

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

*Before:*

*Juan Pablo Arriagada Aljaro (Sole Adjudicator)*

**BETWEEN:**

**International Association of Athletics Federations (IAAF)**

*Anti-Doping Organisation*

**-and-**

**María Guadalupe González Romero**

*Respondent*

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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**A. INTRODUCTION**

1. The Athletics Integrity Unit ("**AIU**") has charged Ms. María Guadalupe González Romero ("the **Athlete**") with an Anti-Doping Rule Violation ("**ADRV**") for the Presence and Use of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, namely epitrenbolone (a metabolite of trenbolone) in a urine sample provided by the Athlete on 17 October 2018 numbered 4257309, pursuant, respectively, to Articles 2.1 and

2.2 of the International Association of Athletics Federations (“**IAAF**”) Anti-Doping Rules (“**ADR**”).

## **B. FACTUAL BACKGROUND**

2. Below is a chronological summary of the evidence before the Sole Adjudicator based on the Parties’ submissions.
3. The IAAF is represented in these proceedings by the AIU, which has delegated authority for results management and hearings on behalf of the IAAF pursuant to Article 1.2 of the IAAF Anti-Doping Rules (this award refers interchangeably to the IAAF or the AIU).
4. The Athlete is a 30-year-old race-walker from Mexico, who underwent an Out-of-Competition doping control test on 17 October 2018 in Mexico City. The Athlete provided a urine sample with reference number 4257309 (the **Sample**).

### *The First Sample*

5. The Sample was analysed by the WADA-accredited laboratory in Montreal, Canada (“the **Laboratory**”) and revealed the presence of a metabolite of trenbolone with an estimated concentration of 1ng/ml.
6. Trenbolone is an Exogenous Anabolic Androgenic Steroids. It is a Prohibited Exogenous Anabolic Androgenic Steroid under section s1.1a of the WADA 2018 Prohibited List. It is a non-specified substance and is prohibited at all times.
7. On 16 November 2018, the AIU notified the Athlete (on behalf of the IAAF) of the result of the analysis and informed her that a provisional suspension had been imposed with immediate effect. The AIU also asked the Athlete to provide an explanation for the result and informed of her right to have the B Sample analysed.

8. In a letter of 23 November 2018, the Athlete stated that the only explanation for the Adverse Analytical Finding ("**AAF**") was her consumption of contaminated meat. In short, she explained that trenbolone is not prohibited for use or consumption on animals destined for slaughter in Mexico, but that it is authorised for use in livestock feedlotting by the Department of Agriculture, Livestock, Rural Development and Food ("**SAGARPA**"). The Athlete included in her letter a list of current pharmaceutical chemicals and identified three products permitted for use in cattle (IMPLEMAX, IMPLEMAX-H and IMPLIX-M) and, with reference to a list of pharmaceutical products with group registration one produced evidence that these products included trenbolone as an active ingredient. She also requested the analysis of the B sample.
9. The Athlete also informed the AIU that on 14 October 2018, she had ingested approximately 200 grams of *meat cut (steak)*; on 15 October 2018, beef filet with vegetables; on 16 October 2018, *5 tacos al pastor (marinated pork in chili sauce, with tortillas)*.

### *The Second Sample*

10. The analysis of the B Sample confirmed the presence of trenbolone. On 3 December 2018, the AIU informed the Athlete about this result.

## **C. AIU PROCEDURE**

11. On 10 December 2018, the AIU issued the Athlete with a Notice of Charge for violations of Article 2.1 ADR and Article 2.2. ADR pursuant to Article 8.4.2 ADR ("**the Charge**") and invited her to confirm how she wished to proceed with the matter by no later than 17 December 2018.
12. On 17 December 2018, the Athlete confirmed that it was not her desire to admit the Charge and stated that she had not used any prohibited substances. She reiterated that the only explanation for the results was her consumption of meat contaminated with trenbolone and highlighted her previous negative anti-

doping tests as evidence that she does not use prohibited substances. The Athlete requested that the matter be determined at a hearing.

#### **D. PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL**

13. On 21 December 2018, I was appointed as Chair of the Panel of the Disciplinary Tribunal ("the **Tribunal**") to determine the matter.
14. In accordance with Article 8.7 of the IAAF Anti-Doping Rules, a preliminary meeting by conference call was scheduled for 11 January 2019.
15. On 10 January 2019, the Athlete indicated that she had not yet received the B Sample Laboratory Documentation Package and the results of the analysis of the blood sample collected on 17 October 2018 and requested to be provided with them and that the preliminary meeting be adjourned until she had received them. The Athlete considered that those documents were essential to fully exercise her right of defence.
16. On 21 January 2019, the Athlete was provided with the B Sample Laboratory Documentation Package.
17. On 29 January 2019, a preliminary meeting took place before me and, on 30 January 2019, I issued the procedural directions for the determination of this matter. In these procedural directions, pursuant to the agreement of the Parties during the preliminary meeting, it was directed that I would hear this matter sitting alone as Sole Adjudicator under Article 8.7.2 (a) of the IAAF Anti-Doping Rules.
18. On 14 February 2019, the Parties confirmed their availability to attend a hearing on the dates proposed during the Preliminary Meeting. Considering the availability of the Parties, the Sole Adjudicator fixed the date for a hearing on this matter on Thursday, 18 April 2019, in London, United Kingdom.

