

ORDER ON COSTS

DECISION 2023/01

OF THE

BADMINTON WORLD FEDERATION

INDEPENDENT HEARING PANEL

QUESTION 1

CLAIMANT: Badminton World Federation

FIRST RESPONDENT: Badminton Confederation Africa

SECOND RESPONDENT: Mr. Donald Mabo

QUESTION 2

COMPLAINANT: Badminton Confederation Africa

DEFENDANT: Mr. Donald Mabo

PANEL: Mr. James Kitching (Chair)

Mr. Enric Ripoll Gonzalez

Ms. Yuri Yagi

DATE: 7 February 2024

Regarding Decision 2023/01 of the BWF Independent Hearing Panel dated 7 December 2023

PRELIMINARY MATTERS

1. On 7 December 2023, a three-person panel (“**Panel**”) of the Independent Hearing Panel (“**IHP**”) of the Badminton World Federation (“**BWF**”) dismissed a complaint lodged by the Badminton Confederation Africa (“**Complainant**”) against Mr. Donald Mabo (“**Respondent**”).

2. The decision of the IHP relevantly provided that:

112. Having heard no submissions on costs, the Panel made no order as to costs, whilst noting that it may be requested to make a costs order in future, in accordance with Article 40 of the Procedures.

3. On 12 December 2023, the Complainant requested that the parties be ordered to bear their own costs. The Complainant relevantly stated:

Firstly, as outlined in paragraph 112 of the Final Decision, it is duly noted that the Honorable Independent Hearing Panel (IHP) made no order as to costs. The BCA aligns itself with this decision concerning costs.

The matters brought before the IHP pertained to the proper functioning and procedural steps to be adopted in future judicial referrals within the realm of Badminton. This Final Decision has not only addressed these issues but has also served as a precedent and guidance for similar situations in the future.

In consideration of the foregoing, the BCA submits that Article 40.2 of the BWF Judicial Procedures shall apply, and each party should bear its own costs. It is emphasized that the complaint was neither vexatious nor frivolous at any point during the proceedings.

Furthermore, during the initial hearing by the BCA Hearing Panel, Mr. Donald Mabo did not raise objections or question the admissibility of evidence, as confirmed in paragraph 82 of the Final Decision. This lack of objection at the "first instance" reinforces the absence of any undue procedural complications.

As per Article 23 of the BWF Judicial Procedures and Article 40.4 confirming the discretionary nature of costs orders, the BCA respectfully urges the Honorable IHP to exercise its discretion in maintaining the status quo of no order as to costs. This decision holds significant public importance, shedding light on previously unclear aspects of dealing with judicial concerns at the level of a Continental Confederation.

4. On 12 December 2023, the Respondent requested that the Complainant be ordered to bear his costs. The Respondent relevantly stated:

2. *Pursuant to the decision of the Independent Hearing Panel dated 7th December 2023, I hereby apply to the hearing panel in terms of Article 40 of the BWF Judicial Procedures to make an order for costs.*

3. *My application is primarily premised on the view that the disciplinary proceedings against me were never intended to protect the integrity and good reputation of the*

sport of badminton and were, instead, initiated to protect questionable practices by a member of the BCA Council.

4. *It is worth noting that as a direct result of the baseless and unfounded disciplinary proceedings brought against me by BCA, I was disqualified from seeking re-election to the BCA Council.*
 - 4.1 *This disqualification violated the presumption of innocence principle and was, consequently, unlawful.*
 - 4.2 *The disqualification was, however, the true motive for initiating disciplinary proceedings against me in the first place.*
5. *Quite apart from the fact that I lost the opportunity to be re-elected to the BCA Council as a result of the BCA witch hunt, I incurred direct costs associated with the disciplinary proceedings at the BCA Judicial Panel level as well as the Independent Hearing Panel level and I entreat the hearing panel to order the in this matter.*
6. *The direct costs that I incurred are the following:*
 - 6.1 *\$500.00 interest on the appeal fee paid to the BWF;*
 - 6.2 *\$970.00 air fares to Botswana (2 trips) to consult with my attorney;*
 - 6.3 *\$1,100.00 boarding and lodging fees (2 trips) in Botswana;*
 - 6.4 *\$420.00 internet services fees;*
 - 6.5 *\$350.00 mobile phone fees;*
 - 6.6 *\$670.00 hospital bills for stress and depression treatment;*
 - 6.7 *\$560.00 fuel for local transportation; and*
 - 6.8 *\$10,500.00 legal fees.*
7. *I also suffered indirect costs/loss of \$1, 035.00 being the honorarium I would have received had I not been unlawfully and unjustifiably removed from my position within the BCA Council.*
8. *In the premises of all the above, I humbly request the Independent Hearing Panel to make an order for payment of \$16, 105.00 costs to me.*
5. *On 19 December 2023, the Legal Secretary to the Panel requested that the Respondent provide evidence to support his requests.*
6. *On 20 December 2023, the BWF confirmed that the appeal fee had been refunded to the Respondent in July 2023.*

