SPORT RESOLUTIONS

SR/319/2024

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

Before:

Anna Smirnova (Chair)

BETWEEN:

WORLD ATHLETICS **Anti-Doping Organisation**

and

YOUSSEF TAOUSSI **Respondent**

DECISION OF THE DISCIPLINARY TRIBUNAL

I. INTRODUCTION

1. The Claimant, World Athletics (hereinafter, the "*WA*") is the governing body for the sport of Athletics worldwide, having its registered seat in Monaco. In these proceedings World Athletics was represented by the Athletics Integrity Unit (hereinafter, the "*AIU*") as per Rule 1.2 of the World Athletics Anti-Doping Rules in force from 1 January 2024 (hereinafter, the "*ADR*").

2. The Respondent, Mr Youssef Taoussi, born 8 December 1994, is a middle-distance runner from Spain (hereinafter, the "*Athlete*"). In these proceedings, the Athlete was represented by Messrs Xabier López and Enrique Villegas, acting *pro bono*.

3. The AIU and the Athlete are hereinafter collectively referred to as the "*Parties*".

4. By the Notice of Charge issued on 16 August 2024, the Athlete was charged by the AIU with the following Anti-Doping Rule Violations (hereinafter, the "*ADRVs*") relating to a urine Sample (Sample Code 1231982) (hereinafter, the "*Sample*") collected from the Athlete, namely:

   a. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample pursuant to Rule 2.1 ADR, by virtue of the presence of Roxadustat in the Sample; and

   b. Use of a Prohibited Substance (specifically Roxadustat) pursuant to Rule 2.2 ADR.

5. The Athlete denied the ADRVs, and the matter was submitted to the Disciplinary Tribunal for determination.

II. FACTUAL BACKGROUND

6. On 24 May 2024, the Athlete provided an In-Competition urine Sample at the 'Gorzów Meeting' in Gorzów Wielkopolski, Poland, which was given the code (1231982).

7. The Sample was analysed by the World Anti-Doping Agency's (hereinafter, "*WADA*") accredited laboratory in Warsaw, Poland. The analysis of the Sample revealed an Adverse Analytical Finding (hereinafter, the "*AAF*") consisting of the presence of Roxadustat (FG-4592), which is included in class S2. "*Peptide Hormones, Growth Factors, Related Substances, and Mimetics* in the WADA 2024 Prohibited List.

8. Pursuant to the WADA 2024 Prohibited List, category S2.1 (Erythropoietins (EPO) and Agents Affecting Erythropoiesis), Roxadustat (FG-4592) is a Prohibited Substance. It is a non-Specified Substance prohibited at all times.

9. On 2 July 2024, in accordance with Article 5 of the International Standard for Results Management (hereinafter, the "*ISRM*"), the AIU issued the Notice of Allegation of ADRVs to the Athlete and imposed a mandatory Provisional Suspension, which was Publicly Disclosed, effective immediately (hereinafter, the "*Notice of Allegation*").

10. By means of the Notice of Allegation, the AIU *inter alia* invited the Athlete by no later than 9 July 2024 to:

    a. provide a full and detailed written explanation for the AAF;

    b. decide if the Athlete wished to request the analysis of the B Sample. It was underlined that the costs of the B Sample analysis would be borne entirely by the Athlete;

    c. discuss an admission on a without prejudice basis within the context of a case resolution agreement.

11. In the Notice of Allegation, the AIU specified that the Athlete may admit that he had committed ADRVs and accept the mandatory Consequences. If the Athlete had done so, the mandatory period of Ineligibility of four (4) years would be automatically reduced by one (1) year, and this reduction would not require WADA's prior agreement. If the Athlete preferred to benefit from the one (1) year reduction in the period of Ineligibility by admitting that he committed ADRVs based on the AAF and accepted the mandatory Consequences, the Athlete should sign and return the Admission of ADRVs and Acceptance of Consequence form to the AIU by no later than 9 July 2024.

12. In addition, the AIU pointed out in the Notice of Allegation that should the Athlete fail to provide a (sufficient) response by 9 July 2024, the AIU would proceed by issuing a Notice of Charge in accordance with Article 7 ISRM.

