

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

May 12, 2021

Decision No. 527

Head Men's Water Polo Coach

University of California, Santa Barbara

Santa Barbara, California

**HEAD MEN'S WATER POLO COACH
UNIVERSITY OF CALIFORNIA, SANTA BARBARA
APPEAL DECISION SUMMARY**

Outcome

The head men's water polo coach at the University of California, Santa Barbara appealed to the NCAA Division I Infractions Appeals Committee the following findings of violations and one of the penalties prescribed by the NCAA Division I Committee on Infractions:

Findings of Violations¹

- IV.B2: Through his conversation with the club coach, the head men's water polo coach set in motion events that resulted in student-athlete 1 living cost-free with the club coach's family for approximately one month prior to his enrollment and receiving free lodging, transportation and meals during that time.
- IV.C2: The head and assistant men's water polo coaches violated employment compensation and extra benefits legislation when they paid student-athletes 1 and 2 significantly higher wages to coach at their water polo club than other student-athletes working at the club and when they paid student-athletes 1 and 2 for work not actually performed.
- IV.D3: The head men's water polo coach violated NCAA head coach responsibility legislation through his direct involvement in recruiting inducement and extra benefit violations, his failure to ascertain whether the housing and compensation arrangements were permissible, and his involvement of the assistant coach in the violations.

The head men's water polo coach also appealed the prescription of the following penalty by the Committee on Infractions:²

Penalty

- VI.8: Show-cause order (head men's water polo coach): The head men's water polo coach was personally involved in arranging a recruiting inducement and providing extra benefits in the form of improper compensation and pay for work not performed. Therefore, the head water polo coach shall be subject to a two-year show-cause order from November 5, 2019, to November 4, 2021. During the two-year show-cause period, the head coach shall be prohibited from participating in all off-campus recruiting activity. UCSB or any other NCAA member institution employing the head water polo coach during the two-year show-cause period shall adhere to this penalty.

¹ For full details of the findings of violations, please go to the University of California, Santa Barbara Committee on Infractions Decision (November 5, 2019) via NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

² For full details of the penalties prescribed in this case, please go to section VI of this Infractions Appeals Committee decision or the UC Santa Barbara Decision via LSDBi by clicking [HERE](#).

Head coach restriction: The head water polo coach violated Bylaw 11 head coach responsibility legislation when he failed to promote an atmosphere of compliance in his program. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, the head water polo coach shall be suspended from the first 30 percent of the season's contests during the first year of the show-cause period.

The Infractions Appeals Committee vacated finding of violation IV.B2. Findings of violations IV.C2 and IV.D3 are affirmed. Given the determinations made by this committee, the classification level of the violations committed by the appellant and penalty VI.8 are remanded to the Committee on Infractions and should be reassessed, in light of the vacated finding of violation.

Members of the Infractions Appeals Committee

The members of the Infractions Appeals Committee who heard this case were: Jonathan Alger, president at James Madison; W. Anthony Jenkins, acting chair and attorney in private practice; Ellen M. Ferris, vice chair and associate commissioner at the American Athletic Conference; Allison Rich, senior associate athletics director and senior woman administrator at Princeton and David Shipley, law professor and faculty athletics representative at Georgia.

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.....	1
VI.	APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.	2
VII.	ISSUES RAISED ON APPEAL.....	3
VIII.	APPELLATE PROCEDURE.	3
IX.	INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.....	4
X.	CONCLUSION.....	12

I. INTRODUCTION.

The head men's water polo coach at the University of California, Santa Barbara appealed to the NCAA Division I Infractions Appeals Committee three of the findings of violations and one of the penalties prescribed by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by the head men's water polo coach (hereinafter referred to as head men's water polo coach or appellant).

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 527, November 5, 2019, in which the committee found violations of NCAA legislation in the men's water polo program. Based on those findings, the Committee on Infractions classified the case as Level I-Aggravated for the violations committed by the head men's water polo coach and prescribed penalties set forth in Section VI. of UC Santa Barbara infractions decision, dated November 5, 2019.³

The violations in the men's water polo program centered on impermissible recruiting inducements and extra benefits for two elite international men's water polo student-athletes and head coach responsibility.

