

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
WORLD ATHLETICS**

Before:

William Norris QC

BETWEEN:

World Athletics

Anti-Doping Organisation

and

Luvo Manyonga

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

INTRODUCTION

1. World Athletics is the International Federation governing the sport of Athletics worldwide. It has its registered seat in Monaco.
2. The Respondent, Mr Luvo Manyonga (hereafter “the Athlete”) is a 30-year-old triple-jumper from South Africa.

3. The Athlete was issued with a Notice of Charge on 23 December 2020, which was revised on 8 January 2021. In that Charge, the Athletics Integrity Unit (“the AIU”), acting for World Athletics, charged the Athlete with a Whereabouts Failure within the meaning of Rule 2.4 of the World Athletics Anti-Doping Rules in force from 1 April 2020 (the “World Athletics Rules” or the “Rules”), specifically for (i) a Missed Test dated 26 November 2019; (ii) a Filing Failure effective 1 April 2020; and (iii) a Filing Failure effective 1 October 2020.
4. This Charge alleged what was, in fact, a second Anti-Doping Rule Violation (“ADRV”) because the Athlete has previously been subject to a period of Ineligibility of eighteen (18) months for an ADRV based on the presence of methamphetamine in a Sample collected from him on 20 March 2012.
5. The Charge set out inter alia (i) the detailed facts and included the supporting documentation and evidence upon which the AIU intended to rely to establish the ADRV against the Athlete; and (ii) the Consequences that the AIU was seeking for that violation. In filing the Charge against the Athlete, the AIU expressly reserved the right to amend and / or add to the Charge at any time.
6. On 4 March 2021, the Athlete’s (then) legal representatives, Lipman Karas LLP, wrote denying the ADRV on the basis of the following:
 - (a) that the requirements of Article 3.9 of Appendix A of the World Athletics Anti-Doping Regulations in force from 1 April 2020 (the “Regulations”) had not been satisfied in respect of one or more of the alleged Whereabouts Failures; and
 - (b) that, for the missed Test on 26 November 2019, the Athlete had a reasonable and legitimate expectation, based on previous tests, whereby Doping Control Officers (“DCOs”) have travelled to see him to conduct those tests, that the DCO would do so in a similar way on 26 November 2019.
7. The AIU submits in its Written Brief that the evidence it has adduced (which was provided to the Athlete on 23 December 2020 and in further documentation sent on 16 March 2021 in response to the Athlete’s own request) is such that the requirements of Article 3.9 of Appendix A of the Regulations have clearly been satisfied with respect to the Filing Failure asserted against the Athlete. Further, it is contended that with respect to the Missed Test

of 26 November 2019, all the requirements of Article 4.3 of Appendix A of the Regulations are also fully satisfied.

8. As I shall explain, the Athlete has not in fact cooperated with this hearing process and has declined several opportunities to attend the hearing scheduled for 28 May 2021. As a consequence, it is unnecessary for me to rehearse the evidential issues in the usual detail and I shall proceed to summarise them. Those who wish to see a more detailed exposition of the case that the Athlete faces, and which I am satisfied the AIU has proved, should refer to the World Athletics Brief to which the Athlete has served no response and which, save for a typographical error (2021 not 2020) in paragraph 44, I find to be a fair and accurate summary of the facts and the propositions of law and principle.

PROCEDURAL HISTORY

9. With the consent of the Parties, I was appointed the Sole Arbitrator to determine this Charge and, with their further agreement (on 4 March 2021), I gave Directions which were issued on 9 March 2021. The relevant Directions were that:
 - (a) the AIU would submit its full Brief by 5:00pm (GMT) on Thursday, 1 April 2021;
 - (b) the Athlete would submit his Brief in answer by 5:00pm (GMT) on 30 April 2021;
 - (c) provision was made for a Reply Brief from the AIU by 5:00pm (GMT) on 14 May 2021;
 - (d) a hearing bundle was to be agreed by Friday, 21 May 2021; and
 - (e) the full hearing was to be held via *Zoom* on Friday, 28 May 2021.
10. On 4 May 2021, Sport Resolutions, which has had administrative responsibility for this process, warned the Parties (that is, the AIU and Lipman Karas (then acting for the Athlete)) that the hearing for 28 May 2021 would have to be rescheduled because of what was then understood to be my unavailability on that occasion. Lipman Karas replied on 5 May 2021 advising that they no longer represented the Athlete because they had been

unable to obtain instructions. They confirmed, nevertheless, that the Athlete's coach was "aware of the deadlines in this matter and also that the hearing date is to be rescheduled".

