

Doping Hearing Panel Decision



Review of Juridical Award delivered by the BWF Doping Hearing Panel on Monday 13 January 2014 in Copenhagen in the following composition:

- Mr. Rune Bård Hansen, Chair
- Professor Dr. Toni Graf-Baumann
- Mr. Finn Mikkelsen

In the cases of LEE Yong Dae (KOR) and KIM Ki Jung (KOR).

The Doping Hearing Panel wrote in its decision of 23 January 2014:

LEE Yong Dae and KIM Ki Jung are sanctioned for one year period of ineligibility commencing as of January 23rd 2014 and ending at midnight on January 23rd 2015.

BWF Doping Hearing Panel recommended the BWF to consider the role of the Korea Badminton Association (BKA) in supporting the Whereabouts Programme of the Korean players on the BWF Registered Testing Pool.

BWF Disciplinary Committee v. Badminton Korea Association (BKA)

A BWF Disciplinary Committee was formed to consider the recommendation from the BWF Doping Hearing Panel, which referred in its decision, to Articles 14.1, 12.1 and 12.2.3 of the BWF Anti-Doping Regulations.

The Committee determined that under the BWF Judicial Procedures (Clause 4.2 of Section 3 and others) it would 'hear the case' using written hearing documents (written reports, and evidence).

The BWF provided to the BKA - all the relevant documents in the case file together with the charges against the BKA that the Disciplinary Committee was considering.

Charges filed against the BKA:

The charges considered by the Disciplinary Committee against the BKA were focused around negligence in communication with Players and BWF about necessary information, failing to educate BKA players and staff and making false representation to BWF by communication without proper consent and communication from the Players.

The decision of the Disciplinary Committee

The Disciplinary Committee ruled that the Badminton Korea Association had to pay a fine to the BWF of USD \$ 40,000 and refund the BWF USD \$1170 (fees charged by the external provider of testing services for each athlete who was unavailable for testing during two missions to test Korean Players on the Registered Testing Pool).

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The decision of the BWF Disciplinary Committee was accepted by the Badminton Korea Association (BKA) on 8th April 2014.

Documents for Review

Since the Doping Hearing Panel – Reasoned Decision of 13 January 2014 (a case which saw one written statement submitted as evidence on behalf of the players) - a significant amount of new information in the case has come to light, from the Disciplinary Committee case against the BKA, from reports, letters and appeals (1, 2, 3, 4, 5 and 6 below) submitted to the BWF. In the light of such new evidence, it was recommended to make a review of the case by the BWF Hearing Panel.

The BWF Doping Hearing Panel was comfortable with making a review of the case based on:

1. Charges against Badminton Korea Association - 6 March 2014.
 2. BWF Disciplinary Committee Decision and Report - 24 March 2014.
 3. Statement of Appeal of Appellant Lee Yong Dae, 14 February 2014 in the Matter of Arbitration under the Code of the Court of Arbitration for Sport, LEE v. BWF.
 4. Statement of Appeal of Appellant Kim Ki Jung, 14 February 2014 in the Matter of Arbitration under the Code of the Court of Arbitration for Sport, KIM v. BWF.
 5. Joint Appeal Brief for Appellants, p. 1-47 + Appendix 1-3 + Exhibits A-1 to A-80, 27 February 2014 in the Matter of Arbitration under the Code of the Court of Arbitration for Sport, LEE & KIM v. BWF:
 6. Witness Statements of Lee Yong Dae, Kim Ki Jung, Lee Hwa Woo, Song Jung Geun, and Registered Testing Pool (RTP) players with Whereabouts Failures (strikes) in 2013, in the Matter of Arbitration under the Code of the Court of Arbitration for Sport, LEE & KIM v. BWF.
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Discussion of New Information

Following the Hearing Panel Decision in January, evidence became available that, the BKA took full responsibility for the administrative failure for all Filing Failures and Missed Tests from Korean RTP Badminton Players on the BWF RTP.

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The BKA office staff had made false representation to the BWF by drafting letters from players and using their names and signature stamps thereby unrightfully documenting to BWF that the players were aware about their Whereabouts Failures.

The administrative failure of the BKA had allowed two (2) players to have three (3) strikes against them – and become ineligible – and a further six (6) players being put at risk with two (2) strikes against them.

From the Joint Appeal Brief, it is obvious that the key element of the matter was on the one side the duties and obligations of the players, and on the other side the duties and obligations of the responsible ADO, in case a delegation (to for example the BKA) had been made for the filing requirements in line with International Standard for Testing Article 11.3.6.

Compared to the normal procedures of the BWF in the terms of Whereabouts filing procedures the assumptions in this case are:

- That the BWF accepted – directly or indirectly – that players in the RTP may choose to delegate the making of his/her Whereabouts to the NF (BKA);
- That all communications and notices in relation to RTP players are sent care of the BKA
- That no communication or notices had been sent directly to the players, even in the case of a second and third Filing Failure / Missed Test.

No available evidence suggests that the players ever received notice from the BWF via BKA!

Conclusion

All strikes for Missed Tests and Filing Failures recorded against Lee Yong Dae (KOR) and Kim Ki Jung (KOR), in 2013 are cancelled.

No Anti-Doping Rule Violation has been committed by Lee Yong Dae (KOR) and Kim Ki Jung (KOR), and their sanctions are now lifted.

In the light of the above, the BWF must undertake an Administrative Review of all other Missed Tests and Filing Failures declared against Korean Badminton Players in 2013.

Mr. Rune Bård Hansen

Professor Dr. Toni Graf-Baumann

Mr. Finn Mikkelsen