

IN THE MATTER OF PROCEEDINGS BROUGHT BY THE ATHLETICS INTEGRITY UNIT UNDER THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATION'S CODE OF CONDUCT

Before:

Michael J Beloff QC (sole arbitrator)

BETWEEN:

International Association of Athletics Federations (the "IAAF")

Applicant

-and-

Mr Virjilio Griggs

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

INTRODUCTION

1. The only matter before me, sitting with the agreement of the parties as a Sole Arbitrator, is to determine, pursuant to the IAAF Disciplinary Tribunal Rules ("the Rules") the appropriate sanction for Mr Virjilio Griggs ("the Athlete") for an admitted breach ("the Breach") of the IAAF Integrity Code of Conduct ("the Code") in that he knowingly submitted manipulated competition results to the

Panama Athletics Federation ("the Federation") so as to gain entry to the 2017 IAAF World Championships in Athletics (the "2017 World Championships").

2. The AIU which brought the charge against the Athlete seeks, so far as material, the following relief namely the imposition of a period of ineligibility of four (4) years upon the Athlete; and a contribution towards the IAAF's costs and expenses incurred in relation to these proceedings.

FACTUAL BACKGROUND

3. The salient facts of the Breach so far as material to the sanction are as follows.
4. On or about 20 July 2017 the Athlete sent to the then President of the Federation, one Elmer Ortiz ("Mr Ortiz"), a document saved on a Google Drive ("the Document"), which contained the results of an Athletics competition that allegedly took place on 12 July 2017 (the "Results"), to the effect that the Athlete had run a time in the 100m event of 10.11 (+1.0 wind), within the qualifying mark of 10.12 for entry into the 2017 World Championships.
5. On 21 July 2017 Mr Ortiz, sent an e-mail to the IAAF Competitions Co-ordinator concerning, inter alia, the Athlete's entry into the 2017 World Championships, which included a link to the Document.
6. Upon review of the Results, the IAAF Competitions Department was concerned that they might not be genuine - for a number of reasons, including:
 - (1) that the athlete who placed first in the 100m event on 12 July 2017 (a Liberian Athlete, Mr Emmanuel Matadi) had competed in Lucerne, Switzerland on 11 July 2017 and then in Madrid, Spain on 14 July 2017 and it was highly unlikely therefore that Mr Matadi had also travelled to Austin, Texas to compete on 12 July 2017; and
 - (2) that the Results in fact related to a competition that took place in San Marco, Texas on 13 June 2017 and appeared to have been manipulated by replacing the date, the venue and the name "Markesh Woodson" (the

name of the athlete who placed second in the 100m in the 19-29 age group) with the Athlete's name.¹

7. On 23 July 2017, the IAAF Interim Competitions Manager e-mailed Mr Ortiz and confirmed that the Athlete's mark as set out in the Results was not, for the foregoing reasons, considered as valid and that, in the IAAF's view the Results had been manipulated (as was indeed the case) so as to make it appear that the Athlete had achieved the entry mark for the 2017 World Championships.
8. In consequence the Athlete was not selected for and did not compete in the 2017 World Championship.
9. On 10 September 2018, the Athlete had an interview by telephone with a representative of the AIU in which he admitted that he had sent the Document to Mr Ortiz but asserted that it was Mr Clifford Scott (Snr) ("Mr Scott"), his previous coach, who had created it and persuaded him to forward it to the Federation.

SANCTIONS

10. So far as material, the Rules provide as follows:

"14. CONSEQUENCES, SANCTIONS AND COSTS

14.1 Where it is decided by a Panel that a Non-Doping Violation of the Integrity Code of Conduct has been committed, subject to Rule 14.3, below, the Panel will impose such consequences and sanction(s) as it deems appropriate including, without limitation, any one or more of the following (any of which may, where appropriate, be suspended):

14.1.1 a caution, reprimand and/or warning as to future conduct;

