



COMPLAINT AND GRIEVANCE COMMITTEE

Appeal of Dillian Whyte

Award

INTRODUCTION

This *Appeal* was referred to the WBO Complaint and Grievance Committee (“Committee”) on July 8th, 2019. The Initial Docketing and Scheduling Conference Call was scheduled for July 19th, 2019, but as requested by Petitioner Dillian Whyte (“Whyte” or “Petitioner”), was rescheduled for July 30th, 2019.

On July 22nd, 2019 Aleksander Usyk (“Usyk”) filed a *Motion to Dismiss*. Whyte was granted until July 26th, 2019 to file his position regarding Usyk’s *Motion to Dismiss*.

During the Initial Docketing and Scheduling Conference Call held on July 30th, 2019, (i) Whyte requested leave to file its response to the *Motion to Dismiss* on or before July 31st, which was granted, (ii) the parties were granted until July 31st to file additional submissions or documentary evidence and (iii) the parties agreed that the Committee could issue this Award without celebrating an evidentiary hearing, based on the pleadings, submissions, briefs and documentary evidence in the docket.

Whyte filed his response to the *Motion to Dismiss*, additional submissions and documentary evidence on July 30th and 31st, respectively; while Usyk filed additional submissions on July 31st.

On August 1st, 2019 the Committee issued an *Order* granting the parties until the next day to express their respective positions regarding (i) whether the Committee may take notice of the fact that Whyte was provisionally suspended by the WBC pending investigation into a failed drug test and (ii) what effect, if any, this fact has on, among other things, the remedy requested by Whyte in this *Appeal*. Both parties filed positions on this matter within the deadline granted. Therefore, the *Appeal* was finally submitted for adjudication on August 2nd, 2019.

FACTS

1. On January 27th, 2018 Usyk unified the WBO/WBC Jr. Heavyweight Championship titles as part of the World Boxing Super Series Jr. Heavyweight Semifinals and defended successfully his WBO Jr. Heavyweight Championship for a fourth (4) consecutive occasion.

2. On July 21st, 2018 Usyk made history becoming the first ever Undisputed Jr. Heavyweight Champion of the World, winning all four titles of the principal boxing organizations and major sanctioning bodies (WBO, WBC, WBA and IBF).

3. After considering Usyk's professional accomplishments and amateur track record, on July 24th, 2018 the WBO Championship Committee issued a *Resolution* designating him as WBO Super Champion.

4. On March 8th, 2019 Whyte's team sent an email to WBO President Francisco 'Paco' Valcarcel ("WBO-President") requesting that Whyte be designated as the Mandatory Challenger in the Heavyweight Division without further delay.

5. On March 11th, 2019 WBO-President responded to Whyte's request and stated the following: "Wherefore, we regrettably cannot grant your request at this time. Nonetheless, we strongly advise keeping Mr. Whyte active in competition."

6. On June 2nd, 2019, John Hornewer, *Esq.*, on behalf of Usyk, sent a letter to WBO-President requesting that Usyk, as WBO Super Champion, be designated as the Mandatory Challenger in the Heavyweight Division. Usyk also informed that he was surrendering the WBO Cruiserweight Championship.

7. On June 3rd, 2019 the WBO Championship Committee approved Usyk's request to be designated as the Mandatory Challenger in the Heavyweight Division.

8. On June 4th, 2019 the WBO Championship Committee sent a communication to Whyte as follows:

On Monday, June 3rd, 2019, the World Boxing Organization (WBO) acknowledge receipt of an email communication submitted by Mr. John Hornewer, *Esq.*, on behalf of WBO Super Champion Mr. Oleksander Usyk, whereby the WBO World Championship Committee was forwarded a request letter and application form regarding official designation of Mr. Usyk as WBO Challenger in the WBO Heavyweight Division. Further, said request was duly notified by email to you and your team representatives, respectively.

On Tuesday, June 4th, 2019, the WBO acknowledge receipt of an email communication reply on your behalf confirming receipt of Mr. Usyk's Mandatory Challenger Designation request and in turn, formally requesting that the WBO refrained from undertaking any deliberations on the referenced matter in order to consider Mr. Usyk's petition and reply accordingly.

