no public announcement, no writing. The communication between the ESC and the CEO by word of mouth. Thus, under the rules, the ESC failed to impose a sanction on Jean Lopez.

E. Did the CEO Have Authority to Impose a Sanction on Lopez and Did Lopez’s Apology Constitute Acceptance of An Agreed Sanction

As stated above in the facts, once Bruce Harris was told of the sanctions recommended by the ESC he sent for Jean Lopez to discuss the matter. Lopez

brought with him both his brothers and proceeded to argue that the recommended sanctions should not be imposed on him. Following this discussion, Harris said that he decided to impose only a warning and the requirement of a public apology to the referees. Lopez admits to making the apology, but he says that he had been told that if he apologized there would be no sanction.

Lopez argues that Harris had no authority to impose any sanction upon him. USAT does not cite to the source of authority for the CEO to impose sanctions on a coach. Section 14 of the Bylaws of USA Taekwondo, Inc. concerns "Chief Executive Officer" ; no provision in that section sets forth any authority on the CEO's part to impose sanctions. If such authority exists from some other source, it has not been demonstrated in this proceeding. Further, the Competition Rules that describe the power of the ESC states that the ESC has the power to impose sanctions; once the ESC imposes sanctions it is required to advise the CEO in writing but there is nothing that says the CEO can disregard what the ESC has imposed or that the CEO can simply impose whatever sanction he wants.

Further, the Arbitrator credits the testimony of Lopez that he was told that if he apologized there would be no sanction. This view of the evidence is bolstered by the fact that USAT at first selected Jean Lopez to be the Pan American Team Coach. As Lopez points out, if USAT thought that it had sanctioned Lopez in February why would it appoint him team coach in April? Thus, the Arbitrator concludes that Lopez's apology is not proof of an agreed sanction.

V. Award

On the basis of the foregoing facts and legal analysis the Claims of Jean Lopez are resolved as follows:

Because the yellow card issued by John Holloway was issued without authority it cannot serve as the basis for disqualification of Jean Lopez under paragraph 1.7 of the Coach Selection Procedures for the 2015 Pan American Games;

Because Lopez's procedural rights were violated by the ESC, because the ESC never imposed any sanction upon Lopez, because USAT CEO Bruce Harris had no authority under the rules to impose a sanction on Lopez, and because Lopez never agreed to a sanction there was no "misconduct resulting in a . . . sanction" that could serve as the basis for disqualification of Jean Lopez under paragraph 1.7 of the Coach Selection Procedures for the 2015 Pan American Games.

The Arbitrator rules that there was no legal basis for USAT to remove Jean Lopez as Coach of the USAT Pan American Games team and he is hereby reinstated to that position.

Further, the parties shall bear their own attorneys' fees and costs of this arbitration and the parties shall bear equally the administrative fees of the American Arbitration Association totaling \$850.00, and the compensation of the arbitrator totaling \$1,500.00 shall be borne equally. Therefore, Respondent USAT shall reimburse the sum of Four Hundred Twenty Five Dollars and Zero Cents (\$425.00), representing that portion of said fees in excess of the apportioned costs previously incurred by Claimant Jean Lopez.

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This Award is in full and final settlement of all claims submitted to this arbitration. All claims not expressly granted are hereby denied.

IT IS SO ORDERED, and signed in Richmond, Virginia.

Dated: July 8, 2015


Hon. John Charles Thomas, Arbitrator