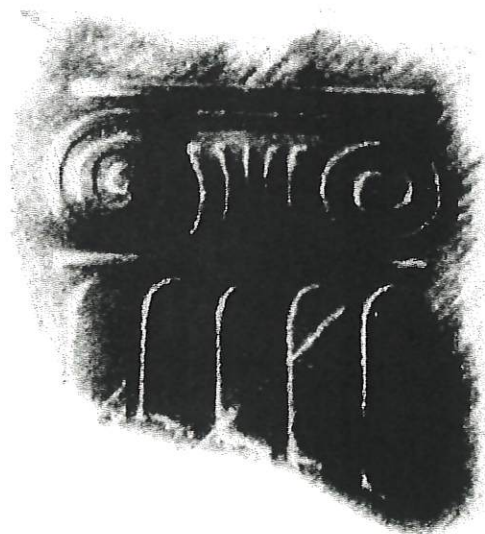


**Tribunal  
Arbitral du Sport  
Court of Arbitration  
for Sport**

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**ARBITRAL AWARD**

**International Association of Athletics Federations (IAAF), Monaco**

**v.**

**Russian Athletic Federation (RUSAF), Russia**

**&**

**Aleksandr Shustov, Russia**

**CAS 2019/O/6156 - Lausanne, June 2020**



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2019/O/6156 International Association of Athletics Federations (IAAF)  
v. Russian Athletic Federation (RUSAF) & Aleksandr Shustov**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Mr Murray Rosen QC, Barrister, London, United Kingdom

**in the arbitration between**

**International Association of Athletics Federations (IAAF)**, Monaco  
Represented by Messrs Ross Wenzel and Nicolas Zbinden of Kellerhals Carrard, Place Saint-François 1, P.O. Box 7191, 1002 Lausanne, Switzerland

**Claimant**

**Russian Athletic Federation (RUSAF)**, Luzhnetskaya Nab 8, 119992 Moscow, Russia

**First Respondent**

**Aleksandr Shustov**, Moscow, Russia  
Represented by Messrs Philippe Bärtsch, Christopher Boog, Stefan Leimgruber, Simon Demaurex and Ms Anna Kozmenko of Schellenberg Wittmer SA, 15bis, rue des Alpes, 1211 Genève 1

**Second Respondent**

## **I. PARTIES**

1. The International Association of Athletics Federations ("IAAF" or "Claimant") is the international federation governing the sport of Athletics worldwide, having its registered seat in Monaco.
2. The Russian Athletic Federation ("RUSAF" or "First Respondent") is the national governing body for the sport of Athletics in Russia and the relevant Member Federation of the IAAF for Russia, having its registered seat in Moscow.
3. Mr Aleksandr Shustov ("the Athlete" or "Second Respondent") is a Russian high jumper born on 29 June 1984. He is an International-Level Athlete for the purposes of the IAAF Rules, and competed in the Moscow World Championships in July 2013.

## **II. FACTUAL BACKGROUND**

4. There is set out in this section a summary of the relevant facts and allegations based on the parties' submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations also found in those materials may be set out, if and when relevant, in the legal discussion that follows. Whilst the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he only refers to that which he considers necessary to explain his reasoning.

### **A THE AIU ALLEGATIONS**

5. By a letter dated 24 November 2017, following two reports issued by Professor Richard McLaren on 16 July and 9 December 2016 as an Independent Person mandated by the World Anti-Doping Agency ("WADA") to investigate allegations of systemic doping practices in Russian sport, the IAAF's Athletics Integrity Unit ("AIU") alleged that the Athlete had committed anti-doping rule violations in October and July/August 2013 by using Prohibited Substances, principally the anabolic steroids Methasterone and Methandrostenolone, as part of the doping practices alleged in the McLaren Reports and the counter-detection methodologies described therein.
6. In the AIU's letter dated 24 November 2017, the Athlete was asked to admit and/or explain the alleged violations by 8 December 2017; and by letter dated 6 December 2017, the Athlete provided his explanations.

7. By a further letter dated 31 January 2018, the AIU told the Athlete that it maintained that he had committed the anti-doping rule violations and that his case would be referred to the Court of Arbitration for Sport ("CAS"). The Athlete was asked to indicate by 14 February 2018 whether he preferred his case to proceed under Rule 38.3 of the 2016 IAAF Rules (ie at first instance before a Sole Arbitrator with a right of appeal within CAS) or under Rule 38.19 (at sole instance before a three-member CAS Panel with no right of appeal, save to the Swiss Federal Tribunal) subject to WADA's consent.
8. On 8 February 2018, the Athlete stated that he would prefer his case to be heard under Rule 38.19 of the 2016 IAAF Rules but, upon consultation, WADA did not give its consent to that request, and accordingly the AIU informed him that his case would be referred to CAS under IAAF Rule 38.3.
9. In its letters of 24 November 2017, the AIU alleged that an e-mail of 19 October 2012 suggested that a then sample 2745234 was positive for EPO but in its Request for Arbitration, the IAAF stated that it was not pursuing this, giving as a reason that Dr Rodchenkov had stated that there was a risk of misreporting endogenous EPO as exogenous.