After the Committee on Infractions issued its decision, the head men's water polo coach filed a timely Notice of Appeal November 20, 2019. The Written Appeal was filed January 17, 2020. The Committee on Infractions filed its Response March 6, 2020. The head men's water polo coach filed his Rebuttal to the Committee on Infractions' Response March 25, 2020. This case was considered by the Infractions Appeals Committee November 19, 2020 (see Section VIII for Appellate Procedure).

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

See Committee on Infractions decision for UC Santa Barbara Page Nos. 5 through 11. 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 UC Santa Barbara Page Nos. 11 through 22. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

V. APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.

The head men's water polo coach appealed the following violations found by the Committee on Infractions:

³ The Committee on Infractions classified this case a Level II-Standard for UC Santa Barbara.

- IV.B2 Through his conversation with the club coach, the head water polo coach set in motion events that resulted in student-athlete 1 living cost-free with the club coach's family for approximately one month prior to enrollment and receiving free transportation and meals during that time.
- IV.C2 The head and assistant water polo coaches violated employment compensation and extra benefits legislation when they paid student-athletes 1 and 2 significantly higher wages to coach at their water polo club than they paid other student-athletes working at the club. Additionally, the coaches paid the two student-athletes for work not actually performed.
- IV.D3 The head water polo coach violated NCAA head coach responsibility legislation through his direct involvement in recruiting inducement and extra benefit violations, his failure to ascertain whether the housing and compensation arrangements were permissible, and his involvement of the assistant coach in the violations.

For the other violations found by the Committee on Infractions, see Committee on Infractions decision for UC Santa Barbara Page Nos. 5 through 11. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VI. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.

The head men's water polo coach appealed a penalty prescribed by the Committee on Infractions. The appealed penalty reads as follows:

- VI.8 Show-cause order (head water polo coach): The head water polo coach was personally involved in arranging a recruiting inducement and providing extra benefits in the form of improper compensation and pay for work not performed. Therefore, the head water polo coach shall be subject to a two-year show-cause order from November 5, 2019, to November 4, 2021. During the two-year show-cause period, the head coach shall be prohibited from participating in all off-campus recruiting activity. UCSB or any other NCAA member institution employing the head water polo coach during the two-year show-cause period shall adhere to this penalty. Head coach restriction: The head water polo coach violated Bylaw 11 head coach responsibility legislation when he failed to promote an atmosphere of compliance in his program. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, the head water polo coach shall be suspended from the first 30 percent of the season's contests during the first

year of the show-cause period. The provisions of this suspension require that the head water polo coach not be present in the facility where contests are held and have no contact or communication with men's water polo coaching staff members or student-athletes during the suspension dates. The prohibition includes all coaching activities for the period of time that begins at 12:01 a.m. on the day of the contest and ends at 11:59 p.m. that day. During that period, the head coach may not participate in any coaching activities, including, but not limited to, team travel, practice, video study, recruiting and team meetings. The results of those contests from which the head coach is suspended shall not count toward the head coach's career coaching record.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for UC Santa Barbara Page Nos. 23 through 44. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VII. ISSUES RAISED ON APPEAL.

In his written appeal, the head men's water polo coach asserted that the findings and conclusions should be set aside because they are: (1) clearly contrary to the evidence presented; (2) the allegations at issue do not constitute a violation of NCAA legislation; and (3) a procedural error was committed that caused the Committee on Infractions to find and conclude in error. The appellant maintained that the Committee on Infractions abused its discretion when it prescribed the show-cause order and the penalty should be vacated.

VIII. APPELLATE PROCEDURE.

In considering the appellant's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the institution's September 12, 2019, hearing before the Committee on Infractions and the submissions by the appellant and the Committee on Infractions referred to in Section II of this decision.

Originally, the in-person oral argument for this appeal was scheduled for June 14, 2020. However, March 24, 2020, all pending oral arguments were postponed due to the circumstances and impact of the COVID-19 pandemic. In September 2020, the Infractions Appeals Committee determined that it would be unable to conduct in-person oral arguments in the foreseeable future, and it would need to conduct oral arguments virtually. The parties were notified September 25, 2020, that the oral argument for this appeal would be conducted virtually.

On May 26, 2020, the appellant requested the Infractions Appeals Committee to provide relief from the stay of penalty V.8, a show-cause order.

