SR/417/2024

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

Before:
Conny Jörneklint (Sole Arbitrator)

BETWEEN:

WORLD ATHLETICS **Anti-Doping Organisation**

and

MR DOMINIQUE LASCONI MULAMBA **Respondent**

DECISION OF THE DISCIPLINARY AND APPEALS TRIBUNAL

I. INTRODUCTION

1. World Athletics is the governing body for the sport of athletics worldwide. World Athletics has delegated implementation of its anti-doping rules to the Athletics Integrity Unit (the "AIU") as per Rule 1.2.2 of the Anti-Doping Rules ("ADR"). Mr Tony Jackson, Deputy Head of Case Management of the AIU, acted as counsel for the AIU in these proceedings.

2. The Respondent, Mr Dominique Lasconi Mulamba ("the Athlete" or "Mr Mulamba"), is a 23-year-old sprinter from the Democratic Republic of Congo. Mr Mulamba was represented by Ms Benita Sarr-Kindongo, Attorney-at-Law from Paris, France, having acted *pro bono*.

3. The Appellant and the Respondent are each referred to individually as a “Party” and collectively as the “Parties”.

II. JURISDICTION

4. The applicable rules are the 2024 World Athletics ADR in force from 1 January 2024.

5. Rule 1.4.4 ADR specifies those athletes who are classified as International-Level athletes for the purpose of the ADR. It follows that the Athlete is an International-Level Athlete for the purposes of Results Management under the ADR based on his entry for, and participation in, the Athletics programme of the Olympic Games pursuant to Rule 1.4.4(b)(ii) ADR. Therefore, the ADR applies to the Athlete.

6. World Athletics has established a Disciplinary and Appeals Tribunal to hear alleged anti-doping rule violations (“ADRVs”) and other breaches of the ADR (Rules 1.3 and 8.2 ADR).

7. This matter has been referred to the Disciplinary and Appeals Tribunal in accordance with Rule 8.5.5 ADR.

8. World Athletics has, pursuant to Rule 4.1 of the World Athletics Disciplinary and Appeals Tribunal Rules, determined that the Disciplinary and Appeals Tribunal shall have a secretariat which is independent of World Athletics. Sport Resolutions acts as secretariat to the Disciplinary and Appeals Tribunal.

III. FACTUAL BACKGROUND

9. On 3 August 2024, the Athlete participated in the 100m sprint heats at the Olympic Games Paris 2024 and obtained the 7th place in ‘Heat 8’.

10. On 4 August 2024, the Athlete provided a urine Sample Out-of-Competition in Paris, France, (the “Sample”), pursuant to Testing conducted by the International Testing Agency (“ITA”) on behalf of the International Olympic Committee (“IOC”) in accordance

with the IOC Anti-Doping Rules applicable to the Games of the XXXIII Olympiad Paris 2024 ("the IOC ADR").

11. On 10 August 2024, the World Anti-Doping Agency ("WADA") accredited laboratory in Paris, France (the "Laboratory") reported that analysis of the Sample had revealed the presence of a Metabolite of Stanozolol, 17-epistanozolol-N-glucuronide (the "Adverse Analytical Finding" or "AAF").

12. Stanozolol is a Prohibited Substance under the WADA 2024 Prohibited List under the category S1.1A Anabolic Androgenic Steroids. It is a Non-Specified Substance, prohibited at all times.

13. In accordance with Article 7.1.1 of the IOC ADR, Results Management with respect to the AAF was to be conducted by the IOC and the ITA was responsible to represent, and to act on behalf, and in the name of, the IOC in relation to Results Management.

14. In that respect, the ITA reviewed the AAF in accordance with Article 5 of the International Standard for Results Management ("ISRM") and determined that:

    14.1. the Athlete did not have a Therapeutic Use Exemption ("TUE") that had been granted (or that would be granted) for the Metabolite of Stanozolol found in the Sample; and

    14.2. there was no apparent departure from the International Standard for Testing and Investigations ("ISTI") or from the International Standard for Laboratories ("ISL") that could reasonably have caused the AAF.

15. On 10 August 2024, the ITA notified the Athlete of the AAF in accordance with Article 7.2.3 of the IOC ADR and imposed a Provisional Suspension upon him.

16. On 21 August 2024, the AIU informed the Athlete *inter alia* that he was also subject to a Provisional Suspension pursuant to the ADR and that following the determination of whether the Athlete had committed an ADRV and the applicable Consequences related to the Olympic Games under the IOC ADR, the IOC would refer the determination of (further) Consequences beyond the Olympic Games to the AIU on behalf of World Athletics.

17. Following the Athlete's request for the B Sample analysis, the B Sample was analysed by the Laboratory on 12 August 2024, and the analysis confirmed the AAF reported in the A Sample.

18. On 20 August 2024, the ITA informed the Athlete that, based on the confirmed presence of a Metabolite of Stanozolol in the B Sample, in application of Article 2.1.2 of the IOC ADR, it was undisputed that he had committed an ADRV.

