
DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR ALFRED KIPKETER

Introduction

1. In April 2017, World Athletics (formerly the IAAF) established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code (the "**Code**"). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Mr Alfred Kipketer is a 23-year-old Kenyan middle-distance runner and an International-Level Athlete for the purposes of the ADR (the "**Athlete**").
3. This decision is issued by the AIU pursuant to Article 8.4.7 ADR, which provides as follows.

"8.4.7 [i]n the event that [...] the Athlete or Athlete Support Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the Integrity Unit (or is deemed to have done so), a hearing before the Disciplinary Tribunal shall not be required. In such a case, the Integrity Unit [...] shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the Specified Consequences [...]."

Whereabouts Failures

4. Article 2.4 ADR provides that the following shall constitute an Anti-Doping Rule Violation:

"2.4 Whereabouts Failures

Any combination of three Missed Tests and/or Filing Failures, as defined in the International Standard for Testing and Investigations, within a twelve-month period by an Athlete in a Registered Testing Pool."

5. A Missed Test and a Filing Failure are defined in the World Athletics Anti-Doping Regulations (the "**Regulations**") respectively as follows:

"Missed Test: A failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in his Whereabouts Filing for the day in question, in accordance with these Anti-Doping Regulations.

"Filing Failure: A failure by an Athlete (or by a third party to whom the Athlete has delegated such a task in accordance with paragraph 3.7 of Appendix A) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing or to update that Whereabouts Filing where necessary to ensure that it

remains accurate and complete, all in accordance with these Anti-Doping Regulations”

6. In short, an athlete violates Article 2.4 ADR where he or she has any combination of three Missed Tests and/or Filing Failures within any twelve-month period, that period beginning on the day of the first relevant Missed Test/Filing Failure.

The Athlete's Commission of an Anti-Doping Rule Violation

7. The Athlete has committed an Anti-Doping Rule Violation under the ADR by virtue of having had four Missed Tests in the twelve-month period beginning on 27 November 2018, specifically:
 - i. A Missed Test on 27 November 2018;
 - ii. A Missed Test on 16 March 2019;
 - iii. A Missed Test on 5 August 2019; and
 - iv. A Missed Test on 11 September 2019;

I. First Whereabouts Failure – Missed Test on 27 November 2018

8. On 28 November 2018, the AIU wrote to the Athlete via his Authorised Athlete Representative, Mr Marc Corstjens, (‘the **Representative**’) requesting the Athlete’s explanation for an apparent Missed Test which occurred on 27 November 2018. The Athlete’s Whereabouts information stated that he would be available for Testing at a specified location in Mosoriot, Kenya, between 09:00-10:00 on 27 November 2018.
9. In summary, the Doping Control Officer (“**DCO**”) arrived at the specified location at 09:05 on 27 November 2018 but was unable to locate the Athlete for Testing. The DCO was advised by the Athlete’s wife that the Athlete had travelled to Nairobi three days prior, which was later confirmed.
10. The Athlete was asked to provide his explanation for failing to be available for Testing on 27 November 2018 by no later than 12 December 2018, in the absence of which the apparent Missed Test on 27 November 2018 would be confirmed against him.
11. The Athlete did not respond or provide any explanation by 12 December 2018 concerning the apparent Missed Test on 27 November 2018.
12. On 9 April 2019, the AIU wrote to the Athlete via the Representative (copied to the Athlete’s National Federation, National Anti-Doping Agency and WADA) and confirmed the apparent Missed Test on 27 November 2018. The Athlete was afforded the right to request an administrative review of that decision by no later than 23 April 2019 and advised that, if he failed to do so, then the Missed Test would be considered as a Whereabouts Failure for the purposes of Article 2.4 ADR.
13. The Athlete did not request an administrative review by 23 April 2019.
14. The AIU therefore recorded a Missed Test against the Athlete (effective on 27 November 2018) as the Athlete’s first Whereabouts Failure in the twelve-month period beginning 27 November 2018.

