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NCAA Division I Infractions Appeals Committee upholds SMU decision

INDIANAPOLIS – Southern Methodist University’s men’s basketball and men’s golf teams must implement scholarship and recruiting restrictions, the men’s basketball team must vacate wins, and the men’s golf team must serve a postseason ban, according to a decision issued by the NCAA Division I Infractions Appeals Committee. The Infractions Appeals Committee also upheld the five-year show cause order for the former head men’s golf coach, the NCAA Division I Committee on Infractions panel’s findings of unethical contact for the former head men’s golf coach and impermissible recruiting inducements in the men’s golf program.

In its appeal, the university argued that the Committee on Infractions panel co-mingled aggravating factors by misapplying actions of involved individuals to the university, did not adequately account for the university’s self-imposed penalties and mitigating factors, and should not have applied the postseason ban to the full men’s golf team.

The former head men’s golf coach argued in his appeal that the underlying violations were improperly classified as Level I and that he did not provide false or misleading information during his initial interview with NCAA enforcement staff.

After its review, the Infractions Appeals Committee found that the Committee on Infractions panel appropriately separated its analyses for the university and involved individuals in determining violation level and penalty structure. The Infractions Appeals Committee also found the scholarship reductions, recruiting restrictions and men’s golf postseason ban imposed by the Committee on Infractions were not an abuse of discretion.

Additionally, it found that there was sufficient evidence that the Committee on Infractions panel did not improperly classify the men's golf violations and there was enough evidence for the panel to find the former head men's golf coach acted unethically.

In September 2015, a Committee on Infractions panel found that the university committed multiple violations, including academic fraud, unethical conduct and lack of head coach control in the men's basketball program, and recruiting and unethical conduct in the men's golf program. As a result, the former head men's golf coach, the former compliance director and a former men's basketball administrative assistant violated NCAA's unethical conduct rules. Additionally, the head men's basketball coach failed to promote an atmosphere of compliance when he did not report violations and was not initially truthful during an interview with NCAA enforcement staff.

In addition to the appealed penalties, the Committee on Infractions panel also prescribed three years of probation for the university; a postseason ban for the men's basketball team; the disassociation of a booster; and a suspension of 30 percent of the men's basketball season for the head coach.

The members of the Infractions Appeals Committee who heard this case were David Williams, committee chair and vice chancellor for university affairs and athletics and athletics director at Vanderbilt University; Jack Friedenthal, professor emeritus at George Washington University; W. Anthony Jenkins, attorney in private practice; and Patti Ohlendorf, vice president for legal affairs at the University of Texas at Austin.

**REPORT OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE**

April 21, 2016

Report No. 425

Southern Methodist University

Dallas, Texas

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

Southern Methodist University appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by Southern Methodist University (hereinafter referred to as SMU).

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 425 September 29, 2015, in which the committee found violations of NCAA legislation in men's basketball and men's golf. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly.

This case centered on violations of NCAA bylaws governing recruiting, academic fraud, unethical conduct, and head coach responsibility.

After the Committee on Infractions issued its report, SMU filed a timely Notice of Appeal October 14, 2015. A written appeal was filed November 20, 2015. The Committee on Infractions filed its Response January 5, 2016. The institution filed its Rebuttal to the Committee on Infractions Response January 20, 2016. The Committee on Infractions requested and was permitted to submit a supplemented Response, which was submitted February 4, 2016, and the institution submitted a supplemental Rebuttal February 9, 2016. The NCAA enforcement staff submitted a memorandum February 10, 2016, to set forth a factual error from the institution's November 20, 2015, submission. The institution submitted a response to the enforcement staff's memorandum February 16, 2016. The case was considered on the written record by the Infractions Appeals Committee February 22, 2016 (see Section VIII below).

