

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

Before:

Hon. Hugh L. Fraser (Chair)

Dr Thomas Murray

Mr Lauri Tarasti

BETWEEN:

International Association of Athletics Federations (IAAF)

Anti-Doping Organisation

-and-

Ms Oluwakemi Adekoya

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

INTRODUCTION

1. The Claimant, the International Association of Athletics Federation ("IAAF"), is the international federation governing the sport of Athletics worldwide.¹ It has its registered seat in Monaco.

¹ 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.

2. The Respondent, Ms. Oluwakemi (Kemi) Adekoya ("the Athlete") is a 26 year old 400 meter hurdler/sprinter who was born in Nigeria and who now competes for Bahrain.² On 27 August 2018, Ms. Adekoya won gold and set an Asian Games record for the 400 meter hurdles.

FACTUAL BACKGROUND

3. This matter concerns the presence of stanozolol and its metabolites in two urine samples collected from the Athlete on 24 and 27 August 2018 in Jakarta, Indonesia on the occasion of the 2018 Asian Games (the "Games") and analyzed by the World Anti-Doping Agency ("WADA") accredited laboratory in Doha, Qatar.
4. The first Sample (with code number #4288745) was collected Out-of-Competition (the "First Sample") whereas the second Sample (with code number #42990177) was collected In-Competition after the Athlete had won the gold medal in the 400 meter hurdles final in a Games record time.
5. The B samples were analyzed on 11 September 2018 and 26 September 2018 respectively at the WADA accredited laboratory in Doha, and in each case, confirmed the Adverse Analytical Finding ("AAF") for stanozolol and its metabolites. Both the A and B samples were positive for the parent compound of stanozolol as well as the metabolites known as 3-hydroxystanozolol, 4-hydroxystanozolol, and 16B-hydroxystanozolol.
6. Stanozolol is listed in S1.1a. Exogenous Anabolic Androgenic Steroids of the WADA 2018 Prohibited List. It is a non-specified substance and is prohibited at all times.
7. The Olympic Council of Asia ("OCA") was competent with respect to establishing the anti-doping rule violation(s) and the resulting Consequences at the Games in accordance with the 2018 OCA Anti-Doping Rules ("OCA ADR").
8. Pursuant to article 10.2.2 of the OCA ADR and in accordance with the principles set out in article 7.1.1 of the World Anti-Doping Code (the "Code") - the IAAF is

² <https://www.iaaf.org/athletes/bahrain/oluwakemi-adekoya-273465>

competent to impose the applicable Consequences beyond the Games in accordance with the IAAF Anti-Doping Rules ("IAAF ADR").

9. In a letter from her counsel dated 23 October 2018, the Athlete waived her right to a hearing before the OCA and accepted the anti-doping rule violation(s) as well as the disqualification of her results at the Games.
10. On 26 November 2018, the IAAF sent a Notice of Allegation to the Athlete which inter alia imposed a Provisional Suspension with immediate effect and requested the Athlete to provide an explanation for the AAFs by no later than 3 December 2018.
11. On 3 December 2018, the Athlete's counsel, Mr. Paul Greene, wrote to the AIU, enclosing statements from herself, her coach Mr. Oyewole Hakeem Tajudeen ("Coach Akeem") and her training partner Glory Onome Nathaniel. In brief, the Athlete denied intentionally ingesting stanozolol and theorized that both she and Glory had been the victims of sabotage through spiking by Ms. Blessing Ogundiran ("Blessing") whilst the Athlete had been training in a group known as "Team Blessed" in July/August 2018 in Nigeria.
12. On 2 January 2019, Mr. Greene forwarded to the AIU a letter that a Nigerian journalist Olajide Fashikum (of Gong News) had sent to WADA on 28 December 2018, alleging that Team Blessed had been the victim of sabotage by Blessing as part of a dispute between a number of coaches.
13. On 18 January 2019, the Athlete, accompanied by Mr. Greene, attended an audio interview with representatives of the AIU and provided further information in relation to her explanation for the AAFs in the Samples. The Athlete mentioned that during the period in which she had been training with Team Blessed and about one week prior to the African Championships (which were held from 1 August to 5 August 2018), Blessing had stopped eating and would only drink water. She also mentioned a conflict between Coach Akeem and Blessing.
14. On 4 March 2019, the AIU sent the Athlete a Notice of Charge indicating that (i) it did not consider her explanations to be sufficient to explain the AAFs, and (ii) it was seeking a four-year period of Ineligibility. The 4 March 2019 letter also

invited the Athlete to confirm how she wished to proceed with the matter by no later than 11 March 2019.