19. The Athlete was informed of the Consequences under the IOC ADR and was provided with an Agreement on Consequences for his acceptance and signature. The Athlete was also informed that, per the IOC ADR, the Consequences were limited to disqualification of his competitive results obtained at the Olympic Games Paris 2024 and was reminded that he had the right to challenge the terms of the proposed agreement and ask for a hearing before Court of Arbitration for Sport Anti-Doping Division ("CAS ADD").

20. On 9 October 2024, the Athlete signed and returned the Agreement on Consequences whereby he expressly agreed to the Consequences of the ADRV pursuant to the IOC ADR.

21. On 31 October 2024, the ITA, on behalf of the IOC, issued a Sanctioning Decision on the ADRV under Article 7.8.3 of the IOC ADR ("the ITA Decision") which found that:

    21.1. the Athlete had committed ADRVs under Article 2.1 and Article 2.2 of the IOC ADR and

    21.2. that all individual competitive results that he had obtained during the Olympic Games Paris 2024 were to be Disqualified, including forfeiture of medals, points and prizes.

22. Insofar as the Athlete had agreed to the finding (that he had committed ADRVs) and the Consequences under the IOC ADR, the ITA Decision also found that the Athlete was deemed to have waived his right to appeal the ITA Decision.

23. The matter was referred to the AIU to determine further Consequences to be imposed upon the Athlete under the ADR.

24. On 8 November 2024, the AIU issued the Athlete with a Notice of Charge which confirmed that the ITA Decision, including that the Athlete had been found to have committed ADRVs pursuant to Articles 2.1 and 2.2 of the IOC ADR, constituted irrefutable evidence against him and that the ITA Decision was final and binding upon him.

25. The AIU confirmed that the additional Consequences to be imposed upon him under the ADR included a period of Ineligibility of four years effective from the date of the final decision in this matter, with credit for the period of Provisional Suspension (provided that this had been effectively served).

26. On 22 November 2024, the Athlete responded to the Charge, through his counsel, noting that he had "*accepted the consequences of the laboratory results with the IOC of the Olympic Games*" but refused the Consequences proposed by the AIU and requested a hearing.

IV. PROCEDURE BEFORE THE DISCIPLINARY AND APPEALS TRIBUNAL

27. On 22 November 2024, the matter was referred to the Disciplinary and Appeals Tribunal (the "Tribunal").

28. On 11 December 2024, Mr Conny Jörneklint, of Sweden, former Chief Judge of Kalmar District Court, was appointed as Chairman of these proceedings. No objections were received to his appointment upon disclosure of his Declaration of Independence.

29. On 20 December 2024, following an agreement between the parties as to the timings when written submissions would be exchanged, Procedural Directions were issued for the determination of this matter ("the Directions"). Tentative dates for the hearing were set and it was decided that the case should be adjudicated by the Chairman as a Sole Arbitrator, as agreed by the parties and in accordance with Rule 8.7.1 ADR.

30. On 7 January 2025, the Athlete submitted his detailed response to the Charge and provided further details in relation to his dispute as to the Consequences to be imposed upon him. The Athlete confirmed that he disputed the Consequences based on (i) an absence of intent, (ii) alleged procedural errors, and (iii) proportionality.

31. On 3 February 2025, the AIU filed its Brief (on behalf of World Athletics) in this matter. In summary, the AIU submitted that (i) the Athlete had failed to provide any concrete, objective or persuasive evidence required to meet his burden to establish that the ADRVs were not intentional, (ii) the Athlete's arguments as to alleged 'procedural errors' were beyond the scope of the proceedings, contravened by the evidence, and, in any event, that the Athlete had misunderstood the legal position and (iii) the Athlete's arguments as to proportionality should be rejected.

32. On 3 March 2025, the Athlete filed his Answer Brief in response to the Brief filed by the AIU. In short, the Athlete's Answer Brief maintained the Athlete's position taken in his response to the Notice of Charge filed on 7 January 2025.

33. On 25 March 2025, the AIU filed its Reply Brief on behalf of World Athletics in response to the Athlete's Answer Brief and in accordance with paragraph 1.4 of the Directions, as varied by agreement between the parties. The AIU reiterated its position taken in its Brief filed on 3 February 2025.

34. On 4 April 2025, the Sole Arbitrator held a hearing via video conference. In attendance for the AIU was Mr Tony Jackson, and for the Athlete were, Mr Dominique Lasconi Mulamba and Ms Benita Sarr-Kindongo, the Athlete's representative. The hearing logistics were efficiently arranged by Ms Astrid Mannheim, Senior Case Manager of Sport Resolutions.

35. As there was no need for any evidentiary proceedings, both Parties had the opportunity to present closing arguments and the Athlete was given the opportunity to express himself. The Parties stated that they did not have any objection in respect of their right to be heard and to be treated equally and fairly in these proceedings.