## **B THE 2013 IAAF RULES**

10. Rule 32.2(b) of the 2012-2013 IAAF Competition Rules in force in 2013 (the "2013 IAAF Rules") prohibit the "*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*"
11. "Use" is defined in the 2014 IAAF Rules as "*the utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method*"; and Rule 33.3 provides that such "Use" may be established by any reliable means, including but not limited to admissions, evidence of third parties, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information.
12. Under Rule 32(b)(i), it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish a violation for Use of a Prohibited Substance or a Prohibited Method.
13. Under Rule 40.2, the period of ineligibility for a violation of Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of ineligibility (Rules 40.4 and 40.5 of the 2013 IAAF Rules) or for increasing it (Rule 40.6 of the 2013 IAAF Rules) are met.

14. Rule 40.6 provides that:

*"if it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) ... and Rule 32.2(h) ... that aggravating circumstances are present which justify the imposition of a period of ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation".*

15. Examples of aggravating circumstances set out in Rule 40.6(a) are that:

*"the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation...".*

16. Rule 40.7(d)(i) provides that *"the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)"* and Rule 40.8 provided as follows:

*"In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money."*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 15 February 2019, the Claimant filed its Request for Arbitration (which it asked to be considered as its "Statement of Appeal" and "Appeal Brief").

18. Pursuant to Article S20 of the Code of Sports-Related Arbitration, 2019 edition (the “Code”) and in view of Rule 38.3 of the 2016 IAAF Rules, this Arbitration was assigned to the Ordinary Arbitration Division of the CAS and has been dealt with according to the Appeals Arbitration Division rules (Articles R47 et seq. of the Code).
19. On 29 March 2019, the parties were informed that Mr Murray Rosen QC had been appointed the Sole Arbitrator.
20. The Athlete challenged this on the grounds that Mr Rosen had been appointed previously by the IAAF and/or Kellerhals Carrard and was the sole arbitrator in a case raising similar issues in *CAS 2018/O/5713*.
21. In accordance with Article R55 of the Code and within the extended time-limit, the Second Respondent filed his Answer on 24 May 2019. When duly invited to do so, the First Respondent did not submit any Answer.
22. On 18 June 2019, the Claimant requested a second round of written submissions to address the experts reports that had been submitted by the Athlete. The Athlete objected to such request.
23. By a decision dated 19 June 2019 and after receipt of the observations submitted by the Claimant and the Sole Arbitrator, the Challenge Commission of the International Council of Arbitration for Sport dismissed the Athlete’s petition for challenge and the Panel was formally constituted on 20 June 2019.
24. On 11 July 2019, the parties were informed that the Sole Arbitrator requested, in application of Articles R56 and R44.3 of the Code, a second round of written submissions on the experts reports. In accordance with his instructions, the Claimant filed a Reply on 22 July 2019 and the Second Respondent filed his Second Response on 16 September 2019. While duly invited to do so, the First Respondent did not submit any Second Response.
25. In his Second Response, the Athlete sought an order to compel the attendance of Professor Richard McLaren for cross-examination as a witness. The Claimant objected to such request and, on 2 October 2019, the parties were informed that, deeming that the Athlete failed to demonstrate any valid need to cross-examine Professor McLaren or any plausible explanation for the delay in calling him as a witness, the Sole Arbitrator refused that application.
26. An Order of Procedure was made on 2 October 2019 and was signed and returned by the parties, respectively, on 4 October 2019, 10 October 2019 and 23 January 2020.

27. In accordance with Article R57 of the Code, a hearing was directed and held on 30 October 2019 at the CAS Court Office, in Lausanne, Switzerland.
28. The representations attending were: for the IAAF – Mr Huw Robert of AIU, Messrs Ross Wenzel and Nicolas Zbinden of Kellerhals Carrard; and for the Athlete - Messrs Philippe Bärtsch, Stefan Leimgruber and Simon Demaurex in person and Ms Anna Kozmenko by video, all of Schellenberg Wittmer SA. RUSAF's representative did not attend.
29. The IAAF called, pursuant to statements and reports it had filed, Dr Grigory Rodchenkov former director of the Moscow Laboratory as a witness by video in the presence of his counsel Ms Avni Patel (and assisted by an interpreter), and as experts Mr Andrew Sheldon by video, and Prof Christian Ayotte and Prof Christophe Champod in person.
30. The Athlete (assisted by interpreters), again pursuant to statements and reports filed, gave evidence by video and called as experts by video Mr Manuel Rundt (in conference with Mr Sheldon), Prof Michael Graham (similarly, with Prof Ayotte) and Mr Geoff Arnold (with Prof Champod).
31. At the end of the hearing, the parties attending confirmed that their rights to a hearing had been fully respected, save that the Athlete maintained his challenge to the sole arbitrator which had been dismissed as above.

#### IV. SUBMISSIONS OF THE PARTIES

##### A THE IAAF's SUBMISSIONS

32. Without the need to set out every submission in detail, it was the IAAF's case in essence that the evidence proved that the Athlete was one of what was alleged in the McLaren Reports (which it conceded was not itself evidence against him) to be a significant number of Russian athletes who were involved in and benefitted from doping practices by which *"the Ministry of Sport directed, controlled and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the FSB, CSP, and both the Moscow and Sochi laboratories."*
33. By way of background, the McLaren Reports described three alleged counter-detection methodologies used for this purpose, known as Disappearing Positives, Washout Testing and Sample Swapping.