On August 17, 2020, the Infractions Appeals Committee considered the head men's water polo coach's request to lift the stay, and the committee granted the appellant relief from the stay of penalty V.8. This relief from the stay is effective as of May 26, 2020, the date of the appellant's request.

A virtual oral argument was conducted November 19, 2020. The head men's water polo coach participated and was represented by his legal counsel. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions and the associate director of the Office of Committees on Infractions. The enforcement staff was represented by the managing director of enforcement and an associate director of enforcement. Other participants included the director of legal affairs and associate general counsel, the vice president of hearing operations, an associate director, the executive assistant to the vice president and the intern for hearing operations. Two new members of the Infractions Appeals Committee participated as silent observers. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

IX. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.⁴

Review of the Finding of Violation: Impermissible Housing Arrangement (IV.B2)

As outlined in NCAA [Bylaw 19.10.1.2](#), to overturn a factual finding prescribed by the hearing panel, the appealing party must show:

- a. A factual finding is clearly contrary to the information presented to the panel;
- b. The facts found by the 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 panel would not have made the finding or conclusion.

The appellant argued that the finding of violation was clearly contrary to the evidence presented to the panel, and he made three arguments to support his conclusion that the facts found by the panel do not constitute an NCAA violation. First, the appellant maintained [Bylaw 12.1.2.1.4.3](#) permits payment of "actual and necessary expenses" in connection with "organized competition." (Written Appeal Page No. 4) According to the appellant, the head coach of a local club team (club coach) provided permissible expenses to student-athlete 1

⁴ 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.

in the form of meals, lodging and transportation per [Bylaw 12.1.2.1.4.3](#).⁵ (Written Appeal Page Nos. 12 through 14) The appellant stated, “[b]eing that ‘actual and necessary expenses’ were provided in connection with ‘organized competition’ and not provided by the appellant or a representative of athletics interest, there is no violation of NCAA Division I Manual Bylaws 13.2.1 and 13.2.1.1-(h).” (Written Appeal Page No. 13)

The appellant’s second argument referenced specific statements contained in the case record that demonstrate that the finding of violation related to the housing arrangement was clearly contrary to the information presented to the panel. The appellant argued that the club coach and student-athlete 1 confirmed that there was no formal request or arrangement made by the appellant for student-athlete 1 to live with the club coach. (Appellant’s Rebuttal Page Nos. 9 and 10)

The appellant’s third argument referenced his specific actions in this infractions case. The appellant maintained that receiving a single phone call from a club coach desiring to obtain a skilled player for his club team, did not substantiate the panel’s finding that the appellant was “personally involved” or had “direct personal involvement” in “provid[ing],” “direct[ing],” or arrang[ing],” impermissible housing for student athlete 1. (Written Appeal Page Nos. 9 through 11 and 13 through 16) The appellant argued that each of the cases cited by the panel demonstrated a much greater level of involvement by a coach than what was shown in this case. (Written Appeal Page Nos. 13 through 16)

The appellant also argued that the panel made a procedural error when it considered the enforcement staff’s joint interview of the club coach and his wife. The appellant argued that the enforcement staff violated “the world-wide investigation protocol” by allowing the club coach and his wife to participate in a joint interview. (Written Appeal Page Nos. 17 through 19) The appellant maintained that the joint interview was inappropriate as the wife did not hear the communication between the appellant and the club coach. (Written Appeal Page Nos. 17 through 19) The appellant further asserted that the interview contained speculative statements by the club coach’s wife that resulted in “group think” and contamination of witness accounts, leading to inaccurate information being provided to the enforcement staff. (Written Appeal Page Nos. 17 through 19)

The panel maintained that the appellant failed to raise the argument that the housing arrangement was permissible under [Bylaw 12.1.2.1.4.3](#) in his submissions to the panel or during the panel’s hearing, and thus waived his right to raise the argument on appeal. (Committee on Infractions Response Page Nos. 23 and 24) The panel also asserted that even if the appellant had made this argument at the panel’s hearing, his statements to the club coach demonstrate the arrangement was “unquestionably facilitated by the appellant’s

⁵ The violations in this case occurred during the 2015-16 through the 2017-18 academic years. Therefore, the bylaw citations are from 2015-16 through the 2017-18 NCAA Division I Manuals.

