
REASONED DECISION OF THE INTERNATIONAL PARALYMPIC COMMITTEE
BOARD OF APPEAL OF CLASSIFICATION

HEARING	6 November 2024 at 09:30 CET
ATHLETE	Esteban Herrault
NATION	France
SPORT	Table Tennis
SPORT CLASS	PTT6
STATUS	Confirmed
EVENT	2018 China Open
LOCATION	Beijing, China
DATE	29 August – 2 September 2018
BAC PANEL	Alberto Predieri, Chairperson Ross Ashcroft, Member Tiago Carvalho, Member
BAC ASSISTANTS	Leen Coudenys, Assistant Louis Muncey, Clerk Lucy Hopwood, Clerk
COMPLAINANT	The International Table Tennis Federation Represented by: Mr Alistair McHenry, Tyr Law
RESPONDENT	Esteban Herrault Represented by: Mr Christof Wieschemann, Wieschemann Rechtsanwälte

1. Introduction

- 1.1 This is a matter brought before the International Paralympic Committee (the “**IPC**”) Board of Appeal of Classification (the “**BAC**”) pursuant to the bylaws of the BAC dated July 2021 (the “**BAC Bylaws**”) and the classification rules for Para Table Tennis of the International Table Tennis Federation dated January 2018 (the “**Classification Rules**”).
- 1.2 The matter is brought by The International Table Tennis Federation (the “**Complainant**” or the “**ITTF**”) against Esteban Herrault (the “**Athlete**”) in relation to a charge of alleged Intentional Misrepresentation (as defined in the Classification Rules) (the “**Charge**”).
- 1.3 The BAC Panel (the “**Panel**”) is grateful to the parties, and their representatives, for their written submissions, their oral submissions and the evidence provided in respect of this matter.
- 1.4 References to the submissions advanced by the parties in the sections below are made where necessary, even though all submissions and arguments have been considered by the Panel.

2. The Parties

- 2.1 The parties are the Complainant and the respondent, or, more precisely, the Athlete.
- 2.2 The Complainant is the international governing body for the sport of Para Table Tennis ("PTT").
- 2.3 The respondent is an athlete who competes in the sport of PTT and is subject to the jurisdiction of the Complainant.

3. Jurisdiction

- 3.1 Article 32.9 of the Classification Rules states that:

Any disciplinary action taken by ITTF-PTT pursuant these Classification Rules must be resolved in accordance with the applicable Board of Appeal of Classification Bylaws.

- 3.2 The ITTF Handbook 2022 supports the jurisdiction of the BAC as follows:

- 3.2.1 Article 1.8.1.1.6:

1.8.1 JUDICIAL BODIES OF THE ITTF

1.8.1.1 The judicial powers of the ITTF shall include:

1.8.1.1.6 the Board of Appeal of Classification of the International Paralympic Committee (IPC BAC) for Para Table Tennis classification matters.

- 3.2.2 Article 8.15.1.2:

Subject to R8.15.2 and R8.15.3, the ITTF Tribunal shall have jurisdiction to hear and decide any alleged infringement of any article under the ITTF Constitution or any other rule or regulation of the ITTF Handbook and any Related Document except: [...] any provision of the Classification Rules of ITTF Para Table Tennis.

- 3.2.3 Annex 1 of Section 9:

The ITTF Tribunal's jurisdiction excludes hearing para table tennis matters (to be heard before the IPC Board of Appeal of Classification).

- 3.3 Clause 2.3 of the BAC Bylaws provides that:

the BAC may also be made available for Paralympic sports not governed by the IPC, subject to an agreement between the IPC and the respective international federation governing that sport.

- 3.4 By letter dated 6 September 2024, the BAC Chairperson, Fred Jansen, confirmed that the ITTF had entered into a service agreement with the IPC which provided a mandate to the BAC to resolve allegations in respect of Intentional Misrepresentation in classification in accordance with the BAC Bylaws. As such, the BAC therefore has jurisdiction to hear matters of Intentional Misrepresentation such as the one before it.

- 3.5 The Athlete's legal representative has made various challenges to the authority of the BAC to adjudicate this dispute. The view of the Panel, as set out above, is that it has jurisdiction in accordance with the Classification Rules and the BAC Bylaws namely as:

- (a) Annex 1 of Section 9 of the Classification Rules is clear that matters relating to PTT are to be referred to the BAC (which is reinforced by Articles 1.8.1.1.6 and 8.15.1.2 of the Classification Rules); and
 - (b) Article 32.9 of the Classification Rules confirms that issues relating to Intentional Misrepresentation are to be resolved in accordance with the BAC Bylaws (which confers jurisdiction on the BAC in instances of agreement between the IPC and the relevant international federation).
- 3.6 The notice of Charge in relation to this matter was submitted by the Complainant's Integrity Unit to the Athlete by email on 17 July 2024 (the "**Notice of Charge**").
- 3.7 Pursuant to the discretion afforded to the Panel under clause 8.1 of the BAC Bylaws, the Panel determined the outcome of the Charge following a hearing on 6 November 2024, conducted remotely via Teams (the "**Hearing**").