34. Under the "Disappearing Positives" methodology, from late 2011, if an initial screen of a sample at the Moscow laboratory, of which Dr Rodchenkov was the then Director, revealed an Adverse Analytical Finding ("AAF"), the athlete would be identified and the Moscow Laboratory and a liaising person at the Russian Ministry of Sport would decide either to "SAVE" or to "QUARANTINE" him or her. If the athlete was "QUARANTINED", the analytical work on the sample would continue and the AAF would be reported, in the ordinary way. But if the athlete was "SAVED", the Moscow Laboratory would report the sample as negative in ADAMS and make the necessary manipulations to conceal the AAF in the Laboratory Information Management System ("LIMS").
35. "Washout Testing" programmes were allegedly conducted prior to certain major events including the July 2012 London Olympic Games and the August 2013 Moscow World Championships, to decide whether an athlete in a doping programme was likely to test positive. This involved the collection and testing of samples at the Moscow Laboratory at frequent intervals to monitor the rate at which quantities of prohibited substances were declining so the athlete would test "clean" in competition. The Moscow Laboratory thus developed schedules to keep track of the athletes subject to this program (the "Moscow Washout Schedules", such schedules were monitored and updated regularly by Dr Rodchenkov.
36. As for "Sample Swapping", when the relevant athletes' samples screened positive, (and if necessary were misreported as negative in ADAMS) the "dirty" samples were swapped for clean urine they had provided in plastic bottles stored at the Moscow Laboratory, using (from early 2013) a tool to open and reseal the cap on the official "BEREG" bottles. This method was facilitated by the establishment and maintenance of a "Clean Urine Bank", which comprised of unofficial samples provided by certain athletes, that were analysed, stored and recorded in the "'Clean Urine Bank Schedules".
37. For the purpose of the McLaren Reports, documentary evidence copied from Dr Rodchenkov's computer allegedly supporting the involvement of athletes in such practices was made available in a package posted on the internet at <https://www.ipevidencedisclosurepackage>. This included London 2012 and Moscow 2013 Washout Schedules and various emails whose metadata was examined for authenticity by Mr Sheldon as a forensic IT expert.

**(1) The alleged violations**

38. The documents on the EDP website were anonymised, but each athlete was attributed one or more codes, substituted for his or her name on the relevant documents. The Athlete's codes on the EDP website were A0809 and A0810, and his name appeared on Moscow

Washout Schedules (EDP 0028/29/32) for 8, 18, 25 and 31 July 2013 and 17 August 2013 respectively, with the following information (regarding the first two unofficial samples and the latter three official samples):

(1) 8 July 2013 –

*T/E = 1.8*

*Methasterone long-term metabolite 900 000*

*Traces of Oxandrolone*

*!! Methandrostenolone !! 80 000 NW*

(“NW” standing for Night Watch, a long-term metabolite discovered in 2006)

(2) 18 July 2013 –

*T/E = 1.3*

*Prohormones?*

*Methasterone long-term metabolite 800 000*

*Methandrostenolone, 25 000 NW*

(3) 25/24 July 2013 – *Russia* (which the IAAF say was official sample 2808086)

*Methasterone long-term metabolite 50 000*

(4) 31 July 2013 – *out of competition* (which the IAAF say was official sample 2810121)

*Methasterone long-term metabolite 90 000*

(5) 17/15 August 2013 – *World Championship* (which the IAAF say was official sample 2808680)

*Methasterone long-term metabolite 60 000*

(as adjusted allegedly by Dr Rodchenkov on EDP0029 from the figure of 95 000 appearing on EDP0028)

39. The penultimate sample 2810121 was reported as negative in ADAMS but by an email dated 2 August 2013 (EDP0148) Dr Rodchenkov told Alexey Velikodniy, an alleged liaison, and Tim Sobolevsky, the Moscow Laboratory's Deputy Director, that this sample had been found to contain "methasterone average" and that this and other athletes' samples to which he referred (collected at a training camp in Novorgorsk), were "*some kind of walking-by-themselves wild ones!... all of these are urgent for the debriefing in the evening*".
40. The final sample 2808680 (collected on 15 August 2013, the date when the Athlete competed at the Moscow World Championship) was subsequently retested by the IAAF

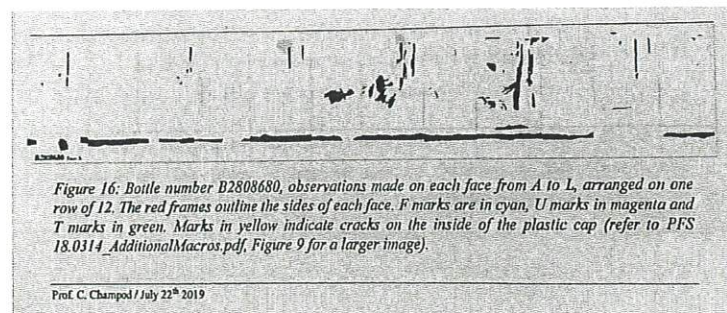
and again found to be negative (the Athlete having claimed in his letter to the AIU dated 6 December 2017 that this would "... *prove that the documents used by IAAF against me ... are not true and are not based on any strong evidence*").

41. However, the IAAF contended for three main reasons as follows, that this was because it had been subject to Sample Swapping:

(a) Dr Rodchenkov stated (initially, before these proceedings were initiated against the Athlete) that Sample Swapping was operated during the Moscow World Championships and that he specifically recalls swapping the Athlete's sample before it was transported to the Lausanne Laboratory (which recorded it as received on 30 August 2013).