11. Shortly thereafter (on or before 10 May 2021), the issue surrounding my availability was resolved and the parties were informed on that day that the hearing could indeed proceed on Friday, 28 May 2021 as originally scheduled. By that stage, of course, the Athlete should have provided his response to the Brief submitted by World Athletics (this should have been submitted on 7 May 2021). Being aware that the Athlete was no longer represented by Lipman Karas, Sport Resolutions asked the Athlete if he required further assistance in obtaining *pro bono* representation.
12. In due course, the AIU and Sport Resolutions were advised that the Athlete had new legal representation and, indeed, may have had such representation since January 2021 (by an attorney in South Africa, Mr Brendan Weldrick). Mr Weldrick was copied into correspondence and, in particular, into an exchange on 20 May 2021 in which the AIU had proposed that the Athlete should be afforded the opportunity to have a short and final extension to the deadline by which he would file his answer in the matter (he not having yet done so despite the Directions given).
13. In the email of 20 May 2021, copied to Sport Resolutions and to Mr Weldrick, the AIU wrote saying, in effect, that it considered that there would still be sufficient time for the matter to be heard on the appointed day (28 May 2021) if the Athlete cooperated even at this late stage and the AIU concluded by saying that if the Athlete failed "*to file an answer, then the AIU submits that the Chair may consider the matter on the basis of the Written Submissions on the already agreed hearing date of 28 May 2021.*"
14. As of Wednesday 26 May 2021, nothing further had been heard from the Athlete or from Mr Weldrick notwithstanding Sport Resolutions having made every reasonable effort to communicate with him and his legal representative. Accordingly, I suggested that Sport Resolutions write again to both the Athlete and Mr Weldrick, reminding them of the hearing due to take place on 28 May 2021 and asking them if they were intending to attend or offering any reason or making any submissions as to why the hearing should not proceed.
15. No response was received from the Athlete, but the AIU submitted further on 27 May 2021 in these terms:

“The AIU notes that Rule 8.8.3 of the World Athletics Anti-Doping Rules provides that the non-attendance of the Athlete or his representative, after proper notice of the hearing has been provided, shall not prevent the Panel from proceeding with the hearing in their absence.

However, in circumstances where the Athlete has failed to respond to correspondence and has also failed to file any written submission responding to the AIU Brief filed on 1 April 2021, the AIU does not consider that the hearing tomorrow is necessary and that the Chair may properly determine this matter on the papers in accordance with the powers set out at Rule 8.6.1(i) of the World Athletics Anti-Doping Rules.”

16. To offer one final opportunity, the parties were advised on 27 May 2021 that unless notice was given by 6:00pm (BST) that day, I would determine the matter on the basis of the papers already submitted.
17. Nothing further has been heard from the Athlete or from his legal representative and, accordingly, that is what I have done.

JURISDICTION & REGULATIONS

18. The World Athletics Anti-Doping Rules, in force from 1 November 2019, and the World Athletics Anti-Doping Regulations, in force from 1 November 2019, are applicable to the Missed Test dated 26 November 2019.
19. The World Athletics Rules and the Regulations are applicable to the Filing Failure effective 1 April 2020 and the Filing Failure effective 1 October 2020.
20. The November 2019 and April 2020 Anti-Doping Rules and Regulations are identical with respect to the substantive and material provisions applicable to this matter.
21. It is not necessary to recite the relevant passages from the World Athletics Rules. Suffice it to say that they apply to all athletes who are members of a Member Federation and to all athletes participating in competitions organised, convened, authorised or recognised by World Athletics. Consequently, they apply to the Athlete in the present case because he was a member of Athletics South Africa, the World Athletics Member Federation in that

country. Further, in 2019, the Athlete competed in several Diamond League events and in the World Championships in Athletics in Doha, Qatar, and has also competed in the South Africa Championships on 25 April and 27 April 2019.

