

Decision Number DT 01/2017

DECISION OF THE CHAIRMAN OF THE IAAF DISCIPLINARY TRIBUNAL

12 July 2017

In the matter of Mr Frank Fredericks and an application for an order for provisional suspension

DECISION

1. In my capacity as Chairman of the IAAF Disciplinary Tribunal I am in receipt of an application made pursuant to Rule 6 of the IAAF Athletics Integrity Unit – Reporting, Investigation and Prosecution Rules (Non-Doping) (the “**Rules**”) by the Athletics Integrity Unit (the “**Integrity Unit**”) dated 30 June 2017, for an order for provisional suspension of Mr Frank Fredericks, an IAAF Council Member, pending investigation of a prima facie case of breach of the IAAF Code of Ethics as in force at the relevant time.
2. Together with its application, the Integrity Unit has filed a Notice of Prima Facie Case (which it interprets, consistently with the approach of the IAAF Ethics Board, to mean one which warrants investigation) made in accordance with rule 5.4 of the Rules.
3. Rule 6 of the Rules provides as follows:

“6. PROVISIONAL SUSPENSION

6.1 At any time where a prima facie case of a Non-Doping Violation of the Integrity Code of Conduct has been determined to exist pursuant to Rule 5 of these Rules, the Head of the

Integrity Unit may make an ex parte application to the chairperson of the Disciplinary Tribunal to impose a Provisional Suspension on the Applicable Person pending the determination of the investigation and potential charge.

6.2 Upon an application made under Rule 6.1, the chairperson of the Disciplinary Tribunal may impose a Provisional Suspension if he considers that the integrity of the sport could otherwise be seriously undermined. Any Provisional Suspension imposed under Rule 6.1 will take effect from the date the chairperson's decision is notified to the Applicable Person. At the same time as such notification, a copy of the decision to impose a Provisional Suspension on the Applicable Person shall be

6.2.1 notified to the Integrity Unit, the Applicable Person's National Federation, and Area Association (if applicable); and,

6.2.2 Publicly Disclosed, unless the chairperson of the Disciplinary Tribunal decides otherwise.

6.3 Where a Provisional Suspension is imposed, the Applicable Person will have the right, at any time, to make an application to contest such Provisional Suspension in a provisional hearing before a Panel of the Disciplinary Tribunal convened to hear his case. This Panel may include the Chairperson of the Disciplinary Tribunal provided that in this situation, the Panel comprises of three (3) members.

6.4 At any provisional hearing under Rule 6.3, the Provisional Suspension may only be lifted if the Applicable Person establishes:

6.4.1 that the charge(s) has/have no reasonable prospect of being upheld, e.g. because of a patent flaw in the case; or

6.4.2 some other facts exist that make it clearly unfair, in all of the circumstances, to impose a Provisional Suspension prior to a full hearing on the merits of the charge(s). This ground is to be construed narrowly, and applied only in exceptional circumstances (e.g. the fact that the Provisional Suspension would prevent the person from participating in a particular event will not qualify as exceptional circumstances for these purposes)."

4. Paragraph 6.1 of the Rules refers to a prima facie case of a Non-Doping Violation of the Integrity Code of Conduct (the "**Integrity Code**"). Paragraph 5.5 of the Integrity Code specifies that where a prima facie case of breach concerns a predecessor Code of Ethics, such a matter shall be determined substantively in accordance with that predecessor Code, but subject to the current applicable procedural rules as set out in the application

and in the notice of prima facie case. It expressly provides:

“Violations of predecessor Codes of Ethics

[...]

5.5 With respect to any Proceedings filed with the Ethics Board or the Integrity Unit after 31 December 2016 concerning an alleged violation of the Former Code of Ethics or any predecessor codes of ethics, such Proceedings will be governed by the substantive provisions of the Former Code of Ethics or predecessor code of ethics (as applicable) and other applicable IAAF Rules in force at the relevant time (unless the Disciplinary Tribunal determines that the principle of lex mitior applies in the circumstances of the case). All such Proceedings will be governed by the Procedural Rules Applicable Under This Code, including being transferred or referred to the Integrity Unit, as appropriate, with any charges being heard and decided by the Disciplinary Tribunal.”