(b) The B bottle of the Moscow World Championship sample 2808680 was analysed for scratches and marks by Prof Champod and his teams:-

(i) He reported that there was found inside its lid (which had 12 faces to its sides, and a sprung metal locking device) multiple so-called "T" marks, as indicated in green in figure 16 of his second report:



(ii) Prof Champod described these "T" marks as *"typical of those observed consecutive to a tampering activity ... the nature of the marks, their shape and compatibility with the working of tools at multiple locations ... provide very strong support for the proposition that the bottle has been tampered with as alleged compared to the proposition of normal use"*.

(iii) Amongst many other bottles tested, one for another sample from the 2013 World Championship, indicated on the Moscow Washout Schedules to have contained prohibited substances (from a Ms Bulgakova) was found to bear similar marks allegedly indicative of a forced opening; whereas a

sample so indicated to be clean (from a Ms Shkolina) bore no such T marks.

- (c) The specific gravity of the A sample 2808680 was recorded by the Moscow Laboratory by Mr Sobolevsky on 24 August 2013 as measuring 1.029, whereas the specific gravity of the urine measured by the Lausanne Laboratory as reported on 14 March 2017 (and also mentioning the presence of ethylglucuronide) was measured at 1.020: according to Prof Ayotte, such a change could only be explained by urine swapping.

- 42. Although the 8 July 2013 schedule also referred to "Traces of Oxandrolone" this aspect (perhaps because these were no more than alleged "Traces") did not feature significantly.

## **(2) Sanctions**

- 43. As for sanctions, the IAAF submitted that there were a number of aggravating factors in the present case tending to the maximum period of ineligibility (dating from the date of the CAS award) in particular that the Athlete used multiple anabolic steroids in the lead-up to an important event, the 2013 Moscow World Championships, as part of a sophisticated doping scheme to conceal his positive results, falsely reporting official samples as clean, and swapping out one of his dirty samples.
- 44. The IAAF further submitted that the evidence of doping dated back to the first (unofficial) sample on the Moscow Washout Schedule on 8 July 2013 and all the Athlete's results from such date until the commencement of the period of ineligibility should be disqualified, since it would not be appropriate to maintain results on the basis of fairness where the doping is severe, repeated and sophisticated as in the case at hand.
- 45. The IAAF requested by way of relief that CAS rule:
  - (a) that it has jurisdiction to decide on the subject matter of this dispute and that the IAAF's Request for Arbitration is admissible;
  - (b) that the Athlete be found guilty of anti-doping rule violations in accordance with Rule 32.2(b) of the 2013 IAAF Rules.
  - (c) that a period of ineligibility of two to four years be imposed on the Athlete, commencing on the date of the CAS award;
  - (d) that all competitive results obtained, by the Athlete from 8 July 2013 until the commencement of any period of provisional suspension or ineligibility are

disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money); and

- (e) that the arbitration costs be borne entirely by the First Respondent or, in the alternative, by the Respondents jointly and severally and the First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to the IAAF's legal and other costs.

## **B RUSAF'S SUBMISSIONS**

- 46. The First Respondent RUSAF did not file any Answer, provide any submissions or evidence or make any requests for relief.

## **C THE ATHLETE'S SUBMISSIONS**

- 47. The Second Respondent's submissions, whilst maintaining his challenge to the appointment of the Sole Arbitrator, may be summarised essentially as follows, his representatives highlighting the burden of proof upon the IAAF both as regards *reliable* evidence for any finding of violation and the sanctions appropriate in the *individual* case and that one cannot expect the Athlete to disprove wrong allegation, especially without any means to do so.

### **(1) The alleged violations**

- 48. The Athlete denied throughout, including his evidence, that he had ever taken Methasterone or Methandrostenedione or any other prohibited substance or had supplied any urine for swapping or tampered with any sample bottle.
- 49. The Athlete stated that he was a very successful international high-jumper, subject to consistent negative findings under doping controls, coming first in some 2010 European events, seventh in the 2013 Moscow World Championship and fourth in the March 2015 European Indoor Championships in Prague.
- 50. He was coached by Evgeny Zagorulko, and until he retired from his professional career (after the publicising of the alleged "Russian doping scandal" in late 2015) and joined the Russian military. He did not previously know of Dr Rodchenkov or any alleged Russian doping programme or any alleged doping by other athletes coached by Mr Zagorulko.
- 51. On behalf of the Athlete, detailed criticisms were made of Dr Rodchenkov and his allegations (which were the foundation of the McLaren Reports) and the purported

electronic documents which he supplied, including the Moscow Washout Schedules and the email of 2 August 2013, which were strenuously challenged both as to their authenticity and their value as evidence.

