

# Court of Arbitration for Sport (CAS) Invalidates World Athletics Rule Imposing Burden of Proof on Disabled Athletes to Prove No Competitive Advantage as Unlawful and Discriminatory, But Then Bars Double-Amputee Sprinter Blake Leeper from Competing on His Blades on Racially Discriminatory Grounds

OCTOBER 26, 2020

**NEW YORK** – October 26, 2020 – Today, October 26, the Court of Arbitration for Sport (CAS) announced that it has invalidated a rule adopted by World Athletics (formerly “IAAF”) – the international sports federation governing track & field – which imposed the burden of proof on disabled athletes requiring them to prove that their prostheses do not provide them with an overall advantage against non-disabled athletes. This is a very important victory for all disabled athletes, as the panel found it to be unlawful and a discriminatory violation of the World Athletics Constitution to require disabled athletes to meet such an onerous burden before they can compete against non-disabled athletes.

As the panel found, “the IAAF’s discussions surrounding the enactment of the Rule were mainly focused on the perceived negative implications of disabled athletes competing with prosthetic aids against non-disabled athletes, with little or no discussion of how the participation of such disabled athletes could be facilitated without compromising fairness.” The IAAF had an “apparent lack of attention and concern regarding the impact of the Rule on the rights and interests of disabled persons” which the panel found was “regrettable,” with the IAAF giving the rights and legitimate interests of disabled persons only a “secondary consideration.” The arbitration panel thus struck from the rule the language imposing the burden of proof on the athlete, concluding that “the Rule is unlawful and invalid insofar as it places the burden of establishing the absence of an overall competitive advantage on the athlete who is seeking to use a mechanical aid,” and “the IAAF bears the burden” of establishing that any disabled athlete who wishes to use prosthetic aids in order to run against non-disabled athletes derives an overall competitive advantage from the use of the particular prosthetic aid.

Shockingly, after reaching the correct decision on the Rule itself, this same CAS panel veered sharply off course when it went on to conclude that the disabled athlete who brought the arbitration -- 400m double-amputee sprinter Blake Leeper -- should not be permitted to compete on his prostheses against non-disabled athletes because he purportedly runs at an “unnaturally” tall height. Specifically, the panel decided that because Mr. Leeper’s prostheses were set at a height greater than the current Maximum Allowable Standing Height (MASH) that Paralympic organizations have used for various events, it would be unfair to permit him to run at this height against non-disabled athletes. This part of the decision was racially discriminatory and thus against public policy.

Mr. Leeper is an African American. The MASH height limits, by contrast, were exclusively derived from data on the height proportions of Caucasians and Asians. As a result, the MASH height limits do not account for the fact that

Black athletes may have different height proportions and should not be required to run at heights that may not be natural to them. These points of racial bias were presented to the CAS panel, but were ignored. The ruling was especially unjust since World Athletics' own experts have admitted that "it is not known if the equations [in one of the studies upon which the new MASH limits are based] are predictive of stature in other populations" and have even conceded that their work "would perhaps be strengthened from future studies with an internationally representative sample." There was thus no scientific or reliable basis to apply these height limitations to a Black athlete like Mr. Leeper, whose prostheses were otherwise found by the Panel not to provide any competitive advantage. And, the MASH height rules have never been adopted by World Athletics, and have never been applied to non-disabled athletes.

Mr. Leeper will file a legal action to challenge this racially discriminatory decision of the CAS panel to preclude him, as a Black athlete, from competing at the same height, on the same prostheses, that he has been using in world competitions for five years. He has already met the qualification time to run in the Tokyo Olympics, which is his dream, and he will not give up his fight to compete against non-disabled athletes on the Olympic stage on the basis of a racist study that does not include any data from Black athletes in its database. Indeed, the height at which Mr. Leeper runs on his prostheses is comparable to the height at which other world-class non-disabled 400-meter athletes run and he does not have any competitive advantage running without biological legs at that height, which has not been shown to be unnatural for him as an African-American athlete.

Mr. Leeper is being represented in this case on a pro bono basis by the international law firm of Winston & Strawn LLP, in a global team headed by partners Jeffrey L. Kessler, David Feher, Michael Stepek and Mathilde Lefranc-Barthe. He has also been supported by the expert testimony, provided on a pro bono basis, of Dr. Hugh Herr of the MIT Media Lab and Dr. Alena Grabowski of the University of Colorado Boulder Applied Biomechanics Lab, and by the scientific research done at the University of Colorado Boulder by Drs. Grabowski, Owen Beck from Georgia Institute of Technology and Paolo Taboga from California State University, Sacramento.

Jeffrey Kessler, lead counsel in the case, issued the following statement after reviewing the CAS decision: "The CAS panel's two rulings are incongruous with each other. On the one hand, the panel strikes down a World Athletics Rule which it finds to be discriminatory against the rights of disabled athletes to compete against the non-disabled. This was a just decision which we salute. On the other hand, the same panel issued a decision authorizing an even more insidious form of racial discrimination — against Black disabled athletes — by finding that their prosthetic limbs are subject to artificial height limitations based solely on the body proportions of Caucasian and Asian athletes. Data from Black athletes were not even considered in these studies, as if these athletes did not exist. It is ironic that Blake Leeper, who has been fighting for the rights of disabled athletes of every race, now finds himself the victim of discrimination against Black disabled athletes. We do not believe the courts will tolerate such discriminatory treatment and we will support Blake as he continues his fight to compete in the Olympics."

Dr. Herr, a world-renown expert in the science of prostheses and human biomechanics, stated: "The decision's reliance on the current MASH limits is totally flawed as a scientific matter. Current evidence does not support the conclusion that running 'taller' means that a person will run faster. More fundamentally, relying on limited studies that exclude persons of African descent is inexplicable and unjustifiable, and in fact current evidence does not support the conclusion that Mr. Leeper runs with a leg length that falls outside a normal biological range. Running involves complex dynamics in which the body moves in many ways during the act of locomotion, and the current MASH rules which are based on a simplified measurement of a person's height while standing barefoot (not running) are not a scientifically valid basis to exclude anyone from competing in running events against non-disabled athletes, who are not even measured for compliance with so-called 'normal' body proportions. Science is not limited by arbitration panels, and the science of running will continue forward and show that this decision got it wrong."

Mr. Leeper stated: "It is sad that we had to fight so hard for disabled athletes to be free of an unfair burden of proof. That was wrong, and I am pleased that the panel overturned that rule. But I cannot accept the panel's decision to deprive me of my right to compete against non-disabled athletes at the same running height at which those athletes naturally compete based on a study of body proportions that did not include a single Black athlete. I will never give up and will continue to do all I can to compete and be judged by standards that are nondiscriminatory, in every way."

Winston & Strawn LLP is an international law firm with offices in New York, London, Paris and many other locations around the world. The team working for Blake Leeper was led by partners Jeffrey L. Kessler and David Feher (New York office), Michel Stepek (London office), and Mathilde Lefranc-Barthe (Paris office), associates Angela A. Smedley, Ben Gordon, Brandon Annette, Drew Washington, and Adriano Pinto, with support from paralegals Corinne N. Kyritsopoulos and Bryan Widro.  
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