CAS 2021/O/8111 World Athletics (WA) v. Lebogang Shange

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Ms Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany
Arbitrators:	Mr Ulrich Haas, Professor and Attorney-at-Law in Zurich, Switzerland
	Mr Alexis Schoeb, Attorney-at-Law in Geneva, Switzerland

in the arbitration between

World Athletics (WA), Monaco

Represented by Mr Ross Wenzel of Kellerhals Carrard in Lausanne, Switzerland and Mr Tony Jackson, Deputy Head of Case Management, World Athletics, Monaco

Claimant

and

Lebogang Shange, South Africa

Represented by Mr Pierre Ducret of CMS of von Erlach Partners Ltd. in Geneva, Switzerland and Mr Japie van Zyl of Schweizer-Reneke and Potchefstroom, South Africa

Respondent

I. THE PARTIES

1. World Athletics (the "**Claimant**" or "**WA**"), formerly the International Association of Athletics Federations (**"IAAF"**), is the international governing body for the sport of athletics, recognised as such by the International Olympic Committee. It has its headquarters in Monaco.

2. Mr Lebogang Shange (the **"Athlete"** or the **"Respondent")** is a 31-year old race-walking athlete from South Africa. The Athlete is an International-Level Athlete for the purposes of the IAAF Anti-Doping Rules in their 2019 version (**"2019 IAAF ADR"**) and a member of the International Registered Testing Pool (**"IRTP"**) according to Article 1.8 (a) 2019 IAAF ADR.

3. The Claimant and the Respondent are collectively referred to as the "**Parties**".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 4 November 2019, at approximately 6:15 a.m. local time, the Athlete underwent an out-of-competition anti-doping control in Pretoria, South Africa, where he provided a urine sample (sample number 3139811, hereinafter referred to as the **"Sample"**). The Sample was taken approximately 10 hours after the Athlete had eaten two portions of beef comprised of braised and stewed meat at the Time Out Café in Pretoria.

6. The analysis of the Sample by the World Anti-Doping Agency ("**WADA**") accredited laboratory in Lausanne, Switzerland (the "**Laboratory**"), revealed the presence of Epitrenbolone (17α-trenbolone), a metabolite of Trenbolone, at a concentration of 0.4 ng/mL (the "**Adverse Analytical Finding**"). Trenbolone is listed as in S1.1a Exogenous Anabolic Androgenic Steroids of the World Anti-Doping Agency 2019 Prohibited List. It is a non-specified substance prohibited at all times (in- and out-of competition).

7. On 19 December 2019, the Claimant, by and through the Athletics Integrity Unit ("**AIU**"), notified the Athlete of his positive result and that he was considered to have committed violations of Articles 2.1 and 2.2 of the 2019 IAAF ADR. The AIU provisionally suspended him from any further competition and requested the Athlete to provide a written explanation for the Adverse Analytical Finding by no later than 5 January 2020.

8. By letter of 18 January 2020, the AIU repeated its request for the Athlete to provide a written explanation. On 10 February 2020 (after having been granted an extension), the Athlete, by and through his legal counsel, filed an explanation (the "**Athlete**

Explanation"), noting, in particular, that the source of the Epitrenbolone found in his Sample was contaminated meat ingested hours before the doping control:

- the Athlete regularly ate meat and, on the evening of 3 November 2019, ate dinner from a buffet at the Time Out Café situated at the High-Performance Centre of the University of Pretoria;
- the Athlete consumed two portions of beef of approximately 400g each comprising braised and stewed meat, which he asserted were sourced from "more inferior cuts of meat" such as the neck, chuck and brisket;
- Trenbolone is permitted for use as a growth promoter in the rearing of cattle in South Africa;
- most of the meat used by the Time Out Café is sourced from a company called Kalahari Cuts, which purchases its meat from the Doornplaat Group. The Doornplaat Group confirmed that it uses Trenbolone as a growth promoter in its feedlots; and
- it was therefore "highly likely" that the meat that the Athlete ate on 3 November 2019 was directly contaminated by a Trenbolone implant or that residues of Trenbolone were still present in the meat that he consumed.

