

In Re : **WORLD SAILING CASE EC02-20 : IN THE MATTER OF THE
COMPLAINTS BY MR WOSSALA AGAINST THE CONDUCT
OF MR ANDERSEN**

AWARD

ERRATUM

Philips Daniels SC

Zeynep Fencimen

Timo Hass

Dick Batt

19 October 2021

Take note that the Panel realised after the publication of the Award that in paragraph 93 there are 2 incorrect references to "December 2013" which should read "December 2016".

This erratum is published to rectify the said error.

The amended award is attached.

INTRODUCTION

1. The Ethics Committee appointed a panel of four members of the Ethics Committee, comprising of Philips Daniels SC, Zeynep Fencimen, Timo Hass and Dick Batt, ("**the Panel**") to determine three charges brought against Mr Kim Andersen ("**Mr Andersen**").
2. The charges originate from a complaint by Mr Gyorgy Wossala ("**Mr Wossala**") that Mr Andersen had breached Sections 1.9(a), (b) and (c) of the World Sailing ("**WS**") Code of Ethics ("**the Code**"). These breaches essentially concern conflicts of interest arising from a contract concluded between WS and TSE Consulting SA, Lausanne ("**TSE**").
3. Ms Laurence Burger ("**Ms Burger**") was originally appointed by WS as the Ethics Officer ("**the EO**") to investigate the complaints lodged by Mr Wossala against Mr Andersen.
4. After concluding her investigation Ms Burger made a decision in terms of Regulation 36.10. She found that Mr Andersen had in fact breached the said sections of the Code, and a recommendation was made that Mr Andersen be charged accordingly.
5. Pursuant to the decision of Ms Burger a Notice of Charge was formulated dated 20 November 2020. Mr Andersen was charged with breaching Sections 1.9(a), (b) and (c) of the WS Code of Ethics.
6. For ease of reference, we quote the relevant provisions of Section 1.9:

"(a) World Sailing Parties before being elected or appointed to any World Sailing office shall disclose any personal interests (as defined by section 1.9(b) below) to the Chief Executive Officer who may publish the same if they may be linked or be relevant to such election or appointment.

(b) World Sailing Parties shall avoid any situation that could lead to a conflict of interests. Conflicts of interests arise if World Sailing Parties have private or personal interests that detract from their ability to perform their function

with integrity in an independent and purposeful manner. Private and personal interests include gaining any actual or possible advantage for a person, their family, relatives, friends or acquaintances, or business associates or partners. The conflict-of-interest provisions of Regulation 34 that apply to World Sailing Race Officials shall continue to apply in parallel with the Code of Ethics.

(c) World Sailing Parties shall not perform their functions where there is an existing or potential conflict of interest unless it has been disclosed and those with the appropriate authority within World Sailing have confirmed in writing they may perform such function.”

7. For the reasons set out hereunder the Panel concludes that it was not established on any basis that Mr Andersen made himself guilty of a contravention of Section 1.9 of the Code.
8. The view of the Panel is amplified by the following extracts from the closing statement made in writing by Ms Burger:

“36 The Panel can only uphold the charges against Mr Andersen, who acted in disregard of World Sailing’s interests by entering into, and extending, an agreement that was not needed and costed a lot of money to World Sailing.

37. The evidence adduced at the hearings, and during the procedure, has shown that TSE was doing first and foremost the work of Mr Andersen.

38. More importantly, Mr Andersen has not been upfront about it. He has changed his story when confronted. The testimonies offered at the hearings portrayed a person who was bent on having things done his way, even if that meant circumventing the Board and the Council.

39. This shows a lack of loyalty towards the interests of World Sailing that amounts to a conflict of interest.”

9. It must be stated at the outset, that paragraph 37 quoted above is patently incorrect. There was no admissible evidence that TSE was doing the work in terms of the agreement with WS for Mr Andersen.
10. The conclusion reached by Ms Burger is a far cry from establishing any one of the grounds of complaint and/or any of the conceivable contraventions of Section 1.9 (a), (b) and/or (c) of the Code.