¹ Name Age Team Finals Wind Age-Grading H# Alternate:
1 Matadi, Emmanuel M26 Unattached 9.93 1.8 9.94 98.59% 3
2 Woodson, Markesh M23 Unattached 10.11 1.8 10.12 96.83% 3
3 Batson, Diondre M24 Unattached 10.15 1.8 10.16 96.45% 3
4 Gray, Cordero M28 Unattached 10.19 1.8 10.20 96.07% 3
5 Stoneham II, Oather M27 Unattached 10.57 1.8 10.58 92.62% 3
6 Musgrave, CJ M26 Unattached 10.72 1.3 10.73 91.32% 4
7 Simmons, Robert M26 Unattached 10.87 1.8 10.88 90.06% 3
8 Odme, Paris M22 Unattached 11.06 1.3 11.07 88.52% 4

14.1.2 a fine of any amount (which, unless otherwise specified, will be payable within 30days);

14.1.3 a compensation payment;

14.1.4 reparation to any victim or victims of the violation;

14.1.5 community service within Athletics;

14.1.6 suspension or removal from office;

14.1.7 removal of any award or other honour bestowed by the IAAF;

14.1.8 disqualification of results, with all resulting consequences, including forfeiture of any related medals, titles, points and/or prizes;

14.1.9 disqualification/expulsion from competitions or events; and,

14.1.10 a specified period of ineligibility, or life ban, from participating in any capacity in any aspect of Athletics and/or in any activities authorised, organised, controlled, recognised, sanctioned and/or supported in any way by the IAAF, Area Association or any National Federation (other than authorised education or rehabilitation programs).

14.2 In order to determine the appropriate sanction(s) to be imposed in each case, the Panel must first determine the relative seriousness of the violation, including identifying all relevant factors that it deems to:

14.2.1 aggravate the nature of the violation, including (without limitation):

a. a lack of remorse on the part of the Applicable Person;

b. whether the Applicable Person has previously been found guilty of any similar violation under the Integrity Code of Conduct or any predecessor regulations;

c. where the violation substantially damaged (or had the potential to substantially damage) the commercial value

and/or public interest in the relevant International Competition and/or the sport of Athletics;

- d. where the violation affected (or had the potential to affect) the result of the relevant competition or event;
- e. where the welfare of a person has been endangered as a result of the violation;
- f. where the violation involved more than one person or entity;
- g. where the Applicable Person failed to cooperate with any investigation or requests for information from the Integrity Unit; and
- h. any other aggravating factor(s) the Panel deems relevant.

14.2.2 mitigate the nature of the violation, including (without limitation):

- a. a timely admission of a violation by the Applicable Person;
- b. the Applicable Person's clean disciplinary record;
- c. the youth and/or inexperience of the Applicable Person;
- d. where the violation did not substantially damage (or have the potential to substantially damage) the commercial value and/or public interest in the relevant International Competition and/or the sport of Athletics;
- e. where the violation did not affect (or have the potential to affect) the course or result of the relevant competition or event;
- f. where the Applicable Person has cooperated with the Integrity Unit and any investigation or requests for information;
- g. where the person or entity has provided Substantial Assistance to the Integrity Unit, a criminal authority or a

professional disciplinary body that results in the Integrity Unit discovering or bringing forward a violation of the Integrity Code of Conduct by another person or entity, or that results in a criminal authority or a professional disciplinary body discovering or bringing forward a criminal offence or the breach of professional rules by another person or entity;

h. where the Applicable Person has displayed remorse;

i. where the Applicable Person has already suffered penalties under other laws and/or regulations for the same offence; and

j. any other mitigating factor(s) the Panel deems relevant

14.3 Having considered the factors in Rule 14.2, the Panel will then determine the appropriate consequences and sanction(s).

14.4 Any period of ineligibility will commence on the date the decision of the Disciplinary Tribunal is published and will end on the date stated in the decision. The Disciplinary Tribunal may at its sole discretion reduce the period of ineligibility imposed by any period of provisional suspension already served prior to the decision being reached. Any Applicable Person subject to a period of ineligibility will remain subject to the Integrity Code of Conduct during that period...

11. The scheme for sanctions so provided is clear;

- (1) The starting point must be a determination of the relative seriousness of the violation.
- (2) For that purpose, all relevant factors which either aggravate or mitigate that seriousness must be considered.
- (3) The factors under either heading (aggravation/mitigation) which are listed are not exclusive.
- (4) Accordingly, other relevant factors under either heading may be considered.