13. On 5 July 2024, the Athlete sent to the AIU an email with an attached explanation as regards the AAF and ADRVs. The Athlete mentioned therein that "*prior to the day of competition and when the sample was collected"* he "*experienced several medical indispositions and general malaise (…) to the extent that* [he] *considered informing the Manager about* [his] *possible absence from the athletic event*". The Athlete continued that he "*used common and non-prohibited medication such as 'Ibuprofen', 'Gelocatil Plus', and other analgesics of the same family to treat the flu period*" and he "*can provide samples of this medication if necessary*". Furthermore, the Athlete pointed out that he lives in his usual residence "*with certain individuals such as* [his] *father, mother, and uncle who suffer from certain chronic diseases that* [he] *cannot describe with complete accuracy (…) but require constant medication. It is possible that at some point before*

the competition and during the aforementioned flu period, there could have been some type of cross-contamination between drugs or substances that might have led to this situation."

14. Finally, the Athlete expressed his "*full cooperation and willingness to clarify this situation*".

15. On 8 July 2024, the AIU acknowledged receipt of the Athlete's explanations of 5 July 2024. Therein the AIU confirmed its understanding that according to the Athlete the AAF "*could have been caused by (i) medication that he ingested to treat a flu period in the lead up to competition and/or (ii) cross-contamination between drugs or substances used by those with whom the Athlete lives who suffer from certain chronic conditions.*" The AIU gave to the Athlete until 12 July 2024 to "*provide any additional information to support*" his explanation.

16. On 11 July 2024, the Athlete provided to the AIU additional explanations which can be summarised as follows:

    a. The Athlete lacks necessary resources to finance the analysis of the medication that possibly caused the AAF;

    b. The Athlete attached the screenshots of WhatsApp conversations with his manager, in which he mentioned the illness episode and possible incapacity to participate in the athletic event;

    c. To cure himself of the flu, the Athlete acquired Ibuprofen and Gelocatil Plus directly from the pharmacy;

    d. Having reviewed the dietary supplements he was consuming at the relevant time, the Athlete did not detect that their composition contained the substance in question or any related substances;

    e. The Athlete reviewed the clinical reports and prescribed medication that he could access in relation to his family members and provided copies to the AIU;

f. The Athlete declared his inability to conduct laboratory analyses and tests of all the medications and supplements that he had used in recent months due to his insufficient financial means.

17. On 16 August 2024, the AIU issued the Notice of Charge (hereinafter and accordingly referred to as the "*Notice of Charge*"), whereby the Athlete was charged with committing the following ADRVs:

a. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, pursuant to Rule 2.1 ADR, by virtue of the presence of Roxadustat in the Sample; and

b. Use of a Prohibited Substance (i.e. Roxadustat), pursuant to Rule 2.2 ADR.

18. In the Notice of Charge, the AIU specified that the Athlete may admit the commission of ADRVs, accept the period of Ineligibility and benefit from the one (1) year reduction in the period of Ineligibility, and to do so the Athlete should sign and return the enclosed therein Admission of Anti-Doping Rule Violations and Acceptance of Consequences form to the AIU by 30 August 2024.

19. In addition, the AIU underlined that the final deadline by which the Athlete may sign and return the enclosed Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form in order to benefit from the automatic reduction of one (1) year in the asserted period of Ineligibility, as specified in Rule 10.8.1 ADR, is within twenty (20) days of the receipt of the Notice of Charge, i.e. by no later than 5 September 2024. The AIU strongly advised the Athlete to provide a reply to the Notice of Charge by 30 August 2024 and in any event by no later than 5 September 2024.

20. On 30 August 2024, the Athlete replied, with an email, that "*the positive result of the detected substance is not due to any intentional or voluntary action on* [his] *part*" and that he was "*unaware of how the contact with the mentioned substance occurred or what factors might have contributed to it*".

III. PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL

21. On 25 October 2024, Sport Resolutions, the Secretariat to the WA Disciplinary and Appeals Tribunal (hereinafter, the "*Disciplinary Tribunal*"), appointed Ms Anna Smirnova as Chair of the Panel determining the matter.

22. On 5 November 2024, a preliminary meeting was convened between the Parties and the Chair of the Panel. The AIU was represented by Messrs Tony Jackson and Tuomo Salonen and, while the Athlete was not present himself, Messrs Xabier López and Enrique Villegas attended on his behalf.

23. At the preliminary meeting, the AIU and the Athlete confirmed their consent for the Chair to hear and consider the matter sitting alone.