THE JURISDICTION OF WORLD SAILING AND THE PANEL

11. Ms Burger and Mr Andersen were invited by the Panel to address it on the question whether the Panel and concomitantly WS has the necessary authority to investigate and/or make any finding of any kind regarding the complaints and the charges brought against Mr Andersen.
12. This question was, in the view of the Panel, relevant, as Mr Andersen is no longer a member and/or an officeholder in any capacity of World Sailing.
13. Mr Andersen did not avail himself of this defence and invited the Panel to make a finding on the actual charges formulated against him, rather than to dismiss the charges on the basis of a technicality.
14. Mr Andersen subjected himself to the original investigation by Ms Burger, and willingly participated in the investigation into his alleged misconduct. Not only did he consult with Ms Burger, and provided her with a statement, but he also actively participated in the hearing, duly represented at all times by a team of legal representatives.
15. In her closing submission, Ms Potts, who at all relevant times represented Mr Andersen during the hearing, stated the following:

“5. *As to jurisdiction, KA (Mr Andersen) takes the position that it is for WS to establish to the satisfaction of the Commission that the Commission has jurisdiction. KA has not taken a point on jurisdiction because KA has been*

extremely keen to clear his name (as he has with the other complaints made against him by three of the witnesses in this case). KA does not dispute that he was required to comply with the Code of Ethics during his period as president of World Sailing. However, it is noted that KA is no longer subject to the WS Regulations".

16. The WS Constitution Committee has interpreted Regulations 35 and 36 to mean that WS retains its jurisdiction over an officeholder, after such officeholder has resigned from a WS office.
17. Based on the interpretation of the Constitution Committee and considering that no objection was raised about the jurisdiction of WS during the hearing and in the written closing submissions, the Panel concluded that, as there is no issue on the jurisdiction of WS, the Panel is entitled to hear and adjudicate the charges brought against Mr Andersen on behalf of the Ethics Committee and/or WS.

THE STRUCTURE OF THE PROCEEDINGS

18. The procedure followed was summarised in a memorandum addressed to the EO on the 10th of June 2021. This memorandum was distributed to Mr Wossala and the legal representatives of Mr Andersen. In terms of the memorandum:
 - 18.1. Ms Burger, acting as prosecutor, would lead the evidence of the prosecution in support of the charges formulated against Mr Andersen;
 - 18.2. any witnesses called by the prosecution would be cross-examined by the legal representatives of Mr Andersen; and
 - 18.3. after the close of the prosecution's case, Mr Andersen would have the opportunity to present evidence with witnesses and documents (if he wished to do so, which witnesses would similarly be subject to cross-examination by the Ethics Officer).
19. Opening submissions were presented by both the prosecution and Mr Andersen.

20. Both the EO and the legal representatives of Mr Andersen were informed, prior to the commencement of the proceedings, of the witnesses to be called. In the case of Mr Andersen, detailed witness statements were presented prior to the commencement of the hearing. No written statements were submitted by the prosecution.
21. Undertakings were obtained in writing from the witnesses to the effect that they would provide evidence in isolation, on a remote platform, and would not have contact with any third party by any means whilst they gave evidence.
22. Each of the witnesses who testified confirmed that they would testify the truth, the whole truth and nothing but the truth.
23. The hearing took place over a period of three days from the 28th of July to the 30th of July 2021. The hearing took place on a Zoom platform and was recorded electronically.

THE RELEVANT FACTUAL BACKGROUND

24. Mr Andersen was elected as president of WS pursuant to an election which took place in Barcelona over the period from 11 to 13 November 2016. In his effort to obtain the presidency Mr Andersen was supported in his campaign by the National Olympic Committee and Sports Confederation of Denmark ("**DNOC**"). In October 2016 DNOC proposed to Mr Andersen that TSE should assist him with administrative support and the like. At that point in time Mr Andersen had not previously engaged the services of TSE.
25. On the 13th of October 2016, after a meeting between a representative of the DNOC and Mr Haue-Pedersen, the Managing Director of TSE, TSE sent DNOC a fee proposal.
26. On 27 October 2016, some two weeks later, a further meeting took place between Mr Haue-Pedersen and Mr Andersen. This is the only evidence of a meeting between Mr Andersen and TSE prior to his election as president in November 2016.