4. Procedural timeline

- 4.1 A summary of the key stages and dates in the proceedings is as follows:
- (a) **17 July 2024** – the Notice of Charge is sent to the Athlete and to the Fédération Française Handisport (the "**FFH**"), the French national governing body for the sport of PTT.
 - (b) **24 July 2024** – Denovo, legal representatives of the Athlete, objected to the possible provisional suspension of the Athlete prior to the Paris 2024 Paralympic Games.
 - (c) **31 July 2024** – Tyr Law, legal representatives of the Complainant, confirmed an expedited timetable has been sought in consideration of the Paris 2024 Paralympic Games and that a provisional suspension would not be enforced.
 - (d) **24 July 2024** – the FFH issued a letter accepting the sanction against it, denying any wrongdoing on the part of the FFH or the Athlete and stating its continued support of the Athlete in his defence of the Charge.
 - (e) **9 August 2024** – Wieschemann Rechtsanwälte, legal representatives of the Athlete, requested a postponement of the proceedings until after the Paris 2024 Paralympic Games and an extension of time for submission of the Athlete's evidence. This letter also objected to use of accelerated procedures, as provided for in clause 11 of the BAC Bylaws¹.
 - (f) **13 August 2024** – the BAC provided a timetable for directions, with a hearing to be held as soon as reasonably practicable after 20 September 2024.
 - (g) **6 November 2024** – the Hearing took place.

5. The relevant facts

The key events and outcomes in relation to the Charge are as follows:

- 5.1 The Athlete was first classified in PTT Sport Class 7 on 21 October 2014, at the commencement of his career as a PTT player at international level.

¹ Clause 11 contains ad-hoc rules which vary the BAC Bylaws, with the effect of shortening the duration of proceedings to minimise disruption during a Paralympic Games period (Clause 11.1).

- 5.2 On 28 March 2018, a medical review request (“**MRR**”) was submitted by the FFH on behalf of the Athlete, due to a change in the Athlete's condition from triplegic to quadriplegic as a result of a worsening in the condition of his left upper limb. The MRR was submitted for the 2018 Slovenian Open, taking place between 9 – 12 May 2018.
- 5.3 On 9 April 2018, the Athlete was advised by the ITTF classification manager that it would not be possible for him to undergo the “**Medical Review**” (as defined in the Classification Rules) at the 2018 Slovenian Open due to a lack appointments of classifiers for that event.
- 5.4 The ITTF classification manager confirmed on 25 July 2018 that the Medical Review of the Athlete would take place at the upcoming 2018 China Open, in August 2018.
- 5.5 The Athlete had been prescribed a supportive brace for his left hand in June 2017 by Dr Guillemet. The prescription was confirmed on 20 July 2018 by Dr Corbineu. The Athlete received the brace from Proteor, a specialist in the manufacture of prosthetics, on 27 July 2018 (the “**Brace**”).
- 5.6 On 29 August 2018, the Athlete went through the Medical Review at the 2018 China Open in Beijing. In respect of this process:
- (a) the panel of classifiers comprised of Dr Sheng Wu (also designated as the Chief Classifier), Marwan Dia and Yao-chun Chang (the “**Classification Panel**”);
 - (b) the Athlete's classification changed from PTT Sport Class 7 to PTT Sport Class 6 Confirmed (the “**2018 Classification**”); and
 - (c) the 2018 international classification card provided, in the section “*Functional Skills*”, the following: “*Describe any restriction in grip*”: “*need to use brace to support it to prevent loss the racket (sic)*”. Details of an athlete's Sport Class (as defined in Part Twelve of the Classification Rules) are typically recorded in an athlete's international classification card.
- 5.7 The Athlete wore the Brace during the said Medical Review and for some, but not all, of the matches he competed in during the 2018 China Open.
- 5.8 Upon returning to France, the Athlete visited Dr Jean Michel Verret, neurologist, on 10 September 2018. Dr Verret prescribed 5mg trihexyphenidyl and 15mg benzotropine to be taken three times per day, which the Athlete proceeded to take. The Athlete did not appear in PTT matches wearing the Brace after receiving the prescription and starting this course of medication.
- 5.9 No further MRR was submitted until September 2023 when, following a complaint received by the ITTF Integrity Unit on 22 February 2023, a MRR was instigated by the ITTF.
- 5.10 As part of the ITTF's investigation process, a medical certificate was obtained from Dr Claire Delpouve dated 19 June 2023. Dr Delpouve confirmed that the Athlete stopped using the hand Brace in 2020, following a reduction in spasticity due to the effects of the medication prescribed by Dr Verret.
- 5.11 A Medical Review took place on 2 September 2023, as a result of which the Athlete's classification was maintained as PTT Sport Class 6 Confirmed (the “**2023 Classification**”).