involvement.” (Committee on Infractions Response Page No. 15) According to the panel, the appellant set these events in motion by: (1) recommending student-athlete 1 to the club coach; (2) telling the club coach that student-athlete 1 needed a place to live; and (3) then putting them in touch with one another. (Committee on Infractions Response Page Nos. 24 and 25) As such, the panel found that the appellant committed a recruiting violation under [Bylaw 13.2.1](#). (Committee on Infractions Response Page Nos. 24 and 25) Finally, the panel asserted that “a prospect’s otherwise permissible receipt of actual and necessary expenses from a club team becomes an impermissible recruiting inducement *when it is facilitated by an institutional staff member*.” (Committee on Infractions Response Page No. 4)

At the panel’s hearing, the institution’s legal counsel raised the issue of whether [Bylaw 12.1.2.1.4.3](#) applied to the conduct outlined in IV.B2. Specifically, the institution’s legal counsel asserted that if the level of communication that the club coach had with student-athlete 1 was similarly minimal or equivalent to the kind of communication a coach would have with a prospective student-athlete about housing, then a violation did not occur. (Committee on Infractions Hearing Transcript Page Nos. 222 and 223) Further the institution’s legal counsel asked the panel to consider whether the free or reduced cost housing would constitute permissible expenses from an outside sponsor under [Bylaw 12.1.2.1.4.3](#). (Committee on Infractions Hearing Transcript Page Nos. 222 and 223)

Pursuant to [Bylaw 19.10.4](#), the Infractions Appeals Committee may consider any information in the record of proceedings before the Committee on Infractions, the record on appeal and arguments presented during the oral argument. Further, in the infractions process, all relevant parties (e.g., institutions and involved individuals) may present information and arguments for the panel to consider in its determination of whether a violation occurred. If other relevant parties put forward information and arguments related to the particular allegations in an infractions case, it should all be considered when assessing whether a violation occurred. Given that the institution’s counsel raised whether the conduct, related to violation IV.B2, was permissible under [Bylaw 12.1.2.1.4.3](#), this information is considered part of the record before the panel and may be considered by this committee.

To demonstrate that a finding of violation is clearly contrary to the information presented, the appellant must show more than an alternative reading or application of the information exists. [Bylaw 19.10.1.2](#) specifies that a finding may be set aside on appeal upon a showing that it is clearly contrary to the information presented to the Committee on Infractions. As this committee has stated in the University of Mississippi case:

“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 upon which the committee based a finding. The Infractions Appeals Committee under existing

legislation will set aside a finding only upon a showing that information that might have supported a contrary result clearly outweighed the information upon which the Committee on Infractions based the finding.” [\[University of Mississippi, Infractions Appeals Committee Report \(May 1, 1995\) Page No. 8\]](#)

Additionally, this committee has previously stated that it is “deferential to the Committee on Infractions in determining the credibility of the evidence, specifically in relationship to weighing the veracity of individuals before it, and it is hesitant to overturn such determinations absent a clear demonstration to the contrary.” [\[The University of Southern Mississippi, Former Head Men's Basketball Coach, Infractions Appeals Committee Decision \(February 2, 2017\) Page No. 5\]](#)

An institution’s staff member shall not be involved, directly or indirectly, in making arrangements for any benefits to a prospective student-athlete other than those expressly permitted by [Bylaws 13.2.1](#) and [13.2.1.1-\(h\)](#), which specifically prohibits free or reduced-cost housing. We agree with the panel that there is an elevated risk of violations when a prospective student-athlete moves to the institution's locale prior to enrollment. [\[Boise State University Infractions Report \(September 13, 2011\)\]](#) and [\[Southeastern Louisiana University Infractions Decision \(April 9, 2015\)\]](#) The appellant should have been more aware of the potential for a violation to occur by mentioning to the club coach that student-athlete 1 would need housing during his participation on the club team. However, in the infractions cases cited by the panel, as well as other infractions cases involving pre-enrollment matters, those involved individuals used influence over those who were under their direction (e.g., student-athletes) to ensure housing was provided and/or they shared a greater level of personal involvement in providing, directing or arranging housing for a prospective student-athlete than what was demonstrated in this case.⁶

