

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE BROUGHT UNDER
THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS ANTI-
DOPING RULES**

Before:

Christopher Quinlan QC (Chair)

Professor Dorian Haskard

Lorraine Johnson

BETWEEN:

UK Anti-Doping

National Anti-Doping Organisation

-and-

Joanna Blair

Respondent

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

A. INTRODUCTION

1. This is the final decision of the Anti-Doping Tribunal ('the Tribunal') convened pursuant to Article 5.1 of the National Anti-Doping Panel Procedural Rules to hear and determine a charge brought against Joanna Blair ('the Respondent') for a violation of Article 2.1 of the *International Association of Athletics Federations Anti-Doping Rules* ('IAAF ADR')
2. Joanna Blair was born on 1 March 1986 and is thirty-one years of age. At the material time she was an athlete registered with UK Athletics. She represented Team GB at the European Athletics Championships held in France in June 2017. As she accepted, at all times she was subject to and bound by the IAAF ADR. By virtue of the IAAF ADR, UK Anti-Doping ('UKAD') has responsibility for results management of IAAF anti-doping rule violations.
3. The Tribunal hearing was held on 6 February 2018 and was attended by
 - The Respondent
 - Jason Torrance, Respondent's solicitor
 - Elaine Blair, Respondent's mother, observing
 - Phillip Law, Solicitor, UKAD
 - Stacey Cross, Solicitor, UKAD
 - David Herbert, UK Athletics, observing
 - Matt Berry, Sport Resolutions
4. This document constitutes our final reasoned decision, reached after due consideration of the evidence, submissions and the Arbitral Awards placed before us.

B. ANTI-DOPING RULE VIOLATION

5. Article 2.1 of the IAAF ADR makes it a doping offence to provide a sample that shows "*the presence of a Prohibited Substance or its Metabolites or Markers*" unless the athlete establishes that the presence is consistent with a Therapeutic Use Exemption ('TUE') within the meaning of Article 4.4.
6. On 24 June 2017, whilst in France representing Team GB, the Respondent was the subject of an Out-of-Competition test. In accordance with standard practice, the sample was split into two, A and B samples. The A Sample was analysed by the Drug Control Centre, King's College London ('the Laboratory') and returned an Adverse Analytical Finding ('AAF') for the presence of 17 β -hydroxy-17 α -methylandrosta-1,4-dien-3-one, a metabolite of metandienone.
7. Metandienone is a non-specified substance listed in S1.1(a) Anabolic Androgenic Steroid in the 2017 Prohibited List. It is prohibited at all times.
8. The Respondent does not have a TUE for metandienone.
9. Accordingly, UKAD charged the Respondent with an anti-doping rule violation ('ADRV') by letter dated 20 July 2017. By the same letter she was provisionally suspended, with immediate effect.
10. By email sent by her legal representative to UKAD on 27 July 2017, the Respondent accepted the AAF and waived her right to have her B Sample analysed.
11. By email sent on 4 August 2017, the Respondent informed UKAD that the suspected route of ingestion of the metandienone was through her use of a "*contaminated supplement*". The Respondent arranged with UKAD, to have the four supplements she said she had been using at the time of sample collection, to be analysed by the Laboratory for contamination.
12. By letter dated 13 September 2017, the Laboratory reported that metandienone had been detected in the creatine powder branded PhD Nutrition Ltd ('the PhD creatine').

The only ingredient listed on the packaging of the PhD creatine' is "100% micronized grade creatine monohydrate". Metandienone is not listed as an ingredient.