V. POSITION OF THE PARTIES

a. The Athlete

36. As the Sole Arbitrator understands it, the Athlete has made the following requests for relief at the hearing:

36.1. As the analyses of the Samples did not comply with the requirements of the ISL, there is no guarantee for an unbroken chain of custody or the exact conditions of analyses. As even a minor irregularity is sufficient to annul a sanction decision, the Athlete requests the Tribunal to dismiss the AAFs of the Samples and to dismiss the ITA Decision of 31 October 2024;

36.2. The Athlete requests the Tribunal to determine that the Athlete, according to Rule 10.2.1(a) ADR, has established that the ADRVs were not intentional and that his sanction is set at a maximum of six months suspension taking in account also that to serve a period of Ineligibility of four years is not proportionate to the seriousness of the offence and the specific circumstances.

36.3. The Athlete requests the Tribunal to award him a contribution to his costs.

b. World Athletics

37. World Athletics has made the following requests for relief, which were maintained at the hearing:

37.1. The Tribunal has jurisdiction over the present matter;

37.2. The Athlete shall serve a period of Ineligibility of four years for the ADRVs based on Rule 10.2.1 ADR commencing on the date of the Tribunal's award;

37.3. The Athlete shall be given credit for the period of Provisional Suspension served from 10 August 2024 until the date of the Tribunal's award against the period of Ineligibility imposed for the ADRVs (provided that the Provisional Suspension has been effectively served).

VI. CONCERNING PROCEDURAL ERRORS

38. Set out below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced in these proceedings. As such, any inaccuracies therein are not attributable to the Tribunal.

a. The Athlete

39. Analyses must meet the requirements of the ISL and ensure an unbroken chain of custody. Any breach can call into question the validity of the test. To date, there is no evidence of strict compliance with these standards.

40. According to case law, for instance CAS 2011/A/2384, *UCI v. Alberto Contador*, a minor error in the chain of custody was sufficient to overturn a sanction decision.

41. No detailed evidence of the chain of custody and the exact conditions of analysis was provided by the ITA. Furthermore, any irregularity in this chain could invalidate the test. In the above-mentioned case, CAS 2011/A/2384, *UCI v. Alberto Contador* an error in documentation was sufficient to invalidate a decision.

42. The Athlete alleges several irregularities in the management of the doping control:

    42.1. An unclear chain of custody of the Sample;

    42.2. Lack of immediate access to test results;

    42.3. Excessive delay in notifying the Athlete of the ADRV, which hindered the preparation of his defence.

43. In accordance with Rule 3.2.3 ADR, any irregularity that may have affected the analytical result must be for the benefit of the Athlete. The AIU has not provided any evidence that these errors did not affect the reliability of the process.

b. World Athletics

44. The Athlete's arguments as to the alleged 'procedural errors' go to whether ADRVs have been committed, as opposed to the Consequences to be imposed.

45. The AIU recalls that the Athlete has already signed an Agreement on Consequences for his ADRVs, which are based entirely on the AAF (i.e., the laboratory results) on 9 October 2024. In addition, in his response to the AIU of 22 November 2024, the Athlete also expressly stated that he "*accepted the consequences of the laboratory results*".

46. The Athlete's arguments viz. alleged procedural errors therefore contradict his previous position.

47. In any event, the Athlete's commission of ADRVs is a matter which is already settled by the ITA Decision and is beyond the scope of these proceedings.

48. The ITA Decision found that the Athlete had committed ADRVs pursuant to Articles 2.1 and 2.2 of the IOC ADR (Rules 2.1 and 2.2 ADR), that decision is final and binding upon the Athlete, and the finding that he has committed ADRVs in the ITA Decision was not appealed and constitutes irrefutable evidence against him, pursuant to Rule 3.2.5 ADR.

49. The Athlete's arguments relating to alleged procedural errors or departures from the WADA International Standards (such as the ISL) are therefore redundant for the purpose of these proceedings to determine the Consequences to be imposed. The correct forum for such arguments was during the Results Management of the AAF that was conducted by the IOC and/or on appeal against the ITA Decision to the CAS ADD. However, the Athlete did not dispute that he had committed ADRVs in the context of those proceedings, nor did he (or WADA) file an appeal against the ITA Decision with the CAS ADD.

50. Contrary to the Athlete's assertion, it is not for the AIU to provide evidence that the requirements for Sample analysis and custodial procedures have been complied with. In this respect, the AIU notes that the ITA notification, dated 10 August 2024, provided the Athlete with the opportunity to obtain detailed information in relation to the chain of custody for, and the analysis of, the Sample, by requesting a copy of the laboratory documentation package for the A Sample analysis.

51. According to Rules 3.2.3 and 3.2.4 ADR, the Athlete must establish a departure from the International Standards or other specific provisions and that the departure could reasonably have caused the AAF, before the burden shifts to the AIU to demonstrate that the alleged departure did not cause the AAF.

52. The ADR make it clear that WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the ISL and that it is for the Athlete to rebut this presumption by establishing a departure that could reasonably have caused the AAF:

> "*3.2.3 WADA-accredited laboratories and other laboratories approved by WADA are presumed to have conducted Sample analysis and custodial procedures in accordance 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.*
>
> *If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding, then the Integrity Unit will have the burden of establishing that such departure did not cause the Adverse Analytical Finding.*
>
> *[Comment to Rule 3.2.3: The burden is on the Athlete or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. Thus, once the Athlete or other Person establishes the departure by a balance of probability, the Athlete's or other Person's burden on causation is the somewhat lower standard of proof – 'could reasonably have caused'. If the Athlete or other Person satisfies these standards, the burden shifts to the Integrity Unit to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]*"

53. Moreover, Rule 3.2.4 ADR also provides that it is for the Athlete to establish: (i) a departure from the ISTI or ISRM and (ii) that the identified departure could reasonably have caused

the ADRVs based on the AAF before the burden shifts to the AIU to demonstrate that the departure, identified by the Athlete, did not cause the AAF.