15. On 7 March 2019, her counsel, Mr. Greene, informed the AIU that the Athlete requested a hearing and that she intended to establish that she bore No Fault or Negligence for the anti-doping rule violation as she had been the victim of sabotage.

16. The Athlete stated that she initially believed that the stanozolol found in her system came from one of her supplements. She sent 16 supplements that she had taken over the past few months for testing at the Aegis Science Corporation in Nashville, Tennessee, USA.

17. All 16 supplements tested negative for stanozolol.

18. In 2017, Ms. Adekoya tore her quadriceps muscle and missed most of that season. She went to UMPC in Pittsburg, Pennsylvania, USA to have surgery on the injured leg.

19. Ms. Adekoya's mother traveled to the United States to visit her daughter following the surgery. Prior to returning to Nigeria, the athlete went with her mother to a supplement store where they purchased EAS Whey Protein Powder to take back to Nigeria.

20. Once Ms. Adekoya had resumed training she attended a training camp organized by Coach Akeem which was held in Sagamu, Nigeria.

21. At some point after her positive test result, Ms. Adekoya learned that another athlete on her training team, Ms. Glory Onome Nathaniel, who had also attended the training camp in Sagamu, had also tested positive for stanozolol.

22. Ms. Nathaniel had never taken any of the same supplements as Ms. Adekoya, nor had they shared supplements. Ms. Adekoya then concluded that the positive link between the positive tests was their training team, and specifically Blessing.

23. Ms. Nathaniel and Ms. Adekoya both came to the conclusion that Blessing had sabotaged their food and reflected on Blessing's strange behaviour while she was at the training camp in Sagamu.

24. After reviewing the expert opinion provided by Professor Christiane Ayotte, Ms. Adekoya tested positive for the parent compound of stanazolol, which would have had to have been consumed only a few days prior to the doping test of 24 August, 2018, Ms. Adekoya abandoned the sabotage by food theory.

25. Ms. Adekoya then submitted that her EAS Whey Protein supplement must have been contaminated by Blessing when she, without permission, entered Coach Akeem's room. Ms. Adekoya maintains that she had stopped taking this supplement by 19 August 2018 when her supply ran out which would have been just a few days before her doping test of 24 August 2018.

PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL

26. On 1 April 2019, a Preliminary Meeting was convened between the parties by telephone conference. The Chair of the Panel, the Honourable Justice Hugh L. Fraser issued directions (i) requiring the AIU to submit its brief by 15 April (17:00 BST), the Athlete to file her Answer by 29 April 2019 (17:00 BST) and the AIU to file its Reply by 13 May 2019 (17:00 BST) and (ii) fixing a hearing for 28-29 May 2019.

27. By email to the Tribunal shortly before 17:00 BST on 15 April 2019, the AIU sought an extension of one hour to its deadline to file the Brief; the Athlete's counsel confirmed by reply that there was no objection to the extension and the extension was confirmed by email of the Tribunal shortly thereafter.

28. In response to the AIU's brief which included a report from Professor Christiane Ayotte, the Athlete sought an extension of the time previously given to file her Answer so that her expert could provide a response to Prof. Ayotte's report.