In light of your request, the WBO World Championship Committee hereby orders you and all interested parties to expose their respective positions and arguments regarding Mr. Usyk's Mandatory Challenger request within the following non-extendable ten (10) day period. The time frame set forth herein triggers officially upon receipt of this letter.¹

9. On June 22nd, 2019 the WBO Championship Committee issued a *Resolution* designating Usyk "as the Mandatory Challenger of the WBO Heavyweight Division in accordance with the privileges and rights afforded pursuant to his WBO Super Champion status recognition."

¹ The WBO Championship Committee also sent this communication to: (i) David Augustus Garcia, *Esq.*/Andy Ruiz Jr.; (ii) Neil Sibley/Dillian Whyte; (iii) Eddie Hearn/Matchroom Boxing; and (iv) Robert Smith/British Boxing Board of Control.

10. On July 5th, 2019, Whyte filed this *Appeal* with the WBO-President requesting that the *Resolution* issued on June 22nd, 2019 by the WBO Championship Committee be reversed and that Petitioner be reinstated as the #1 ranked challenger in the Heavyweight division.

11. On July 20th, 2019, Whyte defeated Oscar Rivas and became the WBC Interim Heavyweight World Champion.

12. Shortly after defeating Rivas and becoming the WBC Interim Heavyweight World Champion, Whyte was provisionally suspended by the WBC pending an investigation into an adverse finding in a drug test related to the Rivas match.

ANALYSIS

There is no doubt that Whyte and Usyk are bound by the WBO Regulations of World Championship Contests (“WBO-Regulations”) and that the WBO-Regulations apply to this *Appeal*. *See*, §35(f) of the WBO-Regulations.

“It is the policy of the World Boxing Organization to encourage its Champions to pursue recognized status as undisputed World Champions and to unify the Championships of the four major world sanctioning organizations (the WBO, WBA, WBC and IBF).” *See*, §14(a) of the WBO-Regulations. One of the elements considered by the WBO in determining whether a boxer deserves the designation of Super Champion is “if the prospective Super Champion has unified the championships of more than one (1) of the four (4) major world sanctioning bodies.” *See*, §14(a)(5)(C) of the WBO-Regulations.

Boxers who are designated with the status of Super Champions qualify for certain rights and privileges under the WBO-Regulations. Among others, “[i]f requested by a Super Champion, the Championship Committee may designate the Super Champion as the Mandatory Challenger for the immediate higher or lower division.” *See*, §14(d)(2) of the WBO-Regulations. As such,

the discretionary power granted to the WBO Championship Committee to grant the request of a WBO Super Champion to be designated as the Mandatory Challenger in the immediate higher division is clear.

Therefore, the standard of review to be used by this Committee to evaluate an appeal questioning a determination of the WBO Championship Committee granting the request of a Super Champion to be designated as the Mandatory Challenger in the immediate higher division is abuse of discretion.

Although it is generally difficult to formally define the concept ‘abuse of discretion’, it definitely requires the analysis of whether the questioned determination is reasonably supported by the record. It requires the adjudicator to draw a line between (i) the plain error, disorder of reason, severe lapse of judgment and procedural failure, and (ii) the simple disagreement with the result.

After carefully reviewing the parties’ submissions, the uncontested facts, and documentary evidence, it is evident that the WBO Championship Committee did not abuse its discretion in granting Usyk’s request to be designated as the Mandatory Challenger in the Heavyweight Division.

It is an uncontested fact that Usyk became the first ever Undisputed Jr. Heavyweight Champion of the World in July 21st, 2018, winning all four titles of the major sanctioning bodies. Also, Usyk unified the WBO/WBC Jr. Heavyweight Championship titles. After considering those professional accomplishments and his amateur track, Usyk was designated as WBO Super Champion. Usyk’s status as a Super Champion along with his fighting record provides strong support for the WBO Championship Committee’s decision, as both prove that Usyk is a “class boxer.”

Usyk's designation as Mandatory Challenger of the WBO Heavyweight Division is strongly supported by the record. The WBO Championship Committee issued a determination in full compliance of its faculties pursuant to the WBO-Regulations and WBO's policies, specifically those related to boxers designated as Super Champions.

While Whyte's record is impressive and could support the designation as a Mandatory Challenger, the role of the Committee is not to say whether it would have reached a different conclusion; only whether the WBO Championship Committee is reasonably supported by the record. Accordingly, there is no basis to reverse the WBO Championship Committee's determination designating Usyk as the Mandatory Challenger in the Heavyweight Division.

