



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

**COURT OF ARBITRATION FOR SPORT (CAS)
Ad hoc Division – Games of the XXXIII Olympiad in Paris**

CAS OG 24/17 Vinesh Phogat v. United World Wrestling & IOC

sitting in the following composition:

Sole Arbitrator: The Hon. Dr Annabelle Bennett AC SC, Australia

AWARD

in the arbitration between

Vinesh Phogat

("Applicant")

v.

United World Wrestling

("First Respondent")

International Olympic Committee

("Second Respondent")

and

Indian Olympic Association

("Interested Party")

I. PARTIES

1. The Applicant is Vinesh Phogat (the “Athlete” or “the Applicant”).
2. The First Respondent is United World Wrestling (“UWW”).
3. The Second Respondent is the International Olympic Committee (“IOC”).
4. The Interested Party is the Indian Olympic Association (“IOA”).
5. The First and Second Respondents are hereinafter jointly referred to as the “Respondents”. The Applicant and the Respondents are jointly referred to as the “Parties”.

II. FACTS

A. Background Facts

6. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator by way of a chronology on the basis of the submissions of the Parties and Interested Party. Additional facts may be set out, where relevant, in the legal considerations of the present award.
7. The Applicant, Ms Vinesh Phogat, is a female Indian wrestler. She was due to compete in the final of the 2024 Olympic Games in Paris on 7 August 2024, in the category of Women’s Freestyle 50 kg. This meant that, had she competed, the Athlete would have won either the silver or the gold medal.
8. At 7h30 (Paris time) on 6 August 2024, an official weight verification (a “weigh-in”) was conducted on the Athlete, with the result being 49.9 kg.
9. The Athlete fought three competitions on that day, that is on 6 August 2024. There is no dispute that she was qualified as being under 50 kg for these competitions.
10. For the purposes of the final, a second weigh-in took place on the morning of 7 August 2024. The Athlete’s evidence is that she weighed in at 150 g over the weight limit of 50 kg. As permitted by the United World Wrestling International Wrestling Rules 2023 (“The Rules”), she repeated that weigh-in after another 15 minutes and her weight was 100 g over the 50 kg limit. UWW’s evidence is that the machine used for weighing is calibrated each morning by Paris Olympic officials.
11. On the morning of 7 August 2024, by a notice dated at 9h11 (Paris time), the Athlete received a disqualification letter issued by a delegate of the First Respondent stating that she was over the 50 kg weight and thus had failed the second weigh-in. The Applicant identifies this as the challenged decision (the “Appealed Decision”). From the evidence, it appears that the referee overseeing the weigh-in only recorded the fact that the Athlete failed the weigh-in by marking “NO” against her name on a list of athletes weighed in that morning, but did

not note the actual weight of the Athlete recorded that day. The UWW says that this is standard procedure.

12. There is no dispute that the Applicant was above the weight limit. She gave the above evidence clearly and directly at the hearing. Her case is that the amount of excess was 100 g and that a tolerance should apply as this is a small excess and explicable for reasons such as drinking water and water retention, in particular during the pre-menstrual phase.
13. Pursuant to Article 11 of the Rules headed “Weigh-in”, the Applicant was disqualified for the finals to take place on 7 August 2024, at 18h15 (Paris time).
14. The Applicant filed the Application on 7 August 2024, at 16h45 (Paris time). The Application did not request any relief by way of provisional measures but did seek the following relief:
 - The athlete requests that the challenged decision and all of its effects be set aside.
 - The athlete requests that she remain eligible and qualified to be awarded her silver medal.
 - The athlete requests a re-weighing before the finals.
 - The athlete requests that she be eligible and qualified to participate in the finals on 7 August 2024 at 18h15.
15. In the absence of any claim for provisional measures, the Sole Arbitrator was appointed on 8 August 2024. The finals had taken place and medals awarded. The Applicant confirmed, on 8 August 2024, that she no longer seeks the third or fourth requests above.

III. THE GROUNDS OF THE APPEALED DECISION

16. The Appealed Decision reads as follows:

“VINESH Vinesh (IND) failed second day weigh-in. According to the article 11 of the International Wrestling Rules, VINESH Vinesh (IND) will be replaced by the wrestler who lost against her in the Semifinal. Therefore GUZMAN LOPEZ Yusneylis (CUB) will compete in the Final. Repechage SUSAKI Yui (JPN) vs LIVACH Oksana (UKR) will become Bronze Medal Match.”

17. As set out above, the Appealed Decision was made pursuant to Article 11 of the Rules, which relevantly provides:

“For all competitions, the weigh-in is organized each morning of the concerned weight-category. The weigh-in and the medical control lasts 30 minutes.

The second morning of the concerned weight category only the wrestlers who participate in the repechages and finals have to come for the weigh-in. This weigh-in will last 15 minutes.

No wrestler may be accepted at the weigh-in if he has not undergone a medical examination the first morning.

Wrestlers must appear at the medical examination and the weigh-in with their license and accreditation.

The only uniform allowed for the weigh-in is the singlet. After having been examined by qualified physicians who are obliged to eliminate any wrestler who presents any danger of contagious disease, the wrestler can be weighed-in. No weight tolerance will be allowed for the singlet.

Contestants must be in perfect physical condition, with their fingernails cut very short.

Throughout the entire weigh-in period, wrestlers have the right, each in turn, to get on the scale as many times as they wish.

The referees responsible for the weigh-in must check that all wrestlers are of the weight corresponding to the category in which they are entered for the competition, that they fulfil all the requirements of Article 5 and to inform any wrestler of the risk he runs if he presents himself on the mat in incorrect dress. Referees will refuse to weigh a wrestler who is not dressed correctly.

The referees responsible for the weigh-in will receive the results of the draw and will be allowed to control only the athletes who are on this list.

If an athlete does not attend or fail the weigh-in (the 1st or the 2nd weigh-in), he will be eliminated of the competition and ranked last, without rank (Exception: cf. Article 55 – Medical Service Intervention).