9. On 24 June 2020 and 11 August 2020, following requests for additional information and evidence from the AIU, the Athlete provided the AIU with supplementary explanations, including two expert reports by Dr. Shaun Morris, a veterinarian feedlot specialist based in South Africa, dated 1 June 2020 and 30 July 2020 (the "**Morris Reports**").

10. On 4 June 2021, the Athlete filed an application to lift the Provisional Suspension with the AIU (**"Application to the AIU"**).

11. On 7 June 2021, the AIU issued its decision on the Application to the AIU (**"Decision of the AIU"**). The Provisional Suspension imposed on 19 December 2019 was lifted from 7 June 2021 until midnight of 29 June 2021 on the condition that the Athlete agreed, by no later than 8 June 2021, to the determination of the matter by way of an expedited procedural calendar whereby a decision could be rendered by the Court of Arbitration for Sport (**"CAS"**) within the context of a single hearing (subject to the approval of the WADA) before the Olympic Games in Tokyo.

12. On 8 June 2021, the Athlete agreed to the procedure proposed in the Decision of the AIU.

13. On 22 June 2021, the AIU informed the Athlete that he was charged with committing an Anti-Doping Rule Violation (**"ADRV"**) pursuant to Articles 2.1 and 2.2 of the 2019 IAAF ADR.

14. On 28 June 2021, after the Athlete had successfully qualified for the Olympic Games in Tokyo, the AIU requested WADA to consent to the present case being referred to the CAS for a single hearing. WADA confirmed its respective consent on the same day.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 29 June 2021, the Claimant filed a Request for Arbitration (serving as the Claimant's Statement of Claim) with the Court of Arbitration for Sport ("**CAS**") in accordance with Articles R38 and R44.1 of the CAS Code of Sports-related Arbitration (2020 edition) (the **"CAS Code"**). The Claimant proposed that the matter be submitted to a Panel composed of three arbitrators and nominated Prof. Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator.

16. The Request for Arbitration provided for an expedited procedural calendar previously agreed between the Parties (**"Procedural Calendar"**) as follows:

29 June 2021	World Athletics Request for Arbitration (serving as Statement of Claim) filed with the CAS
6 July 2021	Athlete to file Response to the Statement of Claim
13 July 2021	World Athletics to file Reply to Athlete Response
15 July 2021 or 16 July 2021 or 20 July 2021	Hearing to be held by video conference
22 July 2021	Operative Award to be issued by the CAS

17. By letter to the Parties dated 1 July 2021, the CAS Court Office, in accordance with the Procedural Calendar, invited the Respondent to submit his Answer by no later than 6 July 2021, including a statement on whether he agrees with the Claimant's nomination of Prof. Haas as arbitrator.

18. On 6 July 2021, the Respondent filed his Answer. The Respondent confirmed his agreement with the Claimant's proposal of a three-member Panel, and with the Claimant's nomination of Prof. Haas as arbitrator. The Respondent nominated Mr. Alexis Schoeb, Attorney-at-Law in Geneva, Switzerland, as arbitrator.

19. By letter of 7 July 2021, the CAS Court Office, in accordance with the Procedural Calendar, invited the Claimant to file its Reply by no later than 13 July 2021.

20. By e-mail of 9 July 2021, the Claimant requested an extension of one day, until 14 July 2021, to file its Reply because it had received the Answer of the Respondent belatedly. On the same day, the Respondent replied that he did not oppose to the Claimant's extension request provided that he would have one full day to review the Claimant's Reply before a potential hearing.

21. On 9 July 2021, the CAS Court Office granted the Claimant' requested extension for filing its Reply by 14 July 2021.

22. On 13 July 2021, the CAS Court Office informed the Parties that Ms. Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany, was appointed as President of the Panel

in accordance with Article R40.2 of the CAS Code. The Parties were informed that, unless any objection was raised by 15 July 2021 (noon CEST), it would be considered that no challenge was brought against Ms. Rombach.