19. On 21 February 2019, the AIU filed its brief on behalf of the IAAF according to paragraph 1.2 of the Directions, as agreed between the Parties during the Preliminary Meeting.
20. On 10 March 2019, the Athlete requested an extension to file the Reply. The Sole Adjudicator granted the Athlete an extension to file the Reply until 28 March 2019.
21. On 28 March 2019, the Athlete presented her Reply.
22. On 9 April 2019, the Athlete responded to additional questions posed by the AIU on 5 April 2019.
23. On 9 April 2019, the AIU requested the hearing scheduled for 18 April be adjourned to another date in order to allow for their expert witness to attend and give evidence in this matter.
24. On 10 April 2019, the Athlete confirmed she was content to accommodate the request so long as the hearing was heard on 19 April. The Athlete was informed by Sport Resolutions that 19 April was a public holiday in the United Kingdom (Good Friday). The Athlete subsequently requested the hearing be heard on 17 April 2019. The revised date was agreed by the AIU.
25. On 12 April 2019, the IAAF submitted its Reply Brief.

## **E. HEARING**

26. On 17 April 2019 a hearing was held in London. The AIU was represented by Mr. Ross of Wenzel, of Kellerhals Carrard law firm, Mr. Tony Jackson, Case Manager and Ms. Olympia Karavasili, Legal Assistant, who attended in person.
27. The Athlete, who attended the hearing by video-conference, was represented by Mr. Luis Fernando Jimenez Aguayo, independent lawyer, and Mr Victor Manuel Espinoza Martinez of Espinoza Martínez, Abogados, S.C. who attended in person, and Mr. Vicente Javalones Sanchis, independent lawyer, and Mr

Antonio Garcia Alcaraz, of Landaberea & Abogados, Barcelona, Spain, who attended by teleconference.

28. The following witnesses gave evidence during the hearing: Mr. Arturo Colin, Pentad Security Executive; Ms. Brenda Jazmin Rivas Villegas, the Athlete's friend; Mr. Eduardo Tager Palos, owner of Picanha Grill restaurant; Mr. Leonardo Granados, owner of Las Gueras restaurant; Mr. Gabriel Luis Ezeta Morales, Notary Public; Professor Giuseppe D'Onofrio, IAAF Expert; and Professor Christiane Ayotte, IAAF Expert. The statement of Dr. Héctor Martínez was omitted.

29. The Athlete's oral evidence related to her routines, the food she had eaten the days prior to the sample collection and her diagnosed anaemia. Among other things the Athlete declared that:

- She called the owner of Picanha Grill, asking for the receipt of her lunch.
- She had received a ticket from Picanha Grill that she threw away.
- She went to Picanha Grill with her friend Brenda Villegas and after having lunch they went home.
- The Athlete qualified herself as an international athlete that has participated in World Championship, Olympic Games and Pan-American Games competitions. As such, she had a personal doctor within her team, but she did not consult with him the diagnostic and the treatment of the emergency doctor.
- The Athlete did not recall the time when she went to General Hospital MF No. 26, what the doctor who attended her- Dr Maldonado- looked like nor how long her consultation with Dr Maldonado took.

30. Mr. Tager, owner of Picanha Grill declared, among other things that:

- His business is a food truck, not a traditional restaurant.

- He did not remember whether the Athlete had had lunch on 17 October at Picanha Grill because he has many customers.
  - The Athlete's lawyers had contacted him and requested to issue an invoice, even though he never issues tickets due to the informal nature of his business.
  - He decided to accept the request made by the Athlete's lawyers, because he was willing to help Mexican sport.
31. Ms. Brenda Villegas, friend of the Athlete, declared that she had lunch at Picanha Grill with the Athlete and that after lunch they took a walk around a square, had an ice cream and then went home.
  32. The owner of Las Gueras, Mr. Granados testified about the running of his business.
  33. Mr. Colin testified about the Pentad Report.
  34. Professor D'Onofrio provided testimony with respect to the clinical adequacy of the Hospital Report and the consistency of the diagnosis with the Athlete's Biological Passport.
  35. Professor Ayotte provided testimony with respect to (i) the plausibility of the Athlete's explanation from a scientific/pharmacokinetic perspective and; (ii) the physiological effects and performance benefits of trenbolone.
  36. Mr. Ezeta provided testimony with respect to the matters set out in his notarial report dated 6 March 2019.