13. The Respondent served a formal response to the charge in the form of a document entitled 'Defence', dated 5 October 2017. Therein, she confirmed her position that she ingested the metandienone unknowingly by ingesting the contaminated PhD creatine, which she bought online on 26 August 2016. That accounted for the AAF and so the ADRV. Accordingly, the ingestion was not intentional. She accepted that she bore some fault, but submitted that it was minimal in light of the following:

13.1. She had not received any formal anti-doping education and, as a non-elite athlete, did not have access to a nutritionist or doctor in relation to supplement use; and

13.2. She had made efforts to investigate PhD creatine through the supplier and acted on their assurances.

14. In support of that account, the Respondent produced with the Defence the following exhibits:

14.1. JB-1 – Order documents for the supplement;

14.2. JB-2 – Photographs of the PhD creatine bottle/ labels;

14.3. JB-3 – A copy of the letter from Dr Walker confirming the presence of metandienone in the PhD creatine she said she used; and

14.4. JB-4 – her performance records.

15. The Respondent provided further details of her account in a document entitled 'Response to UKAD Questions', dated 8 November 2017. Therein, she provided further details of the use of the PhD creatine, but declined to advance an explanation as to how it came to be contaminated (Question 2). She did state that she had not introduced the metandienone into the PhD creatine.

16. In an email sent on 15 November 2017, UKAD asked the Respondent to explain how the PhD creatine came to be contaminated. A reply sent on her behalf on 20 November 2017, declined to "enter in idle speculation". It added that:

16.1. She did not tamper with the supplement;

16.2. She had no knowledge of a third-party tampering with the supplement; and

16.3. That the only *"logical explanation is that the product was contaminated during manufacture"*.

17. On 27 November 2017 by email, UKAD confirmed that PhD creatine from the same batch had been obtained and was being sent for analysis. By email dated 12 December 2017, UKAD disclosed a laboratory report which proved that the said PhD creatine sent for analysis did not contain metandienone. Accordingly, UKAD stated that the Respondent should either accept a four year sanction or request that the matter be referred to the National Anti-Doping Panel ('NADP'). The Respondent asked that the case to be referred to the NADP.

18. As is clear from the above narrative, the Respondent admitted the ADRV. She repeated that admission at the start of the Tribunal hearing. The central issue for the Tribunal was sanction.

C. SANCTION

(1) The Respondent's Case

19. In support of her case and in addition to the documents identified above, the Respondent served a document entitled 'Submissions of Joanna Louise Blair' dated 12 January 2018, drafted by Mr Torrance ('Submissions'). She did not file a witness statement but gave evidence before us.

20. She explained her position, in that she purchased the PhD creatine online from Monstersupplements.com. She believed it was free from prohibited substances. She said she used the GlobalDRO website to check it did not contain any prohibited substance. She also called the supplier, Monstersupplements.com and spoke with a male *"advisor"* (whose name she did not know); he assured her it was *"athlete friendly"* and did not contain a prohibited substance. She started using it in mid-December 2016 on heavy training days.

21. She said she was aware she might be tested but had received no anti-doping education. She thought she might be tested on the day of competition but not before.
22. She accepted she had not declared PhD creatine (or the other supplements she was taking) on the 24 June doping control form. She said she forgot and that was "*careless*". She did disclose them on a team medical questionnaire she completed on 21 June 2017; we were given copies of that questionnaire. She declined to tell us her job or her undergraduate degree, save that it was "*biology related*"; she said she had no chemical background.
23. However, she told us she was a "*therapist*" and worked from her shared home. Her supplements, including the PhD creatine, were kept in the kitchen of that house. Others, including her clients had access to the kitchen. To the best of her knowledge none of her clients had a scientific background and she did not posit any reason why any of them would adulterate her supplements, nor suggest that any of them had.
24. In answer to questions from Mr Torrance she denied adulterating her PhD creatine with metandienone (or at all). She had not heard of metandienone before this case, but believed anabolic steroids could improve strength and muscle growth. She could not say when or how it came to be in there, as she said it must have been, before she gave her urine sample on 24 June. She accepted a degree of fault, which was described as "*minimal*".
25. Questioned by Mr Law she said she visited the UK Athletics ('UKA') website. She said she did not appreciate that the GlobalDRO website is (as that website makes clear) for checking "*medications*". Indeed, the UKA website states in terms that it is not for checking supplements. Further, she did not click the 'nutritions and supplements' link clearly visible on the 'Clean Athletics' page of the UKA website.
26. Since she had not provided a witness statement, she was questioned closely on the formal document submitted by Mr Torrance. Contrary to the assertions made in paragraphs 39 and 40 of that document she conceded:
- 26.1. The PhD creatine label did not state that it had been drug tested and was "*certified safe*";