6. The Classification Rules

6.1 Part Twelve of the Classification Rules contains the following key definitions:

6.1.1 A Medical Review is defined as:

“The process by which ITTF-PTT identifies if a change in the nature or degree of an Athlete’s Impairment means that some or all of the components of Athlete Evaluation are required to be undertaken in order to ensure that any Sport Class allocated to that Athlete is correct.”

6.1.2 A Medical Review Request (MRR) is defined as:

“A request made by a National Body or National Paralympic Committee for Medical Review, made on behalf of an Athlete.”

6.1.3 Intentional Misrepresentation is defined as:

“A deliberate attempt (either by fact or omission) to mislead an International Sport Federation or National Body as to the existence or extent of skills and/or abilities relevant to a Para Table Tennis and/or the degree or nature of Eligible Impairment during Athlete Evaluation and/or at any other point after the allocation of a Sport Class.”

6.2 The following excerpts of the Classification Rules are included and referred to in this reasoned decision for background information:

Article 1.7 (Classification)

Classification is undertaken with the *“aim to ensure that the impact of any Impairment is minimised, and sporting excellence determines which athlete or team is ultimately victorious.”*

Article 1.8 (Application)

The Classification Rules apply to *“all Athletes and Athlete Support Personnel who are registered or licensed with ITTF-PTT, or participate in any Events or Competitions organised, approved or recognised by ITTF-PTT.”*

Article 2.2 (Athlete Responsibilities)

“The roles and responsibilities of Athletes include to:

[...]

c) be knowledgeable of and comply with all applicable policies, rules and processes established by these Classification Rules;

d) participate in Athlete Evaluation in good faith;

e) ensure when appropriate that adequate information related to Health Conditions and Eligible Impairments is provided and/or made available to ITTF-PTT;

f) cooperate with any investigations concerning violations of these Classification Rules; [...].”

Article 31 (Medical Review)

“31.1 This Article applies to any Athlete who has been allocated a Sport Class with Sport Class Status Confirmed (C) or Review with Fixed Review Date (FRD).

31.2 A Medical Review Request must be made if a change in the nature or degree of an Athlete’s Impairment changes the Athlete’s ability to execute the specific tasks and

activities required by Para Table Tennis in a manner that is clearly distinguishable from changes attributable to aging, levels of training, fitness and proficiency.

- 31.3 *A Medical Review Request must be made by the Athlete's National Body or National Paralympic Committee (together with a €100 non-refundable fee and any supporting documentation). The Medical Review Request must explain how and to what extent the Athlete's Impairment has changed and why it is believed that the Athlete's ability to execute the specific tasks and activities required by a sport has changed.*
- 31.4 *A Medical Review Request must be received by ITTF-PTT as soon as reasonably practicable.*
- 31.5 *The Head of Classification must decide whether or not the Medical Review Request is upheld as soon as is practicable following receipt of the Medical Review Request.*
- 31.6 *Any Athlete or Athlete Support Personnel who becomes aware of such changes outlined in Article 31.2 but fails to draw those to the attention of their National Body, National Paralympic Committee or ITTF-PTT may be investigated in respect of possible Intentional Misrepresentation.*
- 31.7 *If a Medical Review Request is accepted, the Athlete's Sport Class Status will be changed to Review (R) with immediate effect."*

Article 32 (Intentional Misrepresentation)

- "32.1 *It is a disciplinary offence for an Athlete to intentionally misrepresent (either by act or omission) his or her skills and/or abilities and/or the degree or nature of Eligible Impairment during Athlete Evaluation and/or at any other point after the allocation of a Sport Class. This disciplinary offence is referred to as 'Intentional Misrepresentation'.*
- 32.2 *It will be a disciplinary offence for any Athlete or Athlete Support Personnel to assist an Athlete in committing Intentional Misrepresentation or to be in any other way involved in any other type of complicity involving Intentional Misrepresentation, including but not limited to covering up Intentional Misrepresentation or disrupting any part of the Athlete Evaluation process.*
- 32.3 *In respect of any allegation relating to Intentional Misrepresentation a hearing will be convened by ITTF-PTT to determine whether the Athlete or Athlete Support Personnel has committed Intentional Misrepresentation.*
- 32.4 *The consequences to be applied to an Athlete or Athlete Support Personnel who is found to have been guilty of Intentional Misrepresentation and/or complicity involving Intentional Misrepresentation will be one or more of the following:*
- 32.4.1 *disqualification from all events at the Competition at which the Intentional Misrepresentation occurred, and any subsequent Competitions at which the Athlete competed;*
- 32.4.2 *being allocated with Sport Class Not Eligible (NE) and designated a Review with Fixed Review Date (FRD) Sport Class Status for a specified period of time ranging from 1 to 4 years;*
- 32.4.3 *suspension from participation in Competitions in all sport for a specified period of time ranging from 1 to 4 years; and*

32.4.4 *publication of their names and suspension period.*

32.5 *Any Athlete who is found to have been guilty of Intentional Misrepresentation and/or complicity involving Intentional Misrepresentation on more than one occasion will be allocated Sport Class Not Eligible with Fixed Review Date Status for a period of time from four years to life.*

[...]