52. The Athlete contended that Mr Rodchenkov's testimony was not credible and was self-contradictory and/or inconsistent. He had allegedly sought bribes from athletes to conceal positive doping test results and was a prime mover in the cover-up which he later alleged, initially to the media for financial gain. He had previously told untruths and made allegations of sample swapping against other athletes, purportedly also supported by expert opinion, which other sports associations (in football and curling), as well as the Independent Commission appointed by WADA in 2015, had not found reliable and at least one CAS panel (in *CAS 2017/A/5379*) had regarded his evidence as uncorroborated hearsay.
53. The risk of technical issues in relation to EPO analysis prevailing at the relevant time, which was seemingly recognised at some point by Dr Rodchenkov and led to the IAAF's decision not to pursue that aspect of the charges put in the AIU's November 2017 letter in its Request for Arbitration, demonstrated that the IAAF's other evidence and alleged test results, which the Athlete has no sufficient means to challenge, are unreliable.
54. For the Athlete it was emphasised that the McLaren Reports were not intended to be and were not admissible evidence against him, that the origin and inputs into the Moscow Washout Schedules were uncertain and could not be properly tested - without knowing even who collected, analysed and recorded the samples at the Moscow Laboratory and whether such processes carried any scientific validity or assurance.
55. It was strongly suggested that the Washout schedules and emails such as that of 2 August 2013 as supplied by or copied from Dr Rodchenkov's own computer (but which he did not claim to have verified himself) lacked a proper chain of custody and could have been created or modified at any time by him or others who had not collected and tested the alleged samples and whose information could not be automatically trusted.
56. In support of these significant doubts, there was adduced on behalf of the Athlete the expert opinion of Mr Rundt who explained the usual forensic requirements to authenticate electronic documents how the metadata of such documents could be manipulated so that their creation and modification dates and other external or internal data trails were falsified, such that Mr Sheldon's alleged authentication was valueless or far from fail-safe.
57. The Athlete's representatives pointed to the negative results recorded in ADAMS for the official samples 2808086, 2810121 and 2808680 and the anomalies in the documents

(such as the variations in respect of the final sample 2808680 - of dates from 15 to 17 August 2013, and of the alleged Methasterone measurements from 95 000 to 60 000).

58. Contrary to the IAAF's allegations, the EDP0028 cannot evidence that the official samples 2808086 and 2810101 contained any prohibited substance since the Moscow Washout Schedule did not refer to any official sample numbers and since none of these samples was collected or tested on 25 July 2013.
59. They submitted expert reports from Prof Graham to the effect that the information in the Moscow Schedules was scientifically incredible or at least implausible, including the quantities as against the T/E ratios, and the alleged pace of quantity washout and reduction in T/E ratios, first in the short period between the two allegedly unofficial samples on 8 and 18 July 2013 and then over the next few weeks (when Methandrostenolone no longer appears at all).
60. As for the final sample 2808680, Prof Graham's reports did not regard the difference in specific gravity of 1.029 (as recorded at the Moscow Laboratory on 24 August 2013) against 1.020 (as recorded at the Lausanne Laboratory on 14 March 2017, with the presence of Ethylglucuronide) as significant enough to indicate urine swapping, rather than degradation or innocent contamination of the same sample.
61. The Athlete rejected entirely Prof Champod's alleged testing of the B bottle to reveal multiple "T" marks in the top, indicative of tampering and forced opening. It was explained that his methodology, creating a tool based on Dr Rodchenkov's description, to mimic that allegedly used at the Moscow Laboratory to open sealed BEREK bottles, had again not satisfied the panel in *CAS 2017/A/5379* (cf para 776).
62. Moreover, the expert on behalf of the Athlete, Mr Arnold considered that Prof Champod's instructions might have tended to bias; that he should have asked neutrally for an investigation of the origin of all the marks in the bottle top, and all possible explanations for scratches inside the top caused otherwise (such as dropping or other mishandling which would push the metal components inside the top) or contamination (by e.g. grit); and that his results were unreliable since his database is too small to make any conclusive findings and since he used a too small number of empty bottles which were not fully closed, thus basing his analysis on the wrong assumption that the bottle used to collect sample 2808680 was not fully closed, and without classifying every type of mark or scratch found.
63. Reverting to Dr Rodchenkov, it was stressed that his earlier statement to the McLaren investigation that the Athlete's urine had been swapped did not identify the sample concerned or any other detail, but was instead accompanied by a denial that he had

personal knowledge of the Athlete's doping, so that in that regard also his evidence at the present hearing to have carried out the swap of the Athlete's sample 2808680 himself must be rejected.

## (2) Sanctions

64. It was submitted, on a subsidiary basis, that there was no evidence of aggravating circumstances (a) as regards use of prohibited substances by the Athlete on multiple occasions (b) by way of deliberate personal involvement in a doping scheme, which (according to *CAS 2017/A/5379* yet again, cf para 718), requires particularly cogent evidence.
65. In any event, so it was contended for the Athlete, even in severe cases of participation in doping schemes, CAS panels have imposed periods of ineligibility of less than the maximum of 4 years, for example 3 years (*CAS 2014/A/3561 & 3614*) including where *"the exact scope timeframe and nature of the underlying doping practices [covered up by a coach's obstructive action]... is not clearly established by the evidence on record"* (*CAS 2012/A/2791*).
66. As regards disqualification of the Athlete's competitive results since 8 July 2013 as sought by the IAAF, it was submitted that this would be an invalid punishment and unfair in the absence of proof that his results subsequent to the Moscow World Championship were affected by his alleged violations, when on the contrary he continued to test negative thereafter.

## V. JURISDICTION AND ADMISSIBILITY

67. Rule 38.3 of the 2016 IAAF Rules states that the CAS procedure shall be governed by the procedural rules governing CAS appeal arbitrations without reference to any time limit to appeal and accordingly the rules set out at Rule 47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code") are applicable to this dispute *mutatis mutandis*, save as explicitly varied.
68. Rule 38.3 of the 2016 IAAF Rules also provides as follows:

*"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member ... If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the*

*deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42...".*

69. The suspension of RUSAF's membership of the IAAF was confirmed by the IAAF Council on 26 November 2015, and on 17 June and 1 December 2016 and 6 February, 2 July and 31 July 2017, it decided that RUSAF had not met the conditions for reinstatement. The IAAF Congress maintained the suspension of RUSAF at its meeting on 3 August 2017, and on 26 November 2017 and 6 March, 27 July and 4 December 2018, the IAAF Council again decided that RUSAF had not met the conditions for reinstatement to membership. The suspension of RUSAF therefore remains in place.
70. As a consequence of the suspension of its membership, RUSAF was (and is) not in a position to conduct a hearing process for the Athlete's case by way of delegated authority from the IAAF pursuant to Rule 38 of the 2016 IAAF Rules. It was and is manifestly unnecessary for the IAAF to impose any deadline on RUSAF for that purpose and it is entitled to refer the case to CAS to be heard in the first instance by a Sole Arbitrator (as in previous cases such as *CAS 2017/A/4949*, *CAS 2016/O/4463* and *CAS 2016/O/4464*, confirmed by the Swiss Federal Tribunal in case 4A\_490/2017).
71. The parties did not contest CAS jurisdiction on this basis and CAS jurisdiction is further confirmed by the signature of the Order of Procedure by all parties.

## **VI. APPLICABLE LAW**

72. Article R58 of the CAS Code provides that:

*"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

73. Rule 13.9.4 of the IAAF Anti-Doping Rules in force from 1 January 2019 (the "IAAF ADR") state that:

*"In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Rules and Regulations)".*

74. Rule 13.9.5 of the IAAF ADR further provides as follows:

*"In all CAS appeals-involving the IAAF, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise".*

75. Rule 1.7 of the IAAF ADR states that

*"These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons ... (b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by the IAAF (ii) the National Federation or any member or affiliate organization of any-National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held."*

76. As an athlete affiliated to RUSAF who has participated in the activities and competitions of RUSAF and the IAAF for a number of years, including the 2013 Moscow World Championships, the Athlete is subject to the IAAF ADR. It follows that the IAAF rules and regulations are applicable in this case, and the parties did not contend otherwise.
77. Pursuant to Rule 21.3 of the IAAF ADR, anti-doping rule violations committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged anti-doping rule violation (that is, the 2013 IAAF Rules) and, for procedural matters, to the 2016-2017 IAAF Competition Rules effective from 1 November 2015 (the "2016 IAAF Rules"). To the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law applies on a subsidiary basis.

## **VII. MERITS**

### **A THE ANTI-DOPING RULE VIOLATION**

78. There are a number of strands to the evidence against the Athlete, which may be broadly summarised as:

- (a) purportedly recording the Athlete's use of Methasterone and Methandrostenolone, the entries for the Athlete on the Moscow Washout

Schedules, supported by Dr Rodchenkov and his alleged email of 2 August 2013 relating to the fourth entry (Methasterone alone) in sample 2810121;

- (b) the alleged urine swapping for sample 2808680, the subject of the fifth entry (again Methasterone alone) – said to be proved by Dr Rodchenkov and Prof Ayotte's views (as regards the change in specific gravity) and Prof Champod's tests and observations (as regards the marks from tampering with the bottle).

79. The Sole Arbitrator regards each of these strands as mutually supportive and as proved, albeit (when taken separately) to varying levels of satisfaction.
80. First, as regards the evidence of use, the Sole Arbitrator does not consider that there is significant doubt as to the veracity of the information on the Moscow Washout Schedules, which he finds to have recorded the results of tests on the Athlete's urine samples collected and analysed at the Moscow Laboratory by or under the supervision of Dr Rodchenkov and Mr Sobolevsky, with the assistance of and as discussed with other Russian officials.
81. Subject to very minor mistakes, the Washout schedules and emails in the EDP included a vast amount of information which was consistent and not specifically contradicted. The differences in the dates relating to sample 2808086 (where the date of 25 July 2013 is mentioned in the EDP, while on the doping control form the date of test is indicated as 24 July 2013) and sample 2808086 (where the date of 17 August 2013 is mentioned in the EDP, while on the doping control form the date of test is indicated as 15 August 2013) are not significant. Multiple dates relate to a single sample (regarding its collection, test, analysis report,...) and such discrepancies do not jeopardise the veracity and relevance of the key information. The email of 2 August 2013, it seemed to the Sole Arbitrator, was of particular probative value as contemporaneous corroboration regarding the knowledge and management of the Athlete's doping programme as recorded in the Moscow Washout Schedules.
82. Secondly, the Athlete's testimony in answer consisted of bare denials – the only currency which a guilty person in his position would have - unless he was prepared to call as witnesses any of the many others allegedly involved in such a far-ranging doping and doping-concealment scheme. That does not prove the case against him, of course, but it cannot much load the scales against the IAAF's specific, positive evidence against him.
83. Thirdly, Dr Rodchenkov's testimony was broadly credible and consistent with the documents adduced, as well as the expert analyses on the IAAF's side.

