
DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR ELIJAH MANANGOI

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 Elijah Manangoi is a 30-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. In this instance, the Athlete has had three Missed Tests in the twelve-month period beginning on 3 July 2019, specifically:
 - i. A Missed Test on 3 July 2019;
 - ii. A Missed Test on 12 November 2019; and
 - iii. A Missed Test on 22 December 2019.

I. First Whereabouts Failure – Missed Test on 3 July 2019

8. On 8 July 2019, the AIU wrote to the Athlete requesting his explanation for an apparent Missed Test following an unsuccessful attempt to test the Athlete by a Doping Control Officer (“DCO”) on 3 July 2019 at an address at Rongai Nazareni University in Rongai, Kenya. More particularly, the Athlete was asked to provide his explanation for failing to be present and available for Testing during his nominated 60-minute time slot (08:00-09:00) at the location specified in his Whereabouts information for 3 July 2019, as required by Article I.4.1 of the International Standard for Testing and Investigations.
9. On 19 July 2019, the AIU received the Athlete’s explanation for the apparent Missed Test on 3 July 2019. In summary, the Athlete asserted that, on 2 July 2019, his connecting flight from Frankfurt to Nairobi had been delayed and as a consequence he only arrived in Nairobi at around 23:00 on 2 July 2019. He claimed that his luggage did not arrive with him from his original departure destination (San Francisco) and that his house key was in his luggage. He stated that he had tried to change his Whereabouts information but “*couldn’t do because time couldn’t allow because it was already past midnight*”. As he did not have his house keys, he had stayed in the nearest airport hotel which led in turn to his Missed Test in Rongai the following morning.
10. Following review of the Athlete’s explanation, the AIU confirmed that the Athlete’s explanation failed to demonstrate that no negligence on his behalf caused or contributed to his failure to be present and available for Testing during his designated time slot on 3 July 2019 or to update his Whereabouts information and, on 7 October 2019, wrote to the Athlete and confirmed the apparent Missed Test.
11. The Athlete was afforded the right to request an Administrative review of that decision by no later than 21 October 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.
12. The Athlete did not request an Administrative review by 21 October 2019. Therefore, the AIU recorded a Missed Test against him (effective from 3 July 2019) as his first Whereabouts Failure in the twelve-month period beginning 3 July 2019.

II. Second Whereabouts Failure – Missed Test on 12 November 2019

13. On 13 November 2019, the AIU wrote to the Athlete requesting his explanation for an apparent Missed Test following an unsuccessful attempt by a DCO to test him on 12 November 2019 at the same registered address at Rongai Nazareni University in Rongai, Kenya. The Athlete was asked once again to provide his explanation for failing to be present and available for Testing during his nominated 60-minute time slot (05:00-06:00) at the location specified in his Whereabouts information for the day in question.
14. On 14 November 2019, the AIU received the Athlete's explanation concerning the apparent Missed Test on 12 November 2019. In summary, the Athlete stated that, on the morning of 12 November 2019, he had been returning home from a night shift connected to his role with the Kenya Police Service, but that due to traffic, he had been unable to make it to his nominated address before the end of his specified time slot.
15. Following investigation of the circumstances, the AIU did not accept that the Athlete's explanation demonstrated no negligence on his part caused or contributed to him not being present and available for Testing during his designated time slot on 12 November 2019 or updating his Whereabouts information and, on 13 January 2020, wrote to the Athlete confirming the Missed Test on 12 November 2019. The AIU concluded that the Athlete should have updated his Whereabouts information as soon as he encountered the traffic jam and had appreciated that there was a risk that he would not be present and available for testing at his registered Whereabouts location during his 60-minute time slot that day.
16. The Athlete was afforded the right to request an Administrative review of that decision by no later than 27 January 2020 and advised that, if the Athlete failed to do so, then the Missed Test would be considered as a Whereabouts Failure for the purposes of Article 2.4 ADR. The Athlete was also advised that the Missed Test on 12 November 2019 constituted his second confirmed Missed Test for the twelve month period beginning on 3 July 2019 and that the Athlete had a further Missed Test pending confirmation, being an apparent Missed Test on 22 December 2019 (see further below).
17. On 19 January 2020, the Athlete requested an Administrative review of the decision to confirm the Missed Test on 12 November 2019. The request was based on the same information as had been provided in his explanation on 14 November 2019, namely, that, on 12 November 2019, he had been unable to make it back to the location specified in his Whereabouts Filing within his 60-minute time slot due to an unexpected traffic jam.
18. On 6 April 2020, having requested additional information from the Athlete and investigated further the Athlete's explanation for what happened on 12 November 2019, the AIU wrote to the Athlete and informed him that the Administrative review request was rejected. In summary, the AIU concluded that the Athlete had failed to demonstrate that no negligent behaviour on his part caused or contributed to his failure to be available for Testing and to update his Whereabouts information for 12 November 2019. The Missed Test on 12 November 2019 was therefore upheld as the Athlete's second Whereabouts Failure (effective from 12 November 2019) in the twelve-month period beginning on 3 July 2019.