## **F. APPLICABLE LAW**

### *Jurisdiction*

37. The Athlete is an International-Level Athlete who, on 17 October 2018 was a member of the Federation of Mexican Athletics Associations, an IAAF Member Federation. Further, in May 2018, the Athlete participated in the Taicang IAAF

World Race Walking Team Championship, organised and recognised by the IAAF.

38. Pursuant to Article 1.9 ADR,<sup>1</sup> the Athlete is an International-Level Athlete, as she was included in the IAAF Registered Testing Pool on the date when the Sample was collected.
39. The IAAF has established the AIU whose role is to protect the integrity of Athletics. The IAAF has delegated implementation of its ADR to the AIU.
40. By virtue of her membership to the IAAF, through her membership of the Mexican Athletics Federation, and as set out in Articles 1.2<sup>2</sup> and 1.7<sup>3</sup> ADR, the Athlete is bound by the ADR, the rules which govern this proceeding.

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<sup>1</sup> *"Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, each of the following Athletes shall be considered to be an International-Level Athlete ("**International-Level Athlete**") for the purposes of these Anti-Doping Rules and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes shall apply to such Athletes:*

*(a) An Athlete who is in the International Registered Testing Pool; [...]"*

<sup>2</sup> *"In accordance with Article 16.1 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit ("**Integrity Unit**") with effect from 3 April 2017 whose role is to protect the integrity of Athletics, including fulfilling the IAAF's obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanctions and Appeals. The references in these Anti-Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit)."*

<sup>3</sup> *"These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, by condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:*

*a) all Athletes Athlete Support Personnel and other Persons who are members of a National Federation or of any affiliate organisation of a National Federation (including any clubs, teams associations or leagues);*

*b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held";*



41. Article 7.2.1 ADR states that the AIU shall have results management responsibility for all potential violations *“arising in connection with any Testing conducted under these Anti-Doping Rules by the Integrity Unit”*.<sup>4</sup>
42. Article 8.2 ADR grants the Tribunal the jurisdiction to hear this matter and reads:
- “The IAAF has established a Disciplinary Tribunal which shall have jurisdiction over all matters in which:*
- (a) An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;”*
43. Article 8.6 ADR grants the Panel the jurisdiction to hear and resolve all matters related to this dispute.
44. Neither party has contested my appointment to the Panel nor the Tribunal’s jurisdiction to hear this case and render a decision in accordance with Article 8.9 ADR.
45. The Athlete neither challenges being subjected to the ADR nor challenges the AIU’s jurisdiction to conduct results management in this matter.

## **G. LEGAL FRAMEWORK**

46. Article 2 ADR reads:

*“Doping is defined as the occurrence of one or more of the following (each an “Anti-Doping Rule Violation”):*

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<sup>4</sup> *“The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances:*

*7.2.1 For potential violations arising in connection with any Testing conducted under these Anti-Doping Rules by the Integrity Unit, including investigations conducted by the Integrity Unit against Athlete Support Personnel or other Persons potentially involved in such violations.”*

## **2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample**

*2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1.*

*2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*

[...]

## **2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method**

*2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method.*

*2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an Anti-Doping Rule Violation to be committed.*

[...]"

47. Article 3.1 ADR provides:

### **"3.1 Burdens and Standards of Proof**

*The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the*

*allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."*

48. Article 3.2.2 to 3.2.4 ADR state:

*"3.2.2 Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly.*

*3.2.3 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in compliance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding. In such an event, the IAAF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*

*3.2.4 Departures from any other International Standard, or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that did not cause the facts alleged or evidence cited in support of a charge (e.g., an Adverse Analytical Finding) shall not invalidate such facts or evidence. If the Athlete or other Person establishes the occurrence of a departure from an International Standard or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that could reasonably have caused the Adverse Analytical Finding or other facts alleged to constitute an Anti-Doping Rule Violation, then the IAAF or other Anti-Doping Organisation shall have the burden to establish that such departure did not cause such Adverse Analytical Finding or the factual basis for the Anti-Doping Rule Violation".*

49. Article 10.2 ADR states:

***"10.2 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 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 international."*

## H. THE ARGUMENTS

50. Both the Athlete's and the AIU's written and verbal arguments have been carefully considered. For the sake of brevity, only the most relevant arguments are recounted herein.

### *THE AIU*

51. The IAAF argues that the AIU reviewed the adverse findings and their review did not reveal a valid Therapeutic Use exemption ("**TUE**") that could justify the presence of epitrenbolone in the Sample.

