

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

*Before:*

*Michael Beloff QC (Chair)*

*Francisco A. Larios*

*Jeffrey Benz*

**BETWEEN:**

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

*Anti-Doping Organisation*

**-and-**

**Jarrion Lawson**

*Respondent*

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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## A. INTRODUCTION

1. The Claimant, the International Association of Athletics Federations ("**IAAF**"), is the International Federation governing the sport of Athletics worldwide.<sup>1</sup> It has its registered seat in Monaco.
2. The Respondent, Mr. Jarrion Lawson (the "**Athlete**"), is a 25-year-old American long jumper/sprinter.
3. On February 27, 2019, the Athletics Integrity Unit ("**AIU**") charged the Athlete pursuant to Articles 2.1 and 2.2 of the IAAF Anti-Doping Rules ("**ADR**") with an Anti-Doping Rule Violation ("**ADRV**") for the Presence and Use of a Prohibited Substance or its Metabolites or Markers, Epi trenbolone (a metabolite of Trenbolone).

## A. FACTUAL BACKGROUND

4. Below is a chronological summary of the undisputed evidence before the Disciplinary Tribunal (the "**Tribunal**").
5. On April 11, 2018, the Athlete tested negative at a doping control test.
6. At all times between April 11, 2018 and June 2, 2018 he was subject to testing, during which period he competed on May 20, 2018 in the Seiko Golden Grand Prix Osaka 2018 in Osaka, Japan.
7. On June 2, 2018 in Springdale, Arkansas (USA), the Athlete underwent an Out-of-Competition doping control test following the Osaka meet. The Athlete provided a urine Sample with reference number 1609851 (the "**Sample**").
8. On June 14, 2018, the A Sample was analysed by the WADA-accredited laboratory in Los Angeles, California (USA) (the "**Laboratory**") and revealed the presence of Epi trenbolone (the "**Adverse Analytical Finding**" or "**AAF**"). Epi trenbolone is listed in S1.1a. Exogenous Anabolic Androgenic Steroids of the World Anti-Doping Agency

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<sup>1</sup> The IAAF is represented in these proceedings by the Athletics Integrity Unit ("**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.

("WADA") 2018 Prohibited List<sup>2</sup>. It is a non-specified substance and is prohibited at all times.

9. On June 21, 2018, the Athlete competed in Des Moines, USA at the USATF National Championships. He competed again on July 13, 2018 in Rabat, Morocco, on July 17, 2018 in Sotteville-lès-Rouen, France, and on July 22, 2018 in London, England.
10. On August 3, 2018, the AIU notified the Athlete of the AAF and imposed on him a Provisional Suspension effective immediately and until the resolution of his case. The letter also invited the Athlete to provide an explanation for the AAF and informed him of his right to have the B Sample analysed.
11. On August 6, 2018, the Athlete – through his appointed legal counsel, Mr. Paul Greene, Esq., of Global Sports Advocates ("GSA") – acknowledged receipt of the AIU's letter and requested the Laboratory Documentation Package ("LDP") for the A Sample.
12. In a letter of August 9, 2018, GSA requested, on behalf of the Athlete, the analysis of the B Sample, an extension to provide the explanation for the AAF, and an estimation of the concentration of Epi trenbolone in the A Sample. That same day, GSA indicated that the Athlete would not attend or be represented at the B Sample analysis and requested for a representative to be assigned in his place.
13. Later on August 9, 2018, the Laboratory analysed the Athlete's B Sample and confirmed the presence of Epi trenbolone (the AIU informed the Athlete about this result on August 20, 2018).
14. On August 10, 2018, the AIU granted the Athlete an extension until September 7, 2018 to file his explanation for the AAF and informed him that the estimated concentration of Epi trenbolone in the A Sample was 0.65 ng/mL (i.e. 650 pg/mL).
15. On August 20, 2018, following receipt of the B Sample result, GSA requested a copy of the corresponding LDP and the concentration of Epi trenbolone in that Sample. That same day, the AIU sent GSA and the Athlete a copy of the requested B Sample

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<sup>2</sup> [https://www.wada-ama.org/sites/default/files/prohibited\\_list\\_2018\\_en.pdf](https://www.wada-ama.org/sites/default/files/prohibited_list_2018_en.pdf)

LDP and informed him that the estimated concentration of Epi trenbolone in the B Sample was 0.8 ng/mL (i.e. 800 pg/mL).

16. On August 23, 2018, GSA requested the AIU to lift the Athlete's Provisional Suspension on the basis that the ingestion of contaminated meat (beef) which he had eaten for lunch on June 1, 2018 had likely caused the AAF. The AIU rejected this request on August 28, 2018 and confirmed that the Athlete should provide his full explanation for the AAF by September 7, 2018.
17. On September 7, 2018, the Athlete provided his explanation (with supporting evidence). The Athlete maintained, as he had put forth on 23 August 2018 in his application to lift his Provisional Suspension, that the likely source of the Epi trenbolone in his system was contaminated meat, which he had ingested in a Teriyaki Beef Bowl on June 1, 2018 at a lunch with Ms. Alexis McCain at a Restaurant in Fayetteville, Arkansas, USA (the "**Restaurant**"). To support his position, the Athlete provided, *inter alia*: (i) an affidavit, (ii) evidence that he ate the Teriyaki Beef Bowl on 1 June 2018 (e.g. a receipt from the Restaurant, text messages exchanged with Ms. McCain setting up the lunch, and a bank account statement confirming the purchase of the bowl), (iii) results of a hair analysis conducted by Dr. Pascal Kintz ("**Dr. Kintz**"), (iv) an expert report from Dr. Helmut Zarbl ("**Dr. Zarbl**"), (v) a picture of the packaged meat received by the Restaurant from National Beef Packing Co., and (vi) an affidavit from a co-owner of the Restaurant ("**Restaurant Owner**") indicating that the meat contained in the Teriyaki Beef Bowl was New York Strip Steak sourced from the Performance Food Group ("**PFG**").
18. On December 10, 2018, the AIU sent a letter to GSA and the Athlete requesting the following additional information/documentation: (i) copies of all purchase orders, invoices, receipts, delivery notes/shipping information and any other documents that relate to all New York Strip Steak ordered/purchased by the Restaurant in the period March 1, 2018 to June 1, 2018 including the relevant product codes and/or item ID's and confirmation of the specific supplier; (ii) confirmation of the inventory management platform/software used by the Restaurant and copies of all stock inventories/entries related to New York Strip Steak for the period March 1, 2018 to

June 1, 2018; and (iii) copies of any refrigerator/storage records for all New York Strip Steak for the period March 1, 2018 to June 1, 2018.