- (5) It is for the Panel (or Sole Arbitrator) to determine relevance of any such factor to the violation, subject only to the conventional constraints of legality and rationality ("constraints").
- (6) After all relevant factors have been considered and the relative seriousness of the violation accordingly determined, one or more of the sanctions listed in Rule 14.1. or any other sanction deemed appropriate, subject only to the same constraints.

12. The AIU's case as set out in its Reply Brief (which in effect replicates the points made in paragraph 26 of the Initial Brief) states (I quote from the Brief verbatim.²)

"6. The AIU has invoked four Integrity Standards, which can be summarised as follows: (i) a failure to act with "*the utmost honesty and integrity at all times*", (ii) failure to conduct himself in a "*professional and courteous manner*", in particular by refraining from language or conduct that is obscene or offensive, (iii) not complying with all the IAAF rules and regulations and (iv) failing to protect the reputation of the IAAF.

7. The (Athlete) has not just violated multiple Integrity Standards by failing to live up to these high standards of behaviour that are expected, he has engaged in intentional and deceptive conduct that, in addition to being tantamount to cheating has the potential to deprive his fellow athletes of opportunities and affect the integrity of competition. Therefore, the sanctionable conduct in this case not only breaches four separate Integrity Standards, it is also so inherently serious that it constitutes a gross violation of each of those standards.

8. In this regard, the AIU maintains that the Athlete's conduct constituted intentional conduct, motivated purely by self-interest. He knew that he had not achieved (and could not achieve) the qualification time for entry to the 2017 World Championships and the only way that he could compete in London was through the

² Substituting for ease of understanding the word "Athlete" for Respondent

manipulation of historical competition results and passing off another's performance for his own, at the expense of others.

9. This type of misconduct strikes at the very heart of the integrity principles that underpin the Code of Conduct and the Integrity Unit submits that this should be treated as a most serious breach of those principles.

10. As the premier event in the IAAF Competition Calendar, the competition experiences a significant threat from those (like the Athlete) who may seek to manipulate the competition in a variety of ways (either through doping or non-doping methods). In this context, the AIU maintains that the Tribunal should weigh heavily in determining the appropriate sanction the fundamental sporting imperatives undermining the Code of Conduct (in Rule 1.1), including, in particular, deterring others from similar wrongdoing and thereby preventing corrupt practices from creeping into and undermining the sport (in this case, at the very highest level)"

13. Although not expressly classified as such, these factors fell within the listed aggravating factors at 14.2.1 (c) and (d) (given that it was the potential, and not only the actual effect of the violation which had to be taken into account). Mr Wenzel also submitted that factor 14.2 (f) was engaged since the violation involved more than one person i.e. the Athlete and the Coach, but on my reading of that provision it required the violator to have himself involved another person; rather than to have succumbed to the blandishments of that other person.³

14. The Athlete's case, as set out in his brief and succinctly elaborated in oral submission by Mr McCann (for whose pro bono representation of the Athlete I am grateful) is as follows (again I quote from the brief verbatim):

"17. There are substantial mitigation features for this Athlete, and no aggravating features of significance.

By reference to Rule 14.2.1:

³ I would not myself have considered the violation to have breached integrity standard (b) given its language, but since the Athlete has admitted that it did my reservation does not influence the conclusions in my Award.

- (a) Immediate remorse upon being first confronted with the facts (though not at that stage (September 2018) being directly accused of any violation himself);
- (b) There is no previous violation of any sort. The Athlete has an unblemished record, and has competed at collegiate level in the period since this incident without further concern;
- (c) The violation did not undermine the World Championships, and did not involve any lengthy investigation. It was spotted almost immediately, and no other athletes were directly affected;
- (d) No results at the World Championship were affected;
- (e) No welfare issues arose;
- (f) Only the Athlete, his former coach (who the Tribunal is respectfully asked to consider culpable as well as the Athlete) and the President of the Federation were directly involved. The President appears to have been unaware of the violation, and acted, with respect to him and the Federation, as a "post box" only;
- (g) The Athlete has co-operated at all times, and made an immediate confession. Again, the Tribunal is respectfully asked to note that the Athlete was not himself being investigated when he made the admission of what he had done;
- (h) There are no other aggravating features, and it is notable that the IAAF Brief points to none.