29. The AIU did not object to the request for the extension sought by Ms. Adekoya with the understanding that the AIU would be granted a further period of three weeks to file its Reply to the Athlete's Answer.
30. The Chair of the Panel agreed to the request for an extension and new directions were issued for the Athlete to file her Answer no later than 17:00 BST on Monday 20 May 2019 and the AIU to file its Reply no later than 17:00 BST on Monday 10 June 2019. A new hearing date of 1 July 2019 was fixed, with 2 July 2019 as a continuation date if necessary.
31. The Parties filed their briefs in a timely manner in accordance with the revised directions.
32. On 1 July 2019 a hearing was held by video conference before the Hon. Hugh L. Fraser in Ottawa, Canada, (Chair), Dr. Thomas Murray in Massachusetts, USA, and Mr. Lauri Tarasti, in Helsinki, Finland. The hearing commenced at 13:00 BST and concluded at 21:00 BST.
33. The parties were represented as follows: for IAAF/AIU, Ross Wenzel, Counsel, and Tony Jackson, Case Manager; for the Athlete, Matthew Kaiser of Global Sports Advocates, Counsel. Mr. Wenzel and Mr. Kaiser had carriage of the advocacy on behalf of their respective clients.
34. The Athlete gave evidence by video from Bahrain. Also heard on the Athlete's behalf by video and or telephone was Coach Akeem Oyewole, Atanda Akindele, Rashidat Lawal, Noora Salem Jasim, Omoniyi Adekoya and Glory Onome Nathaniel. On behalf of the IAAF/AIU, the Panel heard testimony by phone from Blessing Ogundiran, and testimony by video from Basirah Nasir and Prof. Christiane Ayotte, an expert witness testifying from Montreal, Canada. The hearing logistics were diligently arranged by Sport Resolutions.

JURISDICTION AND APPLICABLE RULES

I. Jurisdiction

35. The jurisdiction of the IAAF to impose Consequences in respect of the Athlete's anti-doping rule violation(s) beyond the Asian Games is provided for in article 10.2.2 of the 2018 OCA ADR, as follows:

"In accordance with Article 7.2.2, responsibility for the results management in terms of sanctions beyond the Event itself shall be referred to the applicable International Federation."

36. The Athlete does not contest the jurisdiction of the IAAF in this matter.

II. Applicable Rules

37. With respect to substantive matters, this case is governed by the rules in place at the time of the asserted anti-doping rule violation, i.e. the IAAF ADR effective as of 6 March 2018 (the "2018 ADR").

38. With respect to procedural matters, this case is governed by the current rules i.e. the IAAF ADR effective as of 1 January 2019 (the "2019 ADR").

39. Article 2 of the 2018 ADR specifies the circumstances and conduct that constitute anti-doping rule violations. This includes Article 2.1 which specifies:

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.

40. Article 2.2 of the 2018 ADR also states that use of a Prohibited Substance or Prohibited Method constitutes an anti-doping rule violation:

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.

41. With regard to the presence of a Prohibited Substance or its metabolites or markers in an Athlete's Sample, Article 2.1.2 of the 2018 ADR states:

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.

42. In relation to an Athlete's Use of a Prohibited Substance or prohibited method, Article 2.2.2 of the 2018 ADR provides:

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.

43. The presence of a Prohibited Substance or its metabolites or markers in an Athlete's Sample is therefore sufficient to establish that an Athlete has committed an anti-doping rule violation pursuant to Article 2.1 ADR. Additionally, the use of a Prohibited Substance or a Prohibited Method is sufficient for an anti-doping rule violation to be committed under Article 2.2 ADR.

44. Article 3.1 of the 2018 ADR provides that the IAAF shall have the burden of establishing that an anti-doping rule violation has occurred to the comfortable satisfaction of the Tribunal:

3.1 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.

45. Article 3.2 of the 2018 ADR states that facts relating to anti-doping rule violations may be established by any reliable means.

46. In that regard, Article 3.2 of the 2018 ADR also states:

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.

CONSEQUENCES FOR THE ANTI-DOPING RULE VIOLATIONS

Period of Ineligibility

47. Article 10.2 ADR provides the sanction to be imposed for anti-doping rule violations under Article 2.1 ADR and Article 2.2 ADR 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 antidoping 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.