19. On December 13, 2018, GSA replied to the AIU, indicating that it had reached out to the Restaurant in order to obtain the information/documentation requested, but that the Restaurant replied that it did not have any of the requested records, and, in any event, would not produce them without a subpoena.
20. On December 31, 2018, the AIU requested from the Athlete further information about the hair analysis conducted by Dr. Kintz and the circumstances in which the hair had been collected, packaged and transported. GSA sent the requested information (including a response from Dr. Kintz) to the AIU on January 8, 2019.
21. On February 27, 2019, the AIU sent a Notice of Charge to the Athlete (see *supra* at para. 3).
22. On March 4, 2019, the Athlete accepted that he had committed an ADRV, but indicated he would seek to mitigate the consequences thereof. The Athlete requested for a hearing before the Tribunal where he would "*seek a sanction of No Fault or Negligence pursuant to Article 10.4*" of the ADR.

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

23. On March 6, 2019, Michael J. Beloff QC was appointed Chairman of the Tribunal to determine the matter.
24. On March 8, 2019, the AIU sent to the Tribunal a procedural calendar which had been agreed upon by the parties and provided for the following: (i) the AIU to submit its brief by March 29, 2019, (ii) the Athlete to submit his answer brief by April 12, 2019, (iii) the AIU to submit its reply by April 19, 2019, and (iv) an in-person hearing to be held in New York City (USA) on either the 25<sup>th</sup> or 26<sup>th</sup> of April 2019.
25. On March 29, 2019, the AIU submitted its brief, along with expert reports from Professors Christiane Ayotte and Bradley J. Johnson.

26. On April 12, 2019, the Athlete submitted his answer, along (i) an analysis of the Athlete's hair conducted by Dr. Kintz, and an expert report also from him rebutting Professor Ayotte's expert report, and (ii) an expert report from Dr. Zarbl and his rebuttals to the expert reports filed by Professors Christiane Ayotte and Bradley J. Johnson.
27. On April 18, 2019, the AIU indicated that it did not intend to file a written reply, reserving instead its right to respond orally at the hearing to the points raised in the Athlete's answer brief.
28. On April 26, 2019, a hearing was held at the premises of Debevoise & Plimpton, 919 3rd Ave, New York City, NY (USA) before the Tribunal consisting of Michael J. Beloff QC, Jeffrey Benz and Francisco A. Larios (assisted by Ms. Alisha Ellis of Sport Resolutions). The Athlete was represented by Mr. Greene of GSA. The IAAF was represented by Ross Wenzel and Tony Jackson. The following individuals testified on behalf of the Athlete: the Athlete himself, his agent Mr. Paul Doyle, and expert witnesses Dr. Zarbl and Dr. Kintz (the latter by video link). For the IAAF, Professors Christiane Ayotte and Bradley J. Johnson testified (the latter by video link). The Athlete also made a personal statement at the end of the hearing.
29. The Tribunal has carefully considered all of the parties' evidence, oral and written, provided to it, as well as the submissions in either format made on behalf of the parties.

### **C. THE POSITION OF THE PARTIES**

30. The following is a brief summary of the parties' key submissions.

#### **(i) The AIU**

31. The AIU contends that the Athlete committed ADRVs of Articles 2.1 and 2.2 ADR and, as a result, must be sanctioned under Article 10.2.1 ADR with a period of Ineligibility of four years. In support of its contention the AIU submits:

- (i) The period of Ineligibility cannot be reduced, because the Athlete has failed to prove by the balance of probabilities that the ADRVs were not intentional;
- (ii) The Athlete has failed to prove how the substance entered his body; in particular, he failed to prove his "lightning strike" theory that the meat contained in the Teriyaki Beef Bowl ingested approximately 19 hours prior to his positive test on June 2, 2018 came from a muscle which had received a direct injection of Trenbolone;
- (iii) It is inherently unlikely that a Trenbolone implant would have been placed directly into the muscle in contravention of strictly applied industry regulations, as confirmed by the expert witness Professor Johnson;
- (iv) There is no evidence that residues of Trenbolone in US meat can lead (and have led to) adverse findings, as confirmed by the expert witness Professor Ayotte; and
- (v) The Athlete's "*lightning strike*" theory is implausible and not supported by evidence.

32. In addition to the sanction, the AIU requests that the Athlete be disqualified from all events in which he participated between the date of the ADRV and the date of his Provisional Suspension.

33. The AIU accepts that the Athlete receive credit for the period of Provisional Suspension.

34. The AIU, on behalf of the IAAF, requests the Tribunal to rule as follows:

- "(i) The Tribunal has jurisdiction to decide on the subject matter of this dispute.*
- (ii) The Athlete has committed anti-doping rule violations pursuant to Art 2.1 and/or Art 2.2 ADR.*
- (iii) A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the Tribunal Award. The period of provisional suspension imposed on the Athlete from 3 August 2018 until the date of the Tribunal 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 2 June 2018 until the date of his provisional suspension on 3 August 2018 shall be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.*

*(v) The IAAF is awarded a contribution to its legal costs".*

## **(ii) The Athlete**

35. The Athlete contends that he did not intentionally take Epiandrosterone. He believes that the most likely and only logical source of the estimated 0.65 ng/mL of Epiandrosterone detected in his Sample is contaminated meat eaten on June 1, 2018, 19 hours before his positive doping test. In the Athlete's view, based on the totality of the circumstances, he has satisfied his burden of proving to a balance of probabilities that the Prohibited Substance entered his body in this way. In support of his contention, the Athlete submits that:

- (i) it is undisputed the Athlete ate non-organic beef sourced from the National Beef Packing Company on June 1, 2018 approximately 19 hours before his positive test the next day;
- (ii) Trenbolone is used legally by the US cattle industry and an improper implant of the substance contrary to the applicable industry regulations is possible;
- (iii) Dr. Kintz analysed his<sup>3</sup> hair and found no traces of Trenbolone (while admitting that this only eliminates the possibility that he used Trenbolone in repetitive high dosages);
- (iv) Dr. Zarbl confirmed that his positive doping test could have been the result of consuming beef contaminated by injection of the cow into an off-label site;

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<sup>3</sup> "his" and "he" refers to the Athlete throughout this paragraph.

- (v) his low picogram level of Epi trenbolone is consistent with contaminated beef eaten within 24 hours;
- (vi) no other substances were found in his Sample;
- (vii) he is not a "risk taker" (e.g. takes no supplements) and had a clean record;
- (viii) he had tested negative on April 11, 2018;
- (ix) he was willing to be tested during the period of April 11, 2018 and June 2, 2018 and even competed during that time, showing that he had nothing to hide;
- (x) he had never heard of Epi trenbolone before his AAF; and
- (xi) he is a truthful and credible witness who adamantly denies that he took Epi trenbolone intentionally.

36. It is the Athlete's contention that if the Tribunal finds it "possible" that his AAF resulted from contaminated meat and does not think that he took it intentionally, that he passes the balance of probabilities' 50 percent threshold. As a result, his period of Ineligibility must be eliminated on the basis that he bore No Fault or Negligence.

37. Alternatively, in the event that the Tribunal does not find he proved the most likely source of the Epi trenbolone found in his system, the Athlete contends that his period of Ineligibility should be reduced to two years, as he has established that his ingestion of the Prohibited Substance was unintentional.