Merriam-Webster defines arranged as “to bring about an agreement or understanding” or “to make preparations.”⁷ The conversation in the record shows the appellant told the club coach that the student-athlete would need housing, but no additional agreement was made or action taken by the appellant to facilitate the housing. In fact, the club coach stated that the appellant was not involved in making the arrangements for student-athlete 1 to reside with him, and the appellant did not ask, request or pressure the club coach to provide housing (either for a price, or at a free or reduced cost) to student-athlete 1.⁸ Thus, the action of the appellant falls short of the kind of “arranging” for which coaches have been found responsible in previous infractions cases (e.g., coach asked student-athletes in the same position area as the prospective student-athlete if they had room to house the

⁶ [University of Arizona Infractions Decision \(January 30, 2019\)](#); [St John’s University \(New York\) Infractions Decision \(December 20, 2018\)](#); [Monmouth University Infractions Decision \(October 18, 2017\)](#); [Boise State Infractions Report](#); [Southeastern Louisiana Infractions Decision](#) and [Savannah State University Public Infractions Report \(May 19, 2006\)](#).

⁷ “Arrange.” 2021. In Merriam-Webster.com, from <https://www.merriam-webster.com/dictionary/arrange>.

⁸ October 4, 2017, Interview Transcript of Brittany and Chris Parrish, Page No. 16 [Factual Information No. 52].

prospective student-athlete and then provided contact information to either the prospective student-athlete or student-athlete so the necessary arrangements could be made;⁹ or the coach directed student-athletes to house a prospective student-athlete prior to his enrollment at the institution and the student-athletes had not previously met the prospective student-athlete).¹⁰

As such, we do not believe there is sufficient factual information presented in this case to demonstrate that the appellant directly or indirectly “arranged” for housing for student-athlete 1. In addition, pursuant to [Bylaw 12.1.2.1.4.3](#), the club team could permissibly provide “actual and necessary expenses” (e.g., meals, lodging and transportation) in connection with “organized competition” to student-athlete 1 during his participation on the club coach’s water polo team in summer 2015. In this case, the meals, lodging and transportation from the club team are expressly permitted by [Bylaw 12.1.2.1.4.3](#).

We conclude that there is no violation of NCAA legislation related to the housing arrangement for student-athlete 1. Therefore, we vacate finding of violation IV.B2.

Review of the Finding of Violation: Improper Employment Compensation (IV.C2)

The appellant maintained that the panel’s findings and conclusions related to the employment compensation for student-athletes 1 and 2 are clearly contrary to the evidence presented and that the facts at issue do not constitute a violation of NCAA legislation.¹¹ (Written Appeal Page No. 20) The appellant argued that there is clear and uncontradicted evidence in the case record demonstrating that student-athletes 1 and 2 were compensated for work they actually performed. (Written Appeal Page No. 20) The appellant asserted that the case record shows that student-athletes 1 and 2 were paid below market rate for their compensation based on other water polo clubs in the locale and less than any other head coach working for the appellant’s water polo club. (Written Appeal Page No. 20) The appellant maintained that the water polo club co-owned by the appellant and the assistant water polo coach utilized a payment structure and criteria that were established by the Santa Barbara Water Polo Foundation in 2014. (Written Appeal Page Nos. 22 through 24) According to the appellant, student-athletes 1 and 2 had different and larger roles than other college athletes coaching for the appellant’s water polo club (i.e., managed rosters, developed practice plans, performed scouting, communicated and dealt with parents, and coached in larger and more competitive tournaments), which resulted in higher wages being paid. (Written Appeal Page No. 29)

⁹ [Boise State Infractions Report Page Nos. 8 and 9](#).

¹⁰ [Monmouth Infractions Decision Page Nos. 3 and 4](#).

¹¹ After student-athletes 1 and 2 enrolled at the institution in the fall of 2015 and 2016, respectively, the head coach hired them as coaches at his water polo club.

The panel maintained that the factual findings support the panel's conclusion that the appellant, through his club water polo team, provided improper employment compensation when his club paid student-athletes 1 and 2 at a rate tied directly to their monthly rent, an amount significantly higher than the rate paid to other student-athletes employed at the club.¹² (Committee on Infractions Response Page No. 27) The panel argued that the appellant failed to keep sufficient records of the hours that any of the student-athletes worked, and thus could not provide contemporaneous documentation to back up his stated reason for this pay disparity, "namely, that the student-athletes 1 and 2 served as head coaches and carried more responsibility than the other student-athletes" employed at the appellant's water polo club. (Committee on Infractions Response Page Nos. 28 and 29)

