

**DECISION OF THE  
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION  
DIVISION III INFRACTIONS APPEALS COMMITTEE**

**June 26, 2020**

Decision No. 525

University of Mary Hardin-Baylor

Belton, Texas

## UNIVERSITY OF MARY HARDIN-BAYLOR APPEAL DECISION SUMMARY

### Outcome

University of Mary Hardin-Baylor appealed to the NCAA Division III Infractions Appeals Committee a penalty prescribed by the NCAA Division III Committee on Infractions:

- Penalty V.4 – vacation of all regular season wins and records in which any ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. Further, pursuant to Executive Regulation 31.2.2.3, if any student-athletes competed in the NCAA Division III Championship at any time while ineligible, the institution’s participation in the championship shall be vacated.<sup>1</sup>

The Infractions Appeals Committee affirmed penalty V.4.

### Appellate Procedure

In considering Mary Hardin-Baylor’s appeal, the Infractions Appeals Committee reviewed the notice of intent to appeal; the record before the Committee on Infractions; and the submissions submitted by the institution and the Committee on Infractions.

The appeal was considered on the written record by the Infractions Appeals Committee March 11, 2020.

### Members of the Infractions Appeals Committee

The members of the Infractions Appeals Committee who reviewed this case were William Fritz, committee chair and president of College of Staten Island; Kate Roy, associate commissioner at North Atlantic Conference; and Lauren Haynie, athletics director at Brandeis University.<sup>2</sup>

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<sup>1</sup> For the full details of Penalty V.4, please go to Section VII of this Infractions Appeals Committee decision or the University of Mary-Hardin Baylor Committee on Infractions Decision (October 10, 2019) via the NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

<sup>2</sup> Phill Talavinia, the interim vice president of student life and director of athletics at Bluffton University, was scheduled to review this case. However, due to an emergency meeting at his institution related to COVID-19, he was precluded from participating in the review of this appeal.

## TABLE OF CONTENTS

I.	INTRODUCTION. ....	1
II.	BACKGROUND. ....	1
III.	FINDINGS OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. ....	1
IV.	ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. ....	1
V.	APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS. ....	2
VI.	CORRECTIVE ACTION TAKEN AND PENALTIES (PROPOSED OR SELF- IMPOSED) BY THE UNIVERSITY [AND CONFERENCE]. ....	2
VII.	APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS. .....	2
VIII.	ISSUES RAISED ON APPEAL. ....	3
IX.	APPELLATE PROCEDURE. ....	3
X.	INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL. ....	3
XI.	CONCLUSION. ....	6

## **I. INTRODUCTION.**

The University of Mary Hardin-Baylor appealed to the NCAA Division III Infractions Appeals Committee a specific penalty as determined by the NCAA Division III Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by Mary Hardin-Baylor (hereinafter referred to as appellant or Mary Hardin-Baylor).

## **II. BACKGROUND.**

The Committee on Infractions issued Infractions Decision No. 525 October 10, 2019, in which the committee found violations of NCAA legislation in the football program.<sup>3</sup> Based on those findings, the Committee on Infractions determined that this was a major infractions case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing recruiting, extra benefits and head coach responsibility.

After the Committee on Infractions issued its decision, Mary Hardin-Baylor filed a timely notice of intent to appeal October 24, 2019. A written appeal was filed November 27, 2019. The Committee on Infractions filed its response January 22, 2020. Mary Hardin-Baylor filed its rebuttal to the Committee on Infractions response February 5, 2020. The appeal was considered on the written record by the Infractions Appeals Committee March 11, 2020. (see Section IX below).

## **III. FINDINGS OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.**

See Committee on Infractions decision for Mary Hardin-Baylor Page Nos. 3 and 4. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

## **IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.**

See Committee on Infractions decision for Mary Hardin-Baylor Page Nos. 3 through 7. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

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<sup>3</sup> The Committee on Infractions considered this case through the cooperative summary disposition process, in which all parties agreed to the primary facts and violations as fully set forth in the summary disposition report. The Committee on Infractions proposed additional penalties to the institution, the majority of which were accepted. However, the institution contested one of the Committee on Infractions' proposed penalties, a vacation of records. The institution chose to contest that penalty in a written submission in lieu of an expedited hearing. The Committee on Infractions retained the contested penalty. ([University of Mary Hardin-Baylor Committee on Infractions Decision \(October 10, 2019\) Page No. 1](#)).

