



CADA v. Miranda



Introduction

- Claimant:** Canadian Amateur Diving Association (CADA)
- Respondent:** Arturo Miranda
- Type of Dispute:** Discipline
- Arbitrator:** Ed Ratushny, Q.C.
- Date of Decision:** October 4th, 2005



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Dispute Summary

The Canadian Amateur Diving Association (CADA) sought a resolution to a case involving a veteran member of the national team who was found to have breached the association's Code of Conduct by having consensual sex with a 15-year-old teammate.





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Background Facts

In March 2004, while competing in Calgary at the CADA Winter National Diving Championships, 32-year-old, Arturo Miranda, had consensual sex with a 15-year-old female diver.

A Disciplinary Panel launched a formal hearing in November of that year.

On March 14th, 2005, the Disciplinary Panel found Mr. Miranda in breach of CADA's Code of Conduct by engaging in “...*unreasonable conduct which brings the sport of diving into disrepute.*”

The Panel also concluded there was “*an element of a coach/athlete relationship*” between the two divers, even though there had been no mention of this in advance of the hearings.

Mr. Miranda was suspended from CADA membership and all of its activities for six months.



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Background Facts (cont'd)

A CADA Appeals Panel ruled on June 29th, 2005 that, even though the process followed by the Disciplinary Panel had been flawed, it was reasonable to conclude there had been a breach of the Code of Conduct.

However, the Appeals Panel found the six-month suspension was unreasonable, given the procedural flaws. It ruled that the sanction would be “*confirmed, but suspended*,” meaning Mr. Miranda’s record would show that a sanction had been imposed, but not enforced.

However, both CADA and Mr. Miranda maintained that the Appeals Panel decision had been “*grossly unreasonable*” and that the Panel did not have the proper authority or jurisdiction.

The case was sent to the Sport Dispute Resolution Centre of Canada (SDRCC) for arbitration. Mr. Ed Ratushny, Q.C., was appointed as arbitrator and, based on an agreement between the parties, he was mandated to review the original decision of the Disciplinary Panel.



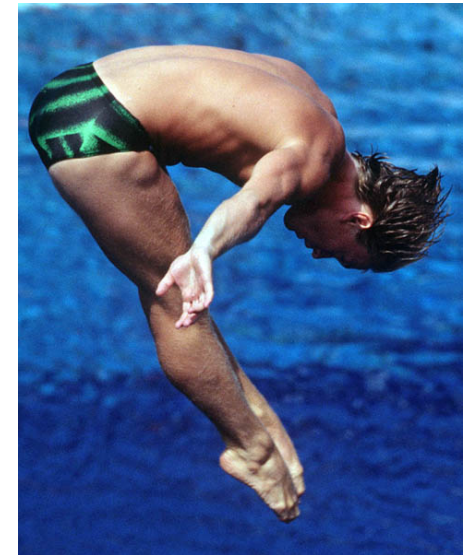
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Claimant's Position

CADA's case was based on the following arguments:

- That the Appeals Panel decision was “*grossly unreasonable and in no way supportable by the facts*”;
- That the Appeals Panel did not have the authority or jurisdiction to rule that the original sanction against the athlete should not be enforced; and,
- That Mr. Miranda had breached the Association's Code of Conduct and that the original six-month suspension should be imposed.



Respondent's Position



Mr. Miranda's case was based on the following arguments:

- There was no breach of CADA's Code of Conduct;
- The sexual relations had involved two consenting partners;
- He had never been the female diver's coach, other than a 5-day period in 2002 when her own coach was absent from a competition in Germany; and,
- CADA should be required to pay at least a portion of his legal costs, in light of the prolonged proceedings and adverse publicity.



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Arbitrator's Analysis

In his ruling, arbitrator, Ed Ratushny, Q.C., noted that there was nothing in CADA's Code of Conduct that forbids or discourages sexual relations between athletes who are members of the Association. Any misconduct, he concluded, must have related to either the difference in age between Mr. Miranda and the female diver or the alleged coach/athlete relationship.

Age differential

In Canada, it is not illegal for an adult to have sexual relations with a 15-year-old, as long as both parties consent. Mr. Ratushny ruled that the age differential could not be used to justify the disciplinary finding of misconduct, particularly when measured against the Association's vague standard of "disrepute."



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Arbitrator's Analysis (cont'd)

Coach/athlete relationship

Mr. Miranda acknowledged having served as the female diver's coach for a 5-day period in 2002 when her regular coach was absent. The SDRCC arbitrator determined that "*merely filling in for a regular coach for a few days, some two years previously,*" was not clear evidence of a coaching "relationship."



Ultimately, Mr. Ratushny concluded that Mr. Miranda was not a coach and that a coach-athlete relationship had not existed.



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Ruling

The SDRCC Arbitrator quashed the original decision by the Disciplinary Panel, thereby removing Mr. Miranda's six-month suspension from CADA membership.

Costs

In most cases brought before the SDRCC, each party covers its own legal costs. In this case, however, the arbitrator cited the Appeals Panel decision which concluded that the Disciplinary Panel had breached the *“Rules of Natural Justice... (and) this denial of the principle of fairness was so exceptional that, together with the outcome of the proceedings and... relative financial resources, costs are warranted.”*

As a result, he ordered CADA to pay \$2,500 towards Mr. Miranda's legal expenses.

Lessons Learned

1. An arbitrator's decision is founded on the rules applicable to the organization and its members, on the allegations of the parties, and on the proof of such allegations.
2. The role of the arbitrator is to interpret the rules in the context of specific circumstances surrounding each case. Ultimately, he or she must ensure that all parties have been treated fairly throughout the entire process.
3. The arbitrator does not have the authority to rewrite the applicable rules or extend their application to circumstances to which no references were made.