26.2. She did not "...do as advised by her National Governing Body and UKAD by using information and links on the UKS website"; and

26.3. She did not do "everything that could be expected of an athlete in her position" to check the PhD creatine was 'safe'.

27. Further, she was taken through and accepted she had not followed the advice on the UKA website in relation to checking supplements before use, including using the Informed Sport website¹. She said she had not heard of the Informed Sport website. She agreed such steps were reasonable.

28. In summary, Mr Torrance argued:

28.1. The evidence supported her contention that the ADRV was caused by her unknowing ingestion of the PhD contaminated with metandienone;

28.2. Accordingly, she had established the ADRV was not intentional;

28.3. Thereafter, she relied upon IAAF ADR Article 10.5.1(b). The sanction assessed by reference to her level of fault (a range from a warning and reprimand to a two year period of Ineligibility) should be (no more than) "*time served*".

(2) UKAD's Case

29. UKAD did not accept the Respondent's explanation. Accordingly, they put her to proof in respect thereof. Mr Law asked her questions and tested her account.

30. It relied upon statements from five witnesses, none of which was disputed.

31. Kelly Eagle is the "*Quality Manager*" at Herbs in a Bottle ('HinB'), which "*supplies*" PhD creatine. She contacted Cambridge Communities Limited ('CCL') and arranged for a sample of PhD creatine from the same batch as supplied to HinB and used in the PhD creatine purchased by the Respondent, to be sent directly to PhD Nutrition. She said this about the manufacturing process:

31.1. CCL supplies HinB with raw materials.

¹ Set out in paragraph 68.4 Skeleton Argument

31.2. HinB blends the raw materials.

31.3. The HinB production process is completed on site. The creatine powder is blended and an automated filling machine fills the tubs. A measuring scoop is added by hand then lid applied. A heat-sealed liner is applied to the lid and a tamper seal collar also attached. The finished goods are then collected by PhD's approved haulier.

31.4. She concluded: *"To the best of our knowledge, none of our materials contain anabolic steroids, however we cannot state this categorically as we do not test for this"*

32. Dr Hannah Pritchard is employed as the *"Quality Manager"* at CCL. In her signed witness statement, she stated that CCL is registered with Informed Sport and its premises are routinely audited and swab-tested to *"minimise inadvertent contamination"*. Registration with Informed Sport meant the CCL site was *"tested to show that it has appropriate controls in place to minimise cross contamination within the supply chain"*. She also confirmed supply of a sample of the relevant batch of PhD creatine to PhD Nutrition as requested by Ms Eagle.

33. Vicki Waller is the *"Technical Manager"* of PhD Nutrition. The company uses contract manufacturers such as HinB to manufacture and package its products. PhD creatine is one such product. She confirmed receipt of the sample of the relevant batch of PhD creatine from PhD Nutrition and its onwards supply to Princy Madanayake at UKAD. It was subsequently supplied to the Laboratory for analysis, which proved negative for metandienone.

34. UKAD called Dr Walker to give evidence before us. He is employed as a senior analyst at the Laboratory. He confirmed the presence of metandienone in the Respondent's tub of PhD creatine. He said that the analytical findings of the PhD creatine powder from the Respondent, including the concentration and her stated use of it, were consistent with the AAF. But that was only one factor. He said that the Respondent's account was *"plausible"*. But, he could not say how the metandienone came to be in the PhD creatine. Contamination was one option, but so was adulteration. By contamination he meant its presence was innocent in the sense of not being a deliberate introduction of metandienone, which he termed adulteration.