*If one (or more) athlete qualified for the repechages and/or finals doesn't attend or fails the weigh-in, the athlete(s) (who successfully passed the second weigh-in) will move to the next round in his(their) part of the bracket.**

**If all athletes don't attend or fail the second weigh-in, the ranking will be made according to the individual ranking criteria (Cf. Article 8)." (emphasis added)*

IV. THE CAS PROCEEDINGS

18. On 7 August 2024, at 16h45 (Paris time), the Applicant filed an Application with the CAS Ad hoc Division against the Respondents with respect to the Appealed Decision, naming the IOA as the Interested Party.
19. On 7 August 2024, at 17h19 (Paris time), the CAS Ad hoc Division notified the Application to the Respondents and invited the latter to file their Answers by 8 August 2024, at 18h00 (Paris time). At that same time, the CAS Ad hoc Division also notified the Application to the Interested Party and invited it to submit an *amicus curiae* brief, should it wish, within the same time-limit.

20. On 7 August 2024, at 18h13 (Paris time), the CAS Ad hoc Division informed the Parties, *inter alia*, that “*although the CAS AHD procedure is extremely fast, it will not have the possibility to render a final award within less than an hour, i.e. before the start of the women’s Wrestling finals tonight.*”
21. On 8 August 2024, at 08h08 (Paris time), the First Respondent sent correspondence requesting that the proceedings be terminated as the competition took place regularly the day before and, as a result, the Applicant’s requests for relief had become moot.
22. On 8 August 2024, at 08h36 (Paris time), the Applicant replied to the First Respondent’s correspondence requesting that the proceedings continue and informing she dropped “*the request regarding the participation in the finals, leaving only the discussion on the point of the silver award medal and the maintenance of the results prior to the date of the decision of 7 August 2024.*”
23. On 8 August 2024, at 11h44 (Paris time), the CAS Ad hoc Division notified the Parties of composition of the Arbitral Tribunal:

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24. On 8 August 2024, at 14h56 (Paris time), the First Respondent requested an extension of its time-limit to file the Answer, which was partially granted until 8 August 2024, at 20h00 (Paris time).
25. Upon a new request from the First Respondent, and in the absence of an objection by the Applicant, the First Respondent’s time-limit to file its Answer was further extended until 8 August 2024, at 21h00 (Paris time).
26. On 8 August 2024, at 17h37 (Paris time), the Second Respondent filed its Answer and nominated the people who would participate in the hearing on its behalf.
27. On 8 August 2024, at 17h49 (Paris time), the Applicant and the Interested Party nominated the people who would participate in the hearing on their behalf and the Interested Party submitted an *amicus curiae* brief.
28. On 8 August 2024, at 20h50, 20h57 and 21h00 (Paris time), the First Respondent filed its Answer.
29. On 8 August 2024, at 22h12 (Paris time), the Applicant requested an opportunity to submit a written reply to the Respondents and Interested Party’s arguments and that the hearing be postponed to a later time on 9 August 2024. Said request was partially granted, with (i) the Applicant being granted until 9 August 2024, at 11h00 (Paris time), to submit a written reply and (ii) the hearing being postponed to 9 August 2024, at 14h00 (Paris time). The Respondents and Interested Party were informed they would be entitled to comment on the Applicant’s reply during the hearing.
30. On 9 August 2024, at 10h53 (Paris time), the First Respondent nominated the people who would participate in the hearing on its behalf.

31. On 9 August 2024, at 10h57 (Paris time), the Applicant filed her reply.
32. On 9 August 2024 at 14h00 (Paris time), a hearing was held with the participation of the following persons, in addition to the Sole Arbitrator and Ms Lia Yokomizo, Counsel to the CAS:

For the Applicant:

- Ms Vinesh Phogat, Applicant (in person)
- Ms Habbine Estelle Kim, legal counsel (in person)
- Ms Joëlle Monlouis, legal counsel (in person)
- Ms Estelle Ivanova, legal counsel (in-person)
- Mr Charles Amson, legal counsel (remote)
- Ms Sureeta Narula, interpreter (remote)

For the UWW:

- Mr Jean Pierre Morand, legal counsel (remote)
- Mr Michael Kottmann, legal counsel (remote)
- Mr Carlos Roy, party representative (remote)
- Mr Jean Daniel Rey, party representative (remote)
- Mr Pedro Silva, witness (remote)
- Mr Kamel Bouaziz, witness (remote)

For the IOC:

- Mr Antonio Rigozzi, legal counsel (in-person)
- Mr Eolos Rigopoulos, legal counsel (in-person)

For the IOA:

- Mr Harish Salve, legal counsel (remote)
- Mr Vidushpat Singhania, legal counsel (remote)
- Mr Nachiket Yagnik, legal counsel (remote)

- Mr Arnav Singhal, legal counsel (remote)
 - Ms Saiee Godbole, legal counsel (remote)
33. There were no objections to the composition of the Sole Arbitrator and the Parties confirmed that the Panel has jurisdiction over the present dispute. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Sole Arbitrator and confirmed that their right to be heard and to be treated equally was fully respected.
34. On 10 August 2024, at 17h43 (Paris time), at the request of the Sole Arbitrator, the CAS Ad hoc Division invited the Parties and Interested Party to file their comments on certain questions raised by the Sole Arbitrator. On the same occasion, the Respondents were invited to provide their views on a request by the Applicant that the award be kept confidential.
35. On 11 August 2024, each of the Parties and the Interested Party submitted a response to the questions raised by the Sole Arbitrator by way of further submissions.
36. On 14 August 2024, at 16h47 (Paris time), the Sole Arbitrator issued the operative part of the award which was notified to the Parties by the CAS Ad hoc Division.