52. There has been no deviation from any International Standard for Testing and Investigation ("**ISTI**") or International Standard for Laboratories ("**ISL**"). Further, the analysis of Sample B confirmed the presence of epitrenbolone.

53. For the IAAF, all athletes are strictly liable for the presence of any prohibited substance in their body. Therefore, the IAAF does not need to demonstrate intent, fault, negligence or knowledge, and the Tribunal can be comfortably satisfied that the Athlete has breached Articles 2.1 and 2.2 ADR and committed anti-doping rule violations.

54. The IAAF refers to several precedents whereby the Athlete must establish how the substance entered her body to rebut the presumption of intentionality, and a simple denial of the deliberate ingestion is not enough to rebut such presumption.

55. The IAAF contends that the Athlete must demonstrate on the balance of probabilities, the source of epitrenbolone found in the Sample in order to obtain a reduction of the period of Ineligibility. The cases in which an athlete

might rebut the presumption without establishing the origin of the substance rely on exceptional circumstances.

56. In relation to the Athlete's allegation that the source of the substance was the consumption of contaminated meat, the IAAF contends that the risk of meat contaminated with clenbuterol in countries such as Mexico is widely acknowledged and, in circumstances where an athlete is able to demonstrate that they have been in a country where clenbuterol meat contamination is demonstrably high, and that they ingested quantities of meat in that country, WADA accepts that disciplinary proceedings against athletes with low levels (less than 1ng/ml) of urinary concentrations of clenbuterol would have little to no prospect of success. However, the same cannot be said for matters involving trenbolone, and thus, the Athlete had the burden of providing actual evidence that it is more likely than not that she ingested meat that was contaminated with trenbolone.
57. Further, the IAAF considers that it is remarkable that the Athlete had omitted in her initial explanation on 23 November 2018 to mention either the medical advice or the beef liver (for breakfast), which contradicts her letter of 23 November 2018, in which she stated that her breakfast consisted of fruits and eggs. As the maximum permitted residues of trenbolone is five times higher in liver, she had an interest in having eaten liver.
58. The IAAF alleges that the evidence produced by the Athlete, i.e. information that trenbolone is used legitimately in meat production in Mexico (without producing any evidence of meat contamination with trenbolone in the country) and uncorroborated evidence that she ingested unspecified amounts of beef on 14 October 2018 and 15 October 2018, is not sufficient on the balance of probability.
59. In addition, the IAAF instructed Pentad Security to carry out an investigation to verify the veracity of the Athlete's explanations. That investigation concluded that some documents had been forged and the Athlete's explanations are moulded around those forged documents. The Pentad Report considers the hospital report submitted by the Athlete to have been forged if one takes into

account the incorrect data included in the report, such as the doctor's name or telephone number, and the fact that "*diagnosis of ferropenic microcytic hypochromic anaemia is not supported by the [Hospital Report] and is not compatible with the hematological values in the [ABP]*", as concluded by Professor D'Onofrio.

60. Further, the IAAF indicates that the restaurant "Picanha Grill" ceased operating some four years ago, and even the scans of the QR Code on the invoice provided by the Athlete provides information that is different from the Athlete's invoice. Similarly, the Pentad Report concludes that the receipts of the restaurant "Las Gueras" are also fabricated considering that the owner, who only works on weekends, handwrote the weekday receipts, and that the Athlete answered in the supplementary questions of the AIU that she finished breakfast at 8:15am, which is unlikely considering that the restaurant opens at 8am.
61. The IAAF also refers, among others, to the case of *ITF v. Marcela Zacarias Valle*, because the athlete in that case alleged that the source of her positive test for trenbolone had been the ingestion of contaminated meat in Mexico. In that case the athlete had provided official government documents, confirming that the administration of trenbolone to cattle is permitted in Mexico, a list of the food she had eaten prior to the sample collection, and a hair analysis with a negative result for the presence of trenbolone
62. The IAAF adds that while in other cases there was a negative urine sample collected respectively one day and three days prior to the date on which a sample was provided that contained low levels of epitrenbolone, in the case at hand there is no proximate negative urine sample collected from the Athlete.

