

Appeal Decision: Appellant - Layne

ORIGIN

On February 24, 2020, an Athletics Ontario (AO) Complaint Hearing Panel (Panel) determined the following regarding mutual complaints between Karl Layne (coach and co-founder of Boost Athletics Track Club), Carla Warwick (head coach with the Mississauga Olympians Track and Field Club and at the time President of the Minor Track Association [MTA]) and her sister Tasha Warwick-Fletcher (also a coach at the Olympians Track and Field Club):

41. Per Section 10c) of the Dispute Resolution Policy, I have determined that the following remedies will apply:

a) Mr. Karl Layne must:

- i. Take the Respect in Sport program (<https://athleticsontario.ca/respect-in-sport/>) by April 15th, 2020. If Mr. Layne has already taken the program, he must re-take it.*
- ii. Receive a letter of reprimand from Athletics Ontario which must be placed in his file. The reprimand will remind Mr. Layne that he must model behaviour befitting a coach, youth mentor, and member of Athletics Ontario*

b) Ms. Tasha Warwick-Fletcher must:

- i. Take the Respect in Sport program (<https://athleticsontario.ca/respect-in-sport/>) by April 15th, 2020. If Ms. Warwick-Fletcher has already taken the program, she must re-take it*
- ii. Take the NCCP Managing Conflict module (either online or in-person) at the earliest reasonable opportunity. If Ms. Warwick-Fletcher has already taken this module, she must re-take it*
- iii. Receive a letter of reprimand from Athletics Ontario which must be placed in her file. The reprimand will remind Ms. Warwick-Fletcher that she must model behaviour befitting a coach, youth mentor, and member of Athletics Ontario*

b) Ms. Carla Warwick must:

- i. Receive a letter of reprimand from Athletics Ontario which must be placed in her file. The reprimand will remind Ms. Warwick that she must model behaviour befitting a coach, youth mentor, and member of Athletics Ontario*

42. Each of the parties is further directed to avoid and limit all contact with the other party, as well as with the athletes of the other party's club, unless absolutely necessary during training and competition.

43. Should Mr. Layne or Ms. Warwick-Fletcher fail to submit completion of the Respect in Sport program to Athletics Ontario by April 15th (and if Ms. Warwick-Fletcher fails to submit completion of the NCCP Managing Conflict module by October 15th) they will be suspended from all sanctioned Athletics Ontario activities including coaching, training, and officiating until proof of completion has been submitted.

BACKGROUND

The Panel's decision related to complaints between the parties stemming from an incident at the Athletics Ontario Provincial Outdoor Championships held at the University of Windsor, Windsor, Ontario, between August 2-4, 2019. The incident in question took place on Sunday, August 4, 2019 and involved a physical and verbal altercation between Mr. Karl Layne (the Appellant), Tasha Warwick-Fletcher and Carla Warwick

REVIEW PROCESS

Carla Warwick submitted to AO an email complaint regarding the incident on August 06, 2019 and followed up on the AO complaint form on Oct 16th. Karl Layne also submitted an AO complaint form to AO on September 18th, 2019.

The AO Safe Sport Officer submitted his report to the AO Chair on or about October 9, 2019. The Safe Sport Officer found that there was adequate evidence of contravention of AO policies to warrant further investigation.

Section 4 of the *AO Dispute Resolution Policy: Appendix A – Dispute Resolution Process* (Dispute Resolution Policy) allows the Chair to appoint an independent investigator to "confirm the background and context of the complaint and to ascertain the facts." The Chair appointed an Investigator on or about October 16, 2019. The Investigator was provided with the complaints, supporting information and the AO Safe Sport Officer's summary. The Investigator reviewed witness statements and interviewed independent adult witnesses. The Investigator submitted his final report to the Chair on November 07, 2019 (incorrectly stated in the Panel Decision as November 02, 2019). The Investigator made the following conclusions:

WARWICK COMPLAINT AGAINST LAYNE

All three individuals have made statements that indicate awareness of the friction that exists as a result of Karl's departure from Mississauga Olympians; however, aside from assertions made in the complaint, no specific evidence has been provided of any violation of AO policy regarding harassment.

The case for harassment as asserted against Karl Layne has not been made out by the evidence provided in this complaint; however, it is the opinion of this investigator that all parties to this

complaint be briefed on what does and does not constitute appropriate communication between members of other clubs and/or individual athletes.

LAYNE'S COMPLAINT AGAINST WARWICKS

While it is clear that a verbal and physical altercation between the parties took place, it appears on a balance of probabilities that it was instigated and initiated by Tasha and participated in by Carla as the co-aggressors. The assertion that Layne initiated an unprovoked physical attack on either Tasha or Carla is not supported by the facts, and making a complaint of that nature will likely have the effect of bringing disrepute to Karl Layne.

Section 5 of the Dispute Resolution Policy provides for the Chair to establish a Hearing Panel within 14 days of receiving the Investigator's Report, or November 21, 2019, if the Chair believes it is warranted. Based on the findings and conclusions of the Investigator's Report, the Chair appointed a single-member Hearing Panel on November 18, 2019. However, due to personal reasons, the Panel member had to withdraw from the case before completing the process. The AO Chair appointed a new single-member Review Panel on January 08, 2020.

