

# ***Diane Modahl v British Athletic Federation (BAF) [2001]***

## ***EWCA Civ 1447***

### **Case overview**

Diane Modahl, an international athlete in the sport of athletics, was charged with a doping violation following an adverse analytical finding (AAF) for the presence of testosterone in a urine sample tested at a laboratory in Lisbon. In accordance with the IAAF<sup>1</sup> Rules, the matter was referred to a Disciplinary Committee for determination. Due to the high-profile nature of the proceedings a five-member tribunal was convened. The Disciplinary Committee unanimously found that Mrs Modahl had committed a doping offence and sanctioned Mrs Modahl to a four-year ban from 18 June 1994.

Mrs Modahl exercised her right of appeal to an Independent Appeal Panel (IAP). During the appeal hearing new evidence was submitted that had not been available to the Disciplinary Tribunal. The IAP unanimously allowed her appeal based on this new evidence, namely that bacterial degradation caused by leaving the sample in a hot room for several days had affected the testosterone reading in her urine sample. Mrs Modahl was cleared of the anti-doping charge made against her.

In February 1996 Mrs Modahl filed a £1m claim for breach of contract and negligence against the BAF in the High Court. Her claim was later narrowed to breach of contract only. The High Court ultimately did not find that there was a contract between Mrs Modahl and the BAF to make a successful claim for damages and held that there was no actual or apparent bias in the composition of the Disciplinary Committee that determined her anti-doping charge in 1994. Mrs Modahl appealed the High Court judgment to the Supreme Court of Judicature.

### **Background Facts**

The basis of Mrs Modahl's claim was that the Disciplinary Committee that had been convened to determine her doping charge in 1994 was tainted by bias. Mrs Modahl argued that it was an implied condition of the contract between her and the BAF that the BAF's Drugs Advisory Committee, which was responsible for appointing the Disciplinary Committee, would take all reasonable steps to ensure that the Disciplinary Committee was free from bias to ensure a fair and impartial hearing.

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<sup>1</sup> IAAF Handbook for 1994-1995

The issue before the Supreme Court was (i) whether there was a contractual relationship between Mrs Modahl and the BAF and (ii) whether there was actual or apparent bias affecting the decision of the Disciplinary Committee.

### **Outcome**

Regarding Mrs Modahl's claim in contract, the Supreme Court determined that there was no express contract between Mrs Modahl and the BAF. However, two of the Judges found that a contract between Mrs Modahl and the BAF could be implied from Mrs Modahl's submission to the BAF rules and the BAF undertaking the obligation to apply those rules.

Regarding the question of bias, it was agreed that there was evidence of apparent bias in relation to at least one of the members of the Disciplinary Committee. However, the Supreme Court found that the High Court was right in concluding that there was no evidence of actual bias affecting the decision of the Disciplinary Panel in 1994. As there was no evidence of actual bias the Supreme Court decided that the process followed in determining Mrs Modahl's doping charge was fair – notwithstanding that the evidence before the Disciplinary Committee was flawed given that the urine sample had not been handled properly. Finally, the Supreme Court found that there was no chance that any other committee would have reached a different decision to that of the Disciplinary Committee based on the evidence available to the Disciplinary Committee in December 1994.