24. Following the preliminary meeting, on 6 November 2024, the Chair issued the procedural directions for the determination of the matter (hereinafter, the "*Directions*"). In the Directions *inter alia,* it was established that (i) the AIU had until 22 November 2024 to submit a brief with arguments on all issues; (ii) the Athlete had until 20 December 2024 to submit an answer brief; (iii) the AIU was expected to submit a reply brief by 24 January 2025, and (iv) the hearing was to be set for a yet to be specified date in February 2025.

25. Following the Directions, the AIU filed the WA Brief on 22 November 2024 (hereinafter, the "*WA Brief*").

26. On 18 December 2024, the *pro-bono* counsel for the Athlete, requested "*an extension of time limit to file the Answer to the Brief submitted by the Athletics Integrity Unit*" and that "*the deadline to present the Answer to the Brief submitted by WA is moved by 6 p.m. CET on Friday 17 January 2025*".

27. On 19 December 2024, in the email reply to the aforementioned extension request submitted by the Athlete, the AIU pointed out that "*the Athlete's request lacks precision or sufficient explanation*" and that "*the* [Procedural Directions of 6 November 2024] *provide the AIU with a period of 3 weeks following the reopening of the AIU offices on 6 January 2024 to file any Reply Brief (i.e. by 24 January 2025). If the Athlete's request is accepted, then applying the same procedural calendar would mean that the AIU's deadline to file any Reply Brief would be Friday 7 February 2025. However, the AIU*

notes that the Chair would only be available for a hearing in the week of 10-14 February 2025. The AIU therefore also considers that the extension requested by the Athlete does not provide sufficient time between the filing of a Reply Brief and the hearing."

28. On 20 December 2024, the Chair amended the procedural schedule set out in the Directions and established that (i) the Athlete had until 10 January 2025 to submit an answer brief; (ii) the AIU was expected to submit a reply brief by 31 January 2025, and (iii) the hearing date was to be determined in the period between 10 and 14 February 2025.

29. On 10 January 2025, the Athlete submitted the Answer to the World Athletics Brief (hereinafter, the "*Answer*") whereby the Athlete, among other submissions, stated his intention "*to avoid additional procedural stages and a potential hearing*".

30. On 31 January 2025, AIU submitted the World Athletics Reply Brief (hereinafter, the "*WA Reply Brief*") and maintained its Requests for relief submitted in the WA Brief. In the cover email to the WA Reply Brief, the AIU requested that "*this matter therefore be determined on the papers*".

31. The Athlete further confirmed his consent "*on having this case determined just on papers and avoiding a hearing*".

32. Based on the Parties' submissions and their agreement to avoid the oral hearing, in accordance with Rule 8.1 ADR, the Chair proceeded with the issuance of this Decision, based on the written documentation on the record.

IV. POSITION OF THE PARTIES

33. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Chair, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows:

A. WA BRIEF

34. Submissions made in the WA Brief, can in essence be summarised as follows:

a. WA submits that it is established that the Athlete committed ADRVs pursuant to Rule 2.1 ADR, i.e. Presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's Sample, and Rule 2.2 ADR, i.e. Use of a Prohibited Substance;

b. Rules 2.1 and 2.2 ADR establish that the Athlete is strictly liable for the Presence of a Prohibited Substance or its Metabolites or Markers in his Sample and the Use of a Prohibited Substance or Prohibited Method; it is not the burden of the AIU to establish the Athlete's intent, Fault, Negligence or knowing Use of a Prohibited Substance in the context of Rule 2.1 or Rule 2.2 ADR;

c. The Laboratory issued a Test Report mentioning the AAF for the presence of Roxadustat in the A Sample of the Athlete's urine. The Athlete waived his right to the B Sample analysis and is therefore deemed to have accepted the results of the A Sample;

d. WA has determined that no valid Therapeutic Use Exemption (hereinafter, *"TUE"*) exists to justify the presence of Roxadustat in the Athlete's Sample. Furthermore, no apparent departures from the International Standard for Testing and Investigations (hereinafter, "*ISTI*") and/or from the International Standard for Laboratories (hereinafter "*ISL*") have been identified;