II. Second Whereabouts Failure – Missed Test on 16 March 2019

15. On 9 April 2019, the AIU wrote to the Athlete by e-mail, via the Representative, requesting his explanation for an apparent Missed Test which occurred on 16 March 2019. The Athlete's Whereabouts information stated that he would be available for Testing at a specified location in Mosoriot, Kenya between 09:00-10:00 on 16 March 2019:
16. In summary, the DCO arrived at the specified location at 09:17 on 16 March 2019 but could not locate the Athlete for Testing. The DCO was told that the Athlete was in Nairobi for trials and had forgotten to update his Whereabouts information.
17. The Athlete was asked to provide his explanation for failing to be available for Testing on 16 March 2019 by no later than 23 April 2019, in the absence of which the apparent Missed Test would be confirmed against him.
18. The Athlete failed to respond and to provide any explanation by 23 April 2019 concerning the apparent Missed Test on 16 March 2019.
19. On 29 May 2019, the AIU wrote to the Athlete via the Representative (copied to the Athlete's National Federation, National Anti-Doping Agency and WADA) and confirmed the apparent Missed Test on 16 March 2019. The Athlete was afforded the right to request an administrative review of that decision by no later than 12 June 2019 and advised that if he failed to do so, then the Missed Test would be considered as a Whereabouts Failure for the purposes of Article 2.4 ADR.
20. The Athlete did not request an administrative review by 12 June 2019.
21. Therefore, the AIU recorded a Missed Test against the Athlete (effective on 16 March 2019) as his second Whereabouts Failure in the twelve-month period beginning 27 November 2018.

III. Third Whereabouts Failure – Missed Test on 5 August 2019

22. On 20 August 2019, the AIU wrote to the Athlete and the Representative requesting the Athlete's explanation for an apparent Missed Test which occurred on 5 August 2019. The Athlete's Whereabouts information stated that he would be available for Testing at a specified location in Mosoriot, Kenya between 09:00–10:00 on 5 August 2019:
23. In summary, the DCO arrived at the specified location at 09:15 but was unable to locate the Athlete for Testing. The Athlete's brother informed the DCO that the Athlete was in Nairobi which was later confirmed by the Athlete's coach.
24. The Athlete was asked to provide his explanation for failing to be available for Testing on 5 August 2019 between 09:00 and 10:00 at the location specified in his Whereabouts information by no later than 3 September 2019, in the absence of which the apparent Missed Test on 5 August 2019 would be confirmed against him. The Athlete was also advised that this Missed Test (if confirmed) would constitute his third Whereabouts Failure in the twelve-month period beginning on 27 November 2018.
25. On 4 September 2019, the AIU received an e-mail from the Representative, attaching a letter signed by the Athlete, which set out his explanation for the apparent Missed Test on 5 August 2019. In the letter, the Athlete stated that he had had to travel to Nairobi due to an emergency.
26. On 4 September 2019, the AIU asked the Athlete to provide further details about the nature of the alleged emergency that resulted in the Missed Test on 5 August 2019. He was also asked to send any documents/evidence to support his explanation by no later than Friday 6 September 2019.