32.7 *If another International Sports Federation brings disciplinary proceedings against an Athlete or Athlete Support Personnel in respect of Intentional Misrepresentation which results in consequences being imposed on that Athlete or Athlete Support Personnel, those consequences will be recognised, respected and enforced by ITTF-PTT.*

32.8 *Any consequences to be applied to teams, which include an Athlete or Athlete Support Personnel who is found to have been guilty of Intentional Misrepresentation and/or complicity involving Intentional Misrepresentation, will be at the discretion of ITTF-PTT.*

32.9 *Any disciplinary action taken by ITTF-PTT pursuant these Classification Rules must be resolved in accordance with the applicable Board of Appeal of Classification Bylaws."*

7. Basis of the Charge and parties' submissions

7.1 The Notice of Charge

7.1.1 The Complainant, upon completing its investigation, concluded that there had been a change "*in the Athlete's ability to execute the specific tasks and activities required by Para Table Tennis*" and a MRR should have been submitted pursuant to Article 31 of the Classification Rules.

7.1.2 The Notice of Charge stated:

"There had been improvement in your impairment resulting in you not needing to wear the brace prescribed and built for you, amounting to a change in the nature or degree of your impairment which changed your ability to execute the specific tasks and activities required by PTT. That should have triggered a further MRR.

Ultimately there were two compelling and self-evident reasons for you to have re-submitted for classification post-the China Open 2018; (i) the fact that you stopped wearing the brace (which you wore during the 2018 classification); and (ii) the medication prescribed by Dr Verret. Both of these were material changes which had potential to affect your classification."

7.1.3 The Notice of Charge set out the allegation that the Athlete had committed an Intentional Misrepresentation, in respect of Article 32.1 of the Classification Rules, by failing to submit a MRR following a consultation with, and subsequent prescription from, Dr Verret in September 2018.

7.2 The Complainant's submissions

The Complainant's allegations in the Notice of Charge centred upon the Athlete's failure to submit a MRR following an alleged change or improvement in his impairment. The reasoning for the Complainant's decision to charge the Athlete with Intentional Misrepresentation may be summarised as follows:

7.2.1 the Complainant submits that there was an improvement in the Athlete's impairment after the 2018 Classification, as evidenced by:

- (a) the fact that he did not wear the Brace on any further occasion following the 2018 China Open;
- (b) a medical report of Dr Delpouve, concluding that the effect of the medication prescribed by Dr Verret improved the spasticity in his left arm to the extent that the Athlete no longer needed to wear the Brace; and
- (c) an improvement in the Athlete's performance trajectory such that he was selected for the European Championship in 2019 and joined the French national team, training with them from January 2022 onwards;

7.2.2 in light of the abovementioned improvement in his impairment, a revaluation (classification) should have been sought once the Athlete stopped wearing the Brace and following the prescription of medication from Dr Verret. The Athlete's failure to update the Complainant as to the status of his impairment was in breach of, among others, Article 2.2(e) of the Classification Rules;

7.2.3 the Complainant further submitted that the Athlete has breached Article 31.2 of the Classification Rules by his failure to notify a relevant body of a change in the nature or degree of his impairment, which has affected his ability to execute the specific tasks and activities required by PTT;

7.2.4 in support of this, the Complainant relied upon video evidence of the Athlete competing without the Brace and the Athlete's sudden move up the ITTF-PTT rankings following the treatment in 2018 which reduced the level of spasticity the Athlete experienced;

7.2.5 the Complainant also submitted that even if it is considered that the Medical Review process was not triggered by the Athlete having stopped wearing the Brace, it was triggered by the improvement in his condition as a result of taking the medication prescribed to him by Dr Verret. This amounted to a change in the nature or degree of his impairment which changed his ability to execute the specific tasks and activities required by PTT.