54. However, the AIU notes that the ITA Decision records clearly that the initial review of the AAF conducted by the ITA did not identify any departure from the ISL or the ISTI that could undermine the validity of the AAF.

55. In addition, the Athlete asserts that an irregularity in the chain of custody could invalidate the test. This falls short of identifying a specific departure from an International Standard or other procedure that could reasonably have caused the AAF as required by the ADR.

56. In any event, the AIU has obtained the chain of custody information for the Sample from the ITA, which the AIU submits demonstrates that there is a clear and unbroken chain of custody for the Sample.

57. Pursuant to the foregoing, the Athlete's arguments in relation to alleged procedural errors should be rejected.

c. The Sole Arbitrator's considerations on matters now addressed

58. Rule 3.2.5 ADR reads as follows:

"The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal will be irrefutable evidence against the Athlete or other Person to whom the decision pertained of those facts, unless the Athlete or other Person establishes that the decision violated principles of natural justice."

59. The ITA Decision decided the following:

*"**IV. SANCTIONING DECISION UNDER THE IOC ADR***

• *Anti-Doping Rule Violation:*

The Athlete is found to have committed an Anti-Doping Rule Violation under Article 2.1 and 2.2 of the IOC ADR.

[…]".

60. The ITA Decision in para 16 stated the following:

> *"16. In the present case, the analysis of the Athlete's B-sample conducted as per his request confirmed the Presence of stanozolol detected in his A-sample. Therefore, it is undisputed that the Athlete has committed an ADRV under Article 2.1 and/or Article 2.2 of the IOC ADR for the Presence/Use of a Prohibited Substance or its Metabolites or Markers."*

61. The ITA Decision was not appealed.

62. According to Rule 3.2.5 ADR, the facts established by the ITA Decision are irrefutable evidence against the Athlete, unless the Athlete establishes that the ITA Decision violated principles of natural justice. No arguments that the ITA Decision violated principles of natural justice have been raised by the Athlete. The Sole Arbitrator therefore finds that the ITA Decision did not violate any principles of natural justice.

63. The Tribunal is therefore bound by the ITA Decision. The facts established by that decision are irrefutable evidence against the Athlete. The Tribunal cannot 'dismiss' or set aside that decision. This also means that it has finally been determined that the Athlete committed ADRVs in Paris.

64. In conclusion, the Athlete's objections in these regards are not upheld.

VII. SANCTION

a. Position of the Parties

65. As above, set out below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced in these proceedings. As such, any inaccuracies therein are not attributable to the Tribunal.

a) The Athlete

66. The violation was not intentional.

67. Rule 10.2.1 ADR states that the period of Ineligibility for the presence, Use, or Attempted Use of Prohibited Substances or Methods is four years if "*the anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the violation was not intentional*".

68. In CAS 2016/A/4534, *Maria Sharapova v. ITF*, the CAS reduced the athlete's suspension from four years to 15 months, as she had no intention of doping but exhibited Negligence in her Use of a medication.

69. The Athlete is young and inexperienced, with very little support or supervision. He attended the Olympic Games in Paris alone, as the entire Congolese delegation had not yet arrived.

70. Stanozolol is unsuited for sprinters. It is typically used in weightlifting and bodybuilding, not in sprinting, as it reduces muscle flexibility. The use of Stanozolol would have negatively impacted his performance rather than enhancing it.

71. No competitive benefit was gained. The Athlete's elimination in the preliminary heats proves that he did not benefit from the Prohibited Substance.

72. The Athlete has a clean doping history. He has never had an ADRV before. Given his limited financial means, he cannot afford a medical team to verify his medications.

73. Rule 10.6 ADR provides for a reduction of the period of Ineligibility in a case of No Significant Fault or Negligence, particularly in cases of unintentional contamination.

74. In the case CAS 2011/A/2384, *UCI v. Alberto Contador*, the cyclist's sanction was set at two years due to the food supplement, taken by the cyclist, being contaminated with clenbuterol.

75. The Athlete regularly consumes dietary supplements as part of his training regimen. However, no independent analysis was conducted before his doping control, leaving room for possible contamination. His limited financial resources prevent him from purchasing certified supplement brands free of Prohibited Substances.

76. The lack of specific anti-doping training, combined with his modest living conditions, may have led to the unintentional contamination by Prohibited Substances. Some medicines in Africa contain anabolic agents without clear labelling. The low concentration of Stanozolol detected is compatible with unintentional contamination, particularly the regular consumption of painkillers prescribed. As a reminder, the Athlete must be given the benefit of the doubt in the event of uncertainty as to the origin of the Prohibited Substance, according to CAS 2016/A/4676, *Arijan Ademi v. UEFA*.