38. The Athlete requests the Tribunal to:

- "(1) Find he bears No Fault or Negligence and eliminate his period of ineligibility so that he is immediately eligible to compete;*
- (2) In the alternative, find that he is subject to a maximum ban of two years backdated to June 2, 2018, the date of his sample collection, since his ingestion of*

*trenbolone was not intentional and render him eligible to compete on June 2, 2020;*

*(3) Preserve all medals, points and prizes earned by Mr. Lawson in the period between the date he was tested on June 2, 2018 and the date he was notified on August 3, 2018; and*

*(4) Order any other relief for Mr. Lawson that this Panel deems to be just and equitable including an award of fees and costs in part or in whole".*

## **D. JURISDICTION**

### **(i) The Athlete**

39. Article 1.2 of the ADR 2019 states as follows:

*"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)".*

40. The application of the ADR to athletes is set out in Article 1.6 ADR 2019 and provides:

*"These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a 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 member or 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;*

*(c) all Athlete Support Personnel and other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and*

*(d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping".*

41. On June 2, 2018, the date on which the relevant Out-of-Competition test was conducted, the Athlete was a member USA Track & Field. Therefore, pursuant to Article 1.6(a) ADR 2019, the Athlete is subject to the ADR.

**(ii) The AIU**

42. Article 7.2 ADR 2019 confers jurisdiction for results management on the AIU in certain circumstances, including:

*"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".*

43. The Sample was collected pursuant to Testing undertaken by the AIU on behalf of the IAAF. Therefore, as is again undisputed by the parties, the AIU had jurisdiction for results management in this matter.

### **(iii) The Tribunal**

44. In accordance with Article 1.4 ADR 2019, the IAAF established the Tribunal to determine ADRVs committed under the ADR.
45. Under Article 8.1(a) ADR 2019, the Tribunal has jurisdiction over all matters in which "*[a]n 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*".
46. Pursuant to Article 1.8 ADR 2019, International Athletes includes *inter alia* "(a) An Athlete who is in the International Registered Testing Pool".
47. Since the Athlete was in the IAAF Registered Testing Pool from September 2016 and on the date he provided his Sample (i.e. June 2, 2018), the Athlete was an International-Level Athlete under Article 1.8(a) ADR 2019.
48. Therefore, as is again undisputed by the parties, the Tribunal has jurisdiction to hear the present dispute over the alleged ADRV against the Athlete.

### **E. APPLICABLE LAW**

49. Pursuant to Article 21.3 ADR 2019, the version of the ADR applicable to the Athlete for substantive issues is the one effective as of 6 March 2018 (the "**ADR**"). The parties do not dispute the subjection of the Athlete to the ADR for substantive issues.
50. Pursuant to the same article of the ADR 2019, with respect to procedural matters, the present case is governed by the current rules of the ADR which were effective as of 1 January 2019 (the "**ADR 2019**"). The parties do not dispute the subjection of the Athlete to the ADR 2019 for procedural issues.

## **F. LEGAL FRAMEWORK**

### **(i) Applicable provisions of the ADR**

51. Article 2 ADR specifies the circumstances and conduct that constitute ADRVs and provides in the relevant parts:

#### **Article 2.1 ADR:**

##### ***“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 duty to ensure that no Prohibited Substance enters his 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”.*

#### **Article 2.2 ADR:**

##### ***“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 body and that no Prohibited Substance 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 under Article 2.1.*

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".*

52. Article 3 ADR deals with proof of doping and states in the relevant parts:

**"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.*

**3.2 Methods of Establishing Facts and Presumptions**

*Facts relating to anti-doping rule violations may be established by any reliable means...*

*[...]*

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".*

53. Article 10.2 ADR provides the sanction to be imposed for an ADRV under Articles 2.1 (Presence) and 2.2 (Use) as follows:

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

*The period of Ineligibility to be imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping rule violation 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 can establish that the Anti-Doping Rule Violation was not intentional.*

54. According to Article 10.2.2 ADR *"If Article 10.2.1 does not apply, the period of Ineligibility shall be two years"*.
55. Article 10.4 ADR then states that *"If an Athlete or other Person establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated"*.
56. In light of the foregoing provisions and given the classification of Epi trenbolone listed in S1.1a of the WADA 2018 Prohibited List (see *supra* at para. 8), the mandatory period of Ineligibility pursuant to Article 10.2.1 ADR to be imposed for an ADRV under Article 2.1 ADR and Article 2.2 ADR is four years unless the athlete can establish on a balance of probabilities that the ADRV was not intentional, in

which case the period is to be reduced to two years. Moreover, the sanction is to be entirely eliminated if the athlete proves that he bears "*No Fault or Negligence*" under Article 10.4 ADR.

## **(ii) Establishing the Origin of the Prohibited Substance**

57. For an athlete to satisfy his burden under Article 10.2.1 ADR, he must establish that it is more likely than not – in mathematical terms more than 50 percent – that the violation was not intentional. Where there is a range of possibilities canvassed, his preferred possibility must pass the same 50 percent threshold. That he can establish that his preferred possibility is more likely than others may be indicative that he can pass that threshold but is not dispositive (CAS 2017/A/5301 *Errani v. ITF* at para. 182). Even if – as in the present case – there are only two possibilities, the 50 percent plus test remains constant. For his purpose 50 percent will not suffice; 50.001 percent will. The Tribunal therefore disagrees with the "*binary choice*" proposition that in the present case it must choose between the Athlete's version (i.e. an unintentional ADRV caused by ingestion of contaminated beef) or another version (i.e. that the ADRV was intentional). There is a third version – indeed the one actually advanced by the AIU, i.e. that the Athlete has not proved that his ADRV was unintentional.
58. As to how an athlete can satisfy his burden, some CAS cases have held that he must in principle establish how the substance entered his body (see, e.g., CAS 2016/A/4377 *WADA v. IWF & Alvarez* at para. 51; CAS 2016/A/4662 *WADA v. Caribbean RADO & Greaves* at para. 36; CAS 2016/A/4563 *WADA v. Egy-NADO & ElSalam* at para. 50; CAS 2016/A/4626 *WADA v. Indian NADA & Meghali*; CAS 2016/A/4845 *Fabien Whitfield v. FIVB*). Another more nuanced line of CAS cases has left open the theoretical possibility that an athlete might be able to rebut the presumption of intentionality without establishing the origin of the Prohibited Substance, all the while emphasising that this will be the case only in the most exceptional of circumstances (see e.g. CAS 2016/A/4534 *Villanueva v. FINA* at para. 37: the "*narrowest of corridors*"; CAS 2016/A/4919 *WADA v. WSF & Iqbal* at para. 66: "*in all but the rarest cases the issue is academic*"). This Tribunal prefers the latter line of authority as it is, *inter alia*, more consonant with the language of the ADR. However, since in this case the Athlete claims to have identified the origin of

the Prohibited Substance and developed his argument from that premise, the Tribunal will concentrate on whether he has done so.