7. On 16 January 2024, the Respondent provided his evidence. It is summarised below:

Amount (USD)	Cost (description as per submissions)	Notes
\$10,500	Legal fees	Cost verified (1 receipt) Occurred in BWF procedure
\$970	Air fares to consult attorney	Cost verified (2 receipts) Occurred in BWF procedure
\$1,100	Boarding and lodging in Botswana	Cost verified (2 receipts) Occurred in BWF procedure
\$560	Fuel for local transportation	No verification provided
\$350	Mobile phone	No verification provided
\$420	Internet	Cost verified (2 receipts) Occurred in BCA & BWF procedures
\$670	Hospital treatment for stress and depression	Cost verified (5 receipts) Occurred in BCA & BWF procedures
\$500	BWF appeal fee	Cost verified (1 receipt) Document provided confirming a private investment
\$1,035	BCA Council Honorarium	

8. Article 40 of the BWF Judicial Procedures (“**Procedures**”) relevantly provides:

40.1 *Any party may apply to the hearing panel to make an order for costs, but such application shall be made within 7 days of the notification to that party of the Reasoned Decision.*

40.2 *Unless otherwise ordered by the hearing panel after the Reasoned Decision is provided to the parties:*

40.2.1 *Each party shall bear its own costs, including the costs of its own witnesses, representatives, lawyers, and counsel in preparation for an in attendance for a hearing.*

40.2.2 *The costs of proceedings related to the hearing panel, including the administration of the hearing, the expenses of the hearing panel members, and of any person that was requested to attend by the hearing panel shall be borne by the BWF.*

...

40.4 *The hearing panel that renders a decision shall also have a discretion to order that one party should pay some or all of the costs of any other party to the*

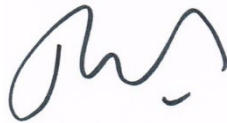
procedure. In exercising that discretion, the hearing panel shall have regard to the fact that the BWF has an obligation to pursue disciplinary proceedings to protect the integrity and good reputation of the sport of badminton. Any decision on costs shall not be subject to appeal independent of an appeal on the merits of the decision.

9. The Panel took note of the following:
 - 9.1. the applications from the Parties were received in time and therefore admissible;
 - 9.2. the complexity of the matter, in that it was ultimately referred by the BWF Council to the IHP, requiring an interim decision (Question 1) and a final decision (Question 2);
 - 9.3. the scope of its discretion to order costs. The Panel considered that it only had power to order costs directly related to the preparation of the case to be presented before the IHP;
 - 9.4. with respect to the summary table above, the only costs that were within scope of the Panel were “*legal fees*” and the “*BWF appeal fee*”. It noted that the BWF appeal fee had been refunded; the question of what interest (if any) the Respondent may have earned for his investment was not within scope of the Panel to determine;
 - 9.5. the interim decision (Question 1) had determined that the Complainant had erred when bringing the case before its own judicial body. The final decision (Question 2) found exclusively and comprehensively in favour of the Respondent; and
 - 9.6. the loss suffered by the Respondent.
10. As a result, the Panel decided it was fair to depart from the rule set out in Article 40.2 of the Procedures, and subsequently ordered:
 - 10.1. the Complainant shall pay **USD 10,500** (i.e. the legal fees borne by the Respondent) as a contribution to the Respondent’s costs in connection to this matter;
 - 10.2. the Respondent shall bear the remaining amount of his costs in connection to this matter;
 - 10.3. the Complainant shall bear the full amount of its own costs in connection to this matter; and
 - 10.4. the BWF shall bear the costs of proceedings related to the hearing panel, in accordance with article 40.2.2 of the Procedures.

ORDER ON COSTS IN DECISION 2023/01

1. The Complainant shall pay **USD 10,500** as a contribution to the Respondent's costs in connection to this matter. Such payment shall occur within thirty (30) days of notification by the Respondent of his bank account details.
2. The Respondent shall bear the remaining amount of his costs in connection to this matter.
3. The Complainant shall bear the full amount of its own costs in connection to this matter.
4. The BWF shall bear the costs of proceedings related to the hearing panel, in accordance with article 40.2.2 of the BWF Judicial Procedures.

Note: Pursuant to Article 40.4 of the BWF Judicial Procedures, this order on costs is not appealable.



Enric Ripoll Gonzalez

James Kitching

Yuri Yagi

(Chair, for the Panel)

7 February 2024