27. It is not disputed by Mr Andersen that TSE created a social media account for him, and that Ms Heimlich (a representative of TSE) assisted him with scheduling meetings and public relations issues.
28. TSE was subsequently paid by DNOC for the services that it provided. The evidence bears out that there was no discussion between TSE and Mr Andersen about TSE providing services to WS in the future.
29. It is common cause that a written agreement was entered into between TSE and WS, in turn represented by Mr Andersen. The agreement was concluded in writing, and signed by WS, on the 14th of December 2016, represented by Mr Andersen. The agreement was then returned to TSE.
30. In terms of the agreement WS was not obliged to make payment to TSE on a fixed monthly basis, or for a minimum number of hours. WS could terminate the services of TSE, without attracting any liability to compensate it.
31. On 21 December 2016 the complete TSE agreement was submitted to the WS Board. It was accompanied by an email which explained the extent to which TSE had been engaged at that point in time. In total TSE had provided services for 90 hours.
32. It is common cause that Mr Andersen engaged with Ms Heimlich at TSE before the terms of the TSE Agreement had been disclosed to the WS Board. The TSE Agreement was signed by TSE on the 24th of November 2016. The fact that WS had not signed the TSE Agreement in November 2016, was confirmed by Mr Andersen.
33. At the first Board Meeting of WS, after its election in November 2016, and on 10 and 11 December 2016, ("**the Dubai meeting**") the new Board was provided with a copy of a budget which had been prepared by the outgoing Board.
34. Certain changes had been made to this budget by Mr Hunt. The changes included a provision in the budget for "external consultancy services". The 2017 budget budgeted for "*International Relations Consultancy (President)*" of £100 000.00 and

"Strategy Consultancy (President)" of £25 000.00. This budget was discussed at the Dubai meeting. In addition, Mr Hunt presented an organisation plan which included a proposal to obtain the services of an executive assistant to assist the president and the CEO.

35. It is not disputed that Mr Andersen left the Dubai meeting before its conclusion. Mr Hunt was left at the meeting and explained to the Board the intention to use TSE to provide certain services.

36. In support of the aforesaid evidence is an email which was addressed by Mr Hunt on the 12th of December 2016 to Ms Jan Dawson ("**Ms Dawson**") stating the following:

"The text extract below is part of my summary to Kim re: our discussions at the Board meeting after he left".

The text extract that Mr Hunt proposed to send to Mr Andersen stated:

"The Board also asked for a scope of work/proposal for the TSE consulting work for their approval before we go ahead".

37. The contents of the email from Mr Hunt to Ms Dawson was not denied by Ms Dawson. We deal with her evidence in more detail hereunder. Ms Dawson did receive the email.

38. In addition, on 14 December 2016 Mr Andersen addressed an email to the Board attaching a document entitled *"Reflections from our Board meeting in Dubai"*. In this email the anticipated scope of work for TSE was spelt out. It included:

38.1. Supporting me (Mr Andersen) in the role as President for WS to build *and strengthen WS within the international sports community and to strengthen WS's connection to IOC on the political level rebuilding contracts to IOC members...".*

38.2. It was also mentioned in the email that the primary purpose for using TSE was *"... to establish WS leadership in the international sports community*

during the period until June 2017 (in the same period where the WS organisation will be unstable due to the relocation) and hereafter to find a permanent WS solution going forward'.