*Relief Requested by the IAAF:*

63. The IAAF requests the Tribunal:
  - (i) "*To rule that the Tribunal has jurisdiction to decide on the subject matter of this dispute.*"

- (ii) *To find that the Athlete has committed anti-doping rule violations pursuant to Article 2.1 ADR and Article 2.2 ADR;*
- (iii) *To impose a period of ineligibility of four years upon the Athlete, commencing on the date of the Tribunal's Award. The period of provisional suspension imposed on the Athlete from 16 November 2018 until the date of the Tribunal's Award shall be credited against the total period of ineligibility, provided that it has been effectively served by the Athlete.*
- (iv) *To order the disqualification of any results obtained by the Athlete between 17 October 2018 and 16 November 2018 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.8 ADR.*
- (v) *To award the IAAF a contribution to its legal costs."*

#### *THE ATHLETE*

64. The Athlete claims that before the doping control test was conducted, she was diagnosed with ferropenic anaemia and the doctor told her to increase her intake of green vegetables and meat. During the days around the date of the urine sample collection, the Athlete was staying at the Mexican Olympic Committee for training and went to a restaurant called "Las Gueras" on 14, 15 and 17 October 2018 and to another restaurant called "Picanha Grill". In both places she ordered beef liver, beefsteak, tacos, picanha, etc. to increase the ingestion of meat to overcome the anaemia.
65. The Athlete claims that the administration of trenbolone to cattle is permitted in Mexico and Mexican authorities allow certain limits of trenbolone residues in meat, but there are not many studies involving trenbolone. The Athlete refers to the Study "*Detection of Anabolic Residues in Misplaced Implantation Site in Cattle*", which states that where trenbolone is used, like in Mexico, there is a high probability that meat contaminated with trenbolone is consumed by humans. As the Athlete consumed beef liver, which has the highest limits of allowed trenbolone, three days before, two days before, and hours before the doping control test, there is a high probability that contaminated beef liver was consumed by the Athlete. The Athlete provided a notarial report in which the



butcher states that he used trenbolone implants in accordance with veterinary advice.

66. The Claimant refers to Article 10.2.1 ADR, which provides that the period of Ineligibility shall be four years, "*unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.*" If this provision does not apply, then the sanction shall be 2 years. In this regard, the Athlete refers to *CAS case 2016/A/4676* to indicate that establishing the source of the prohibited substance in a player's Sample is not required to prove an absence of intent. This is in line with Articles 10.2.1 and 10.2.3 ADR, which do not refer to a need to establish the source of the prohibited substance to prove an absence of intent. Therefore, the IAAF cannot affirm that if the Athlete is not able to provide evidence that she ingested contaminated meat, then she cannot demonstrate that the anti-doping violations were not intentional.
67. For the Athlete, when considering the degree of intentionality, it must be taken into account that during her career she had always tested negative both before and after the positive tests and that she was not aware of the presence of trenbolone in the meat she ingested.
68. The Athlete points out that trenbolone is used to gain weight and muscle mass, and does not imply an enhancement of the performance of long-distance athletes who do not need to gain weight or muscle mass, but the opposite.
69. Further, the Athlete claims that pursuant to Article 10.4 ADR the period of Ineligibility shall be eliminated if the Athlete or other person establishes that she bears No Fault or Negligence; or the Athlete did not know, or suspect, and could not reasonably have known or suspected that the ingestion of meat could lead to a risk that could constitute an Anti-Doping Rule Violation.
70. Alternatively, the Athlete contends that if the Disciplinary Tribunal finds fault or negligence, that she bears No Significant Fault or Negligence and pursuant to Article 10.5.1(b) the period of Ineligibility shall be between zero (0) and two (2) years. In this regard, the Sole Adjudicator has to evaluate the facts and circumstances of the case. To this end, it is necessary to consider an objective element, which is the standard of care of a reasonable person in the athlete's



situation, and a subjective element, which is what could have been expected from the particular athlete in light of her personal capacities. The Athlete considers that under the circumstances of the case, a light degree of fault would be applicable, and the period of Ineligibility should be between zero (0) and eight (8) months.

71. The Athlete also contends that if no period of Ineligibility is imposed all the medals, titles, points and prizes should be retained.
72. Finally, the Athlete refers to the principle of proportionality with regard to the sanction imposed. For the Athlete it is disproportionate to link the imposition of a sanction with the fact that no samples were collected in the days prior to the contaminated sample, and that considering that two negative samples were collected one month before, and one month after, the sample with trenbolone, any period of Ineligibility is disproportionate.

*Relief Requested by the Athlete:*

73. The Athlete requests the Disciplinary Tribunal to rule that:
  - (i) *"no period of ineligibility is imposed on the Athlete based on that she bears No Fault or Negligence.*
  - (ii) *Alternatively, a reprimand and no period of ineligibility is imposed on the Athlete based on that she bears No Significant Fault or Negligence and in accordance with the principle of proportionality.*
  - (iii) *Alternatively, a significant reduction of the otherwise applicable sanction is applied on the basis that she bears No Significant Fault or Negligence and in accordance with the principle of proportionality."*

## **I. ANTI-DOPING RULE VIOLATION**

74. Doping is defined in Article 1 ADR as the occurrence of one or more of the ADRVs set forth in Article 2.1 to 2.10 ADR. Pursuant to Article 2.1 ADR, the

confirmed Presence of a Prohibited Substance in an athlete's Sample, in this instance trenbolone, constitutes an ADRV.