23. On the same day, the Respondent informed the CAS Court Office of his intention to submit an additional expert report by Dr. Helmut Zarbl (the "**Zarbl Report**"), which he claimed he was unable to produce earlier because of the expedited Procedural Calendar.

24. On 14 July 2021, the Claimant filed its Reply and objected to the admission of the Zarbl Report and to the examination of Dr. Zarbl in a hearing. On the same day, Respondent submitted the Zarbl Report.

25. On 15 July 2021, the CAS Court Office acknowledged receipt of the Parties' respective shares of the advance on costs. In the same letter, in accordance with Article R40.3 of the CAS Code and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President:	Ms. Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany
Arbitrators:	Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland Mr. Alexis Schoeb, Attorney-at-Law in Geneva, Switzerland

26. On 16 July 2021, the CAS Court Office, on behalf of the Panel, transmitted the Order of Procedure to the Parties which was duly signed and returned by the Parties on the same date. The Parties were informed that a hearing would be held on 20 July 2021 via videoconference in accordance with the Procedural Calendar and Article R44.2 of the CAS Code.

27. On 19 July 2021, the CAS Court Office informed the Parties that the Panel had decided to admit the Zarbl Report to the file and to grant the Claimant the opportunity to provide additional comments to the report by 11 p.m. (CEST) on that date.

28. In the evening of 19 July 2021, the Claimant submitted a second expert report from Prof. Christiane Ayotte in response to the Zarbl Report.

29. On 20 July 2021, a hearing via video-conference was held. The Parties did not raise any objection as to the composition of the Panel.

30. In addition to the Panel and Ms Andrea Sherpa-Zimmermann, Counsel at the CAS, the following persons attended the video hearing:

For the Claimant:	Mr Ross Wenzel, Counsel Mr Tony Jackson, AIU Mr Virenda Rajput, AIU Legal Intern Professor Christiane Ayotte, Expert Professor Edward Webb, Expert
For the Respondent:	Mr Lebogang Shange, Athlete Mr Pierre Ducret, Counsel Ms Chamsi Diba, Counsel (Trainee)

Mr Japie van Zyl, Counsel
Dr. Helmut Zarbl, Expert
Dr. Shaun Morris, Expert

31. The hearing began at 11:00 am (CEST) and ended at 6:47 pm (CEST) without any major technical interruption or difficulty.

32. At the beginning of the hearing, the Respondent requested the possibility to examine Dr. Tiia Kuuranne, Director of the Laboratory, to which the Claimant objected. After internal deliberations, the Panel informed the Parties that it would not allow Dr. Kuuranne's oral witness testimony, for the reasons set out in more detail below at **VIII.**

33. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The Parties and the Panel had the opportunity to examine and cross-examine the Athlete and the experts. After the Parties' final and closing submissions, the Athlete was offered the opportunity to make a final statement, which he chose not to do. Then the hearing was closed and the Panel reserved its detailed decision for this written Award.

34. Upon closing the hearing, the Parties stated that they had, in principle, no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Respondent, however, upheld his objection in respect of his denied opportunity to examine Dr. Tiia Kuuranne as a witness.

35. On 22 July 2021, the CAS issued the Operative Award to the Parties in accordance with the Procedural Calendar.

36. The Panel had carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

IV. THE POSITION OF THE PARTIES

37. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. THE CLAIMANT'S POSITION

38. The Claimant submits the following in substance:

- The Respondent's allegation that the level of Epitrenbolone found in his Sample was caused by the ingestion of 800g of stewed beef the night before the doping control is unpersuasive and cannot explain the Adverse Analytical Finding.
- It is already rather unlikely that the Respondent ingested 800g (nearly two pounds) of meat for dinner the night before the Sample was taken. The Respondent's

additional submission that the urine he provided for the Sample was his first urination of the day is equally implausible. This is particularly true in light of the presence of 225 µg/mL of an ethanol metabolite in his Sample, which indicates that the Athlete had consumed alcohol together with the meal. Alcohol is well-known for its diuretic effects.