59. The burden to establish the origin of the Prohibited Substance lies solely on the athlete. The Anti-Doping Organisation (here the AIU) does not have the burden "*to hypothesise, still less prove*" an alternative source than the one suggested by the athlete (see e.g. CAS 2012/A/2759 Rybka v. UEFA at paras. 11.31-11.32: "*It was not for UEFA – the Panel emphasise – to hypothesise, still less prove, their own version of events*" as to how the Prohibited Substance entered the Athlete's system); CAS 2014/A/3615 WADA v. Daiders & FIM at para. 52: "*The Panel rejects a proposed interpretation of the rules which would seek to impose the burden on the person charging to explain the source of the substance detected in the system of the person charged*").
60. To satisfy his burden the Athlete must provide the Tribunal "*with actual evidence as opposed to mere speculation*" as to the origin of the substance (emphasis in original, see CAS 2014/A/3820 WADA v. Damar Robinson & JADCO at para. 80). The evidence must establish the specific source of the allegedly contaminated meat and demonstrate the likelihood that said meat was contaminated (see e.g. CAS 2016/A/4563 WADA v. Egy-NADO & EISalam at para. 57: "*In cases of meat contamination, it must – as a minimum – be a requirement that the Athlete sufficiently demonstrates where the meat originated from. For example, where did the butcher buy the Brazilian meat, how was the Brazilian meat imported into Egypt, has any of the other imports of meat been examined or tested for the presence of ractopamine etc.?*").
61. Evidence establishing that the Athlete's suggested source is "*possible*" is insufficient to establish the origin of the Prohibited Substance (see e.g. CAS OG 16/25 WADA v. Yadav & NADA at para. 7.27 where the Panel "*found the sabotage(s) theory possible, but not probable and certainly not grounded in real evidence*" (emphasis added)).
62. Further, the Athlete must demonstrate that the suggested source produced the concentration of the substance detected in his Sample; otherwise his explanation will lack an essential component. The Athlete cannot therefore simply limit himself

to identifying the source of the Prohibited Substance (see CAS 2010/A/2277 *La Barbera v. IWAS* at para. 36: where the panel held: "*Mr. La Barbera did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of the Prohibited Substance would have occurred. Mr La Barbera does in particular neither bring any scientific evidence that would explain how the Prohibited Substance could still be found in his system one week after the end of the dogs' treatment, nor whether such a potential ingestion through his biting his nails could result in the level of substance found in his body. As a result, the Panel finds that Mr La Barbera's explanations lack corroborating evidence and prove unsatisfactory, thereby failing the balance of probability test*"; see also CAS 2017/A/5315 & 5316 *WADA v. FCF Garvia & Castaneda* at para. 141: "*Also, the Panel would have found some pharmacokinetic evidence useful, such as an analysis of the amount of boldenone that would need to be present in meat in order to yield the concentrations of boldenone present in their samples, whether any such amount is in the range of boldenone that cattle farmers in Huila regularly give to their cattle and the processes by which and the amount of time that the body metabolizes boldenone*".

63. Finally, the Tribunal notes that in the celebrated *Contador* cases the Panel found that the Athlete failed to prove that contaminated meat caused his Adverse Analytical Finding even though he managed to trace the piece of meat ingested to a cattle farmer whose brother had been convicted for illicit use of the Prohibited Substance in question (see CAS 2011/A/2384 *UCI v. Contador & RFEC* & CAS 2011/A/2386 *WADA v. Contador & RFEC*).
64. The Athlete does not dispute in any material way the above propositions. Rather he asserts that he satisfied the criteria laid down in them and, if necessary, distinguishes them on the facts.

## **G. MERITS**

### **(i) Anti-Doping Rule Violations**

65. Pursuant to Articles 2.1 (Presence) and 2.2 (Use) ADR, the Presence and Use of Prohibited Substance or its Metabolites or Markers in an athlete's Sample, in this case Epitrenbolone (listed as a Prohibited Substance under S1.1a. Exogenous Anabolic Androgenic Steroids of the WADA 2018 Prohibited List) constitutes an ADRV.
66. According to Articles 2.1.1 and 2.2.1 ADR, respectively, it is each athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Substance is used. Accordingly, 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" or "Use" have occurred. The Athlete is strictly liable for the presence and use of Prohibited Substances.
67. In the present case, the Athlete has not challenged the results of the analysis of the A and B Samples collected from him on June 2, 2019 and tested by the Laboratory. In fact, on March 4, 2019, the Athlete explicitly accepted the presence of the Prohibited Substance Epitrenbolone and that he had committed an ADRV under Articles 2.1 and 2.2 ADR (see *supra* at para. 22). Furthermore, no apparent departures from the International Standard for Testing and Investigations ("**ISTI**") or the International Standard for Laboratories ("**ISL**") have been identified. Nor has a valid Therapeutic Use Exemption ("**TUE**") to justify the presence or Use of Trenbolone in the Sample under Article 7.3 ADR been revealed.
68. Therefore, based on the foregoing, the Tribunal is comfortably satisfied that the Athlete committed an ADRV pursuant to Articles 2.1 and 2.2. ADR. The violation of the said Articles is not in issue between the parties; rather what is in issue are the consequences of that violation.

### **(ii) Failure to prove lack of intent**

69. Pursuant to Article 10.2.1 ADR, the mandatory period of Ineligibility to be imposed on the Athlete for his violation of Articles 2.1 and 2.2. ADR is four years unless he

can prove by a balance of probabilities that the ADRV was not intentional, in which case the sanction would be reduced to two years (*supra* at para. 55). A further reduction is available to the Athlete if he can prove that he bears “*No Fault or Negligence*” under Article 10.4 ADR. The Tribunal must thus determine whether the Athlete proved by the balance of probabilities that the ADRV was not intentional, and, if so, whether he bore any Fault or negligence.

70. The Tribunal who had the benefit of having seen and heard the Athlete was challenged to find that he was a liar, and, if it could not, therefore to acquit him of the ADRV charges. In assessing this proposed approach, which had a beguiling simplicity, the Tribunal bears in mind the following related dicta:

- (i) CAS 2010/A/2230 *International Wheelchair Basketball Federation v. UK Anti-Doping & Simon Gibbs* at para. 11.12: “*To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes for such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete’s basic personal duty to ensure that no prohibited substances enter his body*”.
- (ii) CAS 99/A/234 & CAS 99/A/235 *Meca Medina v Madjen v FINA* at para. 10.17: “*It is regrettable that the currency of such denial is devalued by the fact that it is the common coin of the guilty as well as of the innocent*”.
- (iii) CAS 2014/A/3615 *WADA v Daiders, Daiders & FIM* at para. 51: “*In the Panel’s experience, it is rare for a person charged with a doping offence to admit to deliberate ingestion. For this reason, the weight to be given to an outright denial is diminished by the fact that it is as likely to be the approach taken by a person who is guilty as by one who is not*”.
- (iv) SR/Adhocsport/245/2018 *IAAF v. Glory Onome Nathaniel* at para. 63: “*Common lawyers, as distinct from their civilian counterparts, traditionally place emphasis on the advantages of seeing and hearing witnesses, preferably in proximity; but, if only because experience tells that the most seemingly honest witnesses may be in fact accomplished liars and vice-versa, the advantages can be exaggerated... Any proper adjudicative exercise axiomatically requires a holistic evaluation of all relevant and admissible evidence*”.