V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

37. The Sole Arbitrator has read and considered all of the material (statements and submissions) of the Parties and the Interested Party. Those submissions and evidence will be referred to in the Merits section of this Award, to the extent that they are relevant and necessary to explain the reasons.

a. Applicant's Requests for Relief

38. The Applicant's request for relief is as follows
- 1) The athlete requests that the challenged decision and all of its effects be set aside;
and
 - 2) The athlete requests that she remain eligible and qualified to be awarded her silver medal.

b. First Respondent's Requests for Relief

39. The First Respondent's request for relief is as follows:
- 1) The proceedings must be declared moot and terminated;
 - 2) The Appeal filed by Ms Vinesh Phogat is inadmissible; *and*

- 3) The Appeal filed by Ms Vinesh Phogat is dismissed.

c. Second Respondent's Requests for Relief

40. The Second Respondent's request for relief is as follows:

- 1) Any request for a second silver medal should thus be dismissed.

d. The Interested Party

41. The Interested Party submits that "*the disqualification of the Applicant be revoked and a silver medal be awarded to her.*"

VI. JURISDICTION AND ADMISSIBILITY

42. Rule 61.2 of the Olympic Charter provides as follows:

"61 Dispute Resolution

[...]

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".

43. The First Respondent advanced submissions with respect to jurisdiction in the event that the Sole Arbitrator considered that the challenged decision was a field of play decision. There is clear CAS jurisprudence, and it is clear from Rule 61.2 of the Olympic Charter, that the CAS Ad hoc Division has jurisdiction over any dispute (including field of play) arising on the occasion of, or in connection with the Olympic Games.

44. With the exception of the reservation mentioned above, the jurisdiction of the CAS Ad hoc Division was otherwise expressly confirmed by all Parties at the hearing, including the First Respondent. In view of the foregoing, the Sole Arbitrator considers that the CAS Ad hoc Division has jurisdiction to hear the present matter.

45. Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter referred to as the "CAS Ad hoc Rules") provides as follows:

"Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective.”

46. The Appealed Decision was rendered on 7 August 2024.
47. The admissibility of the Application was expressly confirmed by all Parties at the hearing. In view of the foregoing, the Sole Arbitrator considers that the application filed by the Applicant is admissible.

VII. APPLICABLE LAW

48. Under art. 17 of the CAS Ad hoc Rules, the Sole Arbitrator must decide the dispute "*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate.*"
49. The Sole Arbitrator notes that the "*applicable regulations*" in this case are as set out in the Rules

VIII. DISCUSSION

A. Legal framework

50. These proceedings are governed by the CAS Ad hoc Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003 (amended on 8 July 2021). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PILA"). The PILA applies to this arbitration as a result of the express choice of law contained in art. 17 of the Ad hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the Ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS Ad hoc Rules.
51. According to art. 16 of the CAS Ad hoc Rules, the Sole Arbitrator has "*full power to establish the facts on which the application is based*".

B. Merits

1. Preliminary Observations

52. This is a particularly difficult case. The facts are not in dispute: the Applicant was above the 50 kg limit for her wrestling category when she weighed-in for the finals at the Paris Olympics. Had she competed, she would have been awarded either the gold or the silver medal. Her success in the competition had led to her being in that position.

53. Nevertheless, it is incumbent on the Sole Arbitrator to construe the relevant Articles according to their terms, in the context of the Rules as a whole. Effect should be given to the clear purpose of the Rules and the Articles therein, recognising that any ambiguity should be construed *contra proferentem* the UWW.

2. The Rules

54. It is important to start with the requirements of the Rules and the criteria applicable to the Applicant's competition category.

55. Article 7 of the Rules provides for the age, weight and competition categories. Relevantly, the Olympic weight categories for Women's Wrestling are:

1. 50 kg
2. 53 kg
3. 57 kg
4. 62 kg
5. 68 kg
6. 76 kg

56. The Competition Procedure is set out in Chapter 3 of the Rules, which includes Article 11 – Weigh-In. The following requirements, as set out in Article 11, are worth noting (with original phrasing):

- For all competitions, the weigh-in is organized each morning of the concerned weight-category.
- The second morning of the concerned weight-category only the wrestlers who participate in the repechages and finals have to come for the weigh-in. This weigh-in will last 15 minutes.
- The only uniform allowed for the weigh-in is the singlet. [...] No weight tolerance will be allowed for the singlet.
- Throughout the entire weigh-in period (15 minutes), the wrestlers have the right, each in turn, to get on the scale as many times as they wish.
- The referees responsible for the weigh-in must check that all wrestlers are of the weight corresponding to the category in which they are entered for the competition.
- If an athlete does not attend or fail the weigh-in (the 1st or the 2nd weigh-in), "*he will be eliminated of the competition and ranked last, without rank*".

57. Also relevant to this case is Article 8 of the Rules, headed Competition System, which provides, relevantly (with original phrasing):

- Each weight category is organized in two days. The draw takes place the day before the beginning of the category concerned at the latest.
- The medical control and a first weigh-in will be held the morning of the concerned weight category. The qualified athletes for the finals and repechages will be weigh-in again the second morning of the concerned weight category. No more weight tolerance will be allowed for the second weigh-in.