e. As stated above, the Athlete waived his right to the B Sample analysis, and therefore, sufficient proof of a Rule 2.1 Anti-Doping Rule Violation ("ADRV") for the presence of Roxadustat is automatically established, as per Rule 2.1.2 ADR;

f. The presence of Roxadustat in the Sample also evidences the commission of Rule 2.2 ADR for the Use of Roxadustat by the Athlete;

g. In accordance with Rule 10.2 ADR, the period of Ineligibility for a violation of Rule 2.1 and Rule 2.2 ADR will be four (4) years, where the ADRVs do not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the ADRVs were not intentional. Roxadustat is a non-Specified Prohibited Substance. The Athlete failed to establish on a balance of probabilities that his conduct was not intentional;

h. The Athlete failed to demonstrate the origin of Roxadustat in the Sample; more particularly, the Athlete failed to produce evidence that Roxadustat originated from a medication that had been prescribed to his relatives;

i. Therefore, the Athlete shall serve a period of Ineligibility of four (4) years which shall start from the date of the decision in this matter with credit for the period of the Provisional Suspension served by the Athlete since 2 July 2024, in accordance with Rule 10.13.2(a) ADR;

j. In accordance with Rules 9 and 10.1 ADR, the Athlete's individual results obtained at the 2024 'Gorzów Meeting' shall be Disqualified, with all resulting Consequences, including forfeiture of any medals, titles, awards, points and prize and appearance money;

k. In accordance with Rule 10.10 ADR, the Athlete's competitive results obtained since 24 May 2024 through the commencement of the Provisional Suspension on 2 July 2024 shall also be Disqualified with all the resulting Consequences, including forfeiture of any medals, titles, awards, points, prize money, and prizes;

l. The AIU, on behalf of WA, requested the Disciplinary Tribunal to rule as follows:

"67.1. The Tribunal has jurisdiction over the present matter;

67.2. Mr Youssef Taoussi has committed ADRVs pursuant to Rule 2.1 (Presence) and Rule 2.2 (Use) ADR;

67.3. Mr Youssef Taoussi shall serve a period of Ineligibility of four (4) years for the ADRVs based on Rule 10.2.1 ADR commencing on the date of the Tribunal's award;

67.4. Mr Youssef Taoussi shall be given credit for the period of Provisional Suspension served from 2 July 2024 until the date of the Tribunal's award against the period of Ineligibility imposed for the ADRVs (provided that the Provisional Suspension has been effectively served);

67.5. Mr Youssef Taoussi's results obtained on 24 May 2024 at the 'Gorzów Meeting' and since that date be disqualified pursuant to Rules 9, 10.1 and

10.10 ADR with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money; and

67.6. World Athletics is granted a contribution towards its legal and other costs […] pursuant to Rule 10.12.1."

B. ATHLETE'S ANSWER

35. The Athlete's submissions made in the Answer can in essence be summarised as follows:

a. The Athlete does not object to the jurisdiction of the Disciplinary Tribunal to decide this matter;

b. The Athlete admits the ADRVs established in Rule 2.1 and 2.2 ADR;

c. The Athlete would accept the Consequences, with (i) a reduction of the period of ineligibility by one (1) year as the ADRVs have been accepted, (ii) the Disqualification of the results with all resulting Consequences, including the forfeiture of any medals, titles, points, prize money and prizes since 24 May 2024, and (iii) the Public Disclosure of this matter;

d. The Athlete requested that the AIU not seek Financial Consequences against him as he is in a bad economic situation;

e. The Athlete submitted that the request of the case resolution agreement by way of a Without Prejudice Agreement would be reasonable;

f. The Athlete submitted that although he admits the ADRVs approximately, seven (7) months after the Notice of Allegation had been notified to him, the timely admission should be considered from the moment the Athlete received legal assistance, and thus, the admission occurred just three (3) months after the Athlete had received legal advice;

g. The Athlete underlines that he had otherwise maintained a clean disciplinary record;

h. The Athlete requested the Disciplinary Tribunal to rule as follows:

"(i) Mr. Youssef Taoussi admits the commission of the Anti-Doping Rule Violations established in Rule 2.1 (Presence) and Rule 2.2 (Use).

(ii) Mr. Youssef Taoussi will serve a period of ineligibility of three (3) years.

(iii) Mr. Youssef Taoussi shall be given credit for the period of the Provisional Suspension served from 2 July 2024, until 1 July 2027.