71. While recognizing that other bodies have in other cases taken account of the defendants' demeanour, the Tribunal prefers to take as its point of departure the other evidence and to consider the persuasive force of the Athlete's denial only in that context. By saying this, the Tribunal should not be taken as saying that it found anything unbelievable in itself about the demeanour of the Athlete but simply that his demeanour is not the only, nor even the primary aspect, of the inquiry insofar as the Tribunal's analysis is concerned.
72. The Athlete consistently alleges that the AAF resulted from beef he ingested on June 1, 2018, approximately 19 hours before the positive doping test, during a lunch date with Ms. McCain at the Restaurant, where he ate the Teriyaki Beef Bowl containing approximately 6-10 ounces of non-organic beef. The Tribunal finds that his account of what he ate, where and when on that day is correct, as it is adequately corroborated by documentary evidence (specifically, a receipt from the Restaurant showing he ordered the Teriyaki Beef Bowl and credit card statement confirming that purchase), as well as by an affidavit from Ms. McCain (who attested that he ate the bowl).
73. According to a written statement of the Restaurant Owner dated September 6, 2017, the meat used in the Teriyaki Beef Bowl is non-organic New York Strip Steak sourced from PFG. This was corroborated by photographs of the containers in which such beef eaten by the Athlete was said by the Restaurant Owner to have arrived. Unfortunately, neither the Restaurant Owner nor PFG were prepared to assist further without a subpoena and Mr. Greene believed that such would have been unobtainable. The Tribunal is nonetheless prepared to accept, in the absence of any evidence to the contrary, that this link in the chain was established.
74. Moreover, it is common ground that Trenbolone, a veterinary drug, has been since 1986 used legally by the US cattle industry with the approval of the U.S. Food and Drug Administration ("**FDA**") on non-organic beef cows as a hormonal growth promoter. Therefore, the Tribunal finds that this link is also established.

75. Where the dispute between the parties lies is on whether or not the Teriyaki Beef Bowl he ate at the Restaurant has been shown to be the likely source of his AAF. In support of his position that it was so, the Athlete relies *inter alia* on the results of a hair analysis conducted by Dr. Kintz and an expert report of Dr. Zarbl, which the Tribunal will address separately in the paragraphs to follow.
76. Dr. Kintz declares that he analysed the Athlete's armpit and leg hair collected from him on 14 August 2018 and that it came out negative for Trenbolone. He concluded that "*this negative finding supports the absence of repetitive use (for example for doping) of trenbolone by the donor of the hair specimen*" (emphasis added). However, Dr. Kintz could not rule out the ingestion of a single dose of Trenbolone or indeed of a number of low doses in the period prior to the test. He confirmed this in his response to Professor Ayotte's expert report ("*It is therefore accepted that hair testing for anabolic drugs cannot detect a single exposure, or repetitive limited dosages*"). Dr. Kintz' evidence, which given his area of expertise, the Tribunal accepts, does not go far enough to exculpate the Athlete of intentional use. There is in fact no material difference between Dr. Kintz and Professor Ayotte on this point. In light of the foregoing, the Tribunal finds that the negative hair analysis is of little relevance, as it can only detect repeated and significant doses.
77. As for Dr. Zarbl, he concluded in his initial expert report that the Athlete's ingestion of Trenbolone must have been inadvertent. Dr. Zarbl accepts that the picogram levels of EpiTrenbolone found in his Sample were too low to result from the ingestion of meat from a cow that had received a lawful application of Trenbolone (i.e. an implant administered to the back of the ear). However, it is his position that "*there is more than sufficient evidence and published scientific data to support the idea that Mr. Lawson's positive urine test was the result of consuming beef contaminated by injection of an animal with Trenbolone acetate implants into an off label site in the animal.*"
78. Preliminarily, the Tribunal finds that Dr. Zarbl's expertise as a biochemist (and as specialist in the properties of Zeranol, though not of Trenbolone) is not in issue; nor in so far as he gave evidence within that area is his good faith or indeed his

reasoning disputed. However, the Tribunal notes that his evidence was presented as if he were the Athlete's advocate and in florid tones: "*He [the Athlete] is an unfortunate individual who has been ensnared in a doping trap created by the vanishing zero<sup>4</sup> in drug testing labs*". In particular, the Tribunal notes that Dr. Zarbl, in reaching his conclusion in his expert report that the Athlete's ingestion of Trenbolone must have been inadvertent, takes into consideration, in addition to the low concentration of the Prohibited Substance in the Sample and the negative hair analysis (the latter which is of little relevance – see *supra* at para. 75), the following factors: (i) the Athlete's previous negative testing history, (ii) that the Athlete did not appear to be a "*risk taker*", (iii) that the Athlete would have a lot to lose (e.g. lucrative endorsement deals) by intentionally taking a banned substance, and (iv) that the Athlete had no specific motivation to cheat in view of his success to date. Dr. Zarbl thus did not allow the science to speak for itself.

79. While Dr. Zarbl was naturally entitled to hold these views, they were manifestly outside his area of expertise.
80. The Tribunal is nonetheless prepared to accept that the eating of beef comprising the site of an implant that had been placed directly into the muscle and was contaminated with Trenbolone could result in the low concentration of 0.65 pg/mL found in the Athlete's Sample, although as Professor Ayotte of the WADA accredited Montreal laboratory observed, he would have to have ingested meat comprising the site of a deliberately misplaced trenbolone implant<sup>5</sup>.
81. The Tribunal is also prepared to accept that placement of an implant directly into the muscle could occur, even if it would be contrary to industry regulations. Professor Johnson, the Gordon W. Davis Regent's Chair in Meat Science and Muscle Biology at Texas Tech University and the only expert in beef production before the Tribunal, was obviously an enthusiast for the American system, to whose proper

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<sup>4</sup> A concept created by Gunter Zweig in 1970 to describe how the increasing sensitivity of analytical methods dramatically lowered the detectability of substances.

<sup>5</sup> The 1991 article by B. Spranger and Metzler called "*Disposition of 17 $\beta$ -trenbolone in humans*" provides data on Trenbolone excretion rates in human volunteers who ingested the substance, but does not, in the Tribunal's view, of itself disprove a deliberate ingestion scenario.

operation he had, as his career showed, made a significant contribution. Nevertheless, no system in any sphere of human activity is perfect. Mistakes can and do occur and could in theory do so at PFG, even if it is one of the top four suppliers in the USA and one with a high reputation.