48. Stanozolol is listed in S1.1a of the WADA 2018 Prohibited List. It is a non-specified substance. The period of Ineligibility shall therefore be four years pursuant to Article 10.2.1(a) ADR, unless the Athlete can establish that the anti-doping rule violations were not intentional.

THE ARGUMENT

I. The AIU

49. The AIU submits that the Athlete must demonstrate on a balance of probabilities that the Whey protein was spiked by stanozolol and that she is a long way from meeting that burden. The AIU further submits that stanozolol is a non-specified substance which requires a period of four years Ineligibility unless the athlete can establish that the anti-doping rule violations were not intentional. The Respondent argues that for the purposes of satisfying this burden, a series of Court of Arbitration for Sport ("CAS") cases have held that athletes must in principle establish how the substance entered their body.

50.The AIU adds that the presumption of intentionality has been rebutted without establishing the origin of the Prohibited Substances only in the rare, most exceptional of circumstances. Otherwise the athlete must provide an explanation that is more likely than not. There is a 50.1% minimum.

51.The AIU points to the fact that the sabotage theory changed after the first filing by the Athlete and the food spiking allegation was replaced by one of supplement spiking. The AIU also notes that the quality of the evidence presented to the Tribunal was very poor and consisted of witness evidence not backed up by any documentary evidence.

52. The AIU also submits that the supplement spiking theory was contradicted by the scientific evidence heard from the expert witness in this case. The AIU also notes that the Athlete declared all of her supplements on her doping control form with the exception of the Whey protein which she had been taking on a regular basis for approximately six months.

53.The AIU submits that the Athlete's witnesses were all singing from the same hymnbook, but none gave credible evidence. They maintain that Coach Akeem could not give a straight answer to even the simplest of questions. The Athlete's mother gave evasive evidence and appeared to be assisted by her other daughter who purported to act as an interpreter. The AIU highlights the fact that the Athlete's mother appeared to have a poor memory on all details with the exception of her recollection that six tubs of Whey protein had been purchased.

II. The Athlete

54.The Athlete submits that if the Panel comes to the conclusion that she is a cheater, then she must be given a four-year ban but if the Panel does not believe that she is a cheater, the greatest sanction she could receive would be a two-year ban.

55.The Athlete submits that she would not jeopardize her career and let down the people in Nigeria and Bahrain who look up to her and depend on her by intentionally taking a Prohibited Substance.

56. The Athlete submits that the more probable scenario for her anti-doping rule violation points to Blessing, who had motive and opportunity to sabotage her supplements by entering the coach's room where the supplement was kept and spiking it with Stanozolol.

57. The Athlete further submits that there is no evidence that she took Stanozolol just a few days before a race and that it would not make sense for her to do so. She argues that she is an innocent victim and if the Panel finds that she was the victim of sabotage, she would bear No Fault or Negligence.

ISSUES

58. The issues that the Panel must determine in this case can be listed as follows:

(i) Is the Panel satisfied that the Athlete did not take the Prohibited Substance intentionally within the meaning of Article 10.2.3 of the ADR?

(ii) Has the Athlete established how the substance entered her body?

(iii) Has the Athlete demonstrated that she bears No Fault or Negligence or No Significant Fault or Negligence?

MERITS

59. The burden of proof lies upon the Athlete to establish her case for an elimination or reduction of the sanction required to be imposed as a result of her admitted anti-doping rule violation on the balance of probabilities.

60. CAS case law has consistently held that athletes must adduce specific evidence in order to demonstrate how the substance entered their body. In **WADA v. Damar Robinson & JADCO**, CAS 2014/A/3820, the CAS panel held as follows:

"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".

61. In ***International Wheelchair Basketball Federation v. UK Anti-Doping & Simon Gibbs***, CAS 2010/A/2230, the Sole Arbitrator held as follows:

"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". (para 11.12)

62. Ms. Adekoya testified in the case of Glory Nathaniel, another athlete from the Team Blessed group who had tested positive for stanozolol and its metabolites. Ms. Nathaniel had also alleged that Blessing had spiked her food. In that case heard by Arbitrator, The Hon. Michael Beloff QC, on 2 April 2019,³ Blessing filed a witness statement refuting the spiking allegations made against her.