- 2 kg weight tolerance is allowed for World Cup, UWW Ranking Series Tournaments and for the International Tournaments (Except UWW Ranking Events).
58. UWW points out that, when no tolerance applies, an athlete fails the weigh-in as soon as he or she is above the applicable weight limit.
 59. The first observation is that compliance with the Rules regarding the weigh-in is necessary for eligibility to compete. A decision to eliminate an athlete who fails the weigh-in for a category is not a field of play decision but a decision as to eligibility. UWW submits that the issue presented “*is a pure field of play decision*” and, therefore, the Application is inadmissible. The Sole Arbitrator does not agree. This is not a decision during competition, such as that of an umpire or referee. This is a decision that an athlete is not eligible to compete in a weight category because she is not within the mandated weight.
 60. The second observation is that, under the Rules, Women’s Wrestling is divided into weight categories, with category 1 being for women up to 50 kg and category 2, a separate category, being for women who are up to 53 kg, that is, 3 kg more than those in category 1.
 61. The third observation is that the Rules provide for strict compliance with the weight categories. Thus, the only uniform to be worn is the singlet and no weight tolerance is given for that item; that is, the athlete must ensure that her weight, including the singlet, is below the 50 kg limit. While a 2 kg weight tolerance is allowed for International Tournaments, the Rules state that “*no more weight tolerance will be allowed for the second weigh-in*”, being the weigh-in for the finals. This should be construed as providing that there is no weight tolerance for the second weigh-in; that is, the maximum weight for category 1 is 50 kg. The Applicant’s and IOA’s submissions that she was only 100g over the weight limit seem to assume a tolerance for the second weigh-in, such that the maximum allowed weight was not 50 kg, but some indeterminate higher amount.
 62. The IOA pointed to the different weight regimes in other sports, under other rules. It submits that such “*broader standards*” should apply to the Rules. The Rules are not to be construed by reference to those that apply in other sports. This case is not about the wisdom or validity of the weigh-in procedures as set out in the Rules. No such relief is sought. The same applies to submissions concerning previous versions of the Rules; this case concerns the application of the present version, which reflects a policy which is not challenged. What is in issue is the application of the Rules. The Applicant and the IOA made submissions to the effect that the 100 g excess over the 50 kg limit should be disregarded despite the fact that the Rules allow for no such excess or tolerance. They point to the small amount of the excess and submit that it is somehow unusual and unfair to apply such a small difference. However, it is not uncommon that limits are set and applied, not only as in the Rules but also in many sports where very small differences exist between winning and losing, being eligible and ineligible, being in or out.
 63. The IOA also makes a submission that, by reason of Rule 59 of the Olympic Charter and the By-laws to that Rule, the IOC should determine the matter of the Athlete’s Application under the Olympic Charter. To the extent that this amounts to a submission that the Application should not be determined by the CAS, or that the Rules should not be

considered, the submission is rejected. Rule 61 of the Olympic Charter expressly provides for the jurisdiction of the CAS, which the Parties and the IOA specifically accepted and the relevant regulations are the Rules (see also paragraphs 33, 43-44 and 48-49 above).

3. The Athlete's stated reasons and those advanced by the IOA for failure to comply with the weight limit in the second weigh-in

64. It is to be recalled that Article 11 of the Rules provides that weigh-in is organised each morning for the concerned weight-category, the second morning being for wrestlers in the repechages and finals. A failure to attend, or a weigh-in fail of either the first or second weigh-in, results in "*elimination from the competition and being ranked last, without rank*".
65. The Weigh-in List for second day events at the Paris Olympic Games can be described as cryptic. It is not now necessary to examine that document in detail, as the fact of the Applicant's weight being recorded as above 50 kg is no longer in issue. The Applicant's name appears on the list and under the heading "Weight" is written "NO". The entries for the other athletes in this column are "OK". The Applicant's signature is the only one missing against the relevant entry under the heading "Wrestler's Signature". UWW evidence is that a signature is only obtained from those wrestlers who passed the weigh-in. The document bears a signature of the Referee delegate, together with three other signatures.
66. The Applicant did initially call into question the UWW documentation and procedures at the second weigh-in, as well as the absence of the Applicant's signature but, after the Applicant's oral evidence at the hearing, this aspect was not pressed.
67. There is also in evidence a statement from Ms Ibtissem Doudou, another participant in the Women's 50 kg wrestling. She states that her official weigh-in was done on 6 August 2024 between 7h30 and 8h00 am and on 7 August 2024 between 7h15 and 7h30 am. She says that there were no other weigh-ins done in the evenings or on 5 August 2024 (not the date in question) or on any other dates.
68. While these matters were relevant to the submissions initially advanced by the Applicant, they are no longer relevant, as the Applicant has freely conceded that she failed the second weigh-in, in that her weight exceeded 50 kg by 100 g. Thus, it is not in dispute that the second weigh-in was conducted between 7h15 and 7h30 (Paris time) on 7 August 2024, for the purposes of the finals, and that the Athlete was over 50 kg, by 100 g, and was so recorded and found to have failed the second weigh-in.
69. The Athlete and the IOA raise a number of different reasons for the failure of the second weigh-in, including:
 - The Athlete fought three difficult competitions on 6 August 2024 and needed to eat and drink for her health.
 - There was a short time between bouts, due to the distance between the venue and the Athletes' Village which left the Applicant with little time for the process of losing weight before the second weigh-in the following morning.

- The Athlete did not herself raise the relevance of menstruation, but there is evidence that she was pre-menstrual and that this results, as a normal biological process, in fluid retention. The IOA submits that *“the biological difference in the bodies of male and female wrestlers, particularly in light of the menstruation of women, needs to be taken into account whilst determining the eligibility of female wrestlers on the second day of the weigh-in”*. The IOA has produced a medical certificate dated 8 August 2024 to the effect that the Athlete is “currently” in her pre-menstrual phase and cited medical literature on body weight changes during menstruation.
 - The evidence regarding the effects of the menstrual cycle does not distinguish between the first weigh-in, when she was compliant, and the second weigh-in, when she was not. While it may be the case that the Athlete experienced some bloating and water retention, this is unquantified and, as a condition that may occur during the menstrual cycle, would be expected to be a factor that was mitigated against to ensure that the Athlete remained below the weight limit.
 - There is no evidence in this case of the consequences of differences in the bodies of male and female athletes with regard to weigh-in and weight categories. The weight categories generally and the 50 kg weight category for the Applicant as a woman wrestler are not challenged. The effects of any such differences, and of steps to mitigate such effects, are speculative and unsupported by evidence and cannot be considered for the purposes of this Application. There was candid evidence from the Athlete that she herself has a weight loss regime to counter weight gain from morning to evening and that she had insufficient time to implement that fully. This does not provide sufficient reason, even if an excuse were provided for in the Rules, for failure to bring her weight within her category.
 - The Applicant asserts that complying with the 50 kg restriction undermines her bodily integrity but this is the category that the Applicant freely chose to enter. She could just as easily have chosen category 2, with a higher weight limit. She chose the 50 kg category and had achieved much success in that category, within the mandated weight limit.
70. The IOA also asserts that the weighing machine when empty showed a measurement of 50 g, being half of the Athlete’s excess weight. Even if this was the case, it does not answer the problem that the Athlete’s weight exceeded the permissible weight limit. Further, UWW’s evidence is that officials from the Paris 2024 Organising Committee calibrated all of the scales immediately before the weigh-in on each day. The IOA also postulates *“minor discrepancies”* arising from factors such as temperature, humidity, airflow, vibrations and electrostatic changes which, it says, *“albeit nearly imperceptible, can have devastating effects on the eligibility and future of the Applicant”*. This is speculative and unsupported by evidence or any attempt at quantification.
71. The fact remains that the Applicant was above the 50 kg limit at the second weigh-in. There is no evidence to support the contentions that, somehow, the scales were faulty. The matters raised concerning possible reasons based on biology cannot be an excuse for the failure to comply. They are, as normal biological processes which would include eating and drinking