We find that there is sufficient information in the case record to support the panel's conclusion that a violation occurred. Even if student-athletes 1 and 2 were correctly paid head coaches' salaries or stipends from the fall of 2015 to the fall of 2017, the appellant's water polo club was unable to demonstrate that the student-athletes served in the role of head coaches given the lack of documentation regarding coaching title designations, job descriptions, or pay scales. Further, the appellant's water polo club did not monitor the hours student-athletes 1 and 2 worked. (Committee on Infractions Hearing Transcript Page No. 280) Additionally, from the fall of 2015 to the fall of 2017, the appellant's water polo club compensated student-athletes 1 and 2 with a monthly stipend at a rate that was tied directly to the amount of the student-athletes' rent, which negates the appellant's argument that the rate of compensation was based solely on the student-athletes' experience, coaching skill or the number of hours worked.

The lack of documentation and the connection of the stipend to the student-athletes' rent resulted in the appellant being unable to demonstrate whether student-athletes 1 and 2 were paid the appropriate amounts during the periods they worked, as legislated by [Bylaw 12.4.1](#). The case record also demonstrates that there were specific instances when the student-athletes were paid for work that was not performed. (Committee on Infractions Decision Page No. 10) For example, the club paid student-athlete 1 a full stipend in December 2015 although he worked no more than seven hours that month. (Committee on Infractions Decision Page No. 10) Also, in August 2016, the water polo club paid student-athlete 2 even though he was still in his home country and had not begun coaching. (Committee on Infractions Decision Page No. 10) Although the appellant argued that both student-athletes worked additional hours to compensate for the time that they did not work, the appellant was unable to provide contemporaneous documentation to confirm the student-athletes worked any additional hours. The assistant water polo coach admitted that the water polo club did not keep contemporaneous documentation, which could have demonstrated the reasons for the compensation difference between student-athletes 1 and

¹² In total, the club paid student-athlete 1 approximately \$17,000 for his work from fall 2015 to fall 2017, and paid student-athlete 2 approximately \$11,000 for his work from fall 2016 to fall 2017. If both student-athletes had been paid at the same \$12 hourly rate as other student-athletes at the club, they would have earned approximately \$7,000 and \$3,500, respectively.

2 and the other student-athletes employed at the club, as well as job title distinctions for all the student-athletes employed at the water polo club. (Committee on Infractions Hearing Transcript Page No. 280) The appellant also admitted that he did not monitor or track the hours the student-athletes worked and was not involved in the compensation details for the student-athletes. (Committee on Infractions Hearing Transcript Page No. 283)

Therefore, we affirm the finding of violation IV.C2.

Review of the Finding of Violation: Head Coach Responsibility (IV.D3)

The appellant maintained this finding of violation is clearly contrary to information in the record because he has been a coach for 20 years, has no history of violations of NCAA legislation, and has consistently run a compliant water polo program. The appellant argued that he was not personally involved in facilitating the housing arrangements for student-athlete 1, and at no time were student athletes 1 and 2 paid by his water polo club in excess of the “going rate” in the locale or for work not performed. (Written Appeal Page Nos. 46 through 50)

The panel argued that the appellant failed to rebut the presumption of responsibility for the violations in his program from 2015 to 2017. (Committee on Infractions Response Page No. 34) The appellant’s “hands-off approach” to compliance in a few key areas led to impermissible recruiting inducements, impermissible employment income and extra benefits violations. (Committee on Infractions Response Page Nos. 33 and 34) The panel maintained that the appellant’s approach to compliance in the areas of employment compensation and pre-enrollment housing was “simply too relaxed.” (Committee on Infractions Response Page No. 34) The appellant’s failures were not a simple one-time lapse in judgment or the result of a misunderstanding. The panel stated that the record demonstrates that the appellant failed over a two-year period to: (1) consult with compliance in certain key areas; and (2) keep a vigilant eye on situations that created a heightened risk of violations. Additionally, on at least one occasion, the appellant acknowledged that he had read the manual that addressed the issue of student-athlete employment, but then apparently forgot or ignored the instructions in the manual. (Committee on Infractions Response Page No. 36)