III. Third Whereabouts Failure – Missed Test dated 22 December 2019

19. On 8 January 2020, the AIU wrote to the Athlete requesting his explanation for an apparent Missed Test on 22 December 2019 following an unsuccessful attempt by a DCO to test the Athlete on that date at the same address at Rongai Nazareni University in Rongai, Kenya. The Athlete was asked to provide his explanation for failing to be present and available for Testing during his nominated 60-minute time slot (05:00-06:00) at the location specified in his Whereabouts information for the day in question. The Athlete was also advised that this Missed Test (if confirmed) would constitute his third Whereabouts Failure in the twelve-month period beginning 3 July 2019.

20. The AIU received the Athlete's explanation on 17 January 2020. In summary, the Athlete stated that he had been injured since 27 August 2019 and that, in December 2019, he had travelled to Austria to receive a further diagnosis and treatment in respect of that injury. He attached to his explanation copies of his flight tickets indicating that he had travelled on Saturday 14 December 2019 from Nairobi to Munich and travelled back from Munich to Nairobi on 21 and 22 December 2019. He confirmed that his return flight had left Munich at 21:30 on 21 December 2019 and arrived in Dubai at 06:40 on 22 December 2019 and then his connecting flight to Nairobi departed Dubai at 10:25 on 22 December 2019, arriving finally in Nairobi at 14:35 that day.
21. The Athlete explained that he had delegated full responsibility for his Whereabouts information and updates to a third party in Kenya ("the **Delegate**"). He stated that both his Authorised Athlete Representative and the Delegate were fully aware of his return travel arrangements to Nairobi, but that the Delegate had made a mistake when entering the details of his trip into ADAMS. More specifically, on 13 December 2019, the Delegate updated the Athlete's Whereabouts information in ADAMS with the detail of his trip from Nairobi to Austria being from 15 December 2019 until 21 December 2019. The Delegate mistakenly failed to appreciate that the Athlete would not in fact arrive back in Nairobi until after his 60-minute time slot (05:00-06:00) on 22 December 2019 and therefore did not update his information for that date.
22. On 30 January 2020, the AIU wrote to the Athlete and confirmed the Missed Test on 22 December 2019. The Athlete was afforded the right to request an Administrative review of that decision by no later than 13 February 2020 and also advised that the Missed Test on 22 December 2019 constituted his third Whereabouts Failure in the twelve-month period that began on 3 July 2019.
23. On 13 February 2020, the AIU received the Athlete's request for an Administrative review of its decision to record the Missed Test on 22 December 2019.
24. The Athlete claimed in his Administrative review request that his injury had impacted his mental health, that he had difficulty coping, was easily irritable and sometimes suffered from memory loss. To support his Administrative review request, the AIU received letters from the Athlete's coach, his Authorised Athlete Representative and from the Delegate. The Delegate confirmed that he was the individual responsible for filing and updating the Athlete's Whereabouts information, including in December 2019. In particular, the Delegate acknowledged that he had made a mistake when filing the Athlete's Whereabouts information for December 2019 and had referenced the Athlete's departure date (21 December 2019) as opposed to his arrival date in Nairobi (22 December 2019) when updating his Whereabouts information.
25. On 15 April 2020 and 16 April 2020, the AIU received further information from the Athlete's Coach, his Authorised Athlete Representative and the Delegate in relation to the Missed Test on 22 December 2019.
26. Following a review of the evidence filed in support of the Athlete's request for an Administrative review, including the additional information submitted in mid-April 2020, on 1 July 2020, the AIU wrote to the Athlete with the outcome of the Administrative review. In rejecting the Administrative review request, the AIU confirmed that the Athlete's explanation remained insufficient to rebut the presumption of negligence set out in Article 4.3(e) of Appendix A of the Regulations. The AIU noted that, as an athlete included in the World Athletics Registered Testing Pool, the Athlete remained personally responsible for ensuring that he is available for Testing according to his Whereabouts information and, pursuant to the Regulations, the delegation of the Athlete's whereabouts responsibilities to a third-party (in this case to the Delegate) and the failure by that third-party to update his Whereabouts information accurately, could not be used as a defence to an allegation of a Missed Test.

27. The AIU concluded in the circumstances that the requirements of Article 4.3 of Appendix A of the Regulations remained satisfied and upheld the decision to confirm the Missed Test on 22 December 2019 against the Athlete as his third Whereabouts Failure in the twelve-month period beginning on 3 July 2019.

