An Analysis of Doping-Related Dispute Resolution in United States Olympic Sport

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In the United States, dispute resolution in Olympic sport is governed by a variety of quasi- and non-governmental organizations with overlapping jurisdictions and aims. According to the Amateur Sports Act (1978), the United States Olympic Committee (USOC) is responsible for resolving disputes involving participation in amateur athletic competition. Thus, the USOC requires that any amateur sport organization that wants to be recognized as the national governing body for a sport must agree to submit to binding arbitration in any participation controversy. However, Section 9.11 of the USOC bylaws specifically exempts doping disputes from the established dispute resolution process in place for other eligibility disputes (USOC, 2015). The authority for the resolution of doping disputes is found in Section 10 of the USADA Protocol for Olympic Movement Testing (USADA, 2014). The USADA is a private, independent legal entity with which the USOC has contracted to conduct, manage, and adjudicate doping-related disputes. The USADA's designation as a private actor is important, as it protects the organization from athletes’ claims related to constitutional due process protections (Koller, 2005).

In cases in which the USADA imposes sanctions, the participant has the right to an arbitration hearing to contest the sanction (USADA, 2014). All arbitration hearings are heard by arbitrators from the American Arbitration Association using the AAA’s Supplementary Procedures (AAA, n.d.). The final decision of the AAA panel may be appealed to the Court of Arbitration for Sport (CAS), which may increase, decrease, or void the sanctions. The ruling of CAS is binding on all parties.

In spite of a well-defined protocol for resolving doping-related disputes, there is the possibility that an athlete may choose to pursue litigation in addition to – or instead of – submitting to the arbitration process. In general, arbitration confers a variety of benefits, including reduced court caseloads and expenses, reduced expenses for parties, improved public satisfaction with the justice system, the encouragement of resolutions that are suited to parties’ needs, and increased voluntary compliance with resolutions (Goldberg, Sander, Rogers, & Cole, 2012). In sport-specific cases, arbitration also provides for neutral third parties who understand the culture of sport as well as quick resolution of disputes, including on-site arbitration during Olympic Games and trials (Raber, 1998). Thus, the use of litigation to resolve doping-related disputes is problematic because the courts are unsuitable for a variety of reasons (e.g., lengthy process, failure to understand culture of sport), and they also lack the authority to decide such matters.

The purpose of this research is to: (1) provide a descriptive summary of the disputes handled by the USADA; (2) determine the extent to which athletes pursue resolution through the traditional legal system (as opposed or in addition to arbitration); (3) identify common conditions which lead athletes to use the court system, and; (4) summarize the court’s view of athlete disputes.

For the period from 2001 to 2015, the authors identified cases in which athletes were sanctioned for doping violations under the rules of the athlete’s international federation (IF) and/or the USOC’s anti-doping policies. For each of the sanctioned cases, the authors collected information on the athlete’s sport, the nature of the violation, the sanction, and results of any arbitration hearings. All of this information was available on the USADA’s official website. Then the authors used LEXIS-NEXIS to identify any proceedings in state or federal court initiated by sanctioned athletes.

A total of 413 athletes were sanctioned for doping violations during this period. The sanctioned athletes represent 33 Olympic sports and 8 Paralympic sports, with the greatest number of sanctioned athletes in track and field (118) and cycling (111). A variety of substances and other reasons for sanction were identified, with the following reasons...
appearing most frequently: (1) tetrahydrocannibol (THC) or THC metabolites (47 athletes sanctioned); (2) erythropoietin (EPO) or recombinant human erythropoietin (r-EPO) (31 athletes sanctioned); (3) test refusal (23 athletes sanctioned); (4) non-analytical positive (22 athletes sanctioned); and (5) methylhexaneamine (22 athletes sanctioned). Preliminary analysis failed to find any significant relationships between an athlete’s sport and reason for sanction.

Of the 413 individuals who received sanctions, 55 (13.3%) completed the arbitral process. Only six individuals (1.5%) pursued litigation, including two individuals (Kayle LeoGrande – cycling, Justin Gatlin – track and field) who completed the arbitral process in addition to litigation, and four individuals (Lance Armstrong – cycling, Trevor Graham – track and field coach, Corey Gahan – roller sports, Regina Jacobs – track and field) who pursued litigation without also pursuing arbitration.

The results of this research suggest the USADA protocol is accepted by the vast majority of athletes. Only a small percentage of athletes contest sanctions through the proscribed arbitral process, even though the USOC is responsible for the administrative costs associated with arbitration. Litigation is pursued in only very rare circumstances, and the courts have been consistent in their view of these cases. Because of the limited number of court cases, it is difficult to identify trends. However, it is worth noting that in three of the cases that resulted in litigation, the plaintiff athlete or coach was also involved in other litigation as a defendant. In each case that was litigated, the courts concurred that the Ted Stevens Olympic and Amateur Sports Act provides the USOC with exclusive jurisdiction in matters related to participation, and the courts have no jurisdiction to provide a private right of action.

In this presentation, the authors will discuss the details of the six doping-related suits brought against the USADA and the implications for the USADA and individual athletes.