Head coaches have an obligation to promote a culture of compliance among the entire team, including assistant coaches, staff and student-athletes, and to monitor individuals in the program that are supervised by the head coach. This concept is outlined in [Bylaw 11.1.1.1](#). A head coach is presumed responsible for the actions of his or her staff that result in a violation. In order to rebut the presumption and to not be found responsible for what would otherwise be a head coach’s violation, a head coach must establish before the panel that he or she did everything necessary to monitor all individuals (supervised by the head coach)

and create an atmosphere of compliance in his or her program. [\[Syracuse University Head Men's Basketball Coach Infractions Appeals Decision \(December 3, 2015\) Page No. 4\]](#)

In this case, the panel recognized the appellant's long history of compliance, but noted that it was not enough to overcome the presumption of responsibility. The Infractions Appeals Committee finds that although the appellant's role in connecting the local club coach with student-athlete 1 did not constitute 'arranging' housing for that student-athlete, the Infractions Appeals Committee agrees with the panel that the appellant's failure to properly monitor the compensation of the student-athletes who were employed at his water polo club is a head coach responsibility violation.

Therefore, we affirm the finding of violation IV.D3.

Review of Penalty: Show-Cause Order with Head Coach Restriction Penalties (V.8)

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\]](#)

The appellant argued that the panel erred and abused its discretion when it issued a show-cause order and head coach restriction penalties. (Written Appeal Page No. 52) The appellant asserted that the “COI's prescription of penalties relating to the alleged violations set forth above are not based on the correct legal standard, based on clearly erroneous factual findings as set forth in detail above, fails to consider and weigh material factors, constitutes a clear error in judgment, and significantly based on erroneous, improper, and irrelevant factors.” (Written Appeal Page No. 52) Finally, the appellant argued that the penalty is void as a matter of law in California because the show-cause order constitutes “an unlawful restraint on engaging in a lawful profession pursuant to Cal. Business and Professions Code § 16600.” (Written Appeal Page No. 53). As such, the appellant asserted that the penalties prescribed by the panel should be overturned. (Written Appeal Page Nos. 52 through 54)

The panel argued that the appellant's argument rests on the fact that he did not commit violations of NCAA legislation. (Committee on Infractions Response Page No. 39) Additionally, the panel stated that the appellant requested penalty modifications that would

fall wholly outside the membership-approved guidelines and provided no basis for doing so. (Committee on Infractions Response Page Nos. 39 and 40) The panel maintained that the penalty guidelines contemplate a show-cause order of two to five years for Level II-Aggravated violations, and a head coach suspension of 30 to 50 percent of the season. The panel argued that it prescribed penalties falling at the lowest end of these ranges. A Level II-Aggravated show-cause penalty could include a prohibition on all coaching and recruiting duties, but in this case, the panel restricted only the appellant's ability to recruit off campus and required a suspension of 30% of the season's contests during the first year of the show cause. (Committee on Infractions Response Page Nos. 38 and 39)

Given the vacation of finding of violation IV.B2 (impermissible housing arrangement), this committee finds that both the classification level of the violations related to appellant and penalty V.8 must be reassessed.

Therefore, penalty V.8 is remanded for reconsideration.

X. CONCLUSION.

Finding of violation IV.B2 is vacated. Findings of violations IV.C2 and IV.D3 are affirmed. Given the determinations made by this committee, the classification level of the violations related to the appellant and penalty VI.8 are remanded to the Committee on Infractions and should be reassessed, in light of the vacated finding of violation.¹³

NCAA Infractions Appeals Committee
W. Anthony Jenkins, acting chair
Jonathan Alger
Ellen M. Ferris
Allison Rich
David Shipley.

¹³ According to the Infractions Appeals Committee Internal Operating Procedure 4-4, 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. As noted in section VIII of this decision, the appellant was granted relief from the stay of the penalty and the two-year show-cause penalty began running November 4, 2019. Due to the of impact of the pandemic, the Committee on Infractions and the NCAA Division I Board of Directors Administrative Committee discussed the application of infractions penalties impacted by the pandemic. The Administrative Committee supported, and the Committee on Infractions adopted, a methodology which the Committee on Infractions will consider when assessing whether infractions penalties have been impacted by the pandemic and the application of the infractions penalties for institutions and involved individuals. Therefore, if not done already, the appellant should contact the chair of the Committee on Infractions through Matt Mikrut (mmikrut@ncaa.org), the director for the Committee on Infractions, at the NCAA national office.