63. In the present case, Blessing Ogundiran testified through an interpreter. In her evidence she denied that she had ever put anything in Ms. Adekoya's food and also denied that she had ever attended Coach Akeem's room to spike any supplements. Blessing testified that she entered Coach Akeem's room on one occasion only when he was not present and that was with his permission in order for her to get some dishwashing detergent.

64. Blessing also testified that she had received many injections from Coach Akeem, including on one occasion shortly before the Commonwealth Games Trials in Abuja. Blessing confirmed that she has not been offered any assistance whatsoever by the IAAF in exchange for her cooperation.

65. Ms. Adekoya testified that Blessing was the only person who entered Coach Akeem's room and therefore she would have been the only person with an opportunity to sabotage the Whey protein supplement apart from Coach Akeem himself. When asked by the Tribunal Chair how she could be so certain that Blessing was the only person with access to Coach Akeem's room, Ms. Adekoya replied, "that's what they told me". She did not clarify who "they" were.

³ SR/Adhocsport/245/2018

66. On Cross-Examination, Ms. Adekoya testified that Coach Akeem had never given her so much as a vitamin, that he had never supplied supplements to any of the athletes that he coached. When asked why she did not keep the receipts for the Whey protein, she replied that it was normal for her to throw them away.
67. When Mr. Wenzel pointed out to Ms. Adekoya that the picture of the container of Whey protein that she had submitted as an exhibit referenced on the label that it contained 21 servings, and would therefore have long been used up before 19 August when she claimed that she had run out, Ms. Adekoya replied that she had in fact purchased six containers of Whey protein while in the USA.
68. When asked by Mr. Wenzel how she transported the six containers of Whey on her return to Nigeria from the United States, Ms. Adekoya replied that she had poured the contents of five of the six tubs of Whey into a bag before leaving the U.S. and thus had travelled with a bag filled with the powder from five containers of Whey protein. She kept just one container with her and this was the container that was left in Coach Akeem's room at the August training camp.
69. When asked on cross examination why she did not declare the Whey protein on any of her doping control forms, when she declared many other products including green tea, Ms. Adekoya replied that she simply forgot to write it down.
70. The Panel heard from several witnesses such as Atenda Akindele, and Glory Onome Nathaniel, who testified that Blessing was misbehaving in the months of June and July, that she was being dishonest about what she was doing with her money, and that she was actually sending money to her boyfriends. This evidence was far removed from any link to the spiking allegation and was of no value in determining how Ms. Adekoya's supplements were spiked or what Blessing's motivation might have been to carry out this act of sabotage.
71. The testimony of Omoniyi Adekoya was at times confusing and contradictory. In her statement she mentioned purchasing supplements and vitamins for herself and her daughter, Oluwakemi. When questioned about what other products were purchased apart from the Whey protein, Omoniyi Adekoya could not recall any other products. When asked the colour of the Whey protein or what the container looked like she could not recall. Mr. Wenzel then began a question regarding the

number of supplements that were purchased and before he could even finish his question, the Athlete's mother blurted out that six containers had been purchased.

72. Bashirah Nasir testified as a witness for the IAAF. She was once coached by Coach Akeem in Bahrain and recalled that despite her fear of needles, Coach Akeem would inject her in her buttocks and her stomach and would beat her if he disapproved of her behaviour. She testified that she could recall one occasion on which Coach Akeem gave her a drip by placing a needle in her hand that was attached to the drip.

73. In 2016 Ms. Nasir tested positive for metenolone. She testified that following that Adverse Analytical Finding, Coach Akeem would call her regularly asking her not to say anything to the Bahrain Athletic Federation about what he had been giving her out of fear that he might be banned for life.

74. In her statement presented during these proceedings, Ms. Nasir recalled that Oluwakemi Adekoya had called her asking her not to tell the Bahrain Athletic Federation anything about Coach Akeem. She added that Ms. Adekoya advised her to say that everything that she had been taking had been obtained in Nigeria and that she had taken it on her own.