III. FINDING OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for SMU Page Nos. 4 through 20. A copy of the report may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for SMU Page Nos. 21 through 39. A copy of the report may be accessed via LSDBi at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

V. CORRECTIVE ACTION TAKEN AND PENALTIES (PROPOSED OR SELF-IMPOSED) BY THE UNIVERSITY [AND CONFERENCE].

See Committee on Infractions decision for SMU Appendix One. A copy of the report may be accessed via LSDBi at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

VI. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for SMU Page Nos. 42 through 51. A copy of the report may be accessed via LSDBi at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

VII. ISSUES RAISED ON APPEAL.

In its written appeal, SMU asserted that the imposition of a postseason ban for the 2015-16 academic year in men's golf, specifically as it applies to individual student-athletes, the imposition of scholarship reductions in men's golf and men's basketball, the imposition of recruiting restrictions in men's basketball and men's golf, and the vacation of wins during the 2013-14 academic year in men's basketball was an abuse of discretion.

VIII. APPELLATE PROCEDURE.

In considering the institution's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal and the submissions by the institution and the Committee on Infractions referred to in Section II of this report, including referenced enforcement documents therein.

IX. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

In reviewing this case, the Infractions Appeals Committee may overturn factual findings and conclusions that one or more violations occurred only if:

- a. The hearing panel's finding clearly is contrary to the evidence presented to the panel;

- b. The facts found by the hearing panel do not constitute a violation of the NCAA constitution and bylaws; or
- c. There was a procedural error and but for the error, the hearing panel would not have made the finding or conclusion. [Bylaw 19.10.1.2]

“A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee . . . will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding.” (University of Mississippi, Public Infractions Appeals Committee Report, May 1, 1995, Page No. 10)

The hearing panel determines the credibility of the evidence.

A penalty prescribed by the hearing panel, including determinations regarding the existence and weighing of any aggravating or mitigating factors, shall not be set aside on appeal except on a showing by the appealing party that the hearing panel abused its discretion. [Bylaw 19.10.1.1]

As we stated in the Alabama State University case:

“...we conclude that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors.” [Alabama State University, Infractions Appeals Committee Public Report, June 30, 2009, Page No. 23]

In the present case, while not directly appealing any finding of fact or conclusions by the hearing panel, SMU looks to several of the prongs above to argue that the financial penalties as they extend beyond the probationary period, the imposition of visit limitations in addition to those self-imposed, the postseason ban extension to individual participants, and the vacation of wins penalty were an abuse of discretion.

Specifically, the institution argued that the hearing panel co-mingled aggravating factors by applying individual aggravators to the institution; failed to adequately account for self-

imposed penalties and other institutional mitigating factors, arbitrarily extended financial penalties beyond the probationary period, and failed to limit the postseason ban in golf to the team only consistent with previous impositions of postseason bans involving championships in individual sports. Additionally, the institution alleges that the hearing panel failed to appropriately aggregate the underlying institutional golf violations, which should have resulted in those violations only rising to Level II. Finally, the institution argues that it was not provided adequate notice of the potential for a vacation of wins penalty involving a student-athlete who was granted immunity and that the immunity provided should have eliminated any competition while ineligible by the student-athlete.

The Infractions Appeals Committee, based on a review of the record before it, finds none of these arguments persuasive in meeting the burden of showing abuse of discretion by the hearing panel.

As noted by the Committee on Infractions, it was within the hearing panel's discretion to take the series of Level II violations presented in men's golf, on their own showing an intent to provide more than a minimal but less than a substantial or extensive recruiting, competitive or other advantage, and aggregating them into a Level I violation where the record clearly shows that in combination, a substantial or extensive recruiting, competitive or other advantage was provided. As such, the committee does not need to determine whether it would be an abuse of discretion to arbitrarily aggregate disparate Level III violations in a manner that would result in multiple classifications of Level II violations and then reaggregate them to result in a Level I determination.

Further, the committee finds adequate evidence in the record to suggest that the hearing panel appropriately separated analyses for the institution and involved individuals in weighing aggravating and mitigating factors in determining violation level and penalty structure. Additionally, once penalty structure is determined without indication of abuse of discretion, this committee is hesitant to delineate any penalty within the appropriate matrix options as an abuse of discretion absent a clearly arbitrary imposition in light of consistent prior application to the contrary. There is nothing in the record to suggest an arbitrary imposition regarding the scholarship reductions, recruiting restrictions, and application of the postseason ban to both the team and individual participants. As to the latter, a postseason ban, absent clear legislative intent to the contrary, is by design a penalty for preventing postseason competition for all team participants. While the hearing panel may find extraordinary circumstances in a particular individual sport instance to limit the impact of a postseason ban to particular student-athletes, there appears no clear intent in the current penalty structure to separate team from individual sport impact. As such, a review of precedent under the previous penalty structure provides little weight in determining a present abuse of discretion.