**V. APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.**

Mary Hardin-Baylor did not appeal any of the findings of violations in this infractions case. For the findings of violations found by the Committee on Infractions, see the Committee on Infractions decision for Mary Hardin-Baylor Page Nos. 3 through 7. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

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

See Committee on Infractions decision for Mary Hardin-Baylor Appendix One. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

**VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.<sup>4</sup>**

Mary Hardin-Baylor appealed one of the penalties prescribed by the Committee on Infractions. The appealed penalty is:

- V.4 Pursuant to NCAA Bylaw 19.5.2-(g), the institution shall vacate all regular season wins and records in which any ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. Further, pursuant to Executive Regulation 31.2.2.3, if any student-athletes competed in the NCAA Division III Football Championship at any time while ineligible, the institution's participation in the championship shall be vacated. Individual records of any ineligible student-athletes shall also be vacated. However, the individual records and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding its football program, as well as the records of the head coach, shall reflect the vacated records and be recorded in all publications in which records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the head coach with vacated wins on his record may not count the vacated wins to attain specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated contests shall be removed from athletics department stationary [sic], banners displayed in public areas and any other forum in which they appear (e.g., signature blocks, etc.). Any trophies awarded by the NCAA in football related to vacated wins and record shall be returned to the Association. Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA

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<sup>4</sup> The description of the penalty was copied from the Committee on Infractions decision and may be accessed via LSDBi by clicking [HERE](#).

publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Media Coordination and Statistics office and appropriate conference officials to identify the specific student-athlete and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report, detailing those discussions. The document will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 14 days following the release of this decision. The sports information director (or designee) must also inform the OCOI of its submission to the NCAA Media Coordination and Statistics office.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Mary Hardin-Baylor Page Nos. 8 through 10. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

#### **VIII. ISSUES RAISED ON APPEAL.**

In its written submissions, Mary Hardin-Baylor asserted that penalty V.4 prescribed by the Committee on Infractions was excessive such that it constitutes an abuse of discretion.

#### **IX. APPELLATE PROCEDURE.**

In considering Mary Hardin-Baylor's appeal, the Infractions Appeals Committee reviewed the notice of intent to appeal; the record before the Committee on Infractions; and the submissions submitted by the institution and the Committee on Infractions referred to in Section II of this decision.

The appeal was considered on the written record by the Infractions Appeals Committee March 11, 2020. The written submissions were reviewed in accordance with procedures adopted by the committee pursuant to NCAA legislation.<sup>5</sup>

#### **X. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.<sup>6</sup>**

In reviewing the decision in this case, the Infractions Appeals Committee may not set aside a penalty prescribed by the Committee on Infractions on appeal except on a showing by the appellant that the penalty is excessive such that it constitutes an abuse of discretion.<sup>7</sup> Stated another way, in order to set aside the penalty, the Infractions Appeals Committee is

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<sup>5</sup> President Richard Dunsworth of the University of the Ozarks (Arkansas), the incoming chair of the Infractions Appeals Committee, participated as a silent observer during the review of this appeal.

<sup>6</sup> In this section of the decision, the cites to other infractions cases and NCAA bylaws will be linked to the full text of the infractions decisions and bylaws in LSDBi.

<sup>7</sup> [Bylaw 32.10.4.1](#).

required to determine both that the penalty is excessive and that it is an abuse of discretion. [[Kalamazoo College, Infractions Appeals Committee Report, \(October 18, 2016\) Page No. 2](#) and [Bylaw 32.10.4.1](#)] We will begin by discussing whether the penalty is excessive and then address the abuse of discretion standard.

#### Review of Whether the Vacation of Records Penalty is Excessive.

The appellant made three arguments to demonstrate that the vacation of records penalty was excessive. First, the appellant argued that the head football coach did not provide the benefit to the student-athlete as a “quid pro quo” for the student-athlete’s enrollment or participation on the football team, and no competitive advantage was gained by the institution. [Rebuttal Page No. 3] Second, the appellant argued that the partial presence of one circumstance, “direct [or] knowing involvement of the coach,” out of the seven circumstances identified in [Bylaw 19.5.2-\(g\)](#) does not justify the prescription of the vacation of records penalty. [Rebuttal Page Nos. 4 and 5] Finally, the appellant argued that this case is distinguishable from the vast majority of cases and would be the least severe Division III case in which a vacation of records penalty was prescribed since the adoption of [Bylaw 19.5.2-\(g\)](#). [Rebuttal Page Nos. 6 through 8]

The Committee on Infractions argued that the prescription of the vacation of records penalty was “fair and consistent with both the authorizing legislation and past cases.” [Committee on Infractions Response Page Nos. 8 and 9] The Committee on Infractions identified several previous infractions cases in which it prescribed a vacation of records penalty where student-athletes competed while ineligible, including instances when only one student-athlete competed while ineligible and/or where coaches provided impermissible benefits.<sup>8</sup> [Committee on Infractions Response Page No. 9]

Pursuant to [Bylaw 19.5.2-\(g\)](#), the Committee on Infractions may prescribe a vacation of records penalty in a case in which a student-athlete(s) has competed while ineligible, particularly in a case involving:

- a. Academic misconduct;
- b. Serious intentional violations;
- c. A large number of violations;
- d. Direct or knowing involvement of a coach or institutional administrator;
- e. Competition while academically ineligible;

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<sup>8</sup> [Thomas More College](#) (former NCAA member institution), [Susquehanna University](#), [Occidental College](#), and [Salem State University](#).