22. At no stage has the Athlete disputed that he is subject to the jurisdiction of the World Athletics Rules and the World Athletics Regulations.
23. Jurisdiction for results management is conferred on the AIU in the circumstances arising in the present case.
24. The Missed Test occurred on 26 November 2019. This was in connection with testing conducted under the World Athletics Rules and under the Testing Authority of World Athletics.
25. At the relevant time, the Athlete was a member of the International Registered Testing Pool (“IRTP”), having been a part of the IRTP since September 2016.
26. The effect of the Rules is that the AIU therefore has results management responsibility for the three Whereabouts Failures and authority to issue the Notice of Charge in accordance with Rule 8 for the ADRV committed by the Athlete pursuant to Rule 2.4.
27. Since the Athlete is an International-Level Athlete, the Tribunal has jurisdiction to hear and determine the ADRV alleged against the Athlete, pursuant to Rule 8.1(a) of the World Athletics Rules.
28. It is clear that Out-of-Competition Testing is, as the AIU submits, *“a significant and fundamental element of the AIU’s anti-doping programme to combat the threat of doping to the integrity of the sport of Athletics”*. The programme of Out-of-Competition Testing depends upon the requirement of athletes providing complete and accurate information regarding their whereabouts for every day in a forthcoming quarter, including for a defined 60-minute period where they will be available for Testing during that period.
29. For the detailed obligations imposed upon an athlete, reference should be made to Annex I of the WADA International Standard for Testing and Investigations (“ISTI”) and specifically Article 1.1.1 of Annex I, which details an athlete’s individual whereabouts responsibilities.

30. Consistent with my approach, which is to summarise matters, I do not intend to recite the specific requirements of the ISTI in relation to whereabouts obligations. In brief, athletes must identify where they are at particular times and in particular periods and, should the information provided by them become inaccurate or incomplete, they must update that information. Particularly, they must provide specific 60-minute time slots between 05:00 and 23:00 when they will be available for Testing at a specific location. Article 1.3.2 of the ISTI specifies that a failure to be accessible for Testing at the location during the specified 60-minute time slot will be a Missed Test. That obligation is reinforced by the specific provision of Article 1.4.1, which, in essence, obliges the Athlete to be present and available for testing on any given day during the 60-minute time slot specified for that day.
31. What is known as a Filing Failure occurs when an Athlete fails to make an accurate and complete Whereabouts Filing or to update that Whereabouts Filing as set out above. In those circumstance, they may incur a Filing Failure, which is defined in the ISTI and reflected in the Regulations.
32. Where an Athlete is not both present and available for Testing at the location specified during the 60-minute time slot, a Missed Test allegation arises. What is meant by a “*Missed Test*” is defined in the Regulations as:
- “Missed Test: A failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in his/her Whereabouts Filing for the day in question, in accordance with Article 1.4 of the International Standard for Testing and Investigations.”*
33. Such a Missed Test shall be confirmed only when the requirements of Article 1.4.3 of the ISTI are satisfied. Those requirements are set out in full in the World Athletics’ Brief and I consider them to be summarised correctly.

RULE 2.4 – WHEREABOUTS FAILURES

34. Rule 2.4 of the World Athletics Rules provides that the following shall constitute an ADRV:

“2.4 Whereabouts Failures

Any combination of three Missed Tests and/or Filing Failures as defined in the International Standard for Testing and Investigations, within a twelve-month period, by an Athlete in a Registered Testing Pool.”

35. In this instance, the Athlete has a total of three (3) Whereabouts Failures confirmed against him in the twelve-month period beginning 26 November 2019, specifically:
- (a) a Missed Test dated 26 November 2019;
 - (b) a Filing Failure effective 1 April 2020; and
 - (c) a Filing Failure effective 1 October 2020.
36. The Athlete’s original challenge to the alleged ADRV was on the basis that:
- (a) the requirements of Article 3.9 of Appendix A of the Regulations are not satisfied in respect to one or more of the Whereabouts Failures asserted against the Athlete; and
 - (b) on 26 November 2019, the Athlete had a reasonable and legitimate expectation that the DCO would travel to locate him for Testing (in circumstances where the Athlete was not at the location that he had specified in his Whereabouts Filing for that date during the 60-minute time slot).
37. Since the Athlete has not engaged with the present process, at least not since the Order for Directions made on 9 March 2021, it is unnecessary to recite the Detailed Response to the Athlete’s challenge which is contained in paragraphs 41–72 of the World Athletics Brief. As I say, in the circumstances of this case it is sufficient that I endorse those submissions if I consider them to be accurate, as I do. Accordingly, I am satisfied that World Athletics has proved that the Athlete has committed the ADRV as charged.