- Even accepting that the Respondent ate 800g of meat, the level of Trenbolone potentially ingested is, according to Claimant's expert Prof. Ayotte, insufficient to explain the presence of 0.4 ng/mL of Epitrenbolone in his Sample. The found concentration of Epitrenbolone is rather entirely consistent with the intentional ingestion of Trenbolone.

- The use of growth promoters (such as Trenbolone) in the meat production in South Africa is permitted and regulated by the Department of Agriculture Land Reform and Rural Development. This includes prescribing maximum residue levels of hormones permitted in meat, which, according to the South African Fertilizers, Farm Feeds, Seeds and Remedies Act, 36 of 1947, is 2ng/g in muscle and 10ng/g in liver for Trenbolone in beef.

- According to an independent study by Merck Sharpe & Dohme, a manufacturer of growth promotants (Revalor H) which are used in South Africa, the residue level data confirms the mean concentration of Trenbolone metabolites detected in meat (muscle) are in the pictogram per gram (pg/g) range and therefore significantly below the level of Epitrenbolone found in the Athlete's Sample. It is also well below the maximum residue levels permitted by the South African legislation.

- As the expert Prof. Webb confirmed, there is a strict regulatory regime for the production and inspection of meat in South Africa by virtue of the Meat Safety Act 2000 and the associated Red Meat Regulations. The abattoir used by the Doornplaat feedlot is subject to mandatory, independent inspection of all carcasses by trained, qualified meat inspectors before the meat can be dispatched for human consumption.

- According to a year-long study of over 25,000 cattle carcasses in a comparable high-throughput abattoir in South Africa, not a single carcass was identified as having misplaced implant or multiple simultaneous Trenbolone implants. Both the ear into which a Trenbolone implant is injected subcutaneously and the head of the cattle are routinely separated from the rest of the carcass during slaughter and are not sold together with the rest of the carcass. The same procedure applies when an animal is subject to an emergency slaughter.

- The theoretical possibility of a misplaced implant occurring and the Athlete eating that injection site must be as remote as a *"lightning strike"* (a terminology used by the Respondent's expert Dr. Zarbl).

- As a result, the Athlete did not demonstrate that the ADRV was not intentional. As a consequence, the appropriate period of ineligibility is four years. In light of the fact that the Respondent failed to establish the origin of the prohibited

substance, the 2019 IAAF ADR provisions requiring a finding of No Significant Fault or Negligence are not applicable.

39. The Claimant requests the following relief:

"(i) The CAS has jurisdiction to hear this arbitration.

(ii) The Athlete is found to have committed anti-doping rule violations pursuant to Rule 2.1 and Rule 2.2 of the Rules.

(iii) The Athlete is subject to a period of Ineligibility of four (4) years for the anti-doping rule violations.

(iv) The period of Ineligibility shall commence on the date of the CAS award with credit for the period of Provisional Suspension imposed from 19 December 2019 until 7 June 2021 and from 30 June 2021.

(iv) All competitive results obtained by the Athlete from 4 November 2019 shall be disqualified (with all the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money).

(v) The Athlete shall bear the arbitration costs of these proceedings, if any.

(vi) The Athlete shall be ordered to contribute to the legal and other costs incurred by World Athletics."

B. THE RESPONDENT'S POSITION

40. The Respondent submits the following in substance:

- The level of Epitrenbolone found in his Sample was caused by the ingestion of two portions of approximately 400 grams of cattle meat/beef (comprised of braised/stewed meat which was sourced from the more inferior meat cuts such as neck, chuck and brisket) at the Time Out Café the night before the doping control. The Respondent is a regular meat eater. The urine he provided for the Sample was the Respondent's first urination of the day.

- The meat served in the Time Out Café (including the meat the Respondent ate for dinner the night before the doping control) is sourced from a company called Kalahari Cuts, which purchases its meat from the Doornplaat Group. Like most livestocks in South Africa, the Dornplaat Group uses Trenbolone as a growth hormone in its feedlots. Similarly, the meat the Respondent obtained from two street vendors on a daily basis in the weeks before the doping control was also sourced from Trenbolone using suppliers (Cavalier and Beefcor).