(iv) Mr Youssef Taoussi's results obtained on 24 March 2024 at the Gorzów Meeting and since that date be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prizes and appearance money; and

(v) No financial consequence would be imposed on Mr. Youssef Taoussi, regarding any legal costs and other costs related to the present procedure, as well to any other legal consequence."

C. WA REPLY BRIEF

36. On 31 January 2025, the AIU submitted the WA Reply Brief, which can in essence be summarised as follows:

a. The AIU endorsed the argumentation submitted in the WA Brief;

b. In reply to the Athlete's request concerning the execution of a case resolution agreement, with reference to Rule 10.8.2 ADR, the AIU underlined that the AIU and WADA are provided with sole discretion to conclude a case resolution agreement, and as stated therein, the decision by the AIU or WADA to enter or not to enter into a case resolution agreement is not a matter for determination or review by a hearing body;

c. The Athlete cannot benefit from a one (1)-year reduction in the period of Ineligibility pursuant to Rule 10.8.1 ADR, since in such cases, an admission shall be made within a period of not more than 20 days following the Notice of Charge;

d. In any event, considering the argument of the Athlete about the lack of legal advice at the relevant period of time, the Athlete still failed to admit the ADRVs and accept

the Consequences within 20 days of his first obtaining legal advice on 25 October 2024 (i.e. by 14 November 2024);

e. The AIU submits that the Disciplinary Tribunal must dismiss the Athlete's request to reduce the period of Ineligibility by one (1) year.

V. APPLICABLE LAW AND JURISDICTION

37. Pursuant to Rule 1.2 ADR and in accordance with the WA Constitution, WA established the AIU, whose role it is to protect the integrity of Athletics. WA delegated implementation of the ADR to the AIU, 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.

38. Pursuant to Rule 1.3 ADR, WA established a Disciplinary Tribunal to hear alleged ADRVs and other breaches of the ADR.

39. Pursuant to Rule 1.4.2 ADR, the ADR shall apply to all athletes preparing for or participating in such capacity in the competitions and/or other activities organised, convened, authorised, sanctioned or recognised by WA.

40. The Sample was collected from the Athlete on 24 May 2024, at the 'Gorzów Meeting' in Gorzów Wielkopolski, Poland, which is a WA Continental Tour - Bronze competition, organised and authorised by WA. Consequently, in accordance with Rule 1.4.2 ADR, the Athlete is subject to the application of the ADR.

41. Within the overall pool of athletes who are bound and required to comply with the ADR, those athletes who shall be considered as an International-Level Athlete are defined in Rule 1.4.4 ADR. In particular, for the purposes of Results Management responsibility, the AIU shall have Results Management responsibility over athletes whenever the asserted ADRVs result from (i) Testing conducted under the Testing authority of WA; (ii) an investigation conducted by the AIU, or (iii) in any of the other circumstances in which WA or the AIU has Results Management responsibility under Rule 7 ADR.

42. In the case at hand, the ADRVs asserted in relation to the Athlete result from Testing conducted under the Testing Authority of World Athletics.

43. Based on the foregoing and in the absence of any objections from the Parties, the Panel has confirmed its jurisdiction to rule in this matter.

VI. STANDARDS OF PROOF

44. Pursuant to Rule 3.1 ADR, the following burdens and standards of proof are established:

> ***"3.1 Burdens and Standards of Proof***
>
> *The Integrity Unit or other Anti-Doping Organisation will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the Integrity Unit or other Anti-Doping Organisation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability."*

45. Consequently, it is the burden of the AIU (on behalf of WA) to establish to the comfortable satisfaction of the Panel that the ADRVs were committed by the Athlete.

VII. MERITS

46. Given the specifics of the case and the Parties' submissions, in furtherance of the resolution of the matter, the Panel deems necessary to give the answer to the following questions:

a. Whether the AIU succeeded to discharge its burden of proof in respect of the establishment of the ADRVs of Rules 2.1 and 2.2 ADR by the Athlete, and

b. In the event of an affirmative answer to the foregoing, what Consequences shall be applicable?