CONSEQUENCES FOR THE ADRV

38. Rule 10.3.2 of the World Athletics Rules provides the consequences to be imposed for the ADRV of Whereabouts Failure pursuant to Rule 2.4:

“10.3.2 For an Anti-Doping Rule Violation under Article 2.4 that is the Athlete’s first anti-doping offence, the period of Ineligibility imposed shall be two years, subject to a reduction down to a minimum of one year, depending on the Athlete’s degree of Fault. The flexibility between two years and one year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.”

39. The standard applicable sanction for a violation of Rule 10.3.2 of the World Athletics Rules (Article 2.4 of the World Anti-Doping Code) is a two-year period of Ineligibility. The period of Ineligibility is subject to a possible reduction on the basis of the Athlete’s degree of Fault. However, as the Athlete’s second ADRV, in accordance with Rule 10.7.1, the period of Ineligibility shall be twice the period of Ineligibility treated as if it were a first violation, i.e. a period of Ineligibility of four (4) years.

40. World Athletics accepts the following (and I quote from its Brief for this hearing):

“76. ...by way of lex mitior, the provisions of the World Athletics 2021 Anti-Doping Rules (“the 2021 Rules”) apply to the applicable sanctioning regime.

77. Rule 10.3.2 of the 2021 Rules provides for the same starting point for the sanction (before the consideration of the multiple violation provisions).

78. Given the starting point for the sanction, the Tribunal must then apply the Multiple Violations provisions of Rule 10.9.1 of the 2021 Rules:

“10.9.1 Second or third anti-doping rule violation:

(a) For an Athlete or other Persons second anti-doping rule violation, the period of Ineligibility will be the greater of:

(i) a six month period of Ineligibility; or

(ii) a period of Ineligibility in the range between:

(aa) the sum of the period of Ineligibility imposed for the first anti-doping rule violation plus the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation; and

(bb) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.

The period of Ineligibility within this range will be determined based on the entirety of the circumstances and the Athlete or other Person's degree of Fault with respect to the second violation."

79. The Athlete had an eighteen-month period of Ineligibility imposed upon him for his first anti-doping rule violation. Therefore, the Tribunal will only need to consider Rule 10.9.1(a)(ii).

80. Given World Athletics' position above on the starting point for the sanction, the Tribunal will need to consider a period of Ineligibility in this matter of between 3.5 years and four (4) years.

81. The Athlete has made no submission in mitigation based on his degree of Fault. Therefore, World Athletics submits at this point that a four (4)-year period of Ineligibility must be imposed."

CONSEQUENCES

41. For the reasons summarised above, I find that the Athlete has committed an ADRV pursuant to Rule 2.4 of the World Athletics Rules.

42. I further endorse World Athletics' contention that a four year period of Ineligibility must be imposed as this is his second such violation. That period will commence today although the time during which the Athlete was provisionally suspended (since 23 December 2020) will be credited against the 4 year period. The Athlete's period of Ineligibility will therefore commence on 23 December 2020 and end at midnight on 22 December 2024.

43. In addition, I rule that, pursuant to Rule 10.8 of the World Athletics Rules, any competitive results obtained by the Athlete from the date that the ADRV occurred (1 October 2020) through to the start of the Provisional Suspension on 23 December 2020 shall be disqualified, with all associated consequences including forfeiture of any medals, titles, ranking points, prize and appearance money.

44. World Athletics seeks a contribution to its costs. Since the AIU has necessarily had to prepare to present a case where the Charge(s) were to be contested, there is no good reason why I should not make an award. Since I assume that the Athlete's financial circumstances are not good, I will only make an award in respect of what will only be a proportion of those costs in the sum of £1,000. If World Athletics wishes to submit that I should award a greater (or lesser) sum, then it may have liberty to apply for a review of that part of this order, within 14 days of its receipt.

RIGHT OF APPEAL

45. This decision may be appealed to the Court of Arbitration for Sport ("CAS"), located at Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Article 13 ADR and its relevant subsections.
46. In accordance with (Art. 13.7.1 2019 ADR / Art. 13.6 2021 ADR), parties shall have 30 days from receipt of this decision to lodge an appeal with the CAS.



William Norris QC
Sole Arbitrator
London, UK
11 June 2021

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