75. The Athlete has not challenged the results of the analysis nor the laboratory procedures, and their reported findings are valid. There has been no deviation from any International Standard which could cast doubt on the Sample analysis. In short, there was no dispute that the analysis by the accredited laboratory in Montreal of the Mexico sample collected from the Athlete on 17 October 2018, showed the presence of the banned substance.
76. Article 2.1.1 ADR (see supra) is unambiguous. It is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body and it is not necessary for the AIU to demonstrate intent, fault, negligence or knowing Use by the Athlete in order to establish that an ADRV for "Presence" has occurred.
77. Pursuant to Article 2.1.2 ADR, sufficient proof of an ADRV involving the "Presence" of a Prohibited Substance or its Metabolites or Markers is established by the confirmation of the finding of trenbolone in the Athlete's First A and B Samples.
78. Pursuant to Article 2.2.1 ADR, it is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Substance is "used". Accordingly, it is also not necessary for the AIU to demonstrate intent, fault, negligence or knowing use by the Athlete to establish that an ADRV for "Use" has occurred and the fact that the trenbolone was detected in the Athlete's Samples leads to the conclusion that the Athlete "used" it.
79. Upon consideration of all the evidence and the contradictions of the Athlete, as explained below, an ADRV by reason of "Presence" is established to the Disciplinary Tribunal's satisfaction. Although the charge of the ADRV by reason of use adds nothing in terms of the potential sanction or the Disciplinary Tribunal's deliberations, the Sole Adjudicator is satisfied that it is established as well. Further, there is no dispute that the Athlete does not have a valid Therapeutic Use Exemption justifying the presence or use of the banned substance.

## J. STANDARD OF PROOF AND INTENTION

80. Article 3.1 ADR provides:

*“The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules places the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.”*

81. The Sole Adjudicator considers that the IAAF has established that the Athlete has committed an ADRV. Therefore, the burden of proof is shifted to the Athlete to rebut the presumption or establish specific facts or circumstances on a balance of probability, meaning that the nature and quality of the evidence put forward by the Athlete in her defence, in light of all the facts established, must be such that it leaves the Sole Adjudicator satisfied on the balance of probability that the Athlete’s explanation is more likely than not to be true.
82. In this regard, if the Athlete wishes to eliminate or reduce a period of Ineligibility under the ADR, based on his or her degree of fault, she must produce reliable and credible evidence establishing how the Prohibited Substance entered her system.
83. Accordingly, pursuant to the ADR the Athlete must first establish how the substance entered her system by way of specific, concrete and reliable evidence, so that her explanation is more likely to be certain than not on the balance of probabilities.
84. Balance of probabilities means that an allegation is considered proved if this is more probable than not; or, the occurrence of the circumstances on which a party relies is more probable than their non-occurrence. In some legal systems

this standard is also called “preponderance of the evidence”. It is generally admitted that this standard requires a Panel to be satisfied with a 51% (or anything “more than 50%”) degree of certitude.

85. The Athlete’s explanation of how the substance entered her system relates to the ingestion of meat. However, this explanation together with the evidence produced by the Athlete is not convincing. The Athlete provided contradicting versions of events during the proceedings, which are themselves contradicted by the evidence provided, some of which was fabricated. During the proceedings the Sole Adjudicator appreciated certain elements that, even considered in isolation, were crucial to consider favourably the version of the Athlete. Considering them jointly with the evidence provided at the hearing leaves no doubt that the Athlete’s explanation is not reliable.
86. Indeed, the Sole Adjudicator notes that in the letter provided by the Athlete of 23 November 2018, the Athlete referred to the fact that she had eaten 200 grams of meat cut on 14 October 2018, a beef filet on Monday 15 October 2018, five tacos pastor on Tuesday 16 October 2018 and that her breakfast consisted of fruit and eggs.
87. Firstly, for the Sole Adjudicator it is striking that in that letter of 23 November she did not state that she had been diagnosed with anaemia on 4 September 2018 and that the doctors had told her to increase her meat consumption, as was mentioned subsequently in her Reply. Such treatment is an extremely important element of the Athlete’s explanation, as it was the origin of the Athlete’s explanation to increase meat consumption. For this reason, the Sole Adjudicator considers it surprising that the Athlete did not refer to it in her letter of 23 November 2018.
88. Further, the Athlete indicated that on 14 and 15 October she had eaten 100 grams of beef liver for breakfast, and also on 17 October 2018 before the doping control test, something that she omitted in her letter of 23 November 2018. Considering that liver may contain the highest concentration of trenbolone, it is striking that she did not mention this on 23 November. During the hearing, the Athlete did not explain why she did not mention these facts

from the beginning. Considering that this is a relevant fact, and that the Athlete never provided an explanation as to why she omitted the treatment or the consumption of liver in her letter of 23 November 2018, at least she could have tried to give an explanation for this omission during the hearing, but she did not.