A. Has the AIU discharged its burden of proof in respect of the establishment of the ADRVs of Rules 2.1 and 2.2 ADR?

47. Rule 2.1 ADR reads as follows:

> ***"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 personal duty to ensure that no Prohibited Substance enters their 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 to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish a Rule 2.1 anti-doping rule violation.*
>
> *2.1.2 Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any of the following: (i) the 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 analysed; (ii) where 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 (iii) where the Athlete's A or B Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.*
>
> *2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample will constitute an anti-doping rule violation.*

2.1.4 As an exception to the general rule of Rule 2.1, the Prohibited List, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances."

48. Rule 2.2 ADR reads as follows:

"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

[Comment to Rule 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Rule 3.2, unlike the proof required to establish an anti-doping rule violation under Rule 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information that does not otherwise satisfy all the requirements to establish the presence of a Prohibited Substance under Rule 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organisation provides a satisfactory explanation for the lack of confirmation in the other Sample.]

2.2.2 The success or failure of the 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.

[Comment to Rule 2.2.2: Demonstrating the Attempted Use of a Prohibited Substance or a Prohibited Method requires proof of intent on the Athlete's part. The fact that intent may be required to prove Attempted Use does not undermine the strict liability principle established for violations of Rule 2.1 and violations of Rule 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. An

Athlete's Use of a Prohibited Substance constitutes an anti-doping rule violation unless such Prohibited Substance is not prohibited Out-of-Competition and the Athlete's Use takes place Out-of-Competition. However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition will be a violation of Rule 2.1, regardless of when that Prohibited Substance might have been Administered.]"

49. As follows from the afore-cited provisions, it is and has at all times been the personal duty of the Athlete to ensure that no Prohibited Substance enters his body.

50. As follows from the Test Report submitted by the AIU, the analysis of the Athlete's urine Sample has shown the AAF, namely of the presence of a class *S2. Peptide Hormones, Growth Factors, Related Substances and Mimetics / Roxadustat (FG-4592)* Prohibited Substance as provided for in the WADA 2024 Prohibited List.

51. Pursuant to the WADA 2024 Prohibited List, category *S2.1 Erythropoietins (EPO) and Agents Affecting Erythropoiesis*, Roxadustat (FG-4592) is a Prohibited Substance. It is a non-Specified Substance prohibited at all times.

52. The Athlete did not have a TUE for Roxadustat.

53. The Athlete did not argue any apparent departure from the ISTI or from the ISL that could reasonably have caused the AAF.

54. The Athlete waived his right to the B Sample analysis, which automatically means that there is sufficient proof of an ADRV under Rule 2.1 ADR.

55. Consequently, an ADRV under Rule 2.1 ADR is established.

56. Pursuant to Rule 2.2 ADR, it is not necessary for the AIU to prove the intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish an ADRV for Use of a Prohibited Substance. Use may be established based upon reliable analytical data from the analysis of an A Sample, and such data was submitted by the AIU in the present case.

57. Consequently, an ADRV under Rule 2.2 ADR is established.

58. Based on the foregoing, the Panel finds itself comfortably satisfied that the Athlete has committed the ADRVs provided for in Rules 2.1 and 2.2 ADR.

B. In light of an affirmative answer to the foregoing, what Consequences shall be applicable?

i. Period of Ineligibility

59. Rule 10.2 ADR is, in part, relevant for the case at hand and reads as follows:

> ***"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*
>
> *10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:*
>
> *(a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
>
> *(b) The anti-doping rule violation involves a Specified Substance or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional.*
>
> *10.2.2 If Rule 10.2.1 does not apply, then (subject to Rule 10.2.4 (a)) the period of Ineligibility will be two years.*
>
> *10.2.3 As used in Rule 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct that they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that*

the Prohibited Substance was Used Out-of-Competition. An antidoping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will not be considered 'intentional' if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

[Comment to Rule 10.2.3: Rule 10.2.3 provides a special definition of 'intentional' that is to be applied solely for purposes of Rule 10.2. Beyond Rule 10.2, the term 'intentional' as used in these Rules means that the person intended to commit the act(s) based on which the Anti-Doping Rule Violation is asserted, regardless of whether the person knew that such act(s) constituted an anti-doping rule violation.]

[…]"

60. Roxadustat is a Non-Specified Substance, for which, per the above, the period of Ineligibility should be four (4) years unless the Athlete can establish that the ADRV was not intentional.

61. It is the Athlete's responsibility to establish his lack of intent for the consideration of a reduction of the period of Ineligibility.