Finally, there is adequate evidence in the record to support the proposition reached by the hearing panel that the granting of individual immunity does not eliminate that an ineligible athlete competed on behalf of the institution, but merely that the individual would not be subject to the normal application of the student-athlete reinstatement withholding guidelines. And, even if there was a procedural error resulting in lack of specific notice, which is not clearly evident in the record, such error would not have resulted in the hearing panel reaching a different conclusion as to the individual's eligibility during the games played that served as the basis for the vacation of records penalty.

X. CONCLUSION.

The Committee upholds the appealed penalties.¹

NCAA Infractions Appeals Committee

David Williams, chair
Jack Friedenthal
W. Anthony Jenkins
Patti Ohlendorf.

¹ According to the Division I Infractions Appeals Committee Policies and Procedures [See 3. b. (2) (d) at Page No. 4], any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the Notice of Appeal by the appellant and ends with the public release of the committee's decision. Please see Appendix for information on the impact of the stay on the postseason ban, scholarship reductions, and recruiting restrictions.

APPENDIX

According to the NCAA Division I Infractions Appeals Committee Policies and Procedures [See 3. b. (2) (d) at Page No. 4], any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the Notice of Appeal by the appellant and ends with the public release of the committee's decision. Therefore, the appellant's affirmed penalties shall apply as follows for the postseason ban, scholarship reductions, and recruiting restrictions:²

- Penalty IV.2 (for men's golf only): Men's golf programs shall be banned from postseason competitions for one year commencing the 2015-16 academic year.

- Penalty IV.4:
 - a. Men's Golf: the men's golf program shall reduce the number of scholarship equivalencies offered by 25 percent for each year for a period of three years commencing in the 2016-17 academic year and continuing through and including the 2018-19 academic year. The institution is given credit for the 12 percent reduction it will take during the 2015-16 academic year (Institution imposed). Thereafter, the institution is given the flexibility to determine when and how it will apply the credit over the three-year period. If the institution has already executed scholarships for incoming student-athletes and is unable to reduce scholarship equivalencies by 25 percent in 2016-17, the applicable academic years for this penalty will be 2017-18, 2018-19 and 2019-20.

 - b. Men's Basketball: the men's basketball program shall reduce the number of scholarships by nine over a period of three years to commence with the 2016-17 academic year and continue through the 2018-19 academic year.

The institution is given credit for the two scholarships it will reduce in the upcoming 2015-16 academic year (Institution imposed). Thereafter, the institution is given flexibility to determine how to implement the remaining seven scholarship reductions in men's basketball over the remaining probationary period.

- Penalty IV.5:
 - a. Men's basketball:
 - ii. The institution is further prohibited from hosting any unofficial visits for 13 weeks in the summer of 2016;

 - v. During the 2016-17 and 2017-18 academic years, the institution shall reduce the number of official visits by two in each year; and

² This Appendix does not address institution imposed penalties.

- vii. The institution is further required to reduce recruiting communications with prospective student-athletes by 12.5 percent (seven weeks) in the spring of 2016. If due to the timing of the lifting of the stay, the institution is unable to meet the requirement of reducing recruiting communications with prospective student-athletes by 12.5 percent in the spring of 2016, then the institution would be required to reduce recruiting communications with prospective student-athletes by 12.5 percent (seven weeks) in the spring of 2017.

- b. Men's golf:
 - ii. The institution is further prohibited from hosting any unofficial visits for 13 weeks in the summer of 2016; (ii)

 - vi. The institution shall further reduce recruiting communications by 12.5 percent (seven weeks) in the spring of 2016. . If due to the timing of the lifting of the stay, the institution is unable to meet the requirement of reducing recruiting communications with prospective student-athletes by 12.5 percent in the spring of 2016, then the institution would be required to reduce recruiting communications with prospective student-athletes by 12.5 percent (seven weeks) in the spring of 2017.