7.3 The Athlete's submissions

In respect of the Complainant's allegations, the Athlete submitted the following responses:

7.3.1 the Athlete relies upon his PTT Sport Class 6 Confirmed status having been maintained following the 2023 Classification. It is the Athlete's position that the medication prescribed to him by Dr Verret on 10 September 2018 for the treatment of spasticity of his left upper limb had no effect on the determination of the sport class to which he belongs, as evidenced by his continuing PTT Sport Class 6 Confirmed status;

7.3.2 further, the Athlete submitted that *"If Dr Wu gave this advice knowing that there probably was a medication possible for Esteban to improve his spasticity problems in the upper limbs, he should have told him "come back and see me afterwards", and moreover he have (sic) given him a "Review" status."*;

7.3.3 the medication prescribed by Dr Verret had the same effect as the Brace and in fact: *"Dr Wu being allegedly a medical expert and an experienced classifier was of the opinion:*

- (a) *that the change of compensation would not change the appellant's eligibility to perform the specific tasks in table tennis and*
- (b) *that the change of compensation or better the change of therapy is nothing of interest for classification procedure;"*

- 7.3.4 the use of the Brace was not mandatory and adaptative equipment(s) shall have no relevance as to the classification (pursuant to Article 8.6 of the Classification Rules);
- 7.3.5 the Athlete asserted that he was supposed to be classified at the 2018 Slovenia Open, before the Brace was delivered to him;
- 7.3.6 the Athlete has stated that he was unaware of the Medical Review process under the Classification Rules and that, if he had been, he would have reported the change in his impairment after the 2018 China Open immediately; and
- 7.3.7 the Athlete maintains that there was no dishonesty on his part in his omission to submit a MRR between September 2018 and 2023. He submits that, if the Classification Panel at the 2018 China Open had considered that he should be reviewed after consultation with a neurologist or depending on the progress of his level of impairment with or without a Brace, they would have assigned him the status "R- Review" or "FRD - Review with fixed review date".

8. Approach of the Panel

The Panel has carefully considered the submissions and evidence before it. Where this reasoned decision does not specifically mention any submission, this is not to be taken as a failure of the Panel to consider those submissions. Save for the issue of inadmissible evidence (which is discussed at paragraphs 8.3 – 8.3.7 inclusive), all evidence and submissions before the Panel was considered.

8.1 The burden of proof

- 8.1.1 In considering the arguments submitted by the parties, the Panel had regard to the burden of proof placed on the Complainant. In order for the Panel to make a finding of Intentional Misrepresentation, the Complainant must demonstrate that the Athlete has, by act or omission, made a deliberate attempt to:

“mislead an International Sport Federation or National Body as to the existence or extent of skills and/or abilities relevant to a Para Table Tennis and/or the degree or nature of Eligible Impairment during Athlete Evaluation and/or at any other point after the allocation of a Sport Class.”

- 8.1.2 The standard of proof is to *“the comfortable satisfaction of the Hearing Panel”*, as prescribed by Rule 8.33.1 of the ITTF Handbook 2022. The standard of proof is *“higher than a mere balance of probability but lower than proving beyond a reasonable doubt.”*

8.2 Fairness and transparency of the proceedings

- 8.2.1 The Athlete made various arguments as to the potential unfairness of these proceedings. In particular:

- (a) the Athlete argued that he was not provided with a copy of, or access to, the initial February 2023 complaint made to the Complainant; and
- (b) the Athlete also stated that it was procedurally unfair that he (or his legal representatives) were unable to *“interrogate”* Dr Wu prior to the hearing while the Complainant, on the contrary, was able to.

- 8.2.2 In respect of these arguments:

- (a) the Panel understands that the Athlete was informed of the substance and provided with an overview of the complaint made against him which resulted in these proceedings being

brought. It is the nature of an investigation that some details (such as the identity of the complainant) are kept confidential, in order preserve the integrity of the investigation; and

(b) Dr Wu was made available for cross-examination during the Hearing. The Panel was not persuaded that being unable to “interrogate” or otherwise question Dr Wu prior to the Hearing had a material impact on the Athlete being able to make his defence. Despite issues of admissibility (see paragraphs 8.3 – 8.4.6 inclusive), the Athlete would have had an opportunity to put questions to Dr Wu at the Hearing.

8.2.3 More generally, the Panel acknowledges that the Athlete was provided with the opportunity to explain his account of events during the interview on 9 February 2024 and he had the right to submit all documents of his choosing for consideration by the Panel.

8.2.4 The Panel is satisfied that the procedure has been undertaken in a manner which provides full clarity to the Athlete. All the facts have been brought before the Athlete and before the Panel and the Athlete was given a fair opportunity to set out his defence to the Notice of Charge.

8.3 Admissibility of witness evidence

8.3.1 As per Article 8.31.1 of the ITTF Tribunal Regulations 2021:

"The Hearing Panel has the ability to decide on the admissibility, relevance and weight of any evidence and shall not be bound by any judicial or evidential rules in relation to such matters."

8.3.2 This discretion is also contained in clause 7.9 of the BAC Bylaws.

8.3.3 During the course of the Hearing, it transpired that both Dr Wu and Mr Carpenter, who had provided the Panel with written witness statements on behalf of the Complainant, had had sight of the hearing bundle prior to giving oral evidence. That hearing bundle contained witness evidence and submissions of the parties.