84. That does not mean that there were no elements of doubt and the Sole Arbitrator would not necessarily wish to rely on him alone as regards details – for example, as to his personal swapping of the urine for the Athlete's fifth and last sample (2808680). But his narrative of how the anti-detection methodologies were developed and monitored, including discussion with Sports Ministry officials and liaisons, and their evolution (including urine swapping from the time when he diluted or added ingredients to make the B samples look like the A samples, to the supply of a tool to open and reseal official BEREK bottles by FSB "Magicians") was compelling.
85. Whilst Dr Rodhenkov was subject to proper criticism and his testimony on its own was probably too general and unspecific to make out the serious allegations against the Athlete to the requisite high standard, its headlines were not convincingly impeached despite the Athlete's extensive efforts.
86. Fourthly, taking each of the expert disciplines in turn, the Sole Arbitrator prefers the IAAF's to the Athlete's because in each case their expertise and work was obviously greater, their focus on the practical realities was more pertinent, and the countervailing criticisms seemed mainly theoretical and/or based on hypotheses which were often and mainly far-fetched.
87. This is the case, first, as regards Mr Sheldon's to Mr Rundt's on the authenticity of the copy documents including emails such as that of 2 August 2013 relating to the fourth sample (2810121) results. In the end, there was no dispute with Mr Rundt that to manipulate the date/time of the internal metadata of the documents in the EDP – a vast quantity apparently consistent with each other - would require either the resetting of the computer to falsely date/time each document, or some hypothetical software which neither expert could specify. Whilst Mr Rundt went so far as to suggest that such software could have been created and used, there was no support for this and the theoretical possibility, especially given the specific contents of so many documents, was highly implausible.
88. The Moscow Washout Schedules, once proved authentic, demonstrate the use of prohibited substances, as that was their entire purpose. It is consistent with such purpose that Dr Rodchenkov, who had developed the so-called "Duchess Cocktail" of prohibited steroids, should have expressed concern at the effects of other prohormones (with different washout rates and T/E ratios) as reflected in his email of 2 August 2013.
89. As for the evidence of sample swapping (as regards the last of the five results, in sample 2808680) the Sole Arbitrator is also satisfied as to this, based on the opinions of Prof Ayotte and Prof Champod, as well as Mr Rodhenkov's testimony regarding the practice in general.

90. As between Prof Ayotte and Prof Graham, the Sole Arbitrator is confident in preferring Prof Ayotte. It seemed to him, with respect, that Prof Graham floundered in seeking to defend his reports as regards the allegedly incredible information on the Moscow Washout schedules as regards washout rates and T/E ratios, as well as the obviously major difference between the specific gravities recorded for sample 2808680 in Moscow in August 2013 and in Lausanne in March 2017, which he simply misunderstood.
91. On the scientific plausibility of the successive results recorded on the Moscow Washout Schedules for the Athlete, the hearing showed Prof Ayotte in the Sole Arbitrator's judgment, as authoritative whereas the points made in Prof Graham's reports were successively withdrawn by him in cross-examination, so that by the end it could not be reasonably contended that the Moscow Washout Schedules were implausible or that the major change in the measured specific gravity of sample 2808680 was other than because it was swapped.
92. The Sole Arbitrator also accepts Dr Rodchenkov's testimony to the effect that the complicated technical procedures which might put in doubt a negative EPO result (thus abandoned in this case by the IAAF) are irrelevant as regards the reliability of the very different procedures for steroid testing (supporting the charges maintained in this case by the IAAF).
93. Mr Arnold was far more pugnacious in challenging Prof Champod's methodology and tests, but was also out-gunned not only in qualifications but also as regards his approach. It is correct that, in order to decide whether the sealed BEREK bottles could be opened and resealed, Prof Champod's teams initially tested bottles which had not been fully closed (to 15 "clicks"). But he then used a redesigned tool on fully closed bottles. (As to how the design and redesign accorded with Dr Rodchenkov's description was not further explored in the evidence.) The Sole Arbitrator further considers that enough bottles have been tested to support Prof Champod's conclusions.
94. Having done so, the key point was to compare the marks left on the inside of the tops with the bottle for the B sample 2808680. Those so-called "T" marks were indeed microscopic but the alternative hypotheses other than tampering, as put forward by Mr Arnold, were wholly unrealistic, especially in the context of doping control of which he appeared to know very little.
95. This became more-and-more obvious in his oral examination (in which one striking, and almost farcical episode, was when he attempted to improvise how the metal spring in the bottle top could be innocently worked loose with a finger and so cause similar scratches). Nor does the Sole Arbitrator accept the misconceived attack on Prof Champod and his teams for bias, by their instructions or at all.

96. As mentioned above, the IAAF's many strands of evidence are mutually supportive. Fifthly in this discussion, the Sole Arbitrator concludes that the last urine sample (2808680) was swapped, and that again is important corroboration of the information in the Moscow Washout Schedules regarding the Athlete's use of the prohibited substance which it was intended to conceal.
97. In the end, the violations of 2013 IAAF Rule 32.2 alleged by IAAF against the Athlete by way of the use of the Prohibited Substances are established to the Sole Arbitrator's comfortable satisfaction by reliable evidence and clear inferences therefrom, first as separate strands but then assessed as a whole: together they constitute compelling evidence.
98. The lack of first-hand evidence from those who personally provided and administered the Substances and tested and analysed the Athlete's samples in the washout programme directed by Dr Rodchenkov is far from fatal, and is evidentially made good by the context and corroboration for what the documents record. The Athlete's repeated denials and challenges, on the other hand, were exposed as empty, and his attempts at alternative scientific explanations for the facts were comprehensively refuted.