35. On the issue of whether the PhD creatine was contaminated unknowingly to the Respondent, it submitted, *inter alia*, that the fact metandienone was detected in her product was not dispositive of the issue. It demonstrated no more than metandienone was in that powder when tested. That finding did not help with such matters as:

- 35.1. When it came to be placed in the PhD creatine;
- 35.2. How it came to be placed in the PhD creatine; and
- 35.3. The Respondent's knowledge in relation thereto.

36. Accordingly, UKAD submitted that she failed to establish the route of ingestion of the metandienone and so failed to show the ADRV was not intentional. Further, it argued that she had failed to discharge her burden to show that she acted without Significant Fault or Negligence.

(3) Determination

(a) Discussion

37. Article 10.2 of IAAF ADR Article provides:

Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.

(b) The Anti-Doping Rule Violation involves a Specified Substance and the Integrity Unit establishes that the Anti-Doping Rule Violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

38. This is the Respondent's first ADRV. Metandienone is an anabolic steroid and accordingly, is not a Specified Substance. Accordingly, the appropriate period of Ineligibility shall be four years unless she can establish on the balance of probabilities that the ADRV was not intentional.

39. "Intentional" is defined in IAAF ADR Article 10.2.3 thus:

As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

40. The consequence of the definition of "intentional" in IAAF ADR Article 10.2.3 is that the Respondent in seeking to reduce the otherwise mandatory period of Ineligibility from four to two years must establish (on the balance of probabilities) that she is not an athlete who has cheated. To do so she must establish that (i) she did not engage in conduct which she knew constituted an ADRV; or (ii) she did not know there was a significant risk that her conduct might constitute an ADRV but nonetheless manifestly disregarded that risk.

41. In *UKAD v Buttifant* SR/NADP/508/2016 the NADP Appeal panel said this:

"28. In summary, in a case to which article 10.2.1.1 applies the burden is on the athlete to prove that the conduct which resulted in a violation was not intentional. Without evidence

about the means of ingestion the tribunal has no evidence on which to judge whether the conduct of the athlete which resulted in the violation was intentional or not intentional. There is no express requirement for an athlete to prove the means of ingestion but there is an evidential burden to explain how the violation occurred. If the athlete puts forward a credible explanation then the tribunal will focus on that conduct and determine on the balance of probabilities whether the athlete has proved the cause of the violation and that he did not act intentionally.

29. There may be wholly exceptional cases in which the precise cause of the violation is not established but there is objective evidence which allows the tribunal to conclude that, however it occurred, the violation was neither committed knowingly nor in manifest disregard of the risk of violation. In such a case the conduct under examination is all the conduct which might have caused or permitted the violation to occur. These rare cases must be judged on the facts when they arise.

30. In this case the tribunal correctly stated the effect of article 10.2.3 at paragraphs 33 and 34 of the decision. However we do not consider that the tribunal in *UKAD v Lewis Graham* either misinterpreted the rule or drew a bright line or, if it did, drew it in the wrong place. At paragraph 34 of that decision the statement that the athlete must establish how a substance entered his body was made in relation to substances prohibited in competition only, which is a point expressly covered in article 10.2.3. At paragraph 38 the essence of the reasoning was

“without establishing the likely means of ingestion of the Prohibited Substance it is difficult to see how this Tribunal could properly and fairly consider the question of intent in relation to the conduct which led to that ingestion.”

We share that difficulty, but do not preclude such a finding in an exceptional case.

31. The cases decided by the NADP panels under article 10.2.1.1 are unanimous and correct as to the practical effect of article 10.2.3. It is only in a rare case that the athlete will be able to satisfy the burden of proof that the violation of article 2.1 was not intentional without establishing, on the balance of probabilities, the means of ingestion.”