75. The Panel notes that these are serious allegations being made against Coach Akeem by Ms. Nasir, but also recognizes that Ms. Nasir has retired from Athletic competition, is a recent mother living in the USA and has nothing to gain or lose by making these allegations.

76. The Athlete acknowledges that no one who gave evidence for her had actually witnessed Blessing spiking her supplements. Not only have the witnesses called on her behalf failed to advance a case for the spiking of her supplement with Stanozolol, but the evidence given by Prof. Christiane Ayotte, Director of the WADA accredited laboratory in Montreal seriously undermines the validity of such a theory.

77. In her report dated, 2 June 2019, Prof. Ayotte writes that:

'We don't know the amount supposed to have contaminated the protein supplement. Stanozolol taken orally is extensively and rapidly metabolized, it does not accumulate

in the body as shown by the short period of detection in its metabolites. It was identified in both samples collected 3 days apart as well as three "short-term" metabolites in relatively large amounts. We understand from Tudela (2013) that a single dose of 2 mg of stanozolol can be detected 5 days from its short-term metabolites (meaning that around day 5, these metabolites would be absent but long-term ones would be present in pg/mL). In this case, 5 and 8 days after the last administration the levels are not those observed in the end of the excretion (pg/mL) and are still quite high.

I conclude that it is very unlikely that the stanozolol results reported for the two athlete's samples are due to the ingestion of a contaminated/spiked supplement 5 and 8 days earlier: Stanozolol could also be injected and the results do not exclude that possibility.'

78. In her viva voce testimony, Prof. Ayotte confirmed that stanozolol does not accumulate in the body, it is not stored, and even when injected it does not accumulate. Thus Prof. Ayotte concluded that the high amounts of stanozolol found in Ms. Adekoya's sample point to a recent administration of the substance prior to the doping test.

79. The words "very unlikely" that appear in Prof. Ayotte's report and in her testimony, are often the highest level of certainty that a scientist will permit themselves to utilize. It is noted that Prof. Ayotte's report was not contradicted by any expert evidence introduced by the Athlete and Prof. Ayotte's conclusion was not shaken on cross-examination.

CONCLUSION

80. The Panel finds that the evidence presented by the Athlete falls short of that required for her to meet her burden for a number of reasons. First of all, the Athlete's theory that her Whey supplement was spiked by Stanozolol is based entirely on highly speculative circumstantial evidence. No evidence was presented to the Panel to indicate that Blessing had any issue with Ms. Adekoya.

81. Ms. Adekoya testified that the Whey protein was used essentially every day until July/August when she used it "on and off". At one point in her evidence, Ms.

Adekoya testified that the Whey protein purchased on her annual visit to the USA would sustain her for a year. Later in her evidence she testified that the supply of EAS Whey protein that she had purchased in March had been completely exhausted by 19 August of that year.

82. As counsel for the IAAF points out, Ms. Adekoya had not even mentioned the tub of EAS Whey Protein as part of her explanation for her positive test until recently. The Whey protein was not one of the sixteen (16) supplements that were sent for testing by Ms. Adekoya, presumably one supposes, because she no longer had any of that supplement left after 19 August. More telling is her failure to disclose the Whey protein on either the doping control form on 24 August 2018 or on her previous doping control on 6 June 2018 in Finland. In June 2018 Ms. Adekoya was taking the Whey protein supplement on a daily basis according to her evidence, which calls into question how she could have “forgotten” to disclose it on her doping control form.

83. In her statement Ms. Adekoya had contended that Coach Akeem never provided her or any of his other athletes with so much as a vitamin, and that he has a “zero tolerance for drugs”. This position is contradicted by (i) Coach Akeem’s casual discussion of Blessing’s steroid use in the WhatsApp exchange with her previous coach (Coach Friday), (ii) the witness evidence of Blessing who states that she was injected by Coach Akeem in February and July 2018 (prior to the Commonwealth Games Trials and African Championships respectively) and (iii) the witness evidence of Ms. Basira Shafira Nasir who stated that Coach Akeem regularly provided her with supplements and gave her injections while she was competing for Bahrain.