39. On 14 December 2016 an email was addressed to the Board, by a board member, in which it was stated: "*... state the 2017 budget as drafted by the previous Board was approved with written changes agreed by the Board.*"
40. It follows as a matter of course from the aforesaid, and especially in the absence of any admissible evidence to contradict it, that the 2017 budget was approved to include budget for £100 000.00 for "International Relations Consultancy" and £25 000.00 for "Strategy Consultancy".
41. It is common cause that on 14 December 2016, after the Dubai meeting, and after a disclosure of the existence of the TSE Agreement at the Dubai meeting, and the budget relating to the appointment of TSE Agreement, as a consultancy, Mr Andersen signed the TSE Agreement and returned it to TSE.

THE PERFORMANCE OF THE CONTRACT BY TSE

42. In terms of the TSE Agreement, it became obliged to provide communication services, international relations, and strategy development. It is not disputed that TSE performed such services for WS.
43. Invoices were submitted by TSE every two months. Typically, the invoices provided information regarding the hours spent by category of work. Invoices would not be paid until such time as they were signed-off by Mr Hunt and a Board member, who was either Ms Dawson or Mr Scott Perry ("**Mr Perry**").
44. It is also not disputed that every invoice submitted by TSE was in fact signed off by duly authorised representatives of WS, which in every instance included at least Mr Perry.

45. The first invoice was submitted by TSE in December 2016. This invoice related to services rendered by it prior to the Dubai meeting and/or the approval at Board level that WS enter into the TSE Agreement.
46. Despite this, and despite the fact that Mr Perry chose to testify against Mr Andersen in support of the charges, he did not refuse to sign off on the first invoice, and in fact authorised payment of the invoice based on approval obtained from the Board in February 2017.
47. There can be absolutely no doubt, based on the evidence presented to the Panel, received from all witnesses concerned, that until the termination of the TSE Agreement at the end of 2018, the Board of WS was aware of the TSE Agreement, and the services which TSE provided to WS in accordance with its obligations arising from the TSE Agreement.
48. During the period from May 2017 to November 2017, communication between Mr Andersen, and the Board, and in particular Mr Perry and Ms Dawson, reveals that there was a full disclosure of the nature of the services rendered and to be rendered by TSE, and an open discussion about concluding a fresh agreement with TSE during the latter part of 2017.
49. As matters turned out, a new agreement was in fact concluded with TSE, during November 2017. This was communicated to the Board by Mr Andersen.
50. In her closing argument Ms Burger made the following submission:

"7. The hearings have shown that Mr Andersen:

(1) Decided to enter into the TSE Agreement without proper approval of the Board, or even knowledge;

(2) Changed his story regarding his contacts with TSE prior to the Barcelona election;

(3) Gave reasons for entering into the TSE Agreement that did not even exist at the time;

(4) Decided to extend the TSE Agreement without approval of the Board;

(5) Conveniently rejects any fault on Mr Hunt, while the World Sailing ethics procure could not force him to testify."

51. As is apparent from what has been set out hereunder, and from the references to certain correspondence above, the admissible evidence which was received by the Panel does not support the contentions advanced by Ms Burger.

THE EVIDENCE

52. The prosecution presented the evidence of Mr Mikkel Thommessen ("**Mr Thomessen**"), a journalist, Mr Wosalla, the original complainant as well as Mr Perry and Mr. Jobson, who at the relevant time were Vice-Presidents of WS.
53. It was also intended by the prosecution to introduce the evidence of Mr Oyvind Bordal ("**Mr Bordal**"). On invitation from the legal representatives of Mr Andersen, a debate commenced, prior to the evidence of Mr Bordal, as to the relevance of his evidence.
54. After hearing the arguments, the Panel unanimously decided to disallow the evidence of Mr Bordal, as it was:
- 54.1. unrelated to the complaints;
 - 54.2. irrelevant; and
 - 54.3. would not advance the expeditious determination of the complaints.
55. Evidence was presented on behalf of Mr Andersen, by Mr Natorp, and Ms Dawson. Mr Andersen also gave evidence.
56. We deal briefly with the evidence of the prosecution, and then with the evidence presented by and on behalf of Mr Andersen.