8.3.4 The Panel consider that it was inappropriate for Dr Wu and Mr Carpenter to have had access to the full hearing bundle prior to giving evidence at the Hearing.

8.3.5 As such, in its discretion, the Panel did not rely on anything written or said by these witnesses.

8.3.6 The Panel acknowledges that nothing has arisen in the course of the proceedings which would bring into question the credibility of such witnesses, but the Panel, in its view, could not rely on written or oral testimony which may have been (or, at the lowest, had the appearance of having been) improperly influenced by having access to full case materials.

8.3.7 The Panel heard oral evidence from the Athlete at the Hearing, the content of which is discussed further below in this reasoned decision. There was no reason before the Panel to question the admissibility of the evidence submitted by the Athlete.

9. **Assessment of the Charge**

9.1 The application of the Classification Rules

9.1.1 In its assessment of the Notice of Charge, the Panel considered the Classification Rules relating to Intentional Misrepresentation.

9.1.2 The Panel noted slight discrepancies in approach between Articles 31 and 32 of the Classification Rules in respect of the definitions of “Impairment” and “Eligible Impairment”.

9.1.3 Article 31.2 refers to a “*change in the nature or degree of an Athlete’s **Impairment** [which] changes the Athlete’s ability to execute the specific tasks and activities required by Para Table Tennis*”. The lack of a subsequent MRR may result in the investigation of the Athlete for Intentional Misrepresentation, pursuant to Article 31.6.

9.1.4 However, the definition of Intentional Misrepresentation at Part Twelve of the Classification Rules refers to the “*the existence or extent of:*

(i) *skills and/or abilities relevant to a Para Table Tennis and/or*

(ii) *the degree or nature of **Eligible Impairment***

during Athlete Evaluation and/or at any other point after the allocation of a Sport Class.”

(emphasis added)

9.1.5 The description of Intentional Misrepresentation in Article 32.1 is also distinguishable from Article 31.2, as it states that “*It is a disciplinary offence for an Athlete to intentionally misrepresent (either by act or omission):*

(i) *his or her skills and/or abilities and/or*

(ii) *the degree or nature of **Eligible Impairment***

during Athlete Evaluation and/or at any other point after the allocation of a Sport Class. This disciplinary offence is referred to as ‘Intentional Misrepresentation’.”

(emphasis added)

9.1.6 Whilst Articles 31.2 and 31.6 are clear in their purpose (in potentially triggering an investigation for Intentional Misrepresentation), when it comes to the question of establishing Intentional Misrepresentation under Article 32, it can be seen that the focus is on changes in “*skills and/or abilities and/or (ii) the degree or nature of Eligible Impairment*” (the latter, in particular, being very much different to “*Impairment*” in itself as it is Eligible Impairment which facilitates an Athlete’s entry into the sport of PTT).

9.1.7 The Panel agreed that whilst there was a clear need to consider the degree and nature of the (Eligible) Impairment, the Classification Rules also require consideration of the effect of the medication on the Athlete’s ability and skill. Further, the Classification Rules cross-reference each other and are intended to be applied as a whole.

9.1.8 Notwithstanding any potential slight discrepancy in the Classification Rules, they consistently feature the use of “*and/or*” throughout, confirming that Intentional Misrepresentation can encompass a failure to seek MRR following a change in skills and or abilities, regardless of any potential impact on the Eligible Impairment of any athlete.

9.1.9 The Panel has adopted the purposive approach in its interpretation of the Classification Rules, that is, by first looking at the reading of the words in the most literal sense possible but taking care not to read the Classification Rules in a way that destroys their concepts or validity. In this regard, the Panel were mindful of Article 1.7 of the Classification Rules which states that classification is undertaken “*with the aim of ensuring that the impact of any Impairment is minimised, and sporting excellence determines which athlete or team is ultimately victorious*”. *It is an essential component of ensuring fairness of PTT and preserving the integrity of ITTF-PTT’s competitions around the world.*”



9.1.10 The Panel were also mindful of the application of the Classification Rules on all athletes (pursuant to Article 1.8) and the responsibilities placed on all athletes, pursuant to Article 2.2, to:

c) be knowledgeable of and comply with all applicable policies, rules and processes established by these Classification Rules;

d) participate in Athlete Evaluation in good faith;

e) ensure when appropriate that adequate information related to Health Conditions and Eligible Impairments is provided and/or made available to ITTF-PTT;

9.1.11 As such, the Classification Rules provide that if there is a change in skills and/or ability (which are distinguishable from changes attributable to aging, training levels, fitness and/or proficiency) the onus is on the Athlete to submit a MRR.