and the menstrual cycle, factors to be taken into account as a matter of course by highly experienced athletes (such as the Applicant) to ensure that they remain below the weight limit. The Athlete herself had attended three Olympic Games. She said that she had to eat something but she was aware that she must not become overweight. She needed to rehydrate and then went into her weight loss procedure as best as she could but did not succeed. As UWW submitted, the Applicant was at the upper limit of her weight category, which was evident at the first weigh-in and it was incumbent on her to be extremely careful of her weight.

72. The Applicant submits that there was insufficient training of, and explanation to, athletes from diverse backgrounds and levels of understanding of the procedures. However, it is apparent from the Athlete's evidence that she did understand the need to weigh-in at under 50 kg and that she made efforts to do so, both before presenting for the second weigh-in and on the occasion of the second weigh-in during the 15 minutes available to her to repeat the standing on the scales.

4. The arguments raised on the construction of the Rules

73. The Applicant and the IOA raised a number of arguments based on the construction of the Rules. It is fair to say that the Rules make themselves amenable to such arguments. They are not clearly drafted and some of the wording could bear different constructions when based on the words themselves, out of context. In this case, the English text was used and all arguments based on that text. Article 2 provides that the French text shall prevail. It may be that there is greater clarity in the French version, but no such submission was made and the French version was not mentioned.

74. It is necessary to interpret the Articles by a consideration of the words, of the context of the words in the Article and in the context of the Rules as a whole. The interpretation is a question of law and the process of construction does not include imposing a meaning that the words or phrases do not bear (OG 04/17).

5. Are the Olympic Games an International Tournament for the purposes of Article 8 of the Rules?

75. The IOA, but not the Athlete, argues that Article 8 does allow a 2 kg tolerance, as such tolerance is allowed for International Tournaments. Article 8 provides in part: "*2 kg weigh tolerance is allowed for World Cup, UWW Ranking Series Tournaments and for the International Tournaments*". The argument is that this means that a 2 kg weight tolerance is allowed for the Olympic Games, as an International Tournament. If so, the Athlete is within the weight category.
76. However, the Rules distinguish, in usage, between "international competitions" which, for example in Article 7, include a reference to the Olympic Games and "International Tournaments".
77. Article 3 refers to the Olympic Games, Championships and to all international competitions. Two matters should be noted: the Olympic Games are separately referred to and

“international competitions” is not capitalised and is different to International Tournaments. UWW contends that International Tournaments is a term that applies to specific events as set out in the UWW calendar and not to the Olympic Games. There is no definition in the Rules of any of these terms.

78. Article 6, which deals with Competitor’s Licence, provides for “*the Olympic Games, World Championships, World Cups, Continental Championships, Cups and Games, Regional Games and the World and Continental League, international tournaments registered in the UWW calendar*”. This suggests a distinction between the Olympic Games (and other named events) and international tournaments (not capitalised) registered in the UWW calendar.
79. Article 8, which provides allowance for the 2kg tolerance does not do so by reference to international competitions but to “the International Tournaments”. These words follow a reference to “UWW Ranking Series Tournaments”. It is clear that there is a distinction between “competitions” and “Tournaments”. The UWW website refers to International Tournaments and a calendar for those events. This does not include the Olympic Games, which are separately identified. This latter fact is not determinative but assists in understanding whether “International Tournaments”, undefined in the Rules, is used as a term of art in the field of wrestling and whether it is intended to include the Olympic Games.
80. Article 8 itself states that “no more weight tolerance will be allowed for the second weigh-in” immediately preceding the statement that a 2 kg tolerance is allowed for certain events, including “the International Tournaments”. This suggests that International Tournaments is a class of events and does not equate to international competitions which, as submitted by the IOA, the Olympic Games is. This is supported by the immediately preceding reference to the World Cup which is also an international competition and would not need separate reference if International Tournaments included any international competition.
81. The Sole Arbitrator concludes that, taking all of these matters into account, the preferred construction of “the International Tournaments” in Article 8 of the Rules, as used in that Article, does not include the Olympic Games and that the Athlete was not entitled to that tolerance on her second weigh-in.

6. What does “no more weight tolerance”, as used in Article 8, mean?

82. In the context of Article 8, it is apparent that there is a prohibition on a weight tolerance for the second weigh-in, with the exception provided for the events listed immediately after, for which a weight tolerance is allowed.
83. The IOA referred to the expression “no more” and questioned its meaning. The Sole Arbitrator concludes that it should be read as, in effect, “*weight tolerance will no longer be allowed for the second weigh-in*”. The fact that the following sentence refers to specific events that do allow a weight tolerance supports this conclusion. The UWW contended that the “no longer” was a reference to an earlier form of the Rules which provided for a more general 2 kg tolerance.