The evidence of Mr Thommessen

57. Mr Thommessen was at all relevant times a journalist who testified that he followed the affairs of WS "from a distance" at the time.
58. He found it interesting that the agreement between WS and TSE was signed so soon after Mr Andersen became the President.
59. During his evidence he confirmed that he had obtained much of the information which he published, in an article regarding the conduct of Mr Andersen, from Mr Perry. He further made it clear that his recollection of the events which led to the publication was not 100% clear. He testified that he had never seen a copy of the TSE Agreement. He testified that his article was based on the evidence obtained from Mr Jobson and Mr Perry. It was based on what he had been told. He conceded under cross-examination that it was clear that he did not have the "*full picture*", surrounding the conclusion of the TSE Agreement. He testified unequivocally that he wrote what he was told without conducting any independent investigation into the veracity of statements made by his sources, and without conducting any additional investigation, to ascertain that he had all the relevant facts.
60. The evidence of Mr Thommessen was in all respects inadmissible. His version was premised on uncorroborated facts, and he did not testify of any personal knowledge that he had, or any investigation that he conducted himself, which resulted in the conclusions which he came to in his article.
61. In the circumstances his evidence amounted to nothing more than inadmissible hearsay evidence, to which the Panel has afforded no, alternatively, very little weight. As it has transpired, very little of that published in the article by Mr Thommessen was accurate.

The evidence of Mr Wossala

62. As was the case with Mr Thommessen, Mr Wossala had no first-hand personal knowledge of the factual matters relevant to the charges. He could not testify

about the participation of TSE at the Barcelona election, or any of the services rendered by TSE pursuant to the conclusion of the TSE Agreement.

63. He equally could not give evidence and had no personal knowledge of the information which the Board received regarding the conclusion of the TSE Agreement.
64. His evidence was premised on what he had read in the article published by Mr Thommessen and discussions which he had with Mr Perry. There is no question that the evidence of Mr Wossala, is based on an incoherent assimilation of speculation, assumptions, and half-truths. His evidence in relation to the actual charges and the alleged delinquency of Mr Andersen is hearsay, and for that reason not only irrelevant, but entirely inadmissible.

The evidence of Mr Jobson

65. The third witness called by the prosecution was Mr Jobson. Mr Jobson's evidence was flawed in material respects.
66. Significantly, when he originally made a statement to the EO, on which the EO *inter alia* based her decision to persist with the prosecution of Mr Andersen, he incorrectly advised the EO that WS had signed the TSE Agreement, prior to the Dubai meeting. It is common cause that the TSE Agreement was only signed after the Dubai meeting, on the 14th of December 2016.
67. He had no personal knowledge of the services performed by TSE with the DNOC and/or Mr Andersen. His evidence, to the effect that the TSE Agreement, was a secret deal was contradicted by the evidence of Ms Dawson, and the correspondence from Mr Andersen and Mr Hunt to members of the Board, which has been discussed above.
68. In his evidence-in-chief he confirmed that he did see the memorandum of Mr Andersen, which Mr Andersen addressed to the members of the Board immediately after the Dubai meeting. He could not explain why he had not seen it, despite it being addressed to him. In that memorandum reference was specifically made to

the TSE Agreement. Mr Jobson however testified that he did not read the memorandum at the time.

69. The evidence of Mr Jobson did not take the case of the prosecution any further.
70. His evidence did not establish a contravention by Mr Andersen of any of the provisions of Clause 1.9 (a), (b) or (c) of the Code.

The evidence of Mr Perry

71. The fourth witness called by the prosecution was Mr Perry.
72. The evidence of Mr Perry which he provided to the EO in his interview with her, when she investigated the original complaints against Mr Andersen, was contradicted by him, in his evidence at the hearing.
73. He testified as follows before the EO:

"The Board found out the particulars of the contract months later";

"Mr Perry and Mrs Dawson got a copy of the contract because they saw that payments were made out of their account and as members of the Audit Committee, they wanted to know what these payments were";

"[Mr Perry and Mrs Dawson] asked about these payments before the first Audit Committee meeting in May 2017... neither Mr Perry nor Mrs Dawson or Mr Hunt had seen the contract at that time".