- In the South African meat industry, specific growth promoter products with a slow release of Trenbolone (e.g. Revalor-H or Synovex Plus) have been lawfully used for over 30 years in order to fatten the cattle and to promote muscle growth. 95%

of the cattle in South African feedlots is treated with a Trenbolone containing implant. A single livestock can be treated up to three times with Trenbolone implants during its lifetime.

- The industry norm is to place the Trenbolone implant behind the ear of the livestock at least 70 days before the animal is slaughtered. This industry norm is, however, not always followed by the farmers. There are common practices which increase the risk of residues of the Trenbolone implant remaining in the meat subsequently eaten by customers:
    - Trenbolone implants can be (intentionally or unintentionally) misplaced. Farmers may, for economic gain, consider placing Trenbolone implants not behind the ear, but directly into the muscle. Misplaced implants are not visible on the surface of the carcasses, so the risk that they would not be detected during an inspection is very high. Meat inspections do not focus on the detection of foreign objects in skeletal muscle;
    - Farmers may even put more Trenbolone implants than legally permissible into the cattle to increase the average daily mass gain;
    - The Trenbolone implants are commonly implanted 70 days before the cattle are slaughtered and have a payout period of up to 120 days after the implant. As the Trenbolone works directly in the muscle of the animal and has a 50-day payout period remaining after the animal has been slaughtered, residues of Trenbolone shall in all probabilities be found in all meat sold from such animal. The earlier the animal is slaughtered after the implant (e.g. in case of emergency slaughter), the higher the Trenbolone level.
- Misplaced Trenbolone implants can lead to residue levels in urine consistent with the estimated 0.4 ng/mL of Epitrenbolone found in the Respondent's Sample. There is a likelihood that the Trenbolone implant could have been placed directly into the part of the meat that the Respondent consumed.
- Moreover, the ears of the animal are not always discarded after slaughter. Ears may be sold with the cut or the quarter of the meat. Certain traditional African meat dishes are made from such cut that includes the ears of the animal. This also increases the risk of residues of Trenbolone in meat consumed by end customers.
- CAS jurisprudence has acknowledged the fact that, as a result of cattle farming, it is possible to find meat contaminated with steroids of any kind. In comparison to the EU and the USA, the South African meat industry lacks a proper meat inspection system. Meat inspections are mainly performed by the private sector and not by the national regulatory authorities. The lack of supervision widely opens the floor for the misuse of Trenbolone implants by farmers.
- According to Respondent's expert Dr. Morris, the Doornplaat Feedlot is not part of the National Residue Monitoring Program. This means that the carcasses are not monitored by government appointed officials. The carcasses are sold with the

head of the cow. When a carcass is sold, the pellet injected as the growth hormone will still be in the carcass. It is not removed. All meat dishes made from where the pellet has been injected will contain the pellet.

- During his career, the Respondent had been undergoing numerous doping tests, all of which proved negative. Shortly after his Adverse Analytical Finding, he underwent an in-competition anti-doping control. Because the Respondent had abstained from eating red meat for the last two days before the competition, the sample was negative.

- The estimated concentration of 0.4 ng/mL of Epitrenbolone found in the Respondent's Sample is extremely low. The Minimum Required Performance Level (**"MRPL"**; minimum concentration of a prohibited substance or metabolite that WADA-accredited laboratories must reliably detect and identify) for Trenbolone is 5 ng/mL. According to the Zarbl Report, this means if the Sample had been tested at another laboratory with a MRPL of 1 ng/mL, it would have been reported as a negative, which raises issues of inconsistency and fairness. The assumptions of Prof. Ayotte and her data are insufficient, inaccurate and unscientific.

- Due to the lack of supervision in the South African meat industry, it is not possible for the Respondent to further determine the actual levels of Trenbolone in South African beef cattle. The Respondent has nevertheless submitted sufficient proof on how the prohibited substance entered his body.