62. In his initial explanations to the Notice of Allegation, the Athlete only stated that he did not recall previously having encountered the Prohibited Substance, was unaware of its prohibited Use in Athletics and was not conscious of its effects on athletic performance. In reply to the Notice of Charge, the Athlete reiterated that the "*positive result for the detected substance was not due to any intentional or voluntary action*" on his part. The Athlete did not provide any evidence in corroboration of his statements of innocence.

63. Notwithstanding the above, in the Answer, the Athlete expressly admitted the commission of the ADRVs established in Rules 2.1 and 2.2 ADR.

64. For this reason, the Panel is comfortably satisfied that the ADRVs are established.

65. The Panel further turns its attention to the request of the Athlete to reduce the period of Ineligibility of four (4) years, based on the admission of the ADRVs and with reference to Rule 10.8.2 ADR pertaining to case resolution agreements.

66. Rule 10.8 ADR reads as follows:

"10.8 Results Management agreements

10.8.1 One year reduction for certain anti-doping rule violations based on early admission and acceptance of sanction

Where the Integrity Unit notifies an Athlete or other Person of an anti-doping rule violation charge that carries an asserted period of Ineligibility of four (4) or more years (including any period of Ineligibility asserted under Rule 10.4), if the Athlete or other Person admits the violation and accepts the asserted period of Ineligibility no later than 20 days after receiving the Notice of Charge, the Athlete or other Person may receive a one (1) year reduction in the period of Ineligibility asserted by the Integrity Unit. Where the Athlete or other Person receives the one (1) year reduction in the asserted period of Ineligibility under this Rule 10.8.1, no further reduction in the asserted period of Ineligibility will be allowed under any other Rule.

[Comment to Rule 10.8.1: For example, if the Integrity Unit alleges that an Athlete has violated Rule 2.1 for Use of an anabolic steroid and asserts the applicable period of Ineligibility is four years, then the Athlete may unilaterally reduce the period of Ineligibility to three years by admitting the violation and accepting the three year period of Ineligibility within the time specified in this Rule, with no further reduction allowed. This resolves the case without any need for a hearing.]

10.8.2 Case resolution agreements

Where the Athlete or other Person admits an anti-doping rule violation after being confronted with it by the Integrity Unit and agrees to Consequences acceptable to the Integrity Unit and WADA, at their sole discretion: (a) the Athlete or other Person may receive a reduction in the period of Ineligibility based on an assessment by the Integrity Unit and WADA of the application of Rules 10.1 to 10.7 to the asserted antidoping rule violation, the seriousness of the violation, the Athlete or other Person's degree of Fault, and how promptly the Athlete or other Person admitted the violation; and (b) the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the Athlete or

other Person must serve at least one-half of the agreed-upon period of Ineligibility going forward from the earlier of (i) the date the Athlete or other Person accepted the imposition of a period of Ineligibility; and (ii) the date the Athlete or other Person accepted a Provisional Suspension that was subsequently respected by the Athlete or other Person. The decision by WADA and the Integrity Unit to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of the period of Ineligibility, are not matters for determination or review by a hearing body and are not subject to appeal under Rule 13.

If so requested by an Athlete or other Person seeking to enter into a case resolution agreement under this Rule, the Integrity Unit will allow the Athlete or other Person to discuss an admission of the anti-doping rule violation with it subject to a Without Prejudice Agreement.

[Comment to Rule 10.8.2: Any mitigating or aggravating factors set forth in this Rule 10 must be considered in arriving at the Consequences set forth in the case resolution agreement and will not be applicable beyond the terms of that agreement.]"

67. In the view of the foregoing, the Panel primarily notes that both in the Notice of Allegation and in the Notice of Charge, the AIU drew the attention of the Athlete to the possibility to benefit from a one (1) year reduction in the period of Ineligibility, provided he admitted to the commission of the ADRVs, signed and returned the Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form to the AIU.

68. In accordance with Rule 10.8.1 ADR, the time limit for the admission of the commission of the ADRVs is no later than twenty (20) days after receiving the Notice of Charge. It is undisputed between the Parties that the Athlete did not admit to the ADRVs within the stated time limit. Although the Panel finds it regrettable that the Athlete did not obtain qualified legal advice in a timely fashion for the furtherance of clarification of his rights and possibilities for the admission of the ADRVs, the Panel notes that Rule 10.8.1 ADR does not provide for any exceptions and/or options to extend the time limit set out therein.