74. In giving this evidence to the EO it appears that Mr Perry attempted to create the impression that the Board was left completely in the dark about the TSE agreement for many months. As is apparent from the evidence referred to this was not the case. (The Panel was mindful of the evidence of Mr Thommessen that these statements were also communicated to him by Mr Perry.)
75. It is patently obvious that the evidence which Mr Perry gave to the EO was based on a complete misunderstanding of the true facts which presented themselves at the time.

76. Mr Perry himself testified that he signed off an invoice, for services rendered by TSE pursuant to the TSE Agreement, in February 2017, after the Board deliberated about the TSE Agreement and give him the authority to sign off on the invoice. That is entirely inconsistent with his statement that the Board only found out the particulars of the TSE Agreement "... months later...", being a reference to the Dubai meeting in December 2014.
77. Mr Perry confirmed that none of the board members raised any issue at the Board meeting in Cape Town in February 2017, with the manner in which TSE had been engaged by WS.
78. Mr Perry also testified that he had no first-hand knowledge of TSE's work with the DNOC and Mr Andersen. He in turn confirmed that TSE provided valuable services for WS, which is *inter alia* why the Board did not object to WS using TSE.
79. Mr Perry conceded, in a question from the Panel, that although he was disgruntled with the manner in which Mr Andersen managed the affairs of WS in his capacity as President, the Board itself never disapproved of the TSE Agreement, and did not veto any payments made or to be made by WS to TSE.

The evidence of Mr Natorp

80. Mr Hans Natorp ("**Mr Natorp**") signed a witness statement on the 6th of April 2021. This was presented in evidence.
81. He was briefly cross-examined by Ms Burger who did not challenge any of the allegations in his witness statement, which evidence stands. This includes his evidence that:
 - 81.1. Mr Andersen was first introduced to TSE through the DNOC, during the final weeks of Mr Andersen's election campaign;
 - 81.2. individuals, within and around WS, such as Mr Wossala went out of their way to cause difficulties for Mr Andersen;

81.3. the TSE Agreement was widely known by the relevant people on the WS Council and certainly the Board from the outset in 2016.

The evidence of Ms Dawson

82. Ms Dawson similarly provided a written witness statement, dated, and signed by her on the 7th of April 2021. As in the case of Mr Natorp, she gave oral evidence, and in so doing confirmed the accuracy of the contents of her witness statement. She was cross-examined by Ms Burger.
83. During her cross-examination she confirmed that the use of TSE, as a contracting party, was discussed at the Dubai meeting. She also confirmed that the Board approved the 2017 budget. This is consistent with the email correspondence addressed by and to Mr Hunt and Mr Andersen on the 14th of December 2016.
84. Her evidence in her witness statement was not seriously challenged by Ms Burger. Although there is a discrepancy between her version regarding the discussion of the TSE Agreement at the Dubai meeting, and that of Mr Perry, there is no reason to disbelieve Ms Dawson. If the TSE Agreement was not discussed at the 2016 Dubai meeting, then the email correspondence addressed by and to Mr Andersen and Mr Hunt, to which reference was made herein before, would make no sense, unless it was a contrived attempt to mislead the very Board members who were present at the 2016 Dubai Board meeting.
85. Her evidence regarding the discussion of the budget for 2017 was unequivocal. She stated in her witness statement as follows:

"11. The budget for 2017, which had been set by the previous Board was discussed after Kim left the Dubai meeting. During this discussion, Mr Hunt brought up the budget for TSE's services. He explained that TSE must be used for a number of reasons, such as improving relations with the IOC and IPC; conducting the survey of the 146MNA's, to better understand their needs and any issues; and assisting with recovering a large sum due to WS from Gazprom as sponsorship money. The amount budgeted for this work was £100 000.00, noting that the expenditure

budget for the 2017 financial year was £7.5 million. The Board asked for a scope of works/proposal to be provided to the Board for approval before proceeding with TSE."