42. We agree with that analysis.

43. IAAF ADR Article 10.5 provides:

Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6:

(a) [...]

(b) Contaminated Products.

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the degree of Fault of the Athlete or other Person.

44. The IAAF ADR Definitions provide:

Contaminated Product: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.

45. The Respondent's case was that the ADRV was – on the balance of probabilities – caused by her using PhD creatine which, unbeknown to her, was contaminated with metandienone. Therefore, it is argued, the ADRV was not intentional. That route of ingestion is also a core and necessary finding in relation to her claim under IAAF ADR Article 10.5.1(b).

46. The burden is upon the Respondent, both in respect of proving the ADRV was not intentional but also (as is clear from IAAF ADR Article 10.5.1(b)) that she bore No Significant Fault or Negligence and that the PhD creatine was contaminated. Although UKAD did not accept and tested the Respondent's case by alternative scenarios or possibilities, it bears no burden of establishing corroborated alternatives. To the

extent Mr Torrance argued that the CAS decision in *UCI v. Contador* CAS 2011/A/2384 is authority for the contrary proposition, we disagree.

(b) Route of Ingestion

47. The undisputed evidence established that the PhD powder supplied by the Respondent to the Laboratory after notification of the AAF contained metandienone. Further, metandienone is not disclosed on the PhD creatine label or in information available in a reasonable Internet search. To that extent it comes within the IAAF definition of "contaminated".

48. In *UKAD v Warburton & Williams*, SR/0000120227 (upon which the Respondent placed considerable reliance) the Tribunal noted²:

Mr Lewis QC (candidly) reminded us that the athlete must also show how a normal product that is now known to have been contaminated, came to be contaminated (Clifton Pinot³ and Clifton Promise⁴) [...]

49. Mr Lewis was correct. In circumstances such as this case, where the supplement the Respondent provided was open and not sealed, it is not sufficient for her merely to demonstrate the presence of the metandienone in the PhD creatine *after* the AAF. That is not dispositive of the issue as to whether it was the source of the metandienone in the sample provided on 24 June 2017.

50. On the available evidence, once manufactured the lid of the PhD creatine powder tub is sealed. The Respondent did not suggest that, when she received the tub, the lid was not sealed. Therefore, the possibilities are:

50.1. 'contamination' during the manufacturing process, before the lid was applied and sealed; and/or

50.2. after it was received by the Respondent.

² At §88

³ *Clifton Pinot v FEI*, FEI Tribunal decision dated 6 August 2014

⁴ *Clifton Promise v FEI*, FEI Tribunal decision dated 6 August 2014

As to the latter, that breaks down further to (1) before or (2) after the AAF. If it was after the AAF, it cannot have been the source of the metandienone in the sample. If before, we must still be satisfied (to the requisite standard) that it was (1) not introduced by the Respondent but also (2) was the source of the metandienone in her sample.

51. We deal first with the possibility that the metandienone was added by an unknown other, who did so without her knowledge. The Respondent's evidence of others having access to the kitchen where the PhD creatine was stored creates opportunity, but it is no more than theoretical. She did not begin to suggest motive on the part of any of her visitors to 'spike' or adulterate her supplements. We reject this as wholly improbable.

52. Therefore, the realistic possibilities are

52.1. Innocent contamination during the manufacturing process and it is the source of the metandienone which caused the AAF; or

52.2. She added it before she gave the sample on 24 June; or

52.3. She added it after she gave the sample on 24 June and so it cannot have been the source of the metandienone which resulted in the AAF.

53. The onus is upon the Respondent to satisfy us that the first possibility in the preceding paragraph is probable.

54. We appreciate that within the unregulated supplements industry mislabelling and adulteration or contamination does occur. Although no specific evidence was put before us to that effect, it is the shared experience of this Tribunal and we have had appropriate regard to it. However, we must deal with the specific and not the general; with the evidence in this case and what may occur in the 'industry' more generally.