89. The Sole Adjudicator considers the first version provided by the Athlete to be more reliable, as it was coetaneous to the date when the samples were collected. Further, given the Pentad Report, the Sole Adjudicator considers that even the first version provided by the Athlete is not likely to have occurred given the false statements of the Athlete that were contained within the Pentad Report provided by the IAAF and the declarations of witnesses.
90. Indeed, in relation to the lunch at Picanha Grill, the owner, Mr Eduardo Tager indicated that his business is not a restaurant but a *food truck*, and that it was impossible for him to confirm that the Athlete ate there on 17 October 2018, given the large number of clients he had. Further, he recognised that he does not issue invoices, due to the informal character of his business. The lawyers of the Athlete requested Mr. Tager to provide a receipt indicating what the Athlete had eaten at his restaurant, and as Mr. Tager did not have a receipt, he decided to take an invoice he already had registered and modify the data adding the details of the Athlete. The Sole Adjudicator notes another contradiction here as the Athlete said that she had received a receipt and that she threw the receipt away. Further, the invoice provided by the restaurant Picanha Grill is also inconsistent with the version provided by the Athlete. The invoice submitted by the Athlete refers to a buffet of Brazilian "swords" and salads. However, during the hearing the Athlete asserted that she only ate a piece of meat (*picanha*) and had drunk a soft drink.
91. And finally, the versions of the Athlete and Ms. Rivas about what they did after they met for lunch are not the same.
92. In relation to the breakfast at Las Gueras, the Sole Adjudicator notes that in her letter of 23 November, the Athlete did not indicate that she ate meat or beef liver for breakfast, which makes the version of events set out in her Reply

unreliable. Further, the invoices provided by the Athlete do not show that the Athlete was where she said she was on the days indicated. It is also suspicious that the owner of Las Gueras was able to locate invoices from a number of months prior within just 2 or 3 minutes, as pointed out by the public notary, Mr Ezeta.

93. Las Gueras is a roadside restaurant but also Mr Granados' home, where he serves food without meeting health and cleanliness requirements. It is striking that an international athlete that had supposedly been diagnosed with anaemia had breakfast in such a place. Further, pursuant to her routines, i.e. warm up and training time, and the time spent to go to Las Gueras and order food would mean that the Athlete should have finished breakfast at 8:50am or later, whereas she said that she had finished breakfast at 8:15am.
94. As it has been explained, all the factual elements and the evidence provided by the Athlete contained numerous contradictions, including a document (the invoice of Picanha Grill), whose author recognised it to be false. This leads the Sole Adjudicator to reject the Athlete's explanation for lack of credibility.
95. Having said that, the scientific evidence made available for the Tribunal reinforces the above conclusion as explained in the following paragraphs.
96. The declaration of Professor Ayotte is very helpful as she illustrated that, considering the amount of meat the Athlete had eaten, it was not possible that the trenbolone found in her body came from contaminated meat, due to the fact that its concentration in her Sample was too high.
97. Finally, the Sole Adjudicator wishes to point out that the medical explanation given by the Athlete is not reliable either. First, the Athlete did not refer to the anaemia diagnosis in her letter of 23 November 2018. If such a diagnosis was true, it is difficult to understand or find a reason why the Athlete did not refer to it in the aforementioned letter. Furthermore, she did not consult with the doctor of her technical team whether the diagnosis and the treatment indicated were correct. This does not seem reasonable, considering that she was a high level and experienced athlete in particular when a doctor specialised in sports medicine would have more specialised knowledge and would know the risks of

certain treatments in relation to doping substances. Further, the hospital form indicates that the Athlete should have gone to a nutritionist, but the Athlete did not say anything in this regard. In addition, Professor D'Onofrio provided a report (which was not objected to by the Athlete) that explained that it is not possible to make a diagnosis of anaemia with only a drop of blood taken from the ear of the Athlete and this diagnosis was inconsistent with the previous analysis made by IAAF. Finally, the Athlete did not remember the surrounding circumstances as to why she went to the hospital. One usually remembers the circumstances the first time one experiences important symptoms.

98. In light of the above, the Sole Adjudicator considers that the version put forward by the Athlete is not reliable and therefore the Sole Adjudicator is not satisfied that the Athlete's explanation is more likely than not to be true. Consequently, the Athlete has failed to establish that her ADRV was not intentional. Therefore, no reduction of the standard period of Ineligibility of four years shall be applied.