86. Ms Dawson also devoted a substantial portion of her witness statement to discussions relating to the TSE Agreement after the Dubai meeting. She confirmed the fact that Mr Andersen sent an email to the Board members attaching a note containing reflections regarding the Dubai meeting. In that note, she testified that:

"... he explained the serviced that TSE would be engaged to provide and stated that the arrangement would be flexible, giving WS the ability to call upon TSE as and when required."

87. The statement in paragraph 15 of her witness statement was not challenged. She stated:

"15. However, in the interests of good governance and in view of the discussion in Dubai on TSE, on 18 December 2016 I responded to Kim's email (copy to the full Board) requesting that the full proposal/contract be sent to the Board and suggesting that the Board's approval be sought. While there was no formal requirement for this, I considered that it was the best course of action to be transparent with the Board. On 21 December 2016, Kim sent a copy of the TSE Agreement to the Board and again explained why he considered that there was a need for TSE's services. It was clear from the TSE Agreement that the arrangement did not involve a minimum contracted commitment on behalf of WS but was a normal consultant proposal which set out the hourly rates for the individuals."

88. In paragraph 20 of her witness statement, she made the following statement, which was equally not challenged by Ms Burger during her cross-examination of Ms Dawson:

"20. Not only did Mr Perry not object to the TSE Agreement in December 2016 when it was circulated to all Board members, I am aware that he

authorised payment of a number of invoices issued by TSE. He was therefor clearly aware of the TSE engagement from December 2016 onwards and communicated with Kim directly about the engagement."

The evidence of Mr Andersen

89. Mr Andersen, who testified in his own defence, filed a witness statement, which he signed on the 7th of April 2021.
90. The Panel found no contradiction between the evidence of Mr Andersen, and that of Ms Dawson and Mr Natorp.
91. Mr Andersen was cross-examined by Ms Burger. The main thrust of the submission in the closing submission of the Prosecution was that Mr Andersen claimed that the Board was informed of the TSE Agreement at the Dubai meeting, when that was not so. To this end reference was made by Ms Burger to the statement of Mr Andersen and in particular paragraph 31 thereof. What was stated by Mr Andersen in paragraph 31 is the following:
 - "31. *I understand that Mr Hunt brought up the topic of the Agreement and TSE in my absence. Following my departure from Dubai, I sent a note to the WS Board with my reflections on the meeting, by way of an email dated 14 December 2016. In that note I clearly set out the purpose for which WS was engaging the services of TSE."*
92. The argument by the Prosecution is however that the TSE Agreement was only mentioned as a budget item. This does not detract from the fact that the TSE Agreement was discussed at the meeting. Given the evidence of Ms Dawson it is apparent that the TSE Agreement was discussed at the Dubai meeting, and that the Board was apprised at the meeting of the intention to engage the services of TSE.
93. The fact that work was done by TSE without Board approval, prior to the 14th of December 2016, does not detract from the fact that WS, with knowledge, entered into the agreement with TSE. It is also of no consequence, as each and every

invoice subsequently submitted by TSE, and the invoice which was submitted prior to 14 December 2016, was paid by WS. If anything, WS ratified, to the extent that it was necessary, the conclusion of the agreement between TSE and WS when it consistently authorised payment in respect of each and every invoice submitted by TSE over a period of more than two years, and in fact entered into a revised agreement with TSE at the end of the initial 6-month period.

94. Mr Andersen did not at any stage during his evidence and whilst being cross examined by Ms Burger contradict himself. He was forthright in his responses and made a good impression on the Panel.

THE CONFLICT OF INTEREST

95. According to the report of the EO, Mr Andersen had a private or personal interest in relation to the conclusion of the TSE Agreement that detracted from his ability to perform his function with integrity in an independent and purposeful manner.
96. This was not established by the Prosecution:
 - 96.1. as accepted in the report of the EO, Mr Andersen had no financial interest and owed no duty to TSE;
 - 96.2. there is no witness statement or any other evidence demonstrating that TSE provided services to Mr Andersen that were of a personal benefit to Mr Andersen outside WS.