82. However, it is, the Tribunal repeats, for the Athlete to show that his explanation is probable, not that it is possible, and it is at this juncture that the Athlete's case encounters substantial difficulties.

83. First, the Athlete obviously cannot produce and have tested the actual meat he ingested or even, as in the case of an allegedly contaminated supplement, a product from the same package or container. This is equally obviously not his fault. Nevertheless, an adjudicative body must work on the evidence it has, not the evidence it lacks.

84. Second, in his expert opinion dated March 29, 2019 and testimony, Professor Johnson rejected the theory of the origin of AAF suggested by the Athlete (and Dr. Zarbl) for the following reasons:

- (i) the use of Trenbolone is strictly regulated in the United States (e.g. implants must be placed in the cow's ear, the ears must be removed during the harvest process, and one must abide by the maximum permitted residue levels of the substance, etc.).
- (ii) The USDA Food Safety and Inspection Services ("**FSIS**") which monitors levels of residues in U.S. meat do not cite any issues with violative findings for Trenbolone (in excess of the maximum permitted residue level of 2 ng/g). In fact, the FSIS stopped testing for Trenbolone in 2009 due to historically low findings.
- (iii) For the Athlete's theory to work, the implant would have to be directly injected into the longissimus muscle (i.e. the major back muscle of the cow) from which the meat for the Teriyaki Beef Bowl came. However, doing so would be counterproductive because it would result in only that injected muscle and the muscles adjacent thereto benefitting from the release of Trenbolone (as opposed to the entire cow when the implant is placed

correctly in the ear, thereby allowing the Trenbolone to circulate effectively through the bloodstream). Moreover, it would also be against the economic interest of the beef producers since the longissimus is one of the most high-valued wholesale cuts and implanting directly into it would lessen its value.

- (iv) It would be extremely difficult to penetrate the skin and connective tissues surround the longissimus muscle to place an implant.
- (v) There is no access to the back of the cow during the implanting process. The cow's head is held in place by a restraining device which lowers, if not eliminates, the chance that an implant intended for the ear would end up in the animal's hindquarters. In this regard, the Tribunal notes that the FEEDLOT article "*Implanting Defects steal Profits*" dated August 2000 (to which Dr. Zarbl provided a link in his expert report, but which the Athlete did not produce separately until the hearing) reported repeated incorrect application of implants. However, the incorrect applications reported were the placing of the implant in the wrong part of the ear, or dirty ears leading to dirty needles and consequent abscesses; by contrast the article does not report any incorrect placement of implants into the body of cows. Dr. Zarbl estimated a 1 percent error rate in implanting, but not so extreme that the implant would accidentally end up on the hindquarters of the cow.
- (vi) A piece of meat cut from a muscle directly injected with Trenbolone would be discovered by those that handle the meat. The scabs and lesions that such an injection would create would be noticeable at the slaughterhouse, by the in-house, federal and sometimes pharmaceutical company inspectors, by distributor or the supplier, by the butchers, and at the restaurant. The very purpose of such inspections (and avoidance of resulting blemishes) is to ensure that irregular implants do not occur.

85. The Athlete called no witness with specific expertise to rebut these assertions of Professor Johnson. Dr. Zarbl's encounters with the industry were consequent on, rather than prior to, his involvement in disputed sports doping cases.

86. Dr. Zarbl advances the thesis in his initial expert report that the Athlete could have eaten meat from a cow with an off-label implant or misplaced implant, which he refers to as a "*lightning strike*". The use of the metaphor "*lightning strike*" deployed by Dr. Zarbl is vivid but itself underscores the rarity of what he asserts occurred (indeed, Dr. Zarbl expressly declared at the hearing that a "*lightning strike*" is a rare event, while averring that "*accidents*" do occur). The common saying, "*Lightning never strikes the same place twice*", is disproved by science; but for lightning to strike a place even once is unusual.
87. Dr. Zarbl then also suggests in his rebuttal report with various supporting documents that the beef eaten by the Athlete in fact could have come from Mexico or indeed elsewhere given that the owner of PFG was a Brazilian national. The Tribunal accepts that such a possibility cannot be entirely ruled out (save that, according to Professor Johnson, Brazil does not allow exogenous compounds to be injected into cattle) though noting that it would involve a measure of misrepresentation as to the origins of its beef on the packaging by PFG who labelled the meat "*Product of the USA*". The Tribunal cannot, however, accept that it has been proved to be probable.
88. The Athlete next relied on an exercise in extrapolation. He submitted in his answer brief that, "*Athletes have established that they bear No Fault or Negligence after eating contaminated beef including two recent cases where athletes have tested positive for trenbolone metabolite at levels nearly identical to Mr. Lawson's level*". The Tribunal was invited to infer that the Athlete's own case fit this template.
89. The Tribunal approached this submission with a measure of caution. It is one thing to apply propositions of law from earlier cases as precedents (though CAS itself has no doctrine of precedent akin to that which applies in common law jurisdictions). It is quite another to seek to apply from earlier cases findings of fact. Not only do all cases axiomatically turn on the evidence adduced in them, but panels in later cases may not have a complete record of the evidence in the earlier ones and, even if they did, might not have assessed it in the same way, especially when taking account of the particular evidence in the cases before them. There is no scope for

treating the findings in the earlier cases as a novel species of *res judicata* (nor indeed did the Athlete contend otherwise).

90. With those observations in mind, the Tribunal turns to the cases relied on in this context by the Athlete to see how far they take him.

91. In *ITF v. Marcela Zacarias Valle* (issued on February 8, 2019), the Athlete received a finding of No Fault or Negligence under Article 10.4 of the 2018 Tennis Anti-Doping Programme (which corresponds to Article 10.4 of the WADA Code) after testing positive on June 21, 2018 for an estimated 0.6 ng/mL of Trenbolone Metabolite. The ITF found that the source of the Trenbolone Metabolite was more likely than not 600 grams of beef she had ingested in Mexico the day before her positive test.

92. The Tribunal notes the following distinctive features of the *Valle* case:

- (i) the decision was not the product of a hearing before an independent tribunal, judicially assessing the evidence, but of the ITF itself (see para. 3 of the *Valle* decision);
- (ii) the beef was consumed in Mexico (not in the USA) where it was not "*disputed that the quality controls for meat... are low as compared to certain other countries (e.g. in the EU)*" (see para. 20<sup>6</sup>);
- (iii) the Athlete had tested negative a mere three days before the positive test (see para. 17), which led Professor Ayotte to conclude that a single injection of Trenbolone in that intervening period would have produced a level higher than that found in the positive test (see para 19.3)<sup>7</sup>; and

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<sup>6</sup> On February 11, 2019 the ITF published a warning on the risks of ingesting Clenbuterol and Trenbolone when eating beef or liver in Mexico or China - but did not mention any risks involved in eating such foods in the USA.