## **B SANCTIONS**

99. As set out above, under Rule 40 of the 2013 IAAF Rules, the period of ineligibility for a violation is two years, unless the conditions for eliminating or reducing or increasing it are met.
100. In this case there were multiple violations involving use of multiple anabolic steroids Methasterone and Methandrostenolone and other aggravating circumstances: the Athlete committed the anti-doping rule violations (a) as part of a highly sophisticated and resourced doping scheme; (b) to enjoy performance-enhancing effects at the world's most important competitions; and (c) engaging with other persons in flagrantly deceptive and obstructing conduct to avoid detection.
101. These aggravating circumstances justify the imposition of a period of ineligibility greater than the standard sanction of 2 years, up to a maximum of 4 years (unless the Athlete proves to the comfortable satisfaction of the panel that he did not knowingly commit the anti-doping rule violation, which is certainly not the case here).
102. In the judgment of the Sole Arbitrator, the circumstances of this case require imposition of suspension for the maximum period of 4 years notwithstanding that the Athlete's retirement in the meantime, in 2016, may render this nugatory. The Athlete is correct in

his submission that the focus must be on his individual role and circumstances, rather than the alleged extent of the Russian doping scheme as regards the involvement and benefit of others. However, that does not detract in any way from the extreme aggravation of the violations in his case. It is hard to imagine much worse for a doping cheat.

103. As for disqualification of results under Rule 40.8, the Athlete is again certainly correct that disqualification of all competitive results from the date of the anti-doping rule violation to the commencement of an ineligibility period (with all of the resulting consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money), is subject to considerations of fairness.
104. However, the absence of direct further evidence as to any later violations by the Athlete after the 2013 Moscow World Championships does not mean that disqualification of his subsequent results would be unfair. On the contrary, the likelihood is that his doping in July/August 2013 was intended to assist his future high-jumping career as well, and having been part of such a serious doping scheme, and one which must have been meticulously planned and implemented over a far-longer period than July/August 2013, is unlikely to have been a purely temporary aberration of temporary effect
105. Moreover, such disqualification is not a punishment as such. It is a justifiable remedy for the illicit consequences of his cheating in July/August 2013, insofar as that was intended to and did damage his sport and competitors, whose results and own careers were affected. In many ways the disqualification of his results at and following such a key event as the 2013 World Championship is a more important remedy, in the circumstances of this case, than otiose future ineligibility, since the Athlete is now retired.
106. The likelihood that his misconduct in relation to such a doping scheme was not limited to only a few weeks for one event and his retirement in 2016 should not allow him to escape from the sanctions available not only as regards ineligibility (which will now not affect him) but also the forfeiture of his results in and (logically and justifiably) after the 2013 Moscow World Championship, including the 2015 European Indoor Championships in Prague.
107. The Sole Arbitrator reasons here, on the one hand, the absence of any evidence of doping after 2013 and the harsh punishment that would be a disqualification through to the start of his ban, when the length of such disqualification exclusively depends on the length of the anti-doping procedure; and, on the other hand, the importance of his level of guilt, the damage caused to his competitors and history of sport as well as the absence of any real consequences of the imposed suspension.

108. Having weighed these parameters against each other, the Sole Arbitrator considers that the disqualification of all competitive results over a period of time of four years, i.e. the same duration as the period of ineligibility, is proportionate. Consequently, in accordance with Rule 40.8 of the 2013 IAAF Rules, the Sole Arbitrator finds that all competitive results obtained by the Athlete from 8 July 2013 until 7 July 2017 shall be disqualified with all resulting consequences, including the forfeiture of any titles, awards, points, prizes and appearance money.

### VIII. COSTS

109. The IAAF requested that the arbitration costs be borne entirely by the First Respondent RUSAF pursuant to Rule 38.3 of the 2016 IAAF Rules or alternatively, by the Respondents jointly and severally, and that the IAAF is awarded a contribution to its legal costs.

110. Article R64.4 of the Code provides that:

*"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."*

111. Article R64.5 of the Code provides that:

*"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings ... When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties"*.

112. According to Rule 38.3 of the 2016 IAAF Rules, the *"hearing shall proceed at the responsibility and expense of the Member"*.
113. Generally, although subject to exceptions, a contribution towards its legal fees and other expenses should be awarded to the party who prevails and in the present case that is IAAF and there are no exceptional grounds against its recovering legal expenses.
114. The Sole Arbitrator therefore, and taking account of all relevant matters, finds it just (a) that, in accordance with the IAAF's primary request, RUSAF should pay the arbitration

costs (which shall be determined and separately communicated to the parties by the CAS Court Office); (b) that each Respondent shall contribute the sum of CHF 2,500 (two thousand five hundred Swiss Francs) to the IAAF's fees and expenses; and (c) that RUSAF and the Athlete bear their own fees and expenses.

## **IX. APPEAL**

115. The present award may be appealed to CAS under Rule 42 of the 2016 IAAF Rules.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. CAS has jurisdiction to decide on the subject matter of this dispute and the Request for Arbitration of the International Association of Athletics Federations is admissible and is upheld.
2. Aleksandr Shustov is found guilty of anti-doping rule violations under Rule 32.2(b) of the IAAF Rules.
3. A period of ineligibility of four (4) years is imposed upon Aleksandr Shustov, commencing on the date of this Award.
4. All competitive results obtained by Aleksandr Shustov from 8 July 2013 to 7 July 2017 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).
5. The arbitration costs (to be determined and notified by the CAS Court Office) shall be paid by the Russian Athletic Federation.
6. The Russian Athletic Federation shall contribute the sum of CHF 2,500 (two thousand five hundred Swiss Francs) to the International Association of Athletics Federations' fees and expenses.
7. Aleksandr Shustov shall contribute the sum of CHF 2,500 (two thousand five hundred Swiss Francs) to the International Association of Athletics Federations' fees and expenses.
8. All other and further prayers or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 5 June 2020

**THE COURT OF ARBITRATION FOR SPORT**



Murray Rosen QC  
Sole Arbitrator