BOARD APPROVAL

97. The emails:
 - 97.1. sent by Mr Hunt on 12 December 2016 to Ms Dawson; and
 - 97.2. sent by Mr Andersen on 14 December 2016 to the Board of WS; and

- 97.3. sent by Ms Dawson on 18 December 2016 and the uncontested evidence as contained in the witness statements of Ms Dawson and Mr Andersen demonstrates that the TSE Agreement, and the services to be provided thereunder by TSE, the period of the Agreement and its expected budget (£100 000.00 under item headed "*International Relations Consultancy (President)*" and £25 000.00 under the item headed "*Strategy Consultancy (President)*" was discussed at the Dubai meeting on 10 and 11 December 2016, irrespective of whether it appeared as an item on the agenda for that meeting.
98. The Board was provided with information of the services under the TSE Agreement by an email sent to the Board members (copying, significantly, Mr Perry and Mr Jobson) by Mr Andersen on 21 December 2016. It is common cause that the copy of the TSE Agreement was attached thereto.
99. As seen from the emails sent by Ms Dawson to Mr Andersen in December 2016, it was recommended that the TSE Agreement should be approved by the Board.
100. There is no evidence that the Board ever objected or that any member of the Board expressly noted an objection to the appointment of TSE to provide the contemplated services. There is also no evidence that the Board did not approve the agreement.
101. It is understood that Mr Perry had concerns related to the financial burden created by the obligations arising from the TSE Agreement, and that he was reluctant to have the TSE Agreement renewed for the term beginning in 2017. Despite his concerns, the renewal of the TSE Agreement was approved at the November 2017 Board meeting of WS.

AUTHORISATION

102. All commercial contracts are to be authorised by the President of WS. Considering that the TSE Agreement is a commercial contract, it is deemed that the TSE

Agreement is signed properly when it is signed by the President only. No requirement for Board approval to execute a contract is provided in the Levels of Authorisation. In addition to this, all cheques, purchase orders and payment authorisations larger than £5 000.00 are deemed to be duly signed when those are signed jointly by the CEO and the President or the Vice-President, with finance responsibility.

103. The invoice dated 28 February 2017 was signed by the CEO, Mr Hunt, and was approved on 23 March 2017 by Mr Perry, being the Vice-President and a Board member.
104. On the basis that the invoices were signed off by the CEO and the President or the Vice-President with finance responsibility, it is accepted that those invoices were properly signed off on behalf of WS.
105. No tender process for the execution of the agreement for the services provided by TSE was carried out. It is accepted in the report of the EO that contracts are not subject to tenders at WS. Mr Wossala, in his testimony, confirmed that, to the best of his knowledge no tender process was required for the contracts where the WS is a service recipient.
106. The TSE Agreement was not properly registered in the register of WS. However, it is understood that as per Article 88 of the World Sailing Articles of Association, the CEO, and not the President, has the ultimate responsibility to make all operational decisions and manage all operation practices and activities.

CONCLUSION

107. Having considered the evidence, of all the witnesses who testified, and all the documentary evidence that was produced by the Prosecution and by the witnesses who testified on behalf of Mr Andersen, the Panel comes to the following conclusion:

107.1. there is no evidence that Mr Andersen breached Section 1.9 a) of the Code;

107.2. there is no evidence that Mr Andersen breached Section 1.9(b) of the Code;

107.3. there is no evidence that Mr Andersen breached Section 1.9(c) of the Code.

108. In the circumstances the Panel unanimously makes the following award:

108.1. The charges brought against Mr Andersen, that he breached provisions of Section 1.9(a), (b) and (c) of the Code are dismissed.

PHILIPS DANIELS SC

ZEYNEP FENCIMEN

TIMO HASS

DICK BATT

19 October 2021