As permitted in Section 8 of the Dispute Resolution Policy, the Panel chose to conduct a Documentary Hearing Procedure. This procedure has the following provisions:

- (a) All parties must be given a reasonable opportunity to review the Investigator's report, where an investigation was carried out:*
 - (i) to provide written submissions to the Panel,*
 - (ii) to review the written submissions of the other parties;*
 - (iii) to provide written rebuttal; and*
 - (iv) to provide written arguments.*

The Chair has confirmed that the Panel provided each party with a copy of the Investigator's Report and the other party's written submissions, rebuttals and other relevant information. All final submissions from the parties were due by February 18, 2020. The Panel reviewed the final submissions and determined that no further responses or information were required.

With the conclusion of the Documentary Hearing, the Panel had 14 days, or March 03, 2020, to issue its written decision according to Section 10 of the Policy. The Panel issued its Decision on February 24, 2020, within the required 14 days.

APPEAL PROCESS

According to AO's Dispute Resolution Policy: Appendix C – Appeal Process (Appeal Policy), the parties to this dispute had the right to request an appeal of the decision of the Panel if done so in writing to the AO Chair within 21 days from the date of the decision. Mr. Layne (the Appellant), submitted his request for an appeal on March 04, 2020, within the 21-day appeal period.

However, a decision cannot be appealed simply because the Appellant does not agree with the Panel's decision. According to Section 1 of the Appeal Policy, an appeal may be heard only if the Chair determines that there are sufficient grounds based on one or more of the following procedural errors committed by AO:

- a) made a decision without the appropriate authority or jurisdiction as set out in AO governing documents;
- b) failed to follow procedures as laid out in AO by-law or approved policies;
- c) made a decision which was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views;
- d) exercised discretion for an improper purpose; or
- e) made a decision which was grossly unreasonable.

THE APPEAL

The Appellant (Layne) is basing his appeal request on the following claims:

- 1. In reaching his conclusion, Mr. Indig did not consider all of the relevant and pertinent evidence to reach a comprehensive decision.
- 2. Mr. Indig did not address the issues contained in my complaint; namely that I was assaulted, that the Windsor incident and the subsequent complaints to Athletics Ontario and the OIPRD were vexatious complaints by Carla and Tasha Warwick.
- 3. In reaching his conclusion, Mr. Indig depicted a scenario of three adults swearing and acting badly in front of youth athletes. I am puzzled at how Mr. Indig reached this conclusion as it is not supported by the evidence.
- 4. In his submission, Mr. Indig did not specifically indicate which elements of my conduct constituted misconduct. Instead, Mr. Indig generalized the incident and concluded all involved parties committed misconduct.

As Chair of AO, it is my role to decide whether or not the Appellant presented sufficient grounds to demonstrate that the Panel made one or more of the following procedural errors as outlined in the Appeal Policy:

a) DID THE HEARING PANEL MAKE A DECISION WITHOUT THE APPROPRIATE AUTHORITY OR JURISDICTION AS SET OUT IN AO GOVERNING DOCUMENTS?

None of the Appellant's four claims relates to jurisdiction nor did he provide any arguments or evidence to suggest the Panel lacked appropriate authority or jurisdiction.

b) DID THE HEARING PANEL FAIL TO FOLLOW PROCEDURES AS LAID OUT IN AO BY-LAW OR APPROVED POLICIES?

None of the Appellant's four claims relates to the Panel's failure to follow AO procedures or policies nor did he provide any arguments or evidence to suggest such a failure. As I outlined in the "Review Process" section above, AO and the Panel followed all required procedural

steps and deadlines. The Panel Decision specifically explained that the complaints had been fully investigated and the findings considered by the Panel:

16. The Warwick complaint against Mr. Layne was investigated twice, by an independent individual appointed by Athletics Ontario (as 'Matter #2') and by the Office of the Independent Police Review Director (OIPRD). I am guided by the results of both investigations when deciding on the Warwick complaint.

17. Mr. Layne provides a different version of the incident/altercation in his complaint against the Warwicks. The Layne complaint was investigated by the independent individual appointed by Athletics Ontario (as 'Matter #1') and I am guided by the results of this investigation when deciding on the Layne complaint.

The Panel Decision also documents that all parties were provided ample opportunities to provide further submissions and evidence, review each other's submissions and provide rebuttals. I did not find that the Appeal Application included any significant new information that had not already been provided at earlier stages of the review process. The Panel Decision also specifically stated:

An omission in any part of this decision to reference a position of a party does not indicate that I did not consider that position in my decision.

c) DID THE HEARING PANEL MAKE A DECISION WHICH WAS INFLUENCED BY BIAS, WHERE BIAS IS DEFINED AS A LACK OF NEUTRALITY TO SUCH AN EXTENT THAT THE DECISION-MAKER IS UNABLE TO CONSIDER OTHER VIEWS?