18. There is substantial mitigation. By reference to Rule 14.2.2:

- (a) The admission was immediate, and made before there was any hint of the Athlete being charged. His response to the formal Notice of Charge was also to admit the violation as soon as he reasonably could;
- (b) The Athlete's disciplinary record is entirely clean;

- (c) The Athlete was young at the time of the violation – 23 years of age. He was a student and had no previous experience of World Championships;
- (d) The violation did not substantially damage the commercial value or public interest in the World Championships of 2017;
- (e) The violation did not affect the World Championships of 2017;
- (f) The Athlete has fully co-operated with the AIU, and provided the names of other witnesses to the activities of Mr Scott (in the interview of September 2018). The names he gave were Brandon Thomas and De'stini Henderson;
- (g) This item is not relevant to this case;
- (h) The Athlete has displayed remorse, and does so again in this Answer Brief;
- (i) The Athlete has suffered as a result of this violation. He has not been able to compete at International Level, and may well never be able to do so again;
- (j) The Athlete does, by way of "other mitigating factors", respectfully ask the Tribunal to have reference to the following:
 - i. He was persuaded to commit the violation – which he admits and accepts that he was responsible for – when he was at a low ebb;
 - ii. He has trained and competed without further concern for his conduct;
 - iii. These events occurred over 2 years ago, and he has lived with the consequences of his conduct for that considerable period without resolution;
 - iv. There was a delay in bringing the charges against him."

15. There is one substantial issue of primary fact (i.e. as distinct from inferences to be drawn or weight given to such fact) which divides the parties. As already noted the Athlete claims that he was persuaded to commit the violation by his then coach Mr

Scott. The AIU does not accept this; (see Reply Brief para 20-21.) Axiomatically it is, for the Athlete to make good his claim. He who asserts must prove; semper necessitas probandi incumbit ei qui agit.

16. There are three main possible findings which are open to me to resolve this conflict. First that the Athlete's claim is a deliberate fiction designed to dilute his own guilt, second that the Athlete has not satisfied his burden of proof by producing evidence which meets the applicable standard of balance of probabilities, or third that the Athlete's claim is correct.

17. After considering all the evidence I am disposed to make the third finding, for the following reasons:

(i) (Principally) I have heard and seen the Athlete and am persuaded that he is telling the truth about the role played by Mr Scott, not least because he makes reference to that role by way of explanation, not excuse; as he put it pithily "I am my own man". SR/Adhocsport/245/2018 **IAAF v Glory Onome Nathaniel** paragraph 63 is applicable:

"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"

But I have accordingly taken account of the context as well as the Athlete's countenance in determining whether or not to believe him, ditto.

(ii) The transcribed notes of the recorded interview he had with the AIU show that he made a series of serious allegations about Mr Scott's corrupt conduct vis-a-vis other athletes whom he was coaching which went beyond

manipulation of results including financial exploitation.⁴ All this was peripheral to the charge ultimately brought against the Athlete by the AIU and I cannot conceive why he could have thought it to his advantage to make such allegations if they were untrue especially since the very making of such allegations ran the risk of opening up lines of inquiry for the AIU.

- (iii) By contrast in so far as the Athlete gave evidence pertinent to that charge, it was low key. I quote the key passage of dialogue between the Athlete and the AIU inquisitor:

"So when you said that he – if we go back to Mr Scott – you said the [sic] he lied about results, created fake websites, created fake accounts, would pass forged results onto race meet directors, etc. Can you elaborate a little bit? Was he doing that for you?"

I know he did it for me one time. And he told me about it, and I told him not to proceed with it, because I did not want to really deal with him anymore. And he still did anyway. And actually I know the easiest way that you can find out who this person is, because I know that he

⁴ "Ok, who was your previous coach?"

His name was Clifford Scott. He was a very...I guess the easiest way to say it is he was a very corrupt person. He stole from people. And I didn't realise it until later on in our relationship.

Ok. Stole financially, you mean?