- When considering the Respondent's explanations, the aim of the anti-doping rules needs to be taken into account. WADA recently published a Stakeholder Notice regarding meat contamination (30 May 2019) to ensure that meat contamination cases are dealt with fairly. Therefore, it can never be the intention of the Claimant nor WADA to find an athlete guilty on one fact – a low level positive finding – as an intentional cheat.

- The Respondent's conduct was unintentional because, at the time the Sample was taken, the Respondent has never even heard of Epitrenbolone or the use of Trenbolone in livestock. The Respondent did not commit any fault or negligence so that the period of ineligibility should be eliminated. Alternatively, the period of ineligibility should be reduced based on the fact that such fault or negligence was not significant.

41. In his Answer, the Respondent requests as his relief that the Panel:

"(i) Dismisses the claimant's claim;

(ii) Finds that the respondent bears no fault or negligence and eliminates his period of ineligibility so that he is immediately eligible to compete.

In the alternative:

Finds that the respondent's use of Trenbolone was unintentional and that his

period of ineligibility must be reduced to 18 months, backdated to 4 November 2019, the date of the sample collection.

(iii) Orders that the claimant must pay the costs of the arbitration and contribute to the costs of the respondent.

(iv) Orders any other relief for the respondent that the panel deems to be just and equitable, including an award of fees and costs in part or in whole."

V. JURISDICTION

42. Article 8.6.1 of the current World Athletics Anti-Doping Rules 2021 (the **"2021 WA ADR"**), which is applicable to the present proceedings (according to the principle of *tempus regit actum* – procedural matters are governed by the regulations in force at the time of the procedural act in question), reads as follows:

"Pursuant to Article 8.5 of the Code, anti-doping rule violations asserted against International-Level Athletes and other Persons may, with the consent of the Athlete or other Person, the Integrity Unit and WADA, be heard in a single hearing directly at CAS under CAS appellate procedures, with no requirement for a prior hearing, or as otherwise agreed by the parties."

43. The Respondent is an International-Level Athlete. Article 1.8 of the 2019 IAAF ADR provides that an International-Level Athlete includes an Athlete who is in the IRTP. On 4 November 2019 (the date of the doping control), the Athlete was a member of the IRTP (see above at para. 2) and was, therefore, an International-Level Athlete for the purpose of Article 8.6.1 of the 2021 WA ADR. The Athlete, the AIU and the WADA expressed their consent to the present case being heard directly by CAS with no requirement for a prior or first instance procedure.

44. The Panel, consequently, has jurisdiction to decide on the Request for Arbitration filed against the Respondent.

45. The Parties further confirmed that CAS has jurisdiction by execution of the Order of Procedure.

VI. ADMISSIBILITY

46. The Claimant's Request for Arbitration complies with the requirements of Article R38 of the CAS Code as well as with the time limit imposed on the Claimant by the Procedural Calendar (see above at para. 17). Respondent has also not disputed the admissibility of the Request for Arbitration. Accordingly, the Panel deems the Request for Arbitration admissible.

VII. APPLICABLE LAW

47. The Claimant maintains that the substantive aspects of the asserted ADRV shall be

governed by the 2019 IAAF ADR. To the extent that the 2019 IAAF Rules do not deal with a relevant issue, Monegasque law shall apply (on a subsidiary basis) to such issue.

48. The Respondent concurs with the Claimant's view and relies on Article R45 of the CAS Code and Articles 13.9.4 and 13.9.5 of the 2019 IAAF ADR.

49. Article R45 of the CAS Code, which addresses the issue of the applicable law in Ordinary Arbitration proceedings before CAS, reads as follows:

"The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide ex aequo et bono."

50. Articles 13.9.4 and 13.9.5 of the 2019 IAAF ADR provide:

"13.9.4 In all CAS appeals involving the IAAF, the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Rules and Regulations). In the case of conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.

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

51. In accordance with these provisions, the Parties agree that the case shall be governed by the relevant IAAF rules and regulations, *i.e.* the 2019 IAAF ADR.