<sup>7</sup> In *Valle* at para. 19 it is reported Professor Ayotte testified that so far as she was aware there is no evidence that athletes micro-dose with Trenbolone or that micro-dosing would provide any benefit to an athlete. This evidence, qualified as it was, only points to one, not all, routes out of a finding of intentional ingestion, or more precisely an absence of finding to the contrary.

(iv) while the ITF concluded that Ms. Valle had discharged the burden of proof which lay upon her, it noted in parenthesis that she had done so "*only just*" (see para. 22).

93. The ITF also took note of the *Carl Grove* case (as does the Athlete in the present case) where the record-breaking nonagenarian cyclist only received a public warning after testing positive at the same estimated concentration as Ms. Valle. USADA ultimately found that the likely source of Mr. Grove's positive test was 10 oz of contaminated liver he ate the day before (see para. 21).

94. The Tribunal notes the following distinctive features of the *Grove* case:

- (i) the Decision was not the product of an independent tribunal judicially assessing the evidence, but of USADA itself;
- (ii) there is no detail available of the full evidential record, but only press reports; and
- (iii) Mr. Grove tested negative the day before his positive test.

95. In the Tribunal's view these two Trenbolone cases do not by themselves establish a pattern or trend so striking as to justify the inference that it is more probable than not that the Athlete was the victim of similar contamination.

96. The only other Trenbolone case discussed during the hearing was *IAAF v. María Guadalupe González Romero* (SR/Adhocsport/287/2018), in which the Mexican race-walker athlete had also tested positive for Trenbolone (estimated 1ng/mL) and blamed contaminated meat eaten in Mexico. Subsequent to the hearing in the present case, a Sole Adjudicator of the IAAF Disciplinary Tribunal rejected her defence after holding a hearing. The Sole Adjudicator reasoned that the Athlete had failed to satisfy her burden of proving how Trenbolone entered her system because she cited contradicting version of events during the proceedings and since the scientific evidence (testimony from Professor Ayotte) illustrated the impossibility that the high concentration levels of prohibited substance came from contaminated meat (see paras. 80-98 of the decision).

97. In the Tribunal's view the *Romero* ruling is no more damaging to the Athlete's case than *Valle* and *Grove* are helpful to it. Each case turns on its own facts. The issue, the Tribunal reminds itself, is whether the Athlete has established meat contamination on the balance of probabilities, not whether meat contamination may possibly explain a Trenbolone positive.

98. The Athlete also sought to rely on other cases where there had been a finding that contaminated meat explained a positive finding for a Prohibited Substance.

99. The first was the *Ajee Wilson* decision of USADA dated June 19, 2017, where the Athlete had tested negative one week prior to a positive test that revealed a level of 8ng/mL for Zeranol 24 hours after she ate beef.

100. The Tribunal notes that:

- (i) this was not a decision of an independent tribunal judicially assessing the evidence, but of USADA itself;
- (ii) there is no detail available of the full evidential record, but only press reports including of USADA's statement; and
- (iii) according to Professor Ayotte's unrebutted testimony, there is no evidence that Zeranol (unlike Trenbolone) has ever been advertised as a performance enhancing drug.

101. The second was *FISA v. José Alberto Arriaga Gomez*, a decision of a FISA panel dated June 22, 2015. In that case the Athlete tested negative two weeks prior to the positive test which revealed a level of 4ng/mL for Boldenone two days after he ate meat (including sweetbreads) at a barbecue in Mexico.

102. The Tribunal notes that:

- (i) the meat eaten was from Mexico, not the USA; and
- (ii) the Panel arguably misdirected itself in holding that, where meat contamination is asserted, "*The Panel needs to be satisfied of this on the balance of probabilities and if it is only slightly more probable than other*

*possible explanations, then the Athlete has met the burden and standard of proof required".* The first part of that sentence is, as already explained, impeccable; but the second part suspect (see *supra* at para. 56).

103. The Tribunal gains no substantial assistance from cases concerned with substances other than Trenbolone, especially where different types of meat, differently sourced were under consideration.
104. The AIU for its part drew attention to the line of cases where meat contamination (Boldenone or Clenbuterol) had been rejected as a '*plausible*' explanation for a positive drug test (see letter of August 28, 2018 to GSA at para. 8<sup>8</sup>). The Tribunal likewise derives no Substantial Assistance from such cases, because, quite apart from the consideration that all turned on their particular facts, it is not in issue that meat contamination **can** explain such tests, since such a finding in a particular case would not defy any scientific law.
105. What then is the evidence that in the present case meat contamination was the probable cause of this positive test for this substance? The Tribunal has already explained why it considers that the previous Trenbolone cases neither in terms of quality or quantity take the Athlete over the required legal threshold (see *supra* at paras. 89-95).
106. On the AIU side of the evidential balance sheet is the evidence of Professor Ayotte. She made the following points which the Tribunal accepts:
- (i) Trenbolone has various potential benefits including increasing muscle mass, aiding recovery, improving muscle repair and stamina, etc. This is not in issue. Indeed Dr. Kintz appeared expressly to accept it in his comments on

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<sup>8</sup> "*The AIU relies instead on the long line of established CAS and national jurisprudence which has rejected meat contamination as a plausible explanation for a positive drug test: see e.g., WADA v. FCF & Yobani Jose Ricardo Garcia and WADA v. FCF & Daniel Londono Castaneda CAS 2017/A/5315 & 5316; (football players unable to establish that their positive tests for boldenone likely arose from meat contamination); UCI v. Contador & RFEC and WADA v. Contador & RFEC CAS 2011/A/2384 and 2386 (cyclist unable to establish that a positive test for clenbuterol likely arose from meat contamination); Wen Tong v. International Judo Federation CAS 2010/A/2161 (athlete unable to establish that a positive test for clenbuterol likely arose from meat contamination); Serocynoski v. IOC CAS 2009/A/1755 (athlete unable to establish that a positive test for clenbuterol during the Olympic Games was attributable to meat contamination).*"

Professor Ayotte's report dated April 3, 2019 in his comments on the "*misuse (sic) of trenbolone*".