7. The consequences of failing the weigh-in as provided in Article 11

84. Article 11 provides that, if an athlete does not attend or fail the weigh-in (the 1st or the 2nd weigh-in) he will be “*eliminated of the competition and ranked last, without rank*”.
85. The Applicant submitted that this was inequitable and too severe, however, it is not for the Sole Arbitrator to make the policy of the UWW. It is a matter of construing the Rules promulgated by the UWW. The Applicant submits that the provision should be read as providing for elimination **or** ranking last **or** being left without rank. The word used is “and”, not “or”. The Applicant’s construction, no matter how apparently unfair the consequences are to her in this case, cannot be adopted. The consequences provided in Article 11 are for all three outcomes.
86. This also answers the submission that the Sole Arbitrator should not apply the Rules as written but should apply general principles of equity in determining whether the Athlete failed the weigh-in by being 100 g in excess of 50 kg and in deciding the consequences.
87. The Sole Arbitrator does not have that power or discretion but is required to apply the Olympic Charter and the applicable regulations, the Rules. The Applicant seeks the application of general principles of equity. However, Swiss Law provides that such an approach requires consent of the parties, in that they must authorise the Sole Arbitrator to do so (PILA Article 187(2)). Neither the UWW nor the IOC consents to, or authorises, such an approach.
88. The Sole Arbitrator did consider whether the consequences of failing the second weigh-in could be construed as resulting in the stated consequences for the finals only, but without effect on the rounds already completed. It was for this reason that further submissions were sought after the hearing, to give the Parties and the Interested Party the opportunity to consider this construction.
89. After considering those submissions and Article 11, the words being “*eliminated of the competition*”, the Sole Arbitrator cannot conclude that the competition referred to is the final round. The IOC submitted, and the Sole Arbitrator accepts, that the Wrestling Olympic Tournament constitutes a single competition, with several stages conducted over two days. To be eligible, the wrestlers must pass the initial weigh-in and, if qualified for the second day, the second weigh-in, that is, for as long as the wrestler is in the competition. The Rules use the expression “competition” to encompass events over more than one day. For example, Article 8 provides for each weight category being organised over two days and refers to a first and second weigh-in and also provides that the “*competition*” takes place on a first day with qualification and elimination rounds and a second day for finals and repechage rounds. Thus, in the Rules, a two-day event is one competition, not two separate competitions.
90. The Applicant made detailed submissions in support of her contention that what occurred on 6 and 7 August 2024 were two separate competitions. She points to the fact that there are two weigh-ins, one on each day and that each weigh-in has effect for the whole day. She also points out that when all rounds, including the final, are on one day, there is only a

single weigh-in. In effect, her submission is that there are as many competitions as there are days over which rounds take place, with weigh-ins for each whole day. This argument is unpersuasive. It suggests that the finals are a separate competition if held on a different day to the qualifying rounds but the same competition if held on the same day. It is preferable, and in accordance with the Rules, to characterise this as separate rounds in a single competition. It is perhaps worth noting also that the ordinary meaning of a competition denotes a contest for a prize, or an act or process of trying to win something; that is, from the start to the result. Accordingly, elimination from the competition cannot be limited to elimination from the final round of the competition.

91. The Applicant also submits that she should not be deprived of the rights that had accrued prior to her failed second weigh-in, for which she had been eligible. This, she submits, applies to entitle her to a silver medal and all rankings and scores and points, as to which she had a "*legitimate expectation*". She submits that the UWW is estopped from denying these rights. The basis of behaviour on the part of UWW to found such an asserted estoppel is not identified.
92. The Applicant does not seek orders that the Rules be overturned or otherwise declared unenforceable. Her challenge is to their implementation and application to her situation. Many of her submissions would be relevant to such a challenge of validity but that is not the relief that the Applicant seeks. In the same way, the significant and concerning personal effects on the Applicant of the Appealed Decision, and the effect on India's ranking at the Paris 2024 Olympic Games on which the Applicant relies in her submissions, are not matters that are relevant to the determination of this Application, nor are they uncommon in the context of elite sport and the Olympic Games.
93. Much as the Sole Arbitrator sees the logic in a rule that limits the consequences to the round for which the wrestler is not eligible while maintaining the results of rounds for which she was eligible, the Rules do not provide for such an outcome – to the contrary. The Rules use the words "*eliminate*" and, further, provide that the wrestler is ranked last, without rank. CAS case law is replete with the conclusion that it is not the prerogative of CAS Panels or Sole Arbitrators to rewrite federation rules.
94. The Applicant also submits that, as the Rules have been updated and amended over time, the conclusion should be drawn that they are not clear and that they require updating. This conclusion does not follow and, in any event, as the Sole Arbitrator has observed, the Rules and their validity are not the subject of challenge.
8. **Does the use of the word "he" in Article 11 mean that the consequences of failing the second weigh-in do not apply to a female wrestler?**
95. Article 11 of the Rules provides for the elimination of an athlete who fails the weigh-in, in terms that "*he will be eliminated*". The IOA submits that the Article applies only to male and not to female wrestlers. There is no equivalent article to Article 11 that refers to "she" or, indeed, a separate set of rules that applies to "she".

96. The Rules are not consistent in the use of “*he*” and “*he/she*”. There are multiple examples, in different Articles of the Rules of the use of “*he*”, which usage predominates. This includes Article 27, which provides, relevantly, “*When a wrestler scores 8 points more than his opponent inand Women’s Wrestling, he wins the match*”. As a further example, in Article 28, there is a reference to the attacking wrestler as “*he/she*” and “*his/her*” but this is followed, in the same paragraph, by a reference to the wrestler as “*he*” and “*his*”. Generally, where reference is made to “*he*” in the Rules, which are clearly intended to apply to all wrestlers, male and female, and “*he*” is used, there is no separate provision using “*she*”.
97. Reading the Rules as a whole, the Sole Arbitrator concludes that the use of the word “*he*” was not intended to exclude female wrestlers from the application of the Rules or of Article 11; rather it was the use of a pronoun intended to cover all wrestlers, male and female.
98. It is clear to the Sole Arbitrator that the use in the Rules of “*he*” was not intended to be limited to male wrestlers but, on the contrary, was intended to include female wrestlers. Therefore, the consequences of failing the weigh-in, as provided in Article 11, apply to a female wrestler and thus, to the Applicant.