5. The ‘Procedural Rules Applicable Under This Code’ are defined at paragraph 4.1 of the Integrity Code as *“rules setting out the procedures for dealing with alleged violations of the Code (or the Former Code of Ethics) including reporting, investigating, prosecuting and deciding such violations and includes the Integrity Unit Rules, the Reporting, Investigations and Prosecution Rules, the Disciplinary Tribunal Rules and the Anti-Doping Rules.”*
6. The precondition for an application, i.e. the decision of the Integrity Unit that there is a prima facie case of a Non-Doping Violation of the Integrity Code, has been satisfied. I may therefore impose a provisional suspension if I consider that the integrity of the sport could otherwise be seriously undermined.
7. I should note the following sequence of events which preceded this application, itself made ex parte in accordance with rule 6 of the Rules.
8. On 1 June 2017 the acting Head of the Integrity Unit, Mr Thomas Capdevielle wrote to Mr Fredericks. In the light of the fact that Mr Fredericks had, at or around the time he referred this matter to the IAAF Board, voluntarily stepped down from his role on the IAAF’s Russia task force, Mr Capdevielle stated that the Integrity Unit had determined

that there was a prima facie case warranting investigation against him. He asked whether in the light of Mr Fredericks' voluntary withdrawal from the taskforce, he also voluntarily consented not to undertake his responsibilities in respect of his positions as (a) an IAAF Council Member, (b) Honorary Chair of the IAAF Athletes' Commission and (c) Deputy Chair of the IAAF's Competition Commission, in order that the Integrity Unit could determine his position before considering its own assessment whether his case warranted an application for provisional suspension being made to the Disciplinary Tribunal.

9. On 2 June 2017 by way of a written response, Mr Fredericks replied stating that he was prepared voluntarily to step down as Honorary Chair of the IAAF Athletes' Commission and Deputy Chair of the IAAF's Competition Commission. In respect of his position as an IAAF Council member, he stated, *"I am not prepared to voluntarily consent not to undertake my duties in respect of the position I hold as IAAF Council Member. However, I will use my best judgment when considering if my attendance at Council Meetings is appropriate or not. I have decided not to attend the next Council Meeting that has been set to take place in London during the first week of August 2017, so as to afford you ample opportunity to undertake whatever investigations you deem appropriate. I reiterate that I categorically deny any wrongdoing."*
10. The question for me is therefore to be defined as whether an order for provisional suspension against Mr Fredericks in respect of his position as an IAAF Council member is warranted, taking into account his offer to exercise his own best judgement as to whether his attendance at Council meetings is appropriate or not, as well as his decision not to attend the next Council meeting due to take place in August 2017 on the occasion

of the IAAF World Championships (together “**proposals for voluntary abstention**”).

11. The Notice of prima facie case (“**the Notice**”) against Mr Fredericks states, *inter alia*:
 - (a) There was a journalistic investigation conducted by Le Monde newspaper in France concerning a payment (the “**Payment**”) received by an offshore company (Seychelles domiciled) owned and/or controlled by him, Yemi Limited (“**Yemi**”), from a company owned and/or controlled by Papa Massata Diack, Pamodzi Sports Consulting (“**Pamodzi**”).
 - (b) The Le Monde article states that the Payment was in the amount of US\$300,000 and was paid to Yemi by Pamodzi, a company of Papa Massata Diack on 2 October 2009, the date of the IOC vote which awarded Rio de Janeiro the 2016 Olympics.
 - (c) As an IOC member, he was one of the persons entitled to vote to award the 2016 Olympics to one of the candidate cities.
 - (d) The issue raised by Le Monde’s coverage is whether the Payment received by his company from Mr Diack’s company was an improper payment designed to or in fact influencing his exercise of his IOC voting rights.
12. As also appears from the Notice, Mr Fredericks referred his correspondence with Le Monde as well as some further information to the IAAF Ethics Board for consideration. As this matter fell under the jurisdiction of the Athletics Integrity Unit, those documents and communications were (as advised to him by email from the IAAF Ethics

Board's Legal Secretary) forwarded to the Athletics Integrity Unit for its consideration.