9.2 Assessment of the facts

9.2.1 In accordance with the medical certificate of Dr Delpouve, the treatment prescribed to the Athlete by Dr Verret in September 2018 has improved his condition. Although the Athlete still requires the use of a grip, the medication has reduced the spasticity in his limbs, as a result of which he can play without the Brace. It was not disputed that the Athlete did compete without the Brace since he started to take the medication prescribed by Dr Verret in September 2018.

9.2.2 The Panel heard direct evidence from that Athlete that the tremors he experienced diminished “noticeably” in “his daily life” following taking the medication prescribed to him by Dr Verret. The Panel considered that this improvement in daily life could not reasonably be isolated from his athlete’s life (and his performance as such).

9.2.3 This demonstrates a “change in the nature or degree of an Athlete’s Impairment [which] changes the Athlete’s ability to execute the specific tasks and activities required by Para Table Tennis in a manner that is clearly distinguishable from changes attributable to aging, levels of training, fitness and proficiency” postulated by Article 31.2 of the Classification Rules, which should have triggered a MRR.

9.2.4 The Panel considers that the Athlete was aware (or should have been aware) of his obligation to request a MRR because he had previously done so in 2018 and because of the general obligations on him as an athlete subject to the Classification Rules. The tremor(s) diminished “noticeably” and therefore the change was not so minor as to go unnoticed by him and should have been reported. The fact that this was caused by medication does not have any implication for the application of Article 31.2 of the Classification Rules.

9.2.5 The Panel also consider that the fact that the Athlete was given a PTT Sport Class 6 Confirmed on 2 September 2023 (i.e. the same PTT Sport Class he held since the 2018 Classification) is irrelevant to the conduct leading to the Charge. It is not any athlete’s right or responsibility to determine their own sport class, as this role is required to be undertaken by appropriately trained and qualified classifiers. An athlete cannot abrogate the role of classifiers by failing to submit a MRR according to the Classification Rules.

9.3 The Athlete’s understanding

9.3.1 The Athlete is an experienced PTT player at international level. Owing to his level of experience, it is not credible to believe that the Athlete failed to submit a MRR – following the improvement of his impairment as consequence of the taking of the medication prescribed to him by Dr Verret – due to a lack of knowledge of the Classification Rules.

- 9.3.2 By having previously submitted a MRR to obtain a new classification in 2018, the Athlete has clearly demonstrated prior awareness of the need to submit a MRR further to a change in his impairment. That need occurs both in case of an unfavourable change (from triplegic to quadriplegic as it happened in 2018) and a favourable one (improvement of his impairment due to the reduction in his tremors/spasticity). The Panel cannot reasonably conclude that improvements in the Athlete's daily life pursuant to the medication prescribed to him by Dr Verret have not also resulted in an improvement in the Athlete's life (and his performance as such) and thereby the Athlete should have been aware that there was at least a need to seek a further MRR and not abrogate any potential decision of a classification panel by choosing not to.
- 9.3.3 The Athlete committed a disciplinary offence of Intentional Misrepresentation by omission, the moment he noticed the (noticeable) reduction in the tremors/spasticity he previously suffered following the taking of the medication prescribed to him by Dr Verret. This improved the Athlete's ability to hold a racquet which is integral to the sport of PTT. There was no logical reasoning provided as to why the Athlete did not report this change appropriately and in accordance with the Classification Rules.
- 9.3.4 Given the Athlete's understanding of the Classification Rules and the understanding he would have undoubtedly held in respect of his improved impairment (i.e. that the medication prescribed to him by Dr Verret positively reduced his tremors/spasticity which had a positive impact on his ability and/or skill), the Panel concludes that this omission was deliberate (for the purposes of the definition of Intentional Misrepresentation in the Classification Rules) and intentional (for the purposes of Article 32.1 of the Classification Rules).
- 9.3.5 It is the Panel's view that the unreported change in the Athlete's ability to perform the task of holding his racquet and his improved skill in respect of PTT amounts to Intentional Misrepresentation.

9.4 The FFH

- 9.4.1 The Panel also notes for completeness that the FFH accepted the charge and sanction brought against it for Intentional Misrepresentation but stated that it supported the Athlete in his defence. The Panel finds that these two positions are logically inconsistent, and the acceptance of a charge of Intentional Misrepresentation brought against the FFH could not have been accepted without the Intentional Misrepresentation of the Athlete occurring too.