77. Under Rule 10.2.1(a) ADR, a four-year suspension only applies if the offence is intentional, which has not been established by the AIU. The Tribunal therefore requested to annul the sanction or, at the very least, reduce it significantly.

b) World Athletics

78. The confirmed presence of the Metabolite of Stanozolol in the Sample constitutes sufficient and compelling evidence of the Athlete's ADRVs pursuant to Rules 2.1 and 2.2 ADR.

79. Rule 10.2 ADR provides the period of Ineligibility be imposed for ADRVs under Rules 2.1 and 2.2 ADR (i.e., Article 2.1 and Article 2.2 IOC ADR) as follows:

> *"**Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*
>
> *10.2.1 Save when Rule 10.2.4 applies, the period of Ineligibility will be four years where:*
>
> *(a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. [...]"*

80. Stanozolol is a Prohibited Substance under the WADA 2024 Prohibited List under the category S1.1A Anabolic Androgenic Steroids. It is a Non-Specified Substance prohibited at all times.

81. The period of Ineligibility to be imposed upon the Athlete in accordance with the ADR is therefore a period of four years, unless the Athlete can establish that the ADRVs were not intentional.

82. Rule 10.2.3 ADR provides a definition of the term "*intentional*" in the context of Rule 10.2 ADR:

> *"As used in Rule 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct that they 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 that is only prohibited In-Competition will 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 that is only prohibited In-Competition will 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."*

83. The AIU submits that the Athlete's arguments that the ADRVs were not intentional are entirely insufficient.

84. Whereas it is not strictly required under the ADR that the Athlete proves how the Metabolite of Stanozolol entered his body to establish that the ADRVs were not intentional, and although Court of Arbitration for Sport ("CAS") Panels have left open the theoretical possibility that an athlete might be able to prove an absence of intent without establishing the origin of the Prohibited Substance, it has been made abundantly clear that this will only occur in the most exceptional circumstances.

85. In CAS 2023/A/9377, *Kristian Jensen v. World Rugby*, the CAS Panel noted that:

> "*…there exists an extensive and consistent line of CAS awards holding that establishing the origin of the Prohibited Substance is a crucial, almost indispensable element for an athlete to disprove intent, the absence of which leaves only* 'the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him*' (citing CAS 2017/A/5016 & 5036 - **Abdelrahman** - para. 123 and CAS 2020/A/7068 - **Iannone** - para. 134). On the contrary, there are only a few cases at CAS that would comfortably support a*

deviation from this general rule that the athlete is highly unlikely to be able to disprove intent in the absence of a credible identification of the source. These few cases (inter alia, CAS 2016/A/4534 and CAS 2020/A/7579 & 7580) in which a lack of intent can be affirmed without the athlete establishing the source of the Prohibited Substance are outliers."

86. CAS 2017/A/5016 & 5036, *Abdelrahman v. WADA & EgyNADO*, is particularly relevant for this case. The Panel argued in paragraphs 123 to 125 as follows:

"*123. The Panel, indeed, observes that it could be* de facto *difficult for an athlete to establish lack of intent to commit an anti-doping rule violation demonstrated by presence of a prohibited substance in his sample if he cannot even establish the source of such substance: proof of source would be an important, even critical, first step in any exculpation of intent, because intent, or its lack, are more easily demonstrated and/or verified with respect to an identified "route of ingestion". However, the Panel can envisage the possibility that it could be persuaded by an athlete's assertion of lack of intent, where it is sufficiently supported by all the circumstances and context of his or her case, even if, in the opinion of the majority of the Panel, such a situation may inevitably be extremely rare: where an athlete cannot prove source, it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.*

124. The foregoing, in fact, does not mean that the Athlete can simply plead his lack of intent without giving any convincing explanations, to prove, by a balance of probability, that he did not engage in a conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. The Panel repeats that the Athlete, even though he is not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the anti-doping rule violation and his behaviour, that specific circumstances exist disproving his intent to dope.

125. In this context, therefore, it is this Panel's opinion that, in order to disprove intent, an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent. There is in fact a wealth of CAS jurisprudence stating that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible

occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268; CAS 2014/A/3820): unverified hypotheses are not sufficient (CAS 99/A/234-235). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Panel cannot base its decision on some speculative guess uncorroborated in any manner."

87. Another CAS Panel has held that, "*One hypothetical source of a positive test does not prove to the level of satisfaction required that such explanations are factually or scientifically probable*", CAS 2010/A/2277, *La Barbera v. IWAS*, paragraph 36.