- f. Competition while ineligible in conjunction with a finding of a failure to monitor or lack of institutional control; or
- g. A case in which vacation or a similar penalty would be prescribed if the underlying violation(s) were secondary.

The appellant argued that the existence of one factor is not sufficient for the prescription of the penalty and that the Committee on Infractions failed to address the other six factors in its decision. However, a plain reading of the legislation shows that the Committee on Infractions may prescribe a vacation of records penalty if one of the circumstances in the bylaw exists in a case. The clauses of the bylaw are connected with the word “or.” Therefore, the bylaw does not require more than one of the outlined circumstances to be present in a case for the Committee on Infractions to prescribe a vacation of records penalty. Additionally, the Committee on Infractions is not required to address every circumstance identified in the bylaw when prescribing such a penalty.

Further, the appellant agreed that between May 2016 and December 2017, the head coach and members of the football coaching staff violated recruiting and extra benefit legislation when they provided local transportation and loaned a personal vehicle to a student-athlete (student-athlete 1). The total value of the benefit was approximately \$5,000. As a result of the impermissible benefit, student-athlete 1 competed and received actual and necessary expenses while ineligible. Additionally, the head coach provided an extra benefit to a second student-athlete (student-athlete 2) when he loaned his personal vehicle to him. ([Mary Hardin-Baylor Infractions Decision Page Nos. 3 through 6](#))

At least one of the circumstances identified in the bylaw for which a vacation of records penalty may particularly be prescribed was present in this case. The appellant agreed that there was a student-athlete that participated while ineligible and the head coach had direct involvement in the violation of the legislation.

Therefore, in this case, where one of the circumstances in [Bylaw 19.5.2-\(g\)](#) is present, we do not find the prescription of a vacation of records penalty was excessive.

#### Review of Case Precedent.

We reviewed the Division III case precedent involving infractions cases in which a vacation of records penalty was prescribed. The Committee on Infractions’ case history demonstrates that it has routinely imposed or prescribed a vacation of records penalty when an ineligible student-athlete competes in competition. [Bylaw 19.5.2-\(g\)](#) does not make a distinction in the total number of student-athletes that have to be involved in ineligible competition for the prescription of a vacation of records penalty. The participation of one ineligible student-athlete is sufficient for the Committee on Infractions to consider and prescribe a vacation of records penalty. After reviewing the Division III case precedent,

we do not find that the prescription of the vacation of records penalty in this case was excessive.

Abuse of Discretion Standard for Division III.

The Infractions Appeals Committee did not find the vacation of records penalty to be excessive. As such, we do not need to reach the issue of whether the Committee on Infractions abused its discretion in this case. Yet, we will provide further guidance regarding the abuse of discretion standard.

The abuse of discretion standard set forth in [Bylaw 32.10.4.1](#) was adopted in 2008. However, the Infractions Appeals Committee case precedent related to what does and does not constitute an abuse of discretion is not defined and does not provide sufficient guidance for Division III institutions. The appellant cited a Division I infractions case in an attempt to define criteria for reviewing whether the Committee on Infractions abused its discretion. In order to provide clear guidance and create a consistent method for reviewing an appeal of a penalty prescribed by the Committee on Infractions, this committee will articulate an abuse of discretion standard.

Based on the committee's discussion and analysis on the meaning of abuse of discretion, we conclude that an abuse of discretion in the prescription of a penalty occurs if the penalty:

- a. Is a deviation from NCAA legislation or case precedent without adequate rationale or explanation by the Committee on Infractions in its decision;
- b. Is based on a clearly erroneous factual finding;
- c. Failed to consider and weigh material factors present in the case;
- d. Is based on a clear error of judgment, such that the prescription was arbitrary, capricious or irrational by the record on appeal; or
- e. Is based in significant part on one or more improper factors.

**XI. CONCLUSION.**

The penalty V.4 is affirmed.

NCAA Infractions Appeals Committee

William J. Fritz, chair  
Lauren S. Haynie  
Kate Roy.