69. For the sake of due order, the Panel has also taken into consideration that at no time did the Athlete provide the signed Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form to the AIU.

70. On the account of above, the Panel concludes that there are no grounds for the reduction of the period of Ineligibility based on Rule 10.8.1 ADR.

71. Furthermore, the Panel refers to the Athlete's submission concerning the execution of a case resolution agreement.

72. Based on the clear language of Rule 10.8.2 ADR, entering into case resolution agreements remains at the sole discretion of the AIU and WADA. Moreover, as per the explicit reference therein, the decision by the AIU and WADA to enter or not enter into a case resolution agreement, is not a matter for the determination or review by a hearing body, i.e. the Panel *in casu*.

73. Be it as it may, the Panel has noted that no case resolution agreement has been entered into between the Parties.

74. Consequently, the Panel finds no reason to reduce the period of Ineligibility and concludes that a four (4)-year period of Ineligibility shall be imposed on the Athlete.

75. Pursuant to Rule 10.13.2(a) ADR, the Provisional Suspension served by the Athlete from 2 July 2024 and until the date of this Decision shall be credited against the total period of Ineligibility.

ii. Disqualification of results

76. Rule 10.10 ADR reads as follows:

> ***"10.10 Disqualification of results in Competitions subsequent to Sample collection or commission of an anti-doping rule violation***
>
> *In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule*

violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes.

[Comment to Rule 10.10: Nothing in these Anti-Doping Rules precludes clean Athletes or other Persons who have been damaged by the actions of a Person who has committed an anti-doping rule violation from pursuing any right that they would otherwise have to seek damages from such Person.]"

77. The Sample was collected on 24 May 2024. The AIU requested that all of the Athlete's results obtained at the 'Gorzów Meeting' should be Disqualified, pursuant to Rules 9, 10.1 and 10.10 ADR, with all resulting Consequences, including forfeiture of any medals, titles, awards, points and prize and appearance money.

78. The Athlete in the Answer did not object to the Disqualification and the resulting Consequences.

79. Based on the foregoing and in view of the establishment of the ADRVs committed by the Athlete, the Panel concludes that the Athlete's results obtained on 24 May 2024 and since that date, shall be Disqualified with all the resulting Consequences for the Athlete, including forfeiture of any medals, titles, awards, points and prize and appearance money.

80. The Panel determines that the AIU has absolute discretion to establish an instalment plan for repayment of prize money forfeited pursuant to the above. The Panel is content to leave the establishment of such an instalment plan to the AIU.

VIII. COSTS

81. The Panel has noted the AIU's request to grant WA an order for costs, pursuant to Rule 10.12.1 ADR.

82. Based on the findings developed above, the Athlete is the unsuccessful party.

83. Nevertheless, the Panel rejects the request of the AIU regarding the order for costs, taking into account that the period of Ineligibility of four (4) years and the forfeiture of any titles, awards, medals, points and prize and appearance money represents a considerable financial burden on the Athlete.

84. In view of the foregoing, the Panel determines that each party shall bear its respective costs.

IX. DECISION

85. Based on the aforementioned considerations, the Panel has decided as follows:

(i) The Panel has jurisdiction over the present matter;

(ii) The Athlete has committed two ADRVs relating to Rule 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) and Rule 2.2 ADR (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method);

(iii) A period of Ineligibility of four (4) years is imposed on the Athlete commencing from the date of this decision;

(iv) The period of Provisional Suspension served by the Athlete, from 2 July 2024 until the date of this decision, shall be credited against the total period of Ineligibility;

(v) All of the Athlete's results obtained at the 'Gorzów Meeting' and since that date shall be Disqualified;

(vi) Each party shall bear its own costs.

X. RIGHT OF APPEAL

(vii) This decision may be appealed to the CAS, located at Palais de Beaulieu Avenue Bergières 10, CH-1004 Lausanne, Switzerland (procedures@tas-case.org), in accordance with Rule 13 ADR.

(viii) In accordance with Rule 13.6.1 (a) ADR, the deadline for filing an appeal with the CAS is thirty (30) days from the receipt of this decision.

Anna Smirnova
Chair of the Panel

London, UK
17 February 2024