9. Is a finding of ineligibility also a sanction?

99. The Athlete and the IOA have argued that a finding of ineligibility is necessarily a sanction because of its consequences for the Athlete.
100. CAS jurisprudence has long drawn a distinction between eligibility and sanction. The fact that an athlete is not eligible for an event is not, of itself, a sanction. The IOC points out that a sanction denotes wrongdoing and is a penalty for wrongdoing. This stands in contrast to eligibility, which results from a requirement not being fulfilled and does not include any stigmatisation. There is, of course, no suggestion here of any wrongdoing on the part of the Applicant.
101. The Sole Arbitrator does not accept that Article 11 of the Rules imposes a sanction for failing a weigh-in. It denotes the consequences of an athlete being rendered ineligible to compete during the course of a competition, which results in elimination from the competition.
102. Article 11 does not draw a distinction between failing a weigh-in at the beginning of a competition or after a wrestler has qualified for a number of rounds and reached the final. The Sole Arbitrator sees the force of the logic that, having reached the final round, for which a gold or silver medal would have been awarded, the consequences of failing the weigh-in for that final round should not mean that the Athlete was ranked last in the whole competition but rather that the consequences of a failed weigh-in would apply to the round for which that failure occurred. This way, the athlete would be deemed to have reached, but not competed in, the final. By analogy, if an athlete reaches a round of competition and fails to compete in that round, it cannot be said that they never competed at all. Such application of Article 11 would mean that failure to achieve weigh-in for the final round would result in elimination from that round and ranking last for that round, without rank in that round. If the consequence were simply that the Athlete was ranked last for that round, she would still be entitled to a silver medal. The IOA’s submissions follow that logic. It also submits that if the

second weigh-in results in an inability to qualify to compete on that day, it must follow that elimination from the competition and last ranking relates to the events that follow and not to events that have already occurred. If this were the case, the Athlete would retain her results and rankings from the first day. This necessarily depends on accepting that the second day represents a different competition to that of the first day.

103. However, the Rules treat both days as being one single competition. Article 11 specifically provides for elimination from the competition and being ranked last without rank. As a consequence, in this case, after the Athlete failed the second weigh-in, another athlete competed in the Athlete's place in the final and was awarded the silver medal. Similarly, if the Article were to provide for elimination and without rank in the final, the Athlete would be entitled to a bronze medal. However, other athletes were awarded the bronze medal upon the elimination of the Athlete.
 104. The Rules could be said to be emphatic with respect to a failed weigh-in: elimination of (sic) the competition, ranked last, without rank. If the words "*of the competition*" (which should be read as "*from the competition*") were not present, the construction that the elimination would apply only to the final round of competition would be available to the Sole Arbitrator. Unfortunately for the Applicant, those words cannot be ignored.
 105. The IOA seeks to draw support from the rules of World Athletics, which make specific provision for the maintenance of results prior to disqualification in certain circumstances. The problem is that the Rules do not contain such a provision and it is the Rules that apply to this case, not those of World Athletics. Indeed, the absence of such detailed provisions as exist in the World Athletics rules argue against an interpretation that this was in the contemplation of UWW policy as reflected in the Rules.
 106. It is also the case that the Sole Arbitrator does not have the power to award medals. That rests with the IOC. The silver medal and the bronze medals have been awarded. There is no provision in the Rules for the awarding of a second silver medal. The IOC pointed out that it awards medals based on rankings from the competition and that the Athlete was not ranked.
- 10. Can the consequences of the failed weigh-in be considered for the purposes of proportionality?**
107. The consequences of the failed second weigh-in, which do not arise from any illegal or wrongful act on the part of the Applicant are, in the opinion of the Sole Arbitrator, draconian. A consequence of elimination without ranking from the round for which the Athlete was found ineligible, having been eligible for the rounds for which she competed, would seem to be a fairer solution. However, it bears repeating that neither the formation or validity of UWW policy is before the Sole Arbitrator and there is no evidence or submission as to the reasons for such policy.
 108. Article 11 does not provide for a sanction for wrongdoing. It provides for the consequences of ineligibility. Neither Article 11 nor the Rules provide for any mitigation of the consequences of a failed weigh-in, nor for any discretion in their application. In the case of a sanction, there

is frequently allowance for the application of discretion and questions of proportionality. That is not the case here. In some cases, rules of federations provide for flexibility or discretion. For example, in CAS OG 24/05-06-07, the rules allowed for “*truly exceptional circumstances*”. In the present case, there is no discretion provided.

11. Some additional matters

109. The Applicant contends that the consequences of elimination from the competition, being ranked last and without rank all have the same meaning, which adds confusion and ambiguity and lacks precision. The Sole Arbitrator does not accept this contention. It is equally the case that these terms are emphatic as to the consequences, draconian as they are, and making it clear that not only is the wrestler removed from the competition but also ranked last and without a ranking. This makes clear an intention not to apply simply to disqualification from the round for which the weigh-in failed. Article 11 does refer to ranks and ranking. It makes no reference to any other accumulated rights that may have accrued to the Athlete by reason of her success in the rounds preceding the final. In the further round of submissions, the Applicant made a number of further submissions to which the other Parties were not able to reply. They included submissions that amounted to assertions of a breach of the Applicant’s acquired rights and a lack of legal certainty, as well as assertions of a breach of her rights to bodily integrity.
110. These submissions are dealt with above, in that the Sole Arbitrator has concluded that the Applicant, of her own free will, entered into the 50 kg wrestling category and well knew that this required her to maintain a weight for competition below 50 kg. Article 7 of the Rules provides, relevantly, that each contestant is deemed to be taking part of her own free will and is responsible for herself and is entitled to compete in only one weight category, the one corresponding to her weight at the time of the official weigh-in. The Applicant is an experienced wrestler who had previously competed under the Rules. There is no evidence to the contrary, or any evidence by the Athlete that she did not understand the weight requirements. She voluntarily entered the 50 kg category and, from the evidence, undertook a regime to keep within that weight limit. Her evidence was that she did not have sufficient time to complete a weight loss program, not that she somehow found it interfered with her bodily rights. As to questions related to ambiguity, the Sole Arbitrator has accepted that the language of the Rules is, in some parts, infelicitous but not ambiguous or amenable to different constructions, when the provisions are construed according to the meaning of the words in the context of the Article and the Rules.
111. As to the assertion of a loss of acquired rights, there were no such acquired rights under the Rules, which require weight eligibility throughout a competition. The right to compete in an international competition, including in the finals of the Olympic Games, depended on compliance with the Rules. Application of the Rules to the Olympic Games is compulsory (Article 3 of the Rules) and the Rules have as their objective, *inter alia*, the competition system, methods of victory, classification and elimination of competitors (Article 1 of the Rules). That is, any rights that she acquired by reason of competing in the rounds of the competition were, under the Rules, conditional on maintaining eligibility until, and including, the weigh-in for the day on which her rounds took place, including the final round.