10. **Decision and Order**

- 10.1 The Panel unanimously has found that the Charge was proven.
- 10.2 As the Panel have found the Charge proven, the issue of sanctions must be considered.
- 10.3 The consequences which may follow a finding of Intentional Misrepresentation are outlined in Article 32.4 of the Classification Rules as being one or more of the following:

“32.4.1 disqualification from all events at the Competition at which the Intentional Misrepresentation occurred, and any subsequent Competitions at which the Athlete competed;

32.4.2 being allocated with Sport Class Not Eligible (NE) and designated a Review with Fixed Review Date (FRD) Sport Class Status for a specified period of time ranging from 1 to 4 years;

32.4.3 suspension from participation in Competitions in all sport for a specified period of time ranging from 1 to 4 years; and

32.4.4 *publication of their names and suspension period.*"

- 10.4 The Complainant requested that the following sanctions are applied to the Athlete pursuant to Article 32.4 of the Classification Rules:
- (a) Disqualification from all events following the 2018 China Open up until the September 2023 event at which the Athlete was re-classified and competed (i.e. from 10 September 2018 to 2 September 2023);
 - (b) Suspension from participation in competitions in all sport for 2 years from the date the Charge is (admitted by the Athlete) or upheld by the Panel; and
 - (c) Publication of the Athlete's name and suspension period.
- 10.5 The Complainant submitted that such sanctions were appropriate considering the potential impact the Athlete's Intentional Misrepresentation on a range of competitions since 2018 and the fact that he failed to submit a fresh MRR in accordance with the Classification Rules for a period of five years. The Complainant submitted that given the Athlete had a clean disciplinary record, prior to the events leading to the Notice of Charge, a lesser sanction of a two-year period of ineligibility should be imposed rather than a four-year period (the maximum ineligibility period available pursuant to Article 32.4.3 of the Classification Rules).
- 10.6 The Athlete submitted that no sanction should be imposed. By particular reference to periods of ineligibility, the Athlete submitted that he never sought an advantage and other case examples of Intentional Misrepresentation found against athletes which resulted in periods of ineligibility being imposed concerned athletes acting intentionally to achieve an advantage.
- 10.7 In respect of the request of the Complainant to impose a further prospective period of ineligibility on the Athlete, the Panel is conscious on the one side of the long time (from around 10 September 2018 until February 2023, i.e. almost 5 years) during which the Athlete competed without wearing the Brace and without any officials (apparently) noticing it notwithstanding the 2018 international classification card mentioned "*need to use brace to support it to prevent loss the racket*", and on the other side of the delays in the proceedings caused by the Complainant. Specifically, after receiving the report of a complaint on 22 February 2023, the Complainant did not submit the Notice of Charge until 17 July 2024 (i.e. 17 months after the report of complaint). The Panel appreciates that the Classification Rules provide for a "self-reporting" system (in which the athletes have the obligation to report any change in their health conditions and/or impairment) but considers the 5 year period (without any officials noticing that the Athlete was not wearing the Brace) and the 17-month delay in notifying the Notice of Charge to be excessive and not acceptable in the interests of the sport, the athletes and the Paralympic Movement.
- 10.8 This delay was inexplicable and the Panel considers such delays as manifestly unfair to the Athlete. Imposing a further period of ineligibility on the Athlete when the issue could have been raised sooner, and/or the Charge brought sooner, and/or the imposition of a provisional suspension would have removed the possibility of the Athlete serving and completing a period of ineligibility earlier than if the Panel imposed a period of ineligibility prospectively as sought by the Complainant.
- 10.9 The regulator responsible for investigating and bringing charges in relation to Intentional Misrepresentation has a responsibility to act as quickly and effectively as possible to safeguard the interest of all athletes. The failure of the Complainant to conclude the whole proceedings sooner (even accounting for a period required to investigate the issue) should not be borne by the Athlete.
- 10.10 Consequently, the Panel has determined not to impose on the Athlete any suspension pursuant to Article 32.4.3 of the Classification Rules.

10.11 The Panel, in its discretion, has determined that the Athlete's results from competitions between around 10 September 2018 until 2 September 2023 should be disqualified and that his name and the proving of the Intentional Misrepresentation should be published in light of the following reasons:

- (a) Intentional Misrepresentation is an extremely serious issue which goes against the very ethos and essence of the Paralympic Movement;
- (b) the Athlete's omission, considering the Athlete's obligations under the Classification Rules, his knowledge of classification (or the knowledge he must have) and the importance of classification to fair competition, was significant and serious;
- (c) it is unacceptable for competitions to be tainted by a particular athlete receiving an unfair advantage as a result of an Intentional Misrepresentation;
- (d) publication and disqualification is a necessary consequence in instances of Intentional Misrepresentation in order to appropriately penalise the Athlete, vindicate other competitors and safeguard the sanctity of the Paralympic Movement; and
- (e) the publication of decisions relating to Intentional Misrepresentation is also an important deterrent against future violations, whether by the Athlete or any others involved in the Paralympic Movement.

10.12 Consequently, the Panel hereby orders that there is to be:

- (a) Disqualification of the Athlete from all the competitions he took part in from around 10 September 2018 until 2 September 2023; and
- (b) Publication of the Athlete's name confirming that the Charge of Intentional Misrepresentation has been proven.

Deliberated on 7 November 2024



Alberto Predieri
Panel Chairperson

Milan, 09.01.2025