None of the Appellant's four claims relates to the Panel's bias, either real, perceived or potential, nor did he provide any arguments or evidence to suggest such bias. Furthermore, prior to appointing the Panel, the Chair ensured that the Hearing Panel member had no personal knowledge of or prior relationships with any of the parties involved in the complaints.

d) DID THE HEARING PANEL EXERCISE DISCRETION FOR AN IMPROPER PURPOSE?

None of the Appellant's four claims relates to the Panel's exercise of discretion for an improper purpose nor did he provide any arguments or evidence to suggest such a failure.

e) DID THE HEARING PANEL MAKE A DECISION WHICH WAS GROSSLY UNREASONABLE?

None of the Appellant's four claims suggests the Panel's decision was grossly unreasonable nor did he provide any arguments or evidence to suggest this. Broadly speaking, one could interpret the Appellant's claims #3 and #4 as concerns with the outcome, although I would not classify them as suggestions of gross unreasonableness.

Much of the Appeal Application pertains to the Appellant's disagreement with the other party's complaint, evidence and activities unrelated to the incident in question, all of which was provided to both the Investigator and the Panel.

In fact, many of the Panel's findings were consistent with the Appellant's arguments:

27. The investigator further noted that "no specific evidence has been provided of any violation of AO policy regarding harassment" and wrote that a case for harassment against Mr. Layne had not been made.

28. For Matter #1, the Layne complaint against the Warwicks, the investigator found that Layne's version of events was more credible as it was supported by the three independent adult coaches who the investigator determined were unbiased. The investigator noted the following:

Based on the information provided by witnesses, Karl Layne's complaint that he was physically and verbally assaulted by Tasha Warwick-Fletcher and Carla Warwick has merit.

29. The investigator also noted that the unsubstantiated complaint by the Warwicks against Layne that was sent to the OIPRD could have a negative effect on Layne's professional life. The investigator concluded:

The assertion that Layne initiated an unprovoked physical attack on either Tasha or Carla is not supported by the facts, and making a complaint of that nature will likely have the effect of bringing disrepute to Karl Layne

While the Panel noted that the investigation by the Office of the Independent Police Review Director (OIPRD), initiated by Tasha Warwick, did not find misconduct as defined by the Police Services Act, the Panel had to consider whether there were any violations of the standards of behaviour expected of coaches of AO:

33. For the second allegation, the [OIPRD] investigator found the following:

Given Detective Layne's occupation as a police officer, the comment made relating to there being not 1 but 2 sisters in jail may have demonstrated poor judgement. However, the comment does not amount to misconduct as defined in the Police Services Act.

36. The two investigations that were conducted are narrower in scope than the latitude I have as Hearing Panel in making my decision on the complaints. For example:

*a) For the complaint submitted by the Warwicks against Mr. Layne, the Athletics Ontario investigator found simply that the case for harassment had not been made. It is within my mandate to uphold the complaint should I determine that **any** violation of the conduct standards expected of individuals affiliated with Athletics Ontario (such as are described in the Code of Conduct – Coaches) has occurred; and*

b) The OIPRD investigator found that one allegation was not supported because it did not amount to misconduct as defined in the Police Services Act. This is obviously not the same standard that I am able to use in my determination on the complaint

And finally, despite the lack of arguments and evidence provided by the Appellant, I feel compelled to comment on whether the Panel's sanctions can be considered grossly unreasonable.

The sanction for the Appellant was the requirement, firstly, to take the *Respect in Sport* course and, secondly, for AO to issue the Appellant with a letter of reprimand stating that "he must model behaviour befitting a coach, youth mentor, and member of Athletics Ontario." Regarding the first requirement, the course is a required course for all AO certified coaches. Secondly, the requirements outlined in the letter of reprimand outlined the expected behaviour for all AO members. Therefore, I can not find that the sanctions imposed on the Appellant are unreasonable or grossly unreasonable.

As for the sanctions imposed on the other parties, I find that for similar reasons they can not be considered unreasonable or grossly unreasonable. However, one could argue that perhaps they were not severe enough. On such a point, I do not believe that the sanctions can be interpreted as so grossly unreasonable that I, as Chair, should overturn the decision of an objective Hearing Panel and grant an appeal.

THE APPEAL DECISION

The Appellant has failed to demonstrate that Athletics Ontario has committed a procedural error, based on the Athletics Ontario *Dispute Resolution Policy: Appendix C – Appeal Process* and has, therefore, failed to demonstrate sufficient grounds for an Appeal. Accordingly, I deny the Appellant's request for an appeal and affirm the Hearing Panel's decision.

I recognize that this decision is well beyond the usual timeline requirements for addressing Appeal Applications and for that I sincerely apologize to the Appellant. Much of the reason for the delay was due to the global pandemic but also personal commitments and workload obligations. Nevertheless, the delay had no impact on the substance or outcome of the Appeal. Furthermore, since the appeal was filed, AO developed a new Safe Sport Policy Manual and funding mechanism to ensure that all complaints and appeals can be dealt with quickly and professionally.

Dean Hustwick
President and Chair of the Board of Directors
Athletics Ontario
January 17, 2021