27. On 6 September 2019, the AIU received an e-mail from the Representative on behalf of the Athlete stating the following:
- “Greeting sir
Due to complications about missing dope, I have explain to them about emergency that occurred [sic] on 4th August when I got a call that my son was unwell and had to travel to Nairobi to see him.
Kindly receive my apology because it was due to unavoidable circumstance.
Thanks”*
28. A bus travel receipt including an itinerary from Eldoret to Nairobi for 4 August 2019 was attached to the Athlete’s explanation.
29. On 10 September 2019, following an evaluation of the Athlete’s explanation, the AIU confirmed the apparent Missed Test on 5 August 2019. The Athlete was afforded the right to request an administrative review of that decision by no later than 24 September 2019 and advised that, if he failed to do so, then the Missed Test on 5 August 2019 would be considered as his third Whereabouts Failure in the twelve-month period beginning on 27 November 2018 for the purposes of Article 2.4 ADR.
30. On 24 September 2019, the Representative wrote to the AIU on the Athlete’s behalf and requested an administrative review of the decision to confirm the Missed Test on 5 August 2019.
31. The Representative failed to make any submissions or provide any further information with the request for administrative review and the Athlete was granted an extension until 30 September 2019 to do so.
32. On 27 September 2019, the Representative sent a medical certificate dated 5 August 2019 from Troy Medical Clinic in Nairobi, Kenya without further explanation.
33. On 3 October 2019, the AIU wrote to the Athlete and the Representative inviting the Athlete to respond to further questions concerning his explanation, including in relation to the medical certificate, by 10 October 2019.
34. The AIU received no response from the Athlete or the Representative to its questions by 10 October 2019.
35. On 11 October 2019, the AIU wrote to the Athlete and the Representative confirming that the Athlete had failed to respond to the questions posed by the AIU and granted the Athlete an extension until no later than 16 October 2019 to do so. The Athlete and the Representative failed to respond by the new deadline.
36. On 17 October 2019, the AIU granted the Athlete a final extension to reply to its questions and provide the requested information by no later than 21 October 2019 and confirmed that, in the absence of any response, the administrative review would proceed on the basis of the limited information provided to that point.
37. On 18 October 2019, the Athlete finally replied to the questions posed by the AIU. In summary, the Athlete confirmed that his son had been staying with his mother (the Athlete’s wife) in Nairobi and that the Athlete had been advised at 23:00 on 4 August 2019 that his son was exhibiting serious symptoms including fever, vomiting and dizziness. The Athlete confirmed that, given the emergency, he had taken public transport to travel to Nairobi, which took six (6) hours, and that he had arrived in Nairobi in time to accompany his son to the Troy Medical Clinic in Nairobi at 09:00 on 5 August 2019. The Athlete recalled further that his son had been prescribed over-the-counter medication to treat his symptoms, which had been caused by a *“change in climate”*.

38. On 25 October 2019, the AIU wrote to the Athlete with the outcome of the administrative review. The AIU concluded that the Athlete had had sufficient opportunity to update (and should have updated) his Whereabouts information as soon as his circumstances changed i.e., at the earliest, when the Athlete became aware that he would be required to travel to Nairobi on 4 August 2019. The circumstances (as described by the Athlete) were not sufficient to justify his failure to update his Whereabouts information before his 60-minute time slot at 09:00 on 5 August 2019. The AIU concluded that the Athlete had failed to establish that no negligent behaviour on his part caused or contributed to his failure to be available for Testing in accordance with his Whereabouts information on 5 August 2019 or to update that information.
39. The Athlete was informed on 25 October 2019 that the Missed Test dated 5 August 2019 constituted his third Whereabouts Failure in the twelve-month period since 27 November 2018.

IV. Fourth Whereabouts Failure – Missed Test on 11 September 2019

40. On 8 November 2019, the AIU wrote to the Athlete (copied to the Representative and the Athlete's National Federation) and requested the Athlete's explanation for an apparent Missed Test which occurred on 11 September 2019. The Athlete's Whereabouts information stated that he would be available for Testing at a specified location in Gata Rongai, Rift Valley, Kenya between 09:00-10:00 on 11 September 2019:
41. In summary, on 11 September 2019, the DCO arrived at the specified location at 09:26 but was unable to locate the Athlete for Testing despite making various enquiries on-site.
42. The Athlete was asked to provide his explanation for failing to be available for Testing on 11 September 2019 by no later than 22 November 2019, in the absence of which the apparent Missed Test on 11 September 2019 would be confirmed against him.
43. The Athlete did not respond or provide any explanation by 22 November 2019 concerning the apparent Missed Test on 11 September 2019.
44. On 26 November 2019, the AIU wrote to the Athlete (copied to the Representative, the Athlete's National Federation and National Anti-Doping Agency) and confirmed the apparent Missed Test on 11 September 2019. The Athlete was afforded the right to request an administrative review of that decision by no later than 10 December 2019 and informed that, if he failed to do so, then the Missed Test would be considered as a Whereabouts Failure for the purposes of Article 2.4 ADR.
45. The Athlete did not request an administrative review by 10 December 2019.
46. Therefore, the AIU recorded a Missed Test against the Athlete (effective on 11 September 2019) as his fourth Whereabouts Failure in the twelve-month period beginning 27 November 2018.