88. In CAS 2021/O/8111, *World Athletics v. Lebogang Shange*, the Panel placed emphasis on the fact that the burden remains on the Athlete to prove the source of the Prohibited Substance, and this must be done with reference to concrete evidence. The Panel held, at paragraph 76:

"*To establish origin of the prohibited substance, it is not sufficient for an athlete to merely protest his or her innocence and suggest that the substance must have entered his or her body inadvertently from a supplement, medicine or other product […] rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication, or other product that the athlete has taken as contained the substance in question (e.g. CAS 2017/A/5248).*"

89. In addition, in CAS 2016/A/4919, *WADA v. WSF & Iqbal*, the CAS Panel held that "*in all but the rarest cases the issue is academic*" (paragraph 66) and more recently in CAS 2021/O/7977, *World Athletics v. Shelby Houlihan*, the CAS Panel confirmed "*that it is – in practice – very difficult to rebut the presumption of intent without showing how the prohibited substance entered the Athlete's system*" (paragraph 91).

90. The Disciplinary Tribunal found, in *World Athletics v. Marina Arzamasova,* that "*it is indeed difficult to establish a non-intentional ADRV if the Athlete fails to establish the origin of the substance*" (paragraph 64). The Panel further confirmed that protestations of innocence and speculation are insufficient, and that evidence must be adduced that is concrete and persuasive (paragraph 63).

91. To successfully demonstrate that the ADRVs were not intentional, the Athlete must therefore provide actual evidence that is cogent and sufficient to satisfy the Tribunal to the requisite standard. This was supported by the CAS Panel in CAS 2014/A/3820, *WADA v. Damar Robinson & JADCO*, which concluded: "*In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation*".

92. Evidence establishing that a scenario is merely possible is not enough. The CAS Panel in CAS OG 16/25, *WADA v. Yadav & NADA*, "*found the sabotage(s) theory possible, but not probable and certainly not grounded in real evidence*". In conclusion, the CAS Panel found that "*the nature and quality of the defensive evidence put forward by the athlete, in light of all the facts established, must be such that it leaves the tribunal actually satisfied (albeit not comfortably so) that the athlete's defence is more likely than not [to be] true*".

93. The CAS case law set out above was reflected in the comment to Article 10.2.1.1 in the 2021 World Anti-Doping Code ("WADC"):

> "*[58 Comment to Article 10.2.1.1: While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.]*"

94. Pursuant to the foregoing, it is therefore only in the most exceptional and rarest of cases that an athlete will be able to produce "*concrete and persuasive evidence*" or "*specific, objective and persuasive evidence*" to demonstrate on a balance of probabilities that the conduct which led to the ADRV(s) was not intentional, without explaining what that conduct was, as per in CAS 2020/A/6978 & 7068, *WADA v. FIM & Iannone* (paragraph 134), CAS 2017/A/5369, *WADA v. SAIDS & Gilbert*, (paragraph 148), CAS 2017/A/5016 & 5036, *Abdelrahman v. WADA & EgyNADO* (paragraph 125) and CAS 2017/A/5260, *WADA v. SAIDS & Pena*, (paragraph 153).

95. The Athlete has produced no evidence to demonstrate the source of the Stanozolol Metabolite in the Sample. The Athlete's arguments such as his asserted youth and inexperience, lack of anti-doping education, absence of any competitive advantage,

limited means, and modest living conditions are wholly irrelevant to the assessment of whether the ADRVs were intentional.

96. Moreover, the Athlete's case is devoid of any concrete and persuasive evidence which he is required to submit to demonstrate the source of the Stanozolol pursuant to the case law set out by AIU.

97. The Athlete has put forward speculative explanations that the presence of the Metabolite of Stanozolol in the Sample could have been caused by contaminated prescribed medications or supplements, which have not been corroborated with objective facts or evidence. The Athlete referred to the low concentration of Stanozolol in the Sample, but the AIU cannot find any support for such an assertion. There is no evidence that the concentration of Stanozolol was low.

98. There is no evidence that the Athlete is a regular user of prescribed painkillers. It is worth noting that there were no prescribed painkillers disclosed on the Doping Control Form that the Athlete completed on 4 August 2024. There, he disclosed "*pre lift*", which is a supplement that the Athlete was taking and of which he provided a photo and "*Booster berocca, Doliprane, Effedrine, Irone and Voltaren*", none of which are prescribed painkillers.

99. It is simply wrong to claim that Stanozolol is unsuited for sprinters. History itself tells a very different story. Stanozolol has been used by sprinters since 1988 when Ben Johnson tested positive for Stanozolol after winning the 100-meter final in the Olympic Games. Even more, recent history speaks directly against that assertion. In 2021, the AIU had two cases involving a female sprinter and her trainer using Stanozolol.

100. As such, the Athlete's case amounts to little more than speculation, which is entirely unsubstantiated by any concrete, objective or persuasive evidence whatsoever.

101. Further, the Athlete has provided no factual basis and no evidence justifying a finding of lack of intent, without evidence of source, within the meaning of the strict CAS case law recalled above.

102. The Athlete has therefore failed to establish the source of the Metabolite of Stanozolol in the Sample to establish that the ADRVs were not intentional, and World Athletics therefore

invites the Tribunal to impose the mandatory period of Ineligibility of four years upon the Athlete pursuant to Rule 10.2.1(a) ADR.

c) The Sole Arbitrator's Considerations

103. Rule 10.2 ADR provides the following:

> **"*10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*
>
> *10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:*
>
> *(a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
>
> *[…]*
>
> *10.2.3 As used in Rule 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct that they 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.*
>
> *[…]*
>
> *[Comment to Rule 10.2.3: Rule 10.2.3 provides a special definition of 'intentional' that is to be applied solely for purposes of Rule 10.2. Beyond Rule 10.2, the term 'intentional' as used in these Rules means that the person intended to commit the act(s) based on which the Anti-Doping Rule Violation is asserted, regardless of whether the person knew that such act(s) constituted an anti-doping rule violation.]*."