55. On the available evidence we are not satisfied that the PhD creatine was probably contaminated with metandienone during the manufacturing process. We reach that conclusion for these reasons:

55.1. While not conclusive, the evidence of Kelly Eagle, Vicky Waller and Hannah Pritchard militates against such a conclusion.

55.2. Dr Walker's evidence at its highest founds the assertion that her account is plausible. He cannot speak as to the source of the metandienone.

55.3. The analysis of another portion of the same batch of PhD creatine proved negative for metandienone.

55.4. There is no evidence before us as to the presence or use of metandienone at any one of or more of the premises of CCL, or HinB or indeed PhD. We asked Mr Torrance whether he made any such enquires and he said he had not.

55.5. There is no evidence before us as to how or in what circumstances metandienone could or may have innocently contaminated the PhD creatine used by the Respondent.

55.6. There is no evidence before us as to how or in what circumstances metandienone could or may have been introduced by a third party into the PhD creatine used by the Respondent at the manufacturing stage.

55.7. It follows that the Respondent has failed to show how a normal PhD creatine product that does not contain metandienone, came to be 'contaminated' with it.

56. We assessed her case and her emphatic denial that she added it, either as the source of the metandienone or to mask its use, by creating a 'contaminated supplement'. However, as we were bound to, we considered it in the context of all the evidence. That includes her failure to disclose in on the doping control form but also (of course) the evidence we summarised in the preceding paragraph. Having done so, we were not persuaded that innocent contamination during manufacture explained the presence of metandienone in the PhD creatine and so explained the AAF.

57. In relation to the negative batch test relied upon by UKAD, the Respondent relied upon, *inter alia*, the observations of the Tribunal in *UKAD v Warburton & Williams*, SR/0000120227⁵:

[...] Second, the very nature of contaminants is that they are or might not be evenly spread in any particular batch or production run. In our judgment, a negative test merely establishes that a particular sample is free from any Prohibited Substance/s for which it was tested [...]

⁵ §102; that is also this Chairman's experience based on expert evidence in another case

58. However, that negative batch test is just a piece of the evidence. It has to be seen in the context of the other available evidence.

59. Accordingly, we cannot be and are not satisfied that the Respondent has established how the metandienone entered her system. She has not established that it was probably the result of her ingesting contaminated PhD creatine.

(c) Intentional

60. It follows that on the evidence before us we are bound to conclude that the Respondent has not discharged her burden to establish the ADRV was not intentional.

(d) No Significant Fault or Negligence

61. The Respondent also relied upon IAAF ADR Article 10.5.1(b). For the reasons set out above in relation to the contaminated PhD, she failed in that regard also.

(e) Period of Ineligibility

62. Accordingly, pursuant to Article 10.2.1(a) a period of Ineligibility of four years must be imposed.

(f) Commencement of Ineligibility

63. The Respondent was provisionally suspended with immediate effect by letter dated 20 July 2017. The Respondent said she had not participated since that date and UKAD did not suggest otherwise. The period of Ineligibility shall start on that date, (IAAF ADR Article 10.10.2(a)).

64. The Respondent's status during the period of Ineligibility is as provided in IAAF ADR Article 10.11.

(g) Disqualification of Results

65. By operation of IAAF ADR Article 9, the Respondent is automatically disqualified from the events she participated in after the taking of the sample, namely on 25 June 2017, 2 July 2017 and 8 July 2017 with all resulting consequences, including results, forfeiture of points and prize and appearance money, if any.

D. SUMMARY

66. For the reasons set out above, the Tribunal finds:

- (a) The anti-doping rule violation has been established.
- (b) The period of ineligibility imposed is four years commencing on 20 July 2017.

E. RIGHT OF APPEAL

67. In accordance with IAAF ADR Article 13 the parties may appeal against this decision by lodging a Notice of Appeal according to the applicable time limits.



Christopher Quinlan QC, Chairman

On behalf of the Tribunal

23 February 2018



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