Yeah. He stole financially. And he did a lot of things he wasn't supposed to. He was taking advantage of a lot of people – myself included.

Ok, how did he take advantage of you? If you don't mind me asking?

Well, the way I paid him was through cheques. And he was stealing my account information and he, he would also lie. And so why we're having this conversation right now is he would lie about results. He would print out fake results. He would create fake websites and stuff. To not give...cos he does youth athletes as well and he gets them into AAU meets, like youth championships. And he did a lot of that stuff, and it all caught up to him. I don't even know what he's doing anymore. I don't know if he's still coaching or not. I know that it caught up to him, and he got kicked out of the group he was coaching with, and I know he lost a lot of things that he was doing. And I know that some of his family doesn't talk to him anymore.

Ok. So, obviously you've taken us into the main reason why we're speaking. So, can you just give me a little more detail about Mr Scott? Obviously you weren't the only athlete to be pried upon by Mr Scott, and you say he was dealing with mainly University students and minors?

Yeah. He didn't do like any college athletes or anything. He did strictly post-collegiate and about 13 year old kids to about 17 year old kids. That's what he did coaching-wise. That's the group that he did coach. And I was one of three post-collegiate athletes that he coached.

still has his website up for his team and he has me on it, still, to this day. And I don't know why he hasn't taken it down yet. And I'm actually about to pull it up, see if I can find the website now. Because he has a lot of different websites and stuff. And errr, I don't know, he's very persistent, and I think he thinks that doing that is going to help out his coaching career. But, yeah, that, it doesn't work out the way he thinks.

Ok, so tell me about this one occasion that you know he did it for you.

Yes, it was, I was, I had just come back from the South America championships in Paraguay, and I was getting ready to....No, no, no. it was central American Championships, and that was in Honduras – they were back-to-back weeks. But I was tired, I was, when I got back I told him, that I had just ran like six or seven races in the space of two weeks, so I told him that I didn't really want to do, that I wanted to shut my season down because I was very tired. But he was very persistent; "No, if you want to get yourself a sponsorship, if you want to do this, and you want to do that, then what you need to do, you need to get to Worlds. So we're gonna get you to Worlds". So I agree, I said "ok". So I got into this meet in Bahamas – it was a last chance meet – and I was training for it. With about two weeks left, he tells me that he like has connections, and there's a way that he can get me into Worlds. And I asked "what do you mean?" And he told me that, he, just let him handle the situation, but that I have the times to go to Worlds, so that I should go to Worlds. It was around this time where I was starting to tell him that next season I was most likely not going to be with him anymore. And he was like "no, no, no, don't worry about it, don't worry about it. You're going to want to be with me after this season, you'll see, you'll see, you'll see." So, yeah, he had created this erm, I believe it was a Google document, and he errr, he sent...he sent the Google document to me, and he sent the Google document to....I don't remember who else he sent it to...but he, errr, he had emailed the...I believe he emailed it to me and I believe that I still have it. But I believe that you guys should have it. And errr, errr, there was a long list...I think it was a competition that I had actually competed at. But he altered the 100 results, and that was pretty much the end of it. And that when I knew that he was

doing that, because that had made sense to me because he had many athletes that were going to youth championships that had never really ran the times that they needed to go to the championships. And that point is when I understood, and erm, from thereon I stopped. I went to the Bahamas and I competed, but erm, after that I never spoke to him again."

Notably the Athlete makes no accusation that Mr Scott either bribed or threatened him.

- (iv) While the Athlete now adds further points to his narrative, which he readily accepts he did not make in his interview, namely that he did in fact confess his own involvement in the manipulation to Mr Ortiz (albeit not immediately) and further that he had tried (albeit without success) to recover the text messages relevant to the proposed manipulation that he received from Mr Scott, I am disinclined to place weight on this omission. A lawyer might have thought those points germane to the theme of the interview but Mr Griggs was not a lawyer, had at that stage had no lawyer and was not yet being threatened with disciplinary proceedings.
- (v) While I also take note that Mr Scott when contacted by the AIU on 17 October 2018 denied any involvement in the manipulation, in my view if he had indeed had such involvement he would be unlikely to have admitted it; denial is the default position of the guilty as well as of the innocent. Without at least a transcript of what Mr Scott was asked, and how he responded I cannot therefore find his mere denial instructive.