104. In this case, it has been established by the ITA Decision that the Athlete committed ADRVs under Rules 2.1 and 2.2 ADR. The Athlete has claimed that the ADRV was not intentional.

105. Rule 3.1 ADR deals with Burdens and Standards of Proof. It states that *"*[w]*here these Anti-Doping Rules place 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, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability*."*

106. The Sole Arbitrator finds that the Athlete has not succeeded in pointing to the source of the AAF. He has tried to figure out how the forbidden Substance entered his body. In order to establish the origin of a Prohibited Substance, an athlete must provide actual evidence as opposed to mere speculation. It is not enough to propose possible sources of the AAF because the athlete's explanation will be assessed on the balance of probability. The Sole Arbitrator finds that the Athlete has not managed to establish, on a balance of probabilities, that the ADRV was not intentional.

107. The conclusion is that the period of Ineligibility according to Rule 10.2.1(a) ADR should be four years.

b. Is the sanction according to Rule 10.2.1(a) ADR proportionate?

a) The Athlete

108. A sanction must be appropriate to the Athlete's personal and economic circumstances. The principle of proportionality is expressed in CAS 2006/A/1025, *Puerta v. ITF*. In CAS 2008/A/1583, *Benfica v. UEFA & FC Porto*, the sanction was reduced based on the Athlete's financial vulnerability. Sanctions must be proportionate to the seriousness of the violation and the actual impact on competition.

109. The Athlete did not derive any competitive advantage from the Prohibited Substances detected in the AAF, as he was eliminated in the heats. The Disqualification of his results is unjustified as the Prohibited Substance found had no effect on his performance. The unintentional violation had no impact on the competition itself, as the Athlete was eliminated in the heats.

110. The Athlete has suffered disproportionate personal Consequences due to his precarious socio-economic situation and his role as the family breadwinner. He has already lost his job in Senegal because of this matter. He is currently without any financial resources. The sanction currently imposed prevents him from finding a new club.

111. Given the Athlete's track record, a four-year ban would risk permanently ending his career and only current financial resource. A longer ban would damage his burgeoning career, his position as a role model for young Congolese athletes, and his ability to financially support his family.

112. In CAS 2008/A/1583, *Benfica v. UEFA & FC Porto*, the Panel reduced an athlete's sanction, taking into account his personal circumstances and the limited impact of the offence on the competition. The four-year ban was excessive considering the facts. According to CAS 2017/A/5021, *IAAF v. UAE Athletics Federation & Betlhem Desalegn*, the sanction must be commensurate with the seriousness of the offence. However, the lack of intent and the procedural errors argue for a reduction in the penalty. An annulment of the suspension or, if impossible, a suspension of less than two years would be fairer and in line with previous CAS decisions, for instance CAS 2018/A/5884, *Abdelmalek Mokdad c. Mouloudia Club d'Alger & FAF*. Athletes have a strict responsibility to ensure that no Prohibited Substances enter their bodies. However, lack of intent may be considered to reduce the sanction.

b) World Athletics

113. First, as a matter of principle, questions of proportionality cannot arise where the source is not established. As set out in CAS 2019/A/6541, *Fujimori v. FINA* (paragraphs 89 and 90):

> *"89. As presented above, the Sole Arbitrator concluded that the Athlete failed to establish a plausible source to the Prohibited Substance. This said, the cause of the positive result is not known and guilt was neither alleged nor proven.*
>
> *90. The Sole Arbitrator agrees with FINA that in this context, the issue of proportionality can simply not arise for lack of circumstances in respect to which proportionality could be evaluated."*

114. In any event, the CAS case law has made it clear that there is no scope for application of the principle of proportionality in an anti-doping context. As noted by the Panel in CAS 2018/A/5546, *Guerrero v. FIFA*, and CAS 2018/A/5571, *WADA v. FIFA & Guerrero*:

> "*86. Additionally, the CAS jurisprudence since the coming into effect of WADC 2015 is clearly hostile to the introduction of proportionality as a means of reducing yet further the period of ineligibility provided for by the WADC (and there is only one example of its being applied under the previous version of the WADC). In CAS 2016/A/4534, when addressing the issue of proportionality, the Panel stated:*
>
> > 'The WADC 2015 was the product of wide consultation and represented the best consensus of sporting authorities as to what was needed to achieve as far as possible the desired end. It sought itself to fashion in a detailed and sophisticated way a proportionate response in pursuit of a legitimate aim' (para. 51).
>
> *87. In CAS 2017/A/5015 & CAS 2017/A/5110, the CAS Panel, with a further reference to CAS 2016/A/4643, confirmed the well-established perception that the WADC 'has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction' (emphasis added, para. 227) as was vouched for by an opinion of a previous President of the European Court of Human Rights there referred to see https://www.wada-ama.org/en/resources/legal/legal-opinion-on-the-draft-2015-world-anti-doping-code.*"