12. The relief sought by the Applicant

112. The Applicant seeks an order that all the effects of her failure to pass the second weigh-in be set aside and that she be given a silver medal.
113. The IOC contends that, by Article 8 of the Rules, the two finalists in the elimination rounds take part in the match for first and second places and that the Applicant did not “*take part*” in such match. Thus, the IOC’s position is that she is not entitled to claim that she ranked second, either instead of or alongside the silver medal awardee.
114. It is also the case that the finals took place before this matter was heard. The Applicant has not sought that anyone be deprived of a medal. She has sought an order from the CAS that she be granted a second silver medal. The other Parties in this proceeding have submitted that this is not an available order and not within the power of the Sole Arbitrator to grant that relief, with which the Sole Arbitrator agrees. The Sole Arbitrator does not have the power to award medals. That rests with the IOC. The silver medal and the bronze medals have been awarded. There is no provision in the Rules for the awarding of a second silver medal.
115. By reason of Rule 56(1) of the Olympic Charter, any decision regarding the awarding, withdrawal or reallocation of any victory medal or diploma falls within the sole authority of the IOC. The IOC, in turn, awards medals at the Olympic Games on the basis of rankings established by the International Federations (Rule 46 of the Olympic Charter). The Sole Arbitrator cannot make an order that the IOC give the Applicant an additional silver medal.
116. The Applicant has not established a basis under the Rules for her Application to set aside the effects, as set out in Article 11 of the Rules, of her accepted failure to pass the second weigh-in.

13. Conclusion

117. There is no dispute that the Applicant failed the second weigh-in, in that her weight was in excess of the 50 kg limit. Her case is, in essence, that this is a small excess and can be explained by factors such as the menstrual cycle, water retention, the need to hydrate and insufficient time to reduce her weight by reason of the travel time to the Athlete’s Village.
118. The problem for the Athlete is that the Rules are clear as to the weight limit and are the same for all participants. There is no tolerance provided for – it is an upper limit. It does not even allow for the weight of the singlet. It is clearly up to an athlete to ensure that they remain below that limit.
119. There is no discretion provided in the Rules, which the Sole Arbitrator is bound to apply. The Sole Arbitrator sees the force in the submissions that the consequences of failure of the second weigh-in should be restricted to ineligibility for the event that followed the second weigh-in, namely the finals, but unfortunately for the Applicant, this is not the consequence provided in the Rules.

120. The Athlete asks that the Appealed Decision be set aside such that the consequences provided in Article 11 of the Rules not be applied or that Article 11 be construed so as to apply only to the final round of competition and not to the competition *ab initio*. It is not in contest that the Athlete failed the second day weigh-in. Article 11 of the Rules is not challenged. It follows that the decision was validly made and that Article 11 applies.
121. The Athlete is asking, in effect, that the weight limit provided for in the Rules be varied to accommodate her personal circumstances of the day and that a tolerance be applied to that limit. No quantification of a permissible tolerance was suggested, simply that the Athlete's weight at the second weigh-in was within a tolerance. The problem for the Applicant is that there is no basis in the Rules for such accommodation. To the contrary: the Rules are clear that the 50 kg weight limit is just that, a limit. There is no personal accommodation or discretion provided for.
122. The Athlete passed the weigh-in on the first day, but she was also obliged to pass it on the second day, the day of the final. By reason of the application of Article 11 of the Rules, that meant that she was eliminated from the competition and ranked last, without rank. This precludes the awarding of a silver medal, even though her performance on the first day of the competition ensured that she would have at least achieved a silver medal. She maintains that she remained eligible and qualified to be awarded her silver medal and that her successful weigh-in on the morning of 6 August 2024 was also applicable to the competition the next day.
123. The Athlete acknowledges that, under the Rules, she was replaced in the final round of the competition by the wrestler who lost against her in the semi-final and that both gold and silver medals were awarded. She does not ask that any other wrestler lose her medal but seeks a second silver medal. There is no basis on which the Sole Arbitrator can grant the relief sought to award a silver medal to the Applicant.
124. It is apparent that the Rules reflect a UWW policy that a wrestler must not only be eligible at the beginning of a competition but must also remain eligible for the whole of the competition, that is, from entry to the finals. Accordingly, there are no accumulated rights arising from partial eligibility and this explains why the Rules provide that once a wrestler is ineligible during the course of the competition, the consequences provided in Article 11 apply.
125. It follows that the Sole Arbitrator declines to grant the relief sought and that the Application be dismissed.
126. The Sole Arbitrator observes that the Athlete entered the field of play and fought and won three rounds and reached the final of the 50 kg wrestling competition at the Paris Olympic Games before she failed the second weigh-in and was ineligible to compete in the final. There is no suggestion of any wrongdoing on her part.

IX. COSTS

127. According to Article 22 para. 1 of the CAS Ad hoc Rules, the services of the CAS Ad hoc Division “*are free of charge*”.
128. According to Article 22 para. 2 of the CAS Ad hoc Rules, parties to CAS Ad hoc proceedings “*shall pay their own costs of legal representation, experts, witnesses and interpreters*”.
129. It was confirmed at the hearing that none of the Parties, nor the Interested Party, seek costs. Accordingly, there is no order as to costs.

X. CONCLUSION

130. In view of the above considerations, the Applicant’s Application filed on 7 August 2024 shall be dismissed.

DECISION

The Ad hoc Division of the Court of Arbitration for Sport renders the following decision:

The Application filed by Vinesh Phogat on 7 August 2024 is dismissed.

Operative part: Paris, 14 August 2024

Award with grounds: Lausanne, 16 August 2024

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Annabelle Bennett
Sole Arbitrator