Disciplinary Proceedings

47. Following the conclusion of the results management procedures for the Athlete's Whereabouts Failures set out above, on 14 January 2020, the AIU issued a Notice of Charge to the Athlete for a violation of Article 2.4 ADR (including the imposition of a Provisional Suspension) and invited him to respond by no later than 21 January 2020.
48. Following various attempts to reach the athlete by different means to ensure that he had received the Notice of Charge dated 14 January 2020 (including via the Representative), the AIU reached the Athlete by phone on 3 February 2020 and the Athlete acknowledged that he would respond to the Notice of Charge by the end of the day.

49. The Athlete wrote to the AIU by e-mail and admitted that he had committed an Anti-Doping Rule Violation but requested a hearing before the Disciplinary Tribunal for determination of the Consequences.
50. On 17 February 2020, the Disciplinary Tribunal Secretariat, Sport Resolutions, advised the Athlete of the possibility of obtaining pro-bono legal assistance through its pro-bono service and, on 21 February 2020, the AIU was advised that the Athlete had obtained *pro-bono* legal assistance with respect to the Notice of Charge.
51. On 20 March 2020, a Preliminary Meeting took place before the Chairman of a Panel of the Disciplinary Tribunal. At the request of the Athlete's pro-bono counsel, the Preliminary Meeting was adjourned. Following further repeated requests for adjournment to the proceedings via the Athlete's pro-bono counsel, the Preliminary Meeting took place on 9 June 2020 and, on 22 June 2020, agreed Directions were set for the determination of the matter.
52. In accordance with the agreed Directions, the Athlete filed his Brief with the Disciplinary Tribunal on 28 August 2020 and the AIU filed a Reply Brief on 9 October 2020.
53. Following without prejudice discussions between the parties following the filing of written submissions as set out above, on 5 November 2020, the Athlete's pro-bono counsel confirmed that the Athlete accepted a period of ineligibility of (two) 2 years commencing from the date of the confirmation of the fourth Whereabouts Failure on the Athlete's record, i.e., on 26 November 2019.
54. On 16 December 2020, the Athlete signed and returned an Admission of Anti-Doping Rule Violation and Acceptance of Consequences form to the AIU.

Consequences

55. This constitutes the Athlete's first Anti-Doping Rule Violation under the ADR.
56. On the basis that the Athlete admitted the Anti-Doping Rule Violation under Article 2.4 ADR on 3 February 2020, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
 - 56.1. a period of Ineligibility of two (2) years commencing on the date of the confirmation of the fourth Whereabouts Failure on the Athlete's record, pursuant to Article 10.10.2(b) ADR, from **26 November 2019 to 25 November 2021**; and
 - 56.2. disqualification of all competitive results obtained by the Athlete since **26 November 2019** with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.
57. The Athlete has accepted the above Consequences for his Anti-Doping Rule Violation and has expressly waived his right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

Publication

58. In accordance with Article 8.4.7(b) ADR, the AIU shall publicly report this decision on the AIU's website.

Rights of Appeal

59. This decision constitutes the final decision of the AIU pursuant to Article 8.4.7 ADR.

60. Further to Article 13.2.4 ADR, WADA and the Anti-Doping Agency of Kenya have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Article 13.7.2 ADR.
61. If an appeal is filed against this decision by WADA or the Anti-Doping Agency of Kenya, the Athlete will be entitled to exercise his right of cross-appeal in accordance with Article 13.9.3 ADR.

Monaco 23 December 2020