Although we need go no further in affirming the WBO Championship Committee's *Resolution* and to deny Whyte's *Appeal*, we stress that Petitioner's victory over Rivas and provisional suspension by the WBC counsels in the same direction.

If Whyte is permanently suspended by the WBC, the WBO Championship Committee would have ample discretion to take measures against Whyte. To this effect, the WBO encourages and expects that its boxers "be an example of the highest ideals and spirit of sportsmanship."² These characteristics are incompatible with the use of drugs or stimulants before or during a contest.³

Conversely, if Whyte is otherwise confirmed as the WBC Interim Heavyweight World Champion, he will be bound by the WBC Rules & Regulations ("WBC-Regulations"), which state that "a WBC Interim World Champion shall be considered a true WBC World title for all purposes, other than with respect to a bout versus the actual World Champion, absent any order to the contrary from the WBC in its sole discretion." *See*, §3.22 of the WBC-Regulations.

² *See*, Preamble of the WBO-Regulations.

³ *See*, §§ 28 and 35(b) of the WBO-Regulations, among others.

As a true WBC World title holder, Whyte will be able to defend its WBC title with a champion of the WBO only “with the approval of or ratification by a majority of the [WBC] Board of Governors”. *See*, §3.3(b)(v) of the WBC-Regulations. Therefore, if Whyte is confirmed as the WBC Interim Heavyweight World Champion, the WBO cannot rank him as Mandatory Challenger in the Heavyweight Division without the prior approval of or ratification by the majority of the WBC Board of Governors. However, even with the approval of the WBC Board of Governors, any attempt by Whyte to challenge the WBO Heavyweight World Champion under those circumstances, would be consider a Unification Bout under §7 of the WBO-Regulations, which also discards the possibility of considering him to be a Mandatory Challenger in the WBO Heavyweight Division.

Moreover, ordinarily the WBO and the other principal boxing organizations –WBC, IBF and WBA- do not include in their rankings a World Champion -whether Regular, Super or Interim- of another organization for obvious reasons. This means that if confirmed as the WBC Interim Heavyweight World Champion, and therefore considered a true WBC World title holder in the Heavyweight Division, Whyte cannot be included in the rankings nor considered a Mandatory Challenger in the WBO Heavyweight Division.

Consequently, there is no feasible scenario under Whyte’s current circumstances in which he may be designated as the Mandatory Challenger of the WBO Heavyweight Division.

CONCLUSION

Whyte’s appeal is **DENIED** and the WBO Championship Committee *Resolution* issued on June 22, 2019 is **AFFIRMED**.

The parties are advised that, pursuant to §3 of the WBO-Regulations, this Award constitutes the final decision on the merits of this controversy.

The parties are further advised that pursuant to §35 of the WBO-Regulations they may enforce or seek review of this Award solely before the United States District Court for the District of Puerto Rico or the Court of First Instance of the Commonwealth of Puerto Rico, under the terms provided by the United States Arbitration Act, 9 U.S.C. §§1-16; the Puerto Rico Commercial Arbitration Act, P.R. Laws Ann. tit. 32, §§3201-3229; the Inter-American Convention on International Commercial Arbitration, July 30, 1975, 8 U.S.T. 2043; the Convention on the Recognition and Enforcement of Foreign Arbitration Awards, June 10, 1958, 21 U.S.T. 2517; and applicable case law.

Served upon the parties today via e-mail: Neil Sibley, N.Sibley@valemuslaw.com; David Augustus García, Esq., david@garcialaw.org; John Hornewer, Esq., hornewer@hotmail.com; Egis Klimas, eklimas@hotmail.com; Alexander Krassyuk, gm@k2ukraine.com; Eddie Hearn, eddie.hearn@matchroom.com; Robert Smith, rsmith@bbbofc.com; London Boxing, dillianbox@gmail.com.

Issued today, August 15th, 2019.

/s/Fernando J. Gierbolini-González
Fernando J. Gierbolini-González, Esq.
Chairman

/s/ José R. Negrón-Fernández
José R. Negrón-Fernández, Esq.
Member

/s/Scott E. Gizer
Scott E. Gizer, Esq.
Member