13. Mr Fredericks' account as set out in his statement and emails is as follows:
 - (a) The sum of of US\$300,000 paid to Yemi by Pamodzi was paid pursuant to the terms of a contract dated 11 March 2007 relating to legitimate work which he was doing in the period 2007-2011 relating to the IAAF marketing programme and African athletics events.
 - (b) Despite the contract being concluded in 2007 he had not been paid anything since that time and he had therefore put pressure on Pamodzi for payment, culminating in the payment of US\$299,250 on 9 October 2009.
14. On 14 March 2017, together with his statement, Mr Fredericks submitted to the IAAF Ethics Board (i) email correspondence between him and Papa Massata Diack in 2007 relating to the conclusion of the contract between Yemi and Pamodzi, but no emails between him and Mr Diack after 2007, nor any communications in which he was (prior to the payment in October 2009) pushing for payment by Pamodzi under the terms of the contract; and (ii) an invoice dated 17 September 2009 addressed to Pamodzi for US\$299,300 to include future payments related to consulting work to be undertaken in 2010.
15. I have read and duly considered the Notice and associated documentation for the purpose of ruling on this application.
16. I presently share the view of the Integrity Unit that Mr Fredericks was at all relevant times, specifically in 2009, subject to the IAAF Code of Ethics having served as a member of the IAAF Athletes' Commission continuously between 1999 and 2015. The relevant Code of

Ethics is that in force between 2003 and 2012. It provides in its preamble that it applies to *“persons acting in positions of trust within the IAAF”*.

17. The 2003-2012 Code of Ethics provided so far as material as follows

(a) *“All persons subject to this Code shall use due care and diligence in fulfilling their roles for, or on behalf of, the IAAF. Such persons must not act in a manner likely to tarnish the reputation of the IAAF or Athletics generally, nor act in a manner likely to bring the sport into disrepute.”* (Article A7).

(b) *“Only gifts of nominal value may be given or accepted as a mark of respect or friendship.”* (Article A9).

(c) *“Save as may otherwise be permitted under this Section D, no-one in a position of trust within the IAAF shall, directly or indirectly, solicit, accept or offer any concealed remuneration, commission, benefit or service of any nature connected with their participation in Athletics or with their function as an IAAF official.”* (Article A10).

18. The Integrity Unit concluded that there is a prima facie case of breach by Mr Fredericks of Articles A7, A8 and A10 of the 2003-2012 Code of Ethics and that in particular, the following matters warrant investigation

(a) The reasons for the Payment.

(b) Whether the Payment was a legitimate payment for proper services rendered.

(c) Whether there was any connection between the Payment and the IOC vote to award

the 2016 summer Olympics to Rio de Janeiro.

- (d) Whether the Payment was a concealed remuneration, commission or benefit connected with Mr Frederick's participation in Athletics or with his function as an IAAF official or whether it was a gift exceeding nominal value.