18. In the final analysis, whether the manipulation was perpetrated by the Athlete of his own motion or at the instigation of a third party matters little. The Athlete was an adult; he was not coerced into sending the Document on to the Federation. The highest he put it in the interview was *"I felt like maybe I was pressured to do so considering that I didn't know anybody else out here to coach me and, at that time, I wasn't really ready to let my career go, I wasn't really ready to give up everything that I had worked for, and I didn't know what else to do"*. To do him credit, the Athlete has, in my view realistically, refrained from seeking to lay off blame for what occurred on Mr Scott.

19. Consistently with its initial brief the AIU argues for a period of ineligibility of four years; the Athlete (by Mr McCann) for “a more imaginative form of punishment” namely a reprimand coupled with community service.

ANALYSIS

20. At the outset I observed that there appears to be no precedent for the particular kind of violation of the integrity standards as occurred in this case. If there have been other examples of an athlete’s involvement in a manipulation of a competition results in such a manner, they have not resulted in disciplinary proceedings of which there is any record; and are certainly unknown to me (and to Mr Wenzel).
21. I am wary of attempting in any particular case before me of seeking to read across from sanctions imposed in other cases because:
- (i) all cases are axiomatically fact specific (*CAS 2000/A/281 para 19*).
 - (ii) This is a fortiori where they are of different, and administered under, different regulatory regimes.
 - (iii) Even where the decisions in such cases are on their face fully reasoned, the record may not capture in full what motivated the adjudicative body.
 - (iv) There is a risk attendant on any such exercise of perpetuating some earlier tariff which might either be too lenient or too draconian.

Therefore though I appreciate the efforts which both sides made, on the one hand to apply, on the other to distinguish decisions culled from the fields of ski-ing, football and cricket, I do not find them particularly helpful save tritely to the extent that they emphasised that serious wrongdoing in all its protean forms merits condign punishment.

22. The most significant feature of the Rules which I have to apply in terms of sanction is that they offer an à la carte menu rather than the anti-doping rules a table d’hôte in which both the nature of the penalty (i.e. ineligibility) and the

levels are prescribed. In my view, after the seriousness of the violations has been determined the remaining issue is what, in the light of that determination is a proportionate punishment from the range of options available.

23. In broad terms I find the AIU's case⁵ more powerful than the Athlete's response.⁶ The Athlete is someone who sought entry to the IAAF's flagship competition by fabricating a qualification standard that he could not actually meet. The fact that the manipulation and the falsity of his claim as to his time was swiftly unmasked by the AIU cannot enure to his advantage; he played no part in that revelation. Moreover as I have already pointed out, actual damage to other interests is not required; his actions had the potential both to take up one of a finite number of qualification spots available to the Panamanian team, basically three and, even had he not deprived a fellow countryman of such a place, to distort the results of the 100 metres at the world championships themselves. Such action frustrated the main purpose of the Rules which is to promote fair and clean competition. Although imposing a period of ineligibility is (short of a life ban) the most serious sanction listed under 14.1 it is, in my judgment, inherently appropriate to a violation of this kind which is characterised by dishonesty in breach of the most important of the integrity standards, and was also done for personal commercial advantage i.e. the prospect of sponsorship. One of the recognized purposes of punishment is to deter others from imitation of the same crime. In my judgement the imaginative form of punishment canvassed by Mr McCann would send out entirely the wrong message to the athletics world.
24. I have therefore to consider for how long should this period be. Even accepting that the Athlete promptly regretted his manipulation, on his own case he did not immediately take steps to try to neutralize it, only informing Mr Ortiz of what he had done at the earliest more than a week later (and the IAAF not at all). His remorse was, accordingly, more private than public. I can place little weight on his clean record, given the unusual as well as the serious nature of the violation itself; and still less on the fact that he has competed up to now without repetition; to indulge in further manipulation would have been an act of folly. He had little

⁵ As set out in paragraph 18 above

⁶ As set out in paragraphs 11-17 above

option but to admit the violation when interviewed by the AIU. Metaphorically speaking his fingerprints were on the Document which he sent on to the Federation. The matters referred to at the end of the Athlete's brief (his impecuniosity, his fatherhood, his coaching of other young athletes, the threat to his sporting career if subject to any significant period of ineligibility) seem to me to be a plea for mercy rather than additional mitigation and I discount them.