- (ii) Trenbolone is one of the ten most frequently reported anabolic androgenic steroids by all WADA-accredited laboratories. No evidence to the contrary effect was adduced, and Professor Ayotte was singularly well placed, given her career and position, to testify to such matter.
- (iii) The use of Trenbolone for such purposes has been stimulated by the inadvertent advertising given to it by Dr. Gregory Rodchenkov in what he claims to be an exposure of the institutional doping in Russia. It is not in issue that he made such a claim.
- (iv) Despite the widespread use of Trenbolone in cattle farming in the US and Canada, the testing data of the WADA accredited Montreal laboratory (at which she is the Director and which has had the same limit of detection for Trenbolone since 2009) provides no indication that residues of that substance in meat are causing adverse analytical findings. Of approximately 125,000 samples that were analysed in the period from 2013-2018 (the majority being from the USA and Canada), Trenbolone was only detected in sixteen cases, fourteen of which also contained other Prohibited Substances in the positive test, with the remaining two not coming from the US. The Athlete did not adduce any evidence to rebut this point. In so far as the Athlete argued that there has been some spike in the number of Trenbolone positives in recent years, that begs the question as to whether it was caused by an increased use of the substance for performance enhancing purposes as distinct from irregular meat contamination. In so far as it was (correctly) submitted: the fact the USDA FSIS has not tested for Trenbolone since 2009 provides no evidence that there had been contamination of beef by such substance, but only that there was no evidence from that source to the contrary.
- (v) The scientific literature indicates that, even where cattle is subject to an excessive, off-label regimen of ten simultaneous applications of 200 mg Trenbolone acetate (i.e. five implants in each ear), this will result in

maximum residues of 0.32 ng/g in the meat. Even assuming that the Athlete ate meat that had been subject to such excessive administration of Trenbolone, he would have to have consumed a significant multiple of the quantity of meat that he claims to have eaten, in the order of 8kg to 24kg. Hence, the Athlete needs to rely on theory of the "*lightning strike*", i.e. the ingestion of meat comprising the site of a deliberately misplaced Trenbolone implant (see *supra* at para. 85 on the unlikelihood of this theory).

(vi) The article "*Detection of Anabolic Residues in Misplaced Implantation Sites in Cattle*" dated 1999 by A. Daxenberger *et al.* showed by way of experiment that such misplacement could result in a positive doping test for, *inter alia*, Trenbolone but neither provided nor purported to provide any example of this actually having occurred in the US. They noted only that illegal injection of Trenbolone in calves has been documented in Canada.

(vii) The complaints in the 139-page report by the European Commission in 1999, a salvo in the so-called beef wars between the EU and the US, report that of 258 meat samples said to be *hormone free* 12 percent had detectable levels of hormones, including Trenbolone. This report advances the debate no further since the EU's concern was with the US' (legitimate) use (in the US) of regularly injected hormones on hormone-free goods exported to the EU, and not the frequency of irregularly placed injections.

107. In light of the foregoing, the Tribunal holds that the Athlete has failed to satisfy his burden of establishing how the Prohibited Substance Epitrenbolone entered his body. His denials are, in the overall evidential context, insufficient, even coupled with Mr. Doyle's testimonials to his moral character, to enable him to pass the 50% threshold. Likewise the argument that he did not seek to avoid a doping test between his negative result on April 11, 2018 and June 2, 2018 and that actually he competed in Osaka during that period and continued to compete thereafter until he was told of his positive results so showing that he had nothing to hide, while consistent with innocence, is far from conclusive, or even probative of it, given the uncertainty of such matters as for how long the Trenbolone in the amount ingested would remain detectable in his system and (more importantly) what his perception, right or wrong, of its detectability might have been.

108. In conclusion, the Athlete has failed to prove to the Tribunal that his admitted violations of Articles 2.1 and 2.2 ADR were not intentional. The Athlete has established a *possible*, but not a *probable* case of lack of intention.<sup>9</sup>

### **(iii) Sanction**

109. The Tribunal repeats that it is not for the AIU to establish a case of intentional ADRV against the Athlete. Without prejudice to that, the Tribunal notes for the record that the AIU ventilated a scenario which would, according to it, accommodate the known facts. As was revealed at the hearing, since before the IAAF World Championships in London in 2017, the Athlete was carrying a managed tendon injury (which, his agent explained, was a reason the Athlete, in consultation with his coach, elected to temporarily compete in sprints instead of his specialty, the long jump, in the middle of 2018)<sup>10</sup>. When the Athlete resumed competing in long jump events (which put more strain on the injured part than did the sprints) on 13 July 2018 in order to preserve his sponsorship income, he was free from that injury; indeed, the Athlete testified at the hearing that he was injury free by the time of the US National Championships on June 21, 2018. It was, as the chronology shows, during the interregnum when he was sprinting that he tested positive.

110. The AIU argued that it could be inferred that he may have taken Trenbolone not to enhance his performance, and compete with an unfair advantage, but to speed his recovery so that he would no longer compete with an actual handicap or disadvantage. The Tribunal would only comment that whereas in moral terms the two objectives might be perceived to be different the ADR makes no distinction between them. It is not, however, required to pronounce on the credibility of the AIU's scenario and therefore declines to do so.

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<sup>9</sup> The fact that at other times or in other laboratories the amount of Trenbolone in his system of June 2, 2018 might not have been detected at all raises issues of policy and equity in the worldwide anti-doping system that perhaps undercuts harmonisation but this does not permit the Tribunal to ignore the actual results of his A and B Samples.

<sup>10</sup> The IAAF website shows that the Athlete competed in long jump January to March 2018, then sprints until June 23, 2018 (including in Osaka), until July 13, 2018 when he retook to long jumping: <https://www.iaaf.org/athletes/united-states/jarrion-lawson-267612>

111. The period of Ineligibility of four years commences on the date of the issuance of this decision. However, in accordance with the Athlete's request which is accepted by the AIU, the Tribunal decides that the period of the Provisional Suspension imposed on the Athlete from August 3, 2018 up to the date of this decision should be credited against the total period of Ineligibility, provided that it has been effectively served by him.

112. In accordance with Article 10.8 ADR, the Tribunal also holds that the Athlete's results shall be deemed disqualified between the date the Sample was collected on June 2, 2018 until the start of the Provisional Suspension on August 3, 2018, with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money. The Tribunal does not consider that fairness requires otherwise.

#### **H. COSTS**

113. The AIU sought, on behalf of the IAAF, an award for a contribution to the IAAF's legal costs. The Tribunal, in consideration of, on the one hand, the outcome of the case i.e. that the Athlete has not prevailed with his explanation, and on the other the fact that the case presented by the Athlete was far from weightless and required careful consideration, as well as the relative economic strength of the parties, decides that the Athlete shall make no contribution to the AIU's costs.

114. The Tribunal notes as a matter of record that the AIU did not provide any detail as to its costs.

#### **I. ORDER**

115. For the reasons set out above, the Tribunal makes the following decisions and orders:

- a) The Disciplinary Tribunal has jurisdiction to decide the present dispute.

- b) Mr. Jarrion Lawson has committed Anti-Doping Rule Violations pursuant to Articles 2.1 and Art 2.2 ADR.
- c) A period of Ineligibility of four years is imposed upon Mr. Jarrion Lawson, commencing on the date of the Tribunal Award. The period of Provisional Suspension imposed on Mr. Jarrion Lawson from August 3, 2018 until the date of the Tribunal Award shall be credited against the total period of Ineligibility, provided that it has been effectively served by him.
- d) Mr. Jarrion Lawson's results from June 2, 2018 until the date of his Provisional Suspension on August 3, 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.
- e) No costs are awarded to any party.

## **J. RIGHT OF APPEAL**

116. This decision may be appealed to the Court of Arbitration for Sport in accordance with Article 13 ADR and its subsection.

*Michael J Beloff QC*

**Michael Beloff QC**

Panel Chairman

24 May 2019



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