19. In support of its consequent application for an order for the provisional suspension of Mr Fredericks from his position as an IAAF Council Member (and confirming his voluntary self-suspension from his other positions within the IAAF and any other position in the sport of athletics), pending the outcome of the investigation against him and any disciplinary proceedings to follow, the Integrity Unit identified the following factors which, it submitted, support the imposition of such an order on the basis that the integrity of the sport could otherwise be seriously undermined:

- (a) First, the role of an IAAF Council Member is a senior position within the sport and is tasked with important decisions of the greatest consequence to the sport and its administration.
- (b) Second, the prima facie case warranting investigation against Mr Fredericks concerns a very serious matter, namely the possibility that Mr Fredericks received substantial sums of money with the aim and/or effect of affecting his voting in the award of an Olympic host city.
- (c) Third, whilst the Disciplinary Tribunal will not at this stage be seeking to weigh the substantive factual matters (which remain to be investigated), Mr Fredericks has not, in the answers and explanations he has provided to date, disturbed the

prima facie case of matters warranting investigation. In particular:

- (i) It remains to be investigated why the Payment made by Pamodzi to Yemi was made on the date of the award to Rio de Janeiro of the 2016 Summer Olympic Games.
 - (ii) It is unclear why sums were apparently not paid during the first two years of the contract (if genuine), nor why the invoice produced from 2009 also concerns payment for future work to be undertaken.
 - (iii) The email communications produced so far concern the period of 2007 and do not therefore shed any light on the circumstances of the payment in 2009.
- (d) Papa Massata Diack has been found by a Panel of the IAAF Ethics Board to have engaged in an extortion scheme in respect of the concealment of a positive drugs test by the Russian athlete Liliya Shobukhova. Mr Diack is also subject to investigation by the French police, and is subject to an Interpol red notice, in respect of broader lines of investigation by the French police including in respect of the award of athletics and other sporting competitions. In those circumstances, the origination of the sums from Papa Massata Diack's company Pamodzi raises questions as to the propriety of the payment.
- (e) Whilst Mr Fredericks has volunteered provisionally to relinquish his roles save as IAAF Council member pending investigation, his suggestion that his participation in IAAF Council business should be a matter of his own discretion on a meeting by meeting and issue by issue basis is, in the Integrity Unit's view, inadequate in the light of the seriousness of the matters, the subject of investigation, and the importance of ensuring and being seen to ensure the utmost standards of

probity in the administration of the sport.

20. It is sufficient for me to say that I am persuaded, for the reasons advanced by the Integrity Unit, that I should make the order sought. I note that the decision on such an application engages a discretion, not a duty: against the interests of the sport must be set and considered the interests and prejudice which an individual would suffer if an order for provisional suspension were made and the outcome of the investigation and any disciplinary proceedings were that no breach of the IAAF Code of Ethics were established.
21. As at present advised, I find it not easy to see in what circumstances I would refuse to impose a provisional suspension if I considered that, in its absence, the integrity of the sport could be seriously undermined, but such circumstances justifying my refusal certainly have not so far been shown to exist in the present case, even paying due regard to Mr Fredericks' proposals for voluntary abstention from Council business which are, in any event, incomplete.
22. I must emphasise that an order for provisional suspension (and the application by the Integrity Unit for such order) in no way abrogates the principle of the presumption of innocence. Mr Fredericks enjoys and will continue to enjoy the benefit of that presumption until such point, if matters progress to that stage, that a Panel of the Disciplinary Tribunal concludes that he has breached the IAAF's Code of Ethics as in force at the relevant times. An order for provisional suspension is not an early determination of guilt. Rather, it is an order which may be made on a precautionary basis to safeguard the interests of the sport, and support public confidence in the sport and its integrity, pending the conclusion of any ethical investigation and disciplinary proceedings.
23. Furthermore, Mr Fredericks has the right to appeal against my order pursuant to Rule 6.3 of the Rules, in which he could challenge the order, if he wishes to do so, on the Grounds

identified in Rule 6.4 as set out in paragraph 3 above.

24. I therefore make an order for the provisional suspension of Mr Fredericks from his position as an IAAF Council Member (and confirming his voluntary self-suspension from his other positions within the IAAF) and any other position in the sport of athletics, pending, as appropriate, the outcome of the investigation against him and any (if any) disciplinary proceedings to follow.

Michael J Beloff QC

Chairman of the IAAF Disciplinary Tribunal

12 July 2017