Disciplinary Proceedings

28. On 21 July 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 4 August 2020.
29. Following an extension granted to the Athlete to respond, on 8 August 2020, the Athlete admitted the Charge, expressed his remorse for the Anti-Doping Rule Violation and accepted full responsibility for not updating his Whereabouts information accurately and for 'trusting' a third party to submit and update his Whereabouts information on his behalf. The Athlete requested at the same time that the AIU give consideration to reducing the applicable period of Ineligibility based on his degree of Fault for the Anti-Doping Rule Violation in accordance with Article 10.3.2 ADR and, following a request from the AIU, he subsequently provided further elements in this regard for the AIU's consideration.
30. On 19 October 2020, having fully assessed the Athlete's position on Fault, the AIU wrote to the Athlete and confirmed that he was not entitled to any reduction in the period of Ineligibility pursuant to Article 10.3.2 ADR.
31. Article 10.3.2 ADR provides that the period of ineligibility may be reduced by up to a maximum of one year, based on the Athlete's degree of Fault for the Anti-Doping Rule Violation. The Anti-Doping Rule Violation in Article 2.4 ADR consists of three distinct/separate Whereabouts Failures. Therefore, to benefit from the maximum reduction available, the Athlete must be able to demonstrate (on the balance of probabilities) that his level of Fault is low in relation to all three Whereabouts Failures.
32. In this case, the Athlete's submissions as to his level of Fault for the Anti-Doping Rule Violation relate exclusively to only one of the Whereabouts Failures; the Missed Test on 22 December 2019. The level of any Fault-related reduction available to the Athlete in accordance with Article 10.3.2 ADR is therefore similarly limited.
33. The definition of Fault in the ADR specifies the following factors that are to be taken into account in assessing an Athlete or other Person's degree of Fault:
- "Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. [...]"*
34. In view of the Athlete's submissions and the specific circumstances of the Missed Test on 22 December 2019, the assessment of the Athlete's Fault in this case must therefore centre on any breach of duty or lack of care towards the delegation of his whereabouts responsibilities to the Delegate.

35. It is to be noted first in this regard that the Athlete is a highly experienced International-Level Athlete (a former 1500m World Champion in 2017) who benefits from bespoke, individual, “around the clock” support with his whereabouts responsibilities through arrangements made with his Authorised Athlete Representative and the Delegate. He is not a Minor and he has filed no evidence of any impairment¹.
36. Furthermore, the AIU’s position is that the degree of risk that the Athlete should have perceived was significant. There is an inherent and increased risk of inaccuracies and delays to filing and updating Whereabouts information in circumstances where an athlete delegates those responsibilities to a third-party. That risk is further aggravated where an athlete fails to ensure that they are able to access their Whereabouts information in ADAMS themselves at all times, fails to monitor that information and fails to exercise any due diligence over the third-party to whom their whereabouts responsibilities are delegated.
37. In this case, the Athlete accepted that he simply ‘*trusted*’ the Delegate to maintain his Whereabouts information and to make updates on his behalf. This was done without any oversight and without the Athlete checking whether the information in his Whereabouts Filing (and any updates made to that information) was accurate. The Athlete therefore failed to exercise any care or investigation in relation to what should have been the perceived significant level of risk in these circumstances, as set out above.
38. For these reasons, the AIU has concluded that the Athlete is unable to benefit from any reduction in the period of Ineligibility based on his degree of Fault for the Anti-Doping Rule Violation in accordance with Article 10.3.2 ADR. However, based on the Athlete’s timely admission of the Anti-Doping Rule Violation on 8 August 2020 after being confronted with it in the Notice of Charge on 21 July 2020 and taking into account all the circumstances of the case, the AIU has exercised its discretion to backdate the period of ineligibility to the date of the Anti-Doping Rule Violation, i.e., the date of the Third Missed Test on 22 December 2019, in accordance with Article 10.10.2(b) ADR.

Consequences

39. This constitutes the Athlete’s first Anti-Doping Rule Violation under the ADR.
40. On the basis that the Athlete has admitted the Anti-Doping Rule Violation under Article 2.4 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
 - 40.1. a period of Ineligibility of two (2) years commencing on the date of the third Whereabouts Failure, pursuant to Article 10.10.2(b) ADR, from **22 December 2019 to 21 December 2021**; and
 - 40.2. disqualification of all competitive results obtained by the Athlete since **22 December 2019** with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.
41. 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.

¹ See SR/NADP/476/2015 *UKAD v. Duffy*, which held that an Athlete must show (i) a medical diagnosis and (ii) cognitive impairment linked to the commission of the anti-doping rule violation to establish an impairment.

Publication

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

Rights of Appeal

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

44. 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.

45. 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 10 November 2020