## **K. CONSEQUENCES**

99. Pursuant to Article 10.2.1 (a) ADR, the mandatory period of Ineligibility to be imposed is four years unless the Athlete can establish on a balance of probabilities that the ADRV was not intentional. Athletes are strictly liable for the substances that are found in their systems, and exceptional circumstances mitigating against the consequences of that strict responsibility will not be found to exist where the Athlete has failed to exercise appropriate diligence and care, and where the Athlete has failed to provide satisfactory evidence to demonstrate that she was neither at fault, nor acted negligently or intentionally.
100. As stated above, the Athlete has not established on a balance of probabilities that the ADR was not intentional. Without providing reliable evidence as to how the substance got into her system the only inference that can be drawn by the Panel is that she more than likely knew, or reasonably should have known, of



the risks and that she knew, or reasonably should have known, that her conduct might constitute or result in an ADRV.

101. The evidence before the Sole Adjudicator does not warrant a reduction of the mandatory period of Ineligibility pursuant to Article 10.2.1 ADR. The presumptive four-year sanction cannot be reduced on the basis of the Athlete's lack of intention, which the Sole Adjudicator considers to be proportional to the violation.
102. The Sole Adjudicator considered the Athlete's argument as to proportionality of sanction, which contended a four-year sanction to be disproportionate bearing in mind that two negative samples were collected one month before, and one month after, the sample containing trenbolone. The Sole Adjudicator also considered the argument that no sample collection took place in the days prior to the contaminated sample, but sees no strength to either argument that this would render a four-year sanction disproportionate. Indeed, the ADR provide for an objective sanction, that can be reduced in certain circumstances. Further, if the Athlete's argument was admitted, it would be easy for athletes to argue the reduction of sanctions, simply by providing a negative result in future doping control tests. Similarly, a past clean record could be relied upon to encourage athletes to commit a first violation.

#### **L. THE START DATE OF THE PERIOD OF INELIGIBILITY**

103. A period of Ineligibility of four years is imposed upon the Athlete, commencing on the date of the Panel's decision. In its submission, the IAAF indicated the period of provisional suspension imposed on the Athlete from 16 November 2018 until the date of the Tribunal's Award should be credited against the total period of Ineligibility, provided that it has been effectively served by the Athlete. Considering that crediting the period of provisional suspension is more beneficial to the Athlete than not crediting it, the Sole Adjudicator decides that the period from 16 November 2018 up to the date of this award should be credited against the total period of Ineligibility, provided that that it has been effectively served by the Athlete.



## **M. DISQUALIFICATION OF RESULTS**

104. Pursuant to Article 10.8 ADR the Athlete's results shall be disqualified between 17 October 2018 and 16 November 2018 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

## **N. COSTS**

105. The IAAF sought an award for a contribution to its legal costs. The Sole Adjudicator has had regard to all the circumstances of the case, in particular the fact that the Athlete has not prevailed with her explanation, and that the IAAF has not specified the amount of the costs it has incurred. Thus, the Sole Adjudicator decides to order that the Athlete shall bear the cost of the proceedings before the Disciplinary Tribunal at a nominal amount of USD 1,000.

## **O. THE RIGHTS OF ANY APPEAL**

106. Article 8.9.2 ADR requires the Panel to set out and explain in its decision the rights of appeal applicable pursuant to Article 13 ADR.

107. As this proceeding involves an International Level Athlete, the decision may be appealed exclusively to the CAS, as per Article 13.2.2 ADR. The scope of review on appeal includes *"all relevant issues to the matter and is expressly not limited to the issues or scope of review before the initial matter"*.<sup>5</sup>

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<sup>5</sup> Art 13.1.1 of the ADR.

## **P. ORDER**

108. For the reasons set out above, the Sole Adjudicator makes the following decisions and orders:

- (i) The Disciplinary Tribunal has jurisdiction to decide the present dispute.
- (ii) The Athlete has committed an ADRV under Article 2.1 and 2.2 ADR.
- (iii) A period of Ineligibility of four years is imposed upon the Athlete, commencing on the date of this award. The period of provisional suspension imposed on the Athlete from 16 November 2018 until the date of this award shall be credited against the total period of Ineligibility, provided that it has been effectively served by the Athlete.
- (iv) The Athlete's results from 17 October 2018 until the commencement of her provisional suspension on 16 November 2018 shall be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money, pursuant to Article 10.8 ADR.
- (v) The Sole Adjudicator orders that the Athlete shall bear the cost of the proceedings before the Disciplinary Tribunal at a nominal amount of USD 1,000 this amount is to be paid to the IAAF.



**Juan Pablo Arriagada Aljaro (Sole Adjudicator)**

09 May 2019

London, UK



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