25. I have however, concerns about two matters. First there has been an unexplained delay in bringing a charge against the Athlete. The offence took place on 21 July 2017; the Notice of Charge was issued only on 21 May 2019. Second the Athlete was not provisionally suspended (although Rule 14.4 expressly mentions that such was an option open to the AIU, and, even if not specifically mentioned in Rule 14.1, could be embraced within the general power to impose appropriate sanctions). In consequence while the Athlete has been able to compete unless and until he was held by me ineligible, he has done so under the shadow of inevitable disciplinary proceedings. I would be disposed were I free to do so to backdate any period of ineligibility that I considered appropriate and indeed both parties were at one in orally commending this course if ineligibility were in my mind.

26. My problem lies in the mandatory language of 14.4 which for convenience I repeat:

"Any period of ineligibility will commence on the date the decision of the Disciplinary Tribunal is published and will end on the date stated in the decision. The Disciplinary Tribunal may at its sole discretion reduce the period of ineligibility imposed by any period of provisional suspension already served prior to the decision being reached"

27. The first sentence is unambiguous as to the date on which any period of ineligibility will commence i.e. the date of publication of my decision and appears therefore to exclude backdating. The second sentence deals with where a period of provisional suspension has been imposed and served, and does not deal with the situation where such a provisional suspension might have been but was in fact not ordered.

28. Nor does the solution, in my view, lie in the general words of 14.1 and my power to impose the sanction I deem appropriate. First this would introduce impermissibly, a route by a backdoor when the front door is closed and create an irreconcilable tension between 14.1 and 14.4. Second the touchstone of sanctions is the seriousness of the violation (see paragraph 11 above). The factors that attract my sympathy as set out in paragraph 25 above are nothing to do with the seriousness of the violation.
29. The AIU in its post hearing submission states the following (with which Mr McCann unsurprisingly agrees).

"Article 14.4 of the IAAF Disciplinary Tribunal Rules provides that a period of ineligibility shall commence on the date that the decision of the Disciplinary Tribunal is published and that the period of ineligibility imposed may be reduced by any period of provisional suspension already served prior to the decision being reached.

The AIU's position is that World Athletics concluded (following its investigation) that the Athlete's results had been manipulated on 23 July 2017 and therefore that it would have been open to the AIU to have requested the imposition of a Provisional Suspension by the Chair of the Disciplinary Tribunal from that date (in accordance with Rule 6 of the IAAF AIU Reporting, Investigation and Prosecution Rules (Non-Doping)).

In the specific circumstances of this case where, although no provisional suspension was ever sought (or imposed), the Athlete has not competed in any major International Competitions organised or convened by World Athletics in the period since 23 July 2017 (including the 2018 World Indoor Championships and the 2019 World Outdoor Championships), and where the Athlete has expressly agreed to the disqualification of the entirety of his results in the event that any period of ineligibility imposed is backdated, the AIU does not object to the period of ineligibility being backdated to the date from which it was open to the AIU to have requested that a provisional suspension be imposed (i.e. 23 July 2017).

30. Since the rules under which the sanction is sought are World Athletics' Rules it is open to the AIU in what they describe aptly as "the specific circumstances of this case" to waive them in the interests of justice, which should always be paramount, I shall therefore accept the invitation to backdate.
31. I am not minded to award more than a token sum of costs against an impecunious athlete without compelling reason to do so (of which there is none).
32. The right of appeal against this decision is provided by Section 16 of the IAAF Disciplinary Tribunal Rules.

ORDER

1. Mr Virgilio Griggs will serve a four year period of ineligibility backdated to 23 July 2017 i.e. until 23 July 2021
2. Mr Virgilio Griggs will pay the sum of 5 (Five) USD to the AIU by way of costs.

Michael J Beloff QC

Michael J Beloff QC

06 February 2020

London, UK



Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk

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