84. The Panel finds that Coach Akeem was not a credible witness. He claimed not to have provided any supplements or vitamins to his athletes. It is difficult to reconcile this statement with the evidence regarding conversations on 25/26 December 2018 about Winstrol⁴ and the administration regimen for an Athlete that he had not yet taken on. When questioned on cross-examination about those conversations he maintained that he did not know that Winstrol was a prohibited steroid when he was engaged in the WhatsApp discussions.

⁴ The trade name for Stanozolol

85.It was very difficult to get a straight answer from Coach Akeem. He had difficulty in answering basic questions and was evasive at every turn. Coach Akeem was at one point admonished by the Tribunal Chair for his refusal to answer questions succinctly, yet he continued to obfuscate.

86.The evidence from the Athlete's mother Omoniyi Adekoya was evasive and was, as could be seen on the video, aided by her other daughter. Her memory was poor on all relevant details, except for her specific recollection that six tubs of Whey protein had been purchased.

87. The Panel finds that the evidence given by Basirah Nasir about Coach Akeem's injections and control over his athletes as well as his desire for them not to disclose his regimen, has the ring of truth. Her evidence was given in a clear, concise and cogent manner and we find her to be a credible witness.

88.The Panel finds that the new explanation given by the Athlete for her AAF still fails on the science as demonstrated by the evidence of Prof. Christiane Ayotte. The Athlete's claim that she stopped taking the Whey Protein on 19 August 2018, had it been true, would not have resulted in the adverse findings 5 and 8 days later on 24 and 27 August respectively. The presence of the parent compound and short-term metabolites of stanozolol in relatively significant concentrations is not compatible with an oral exposure 8 days previously.

89.The Athlete has argued that the more probable scenario points to sabotage by Blessing and if the Panel were to make such a finding, the Athlete submits that she would have met her burden. The Panel agrees with the conclusion of Prof. Ayotte that it is **very unlikely** that the stanozolol results reported for Ms. Adekoya were due to the ingestion of a contaminated or spiked supplement (emphasis added).

90.In summary, the Panel finds that the explanation offered by the Athlete for her anti-doping rule violation is not credible for the reasons stated above.

91.The Panel also observes that the World Anti-Doping Code, which is the basis both for the OCA Anti-Doping Rules and the IAAF Anti-Doping Rules, includes the following comment (under Article 10.4);

This Article and Article 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence.

92. For these reasons, the Panel finds that the Athlete has failed to establish the source of the violation. When the Athlete is unable to establish the origin of a non-specified Substance there is a presumption of intentional doping, absent very exceptional circumstances. The Panel finds that those circumstances are not present in the case before us, and that there is no basis to apply the No Significant Fault or Negligence provisions.

ORDER

93. In light of the above, the Panel:

- (i) Rules that the Tribunal has jurisdiction to decide on the subject matter of this dispute.
- (ii) Finds that the Athlete has committed anti-doping rule violations pursuant to Article 2.1 ADR and Article 2.2 ADR.

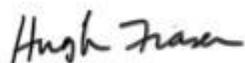
(iii) Imposes a period of Ineligibility of four-years upon the Athlete, commencing on the date of this Award in accordance with Article 10.2.1(a) ADR. The period of Provisional Suspension imposed on the Athlete from 26 November 2018 until the date of the Tribunal's Award shall be credited against the total period of ineligibility, provided that it has been effectively served by the Athlete.

(iv) Orders the disqualification of any results obtained by the Athlete between 24 August 2018 and 26 November 2018 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.8 ADR.

(v) Awards the IAAF, the successful party, a contribution of £1000 towards its legal costs.

RIGHT TO APPEAL

94. This decision may be appealed to the CAS in accordance with Article 13 ADR and its subsection.



Hon. Hugh L. Fraser (Chairman)

18 July 2019

London UK