115. The discussion of proportionality has been referred to and endorsed by the CAS Panel in CAS 2023/A/9451, CAS 2023/A/9455, and CAS 2023/A/9456, *WADA v. RUSADA & Ms. Kamila Valieva*, (paragraphs 421-425). See also other recent awards in CAS 2018/A/5583, *Joshua Taylor v. World Rugby*, paragraph 98: "*the principle of proportionality is satisfied by the range of sanctions appropriate to particular ADRVs and does not require any further adjustment to a sanction envisaged which would involve lowering the periods of ineligibility otherwise prescribed*". Also, in CAS 2018/A/5958, *Elena Adelina Panaet v. RNADA*, paragraph 83: "*the WADC […] has the principle of proportionality built into it within the nature of its sanctioning regime. It is on this basis of proportionality that the concepts of 'no fault or negligence' and 'no significant fault or negligence' are conceived and applied in the rules, and which provide the potential basis*

for an elimination or reduction of an athlete's suspension within an otherwise strict-liability regime. There is, as such, no separate basis of 'proportionality' on which to reduce an athlete's suspension for an anti-doping rules violation". CAS 2019/A/6541, *Hiromasa Fujimori v. FINA*, paragraph 94, adds: "*Even an "uncomfortable feeling" regarding a sanction mandated in the rules, had there been one, would not have been sufficient to invoke the principle of proportionality where the applicable rules include a sanctioning regime which is proportionate and contains clear and concise mechanism which allows for a reduction of the applicable sanction.*" See also TAS 2020/A/7299, *Zelimkhan Khadjiev & FFLDA c. UWW*, paragraphs 140-141.

116. The AIU therefore submits that the Athlete's proportionality arguments should be dismissed and the mandatory period of Ineligibility of four years should be imposed.

c) The Sole Arbitrator's considerations

117. The Sole Arbitrator agrees with the CAS jurisprudence, which confirms that there is no separate basis of proportionality on which to reduce an athlete's suspension for an ADRV than expressed in the WADC, and in this case the ADR. The conclusion is that the period of Ineligibility should be four years as stipulated in the ADR.

c. Commencement of the period of Ineligibility

118. According to Rule 10.13 ADR, commencement of the period of Ineligibility shall come into force and effect on the date that this decision, imposing the Consequences, is issued and the Provisional Suspension served by the Athlete shall be credited towards such a period of Ineligibility. The Sole Arbitrator concludes that there is no reason to deviate from this rule in this case.

d. Disqualification of results and other Consequences

119. Rule 10.10 of the ADR provides that:

"***10.10 Disqualification of results in Competitions subsequent to Sample collection or commission of an anti-doping rule violation***

In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes."

120. In the ITA Decision according to Article 10.1 of the IOC ADR, all the Athlete's individual results obtained at the Olympic Games Paris 2024 were Disqualified with all resulting Consequences. In particular, the results in the 100m sprint heats at the Olympic Games Paris 2024 were Disqualified, including forfeiture of all medals, diplomas, points and prizes.

121. The Sample Collection took place on 4 August 2024. The Athlete has been Provisionally Suspended since 10 August 2024. Even if there had been time for the Athlete to participate in any other competition between the date of the Sample Collection and the date when the Provisional Suspension came into effect, Rule 10.10 ADR would have applied.

VIII. COSTS

122. The Athlete has requested the Tribunal to award him a contribution to the costs he has incurred.

123. According to Rule 10.12.1 ADR, the Disciplinary Tribunal may require the Athlete or other Person to reimburse WA for the costs that it has incurred in bringing the case, where an Athlete or other Person is found to have committed an ADRV.

124. The AIU has not made any claims for costs.

125. Accordingly, the Sole Arbitrator orders that the Parties shall bear their own costs.

IX. DECISION AND ORDERS

126. The Disciplinary and Appeals Tribunal has jurisdiction to decide on the subject matters of this dispute.

127. The Athlete has committed ADRVs under Rules 2.1 and 2.2 ADR.

128. A period of Ineligibility of four years is imposed upon the Athlete, commencing on the date of this Disciplinary and Appeals Tribunal Award. The period of Provisional Suspension imposed on the Athlete from 10 August 2024 until the date of this Tribunal Award shall be credited against the total period of Ineligibility.

129. The Athlete's results between 4 and 10 August 2024, shall be Disqualified with all resulting Consequences, including the forfeiture of any medals, titles, points, prize money, and prizes.

130. The Parties shall bear their own costs.

X. RIGHT OF APPEAL

131. This decision may be appealed to the Court of Arbitration for Sport ("CAS"), located at Palais de Beaulieu Av. des Bergières 10, CH-1004 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Rule 13 ADR.

132. In accordance with Rule 13.6.1(a) ADR, parties shall have 30 days from receipt of this decision to lodge an appeal with the CAS.

Conny Jörneklint

Sole Arbitrator
London, UK
28 April 2025