52. The Panel shall therefore apply the 2019 IAAF ADR in the present matter, and subsidiarily Monegasque law.

VIII. OTHER PROCEDURAL ISSUES

53. At the beginning of the hearing, the Respondent requested the right to examine Dr. Tiia Kuuranne, Director of the Laboratory, about the explanations provided in her letter dated 12 December 2019 to the AIU, in particular regarding the estimation of the Epitrenbolone concentration found in the Athlete's Sample.

54. According to Article R44.2, para. 5 of the CAS Code, the Panel did not find it necessary to examine Dr. Kuuranne because the Panel considered such testimony to be irrelevant. Dr. Kuuranne's standard letter about the Epitrenbolone concentration in the Athlete's Sample speaks for itself and is clear in itself. The Athlete, who had been in possession of the document package (including Dr. Kuuranne's letter) for quite some time, did not challenge or even address the letter before the hearing. The Respondent did not make the alleged significance of Dr. Tiia Kuuranne's testimony clear until the hearing, neither did he contest the level of Epitrenbolone in the Sample.

IX. MERITS

55. In consideration of the Parties' submissions, the main issues to be resolved by the Panel are the following:

A. Did the Athlete commit an ADRV, *i.e.* violate Articles 2.1 and 2.2 of the 2019 IAAF ADR?

B. In case the first question is answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

A. DID THE ATHLETE COMMIT AN ADRV?

56. The Athlete has been charged with violating Articles 2.1 and 2.2 of the 2019 IAAF ADR, which read as follows:

> ***"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample***
>
> *2.1.1 It is each Athlete's duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1.*
>
> *2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*
>
> *2.1.3 Except for those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an Anti-Doping Rule Violation.*
>
> [...]
>
> ***2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method***

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an Anti-Doping Rule Violation to be committed."

57. Article 3 of the 2019 IAAF ADR determines the follows:

"3.1 Burdens and Standards of Proof

The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules places the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to Anti-Doping Rule Violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable at hearings in doping cases under these Anti-Doping Rules:

[…]

3.2.3 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in compliance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding. In such an event, the IAAF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding."

58. Article 4 of the 2019 IAAF ADR provides for the following:

"4.1 Incorporation of the Prohibited List

4.1.1 These Anti-Doping Rules incorporate the Prohibited List, which is published and revised by WADA as described in Article 4.1 of the Code."

59. Epitrenbolone is a metabolite of Trenbolone, a prohibited substance listed under S.1.1a Exogenous Anabolic Androgenic Steroids of the 2019 WADA Prohibited List. It is a non-specified substance prohibited at all times (in- and out-of competition). No quantitative threshold is identified for Epitrenbolone, which means that the presence of any quantity (including the 0.4 ng/mL detected in the Athlete's Sample) constitutes an ADRV.

60. The Respondent has not disputed the Adverse Analytical Finding. Similarly, the Respondent was undisputedly not in possession of a Therapeutic Use Exemption. The only challenge the Athlete put forward (relying on a statement made by his expert Dr. Zarbl) in respect of the presence of 0.4 ng/mL Epitrenbolone in his Sample is that not all laboratories would have detected the low quantity of 0.4 ng/ml, and that it raises issues of inconsistency and fairness if the Athlete was sanctioned for an Adverse Analytical Finding that would have remained undiscovered in other (WADA-accredited) laboratories. In supporting his argument, the Respondent relies on the WADA Technical Document TD2018 MRPL, which establishes the so-called Minimum Required Performance Levels, or MRPLs. The document describes an MRPL as a "*minimum concentration of a Prohibited Substance or Metabolite of a Prohibited Substance or Marker of a Prohibited Substance or Method that Laboratories shall be able to reliably detect and identify in routine daily operations*" (WADA Technical Document TD2018, p. 1). According to Dr. Zarbl, the MRPL for Epitrenbolone is 5 ng/ml, which is more than ten times higher than the quantity of Epitrenbolone found in the Athlete's Sample.

61. The Panel finds that this argument is without merit. The MRPL does not determine the material threshold for the determination of an Adverse Analytical Finding. The material threshold is governed by Article 2.1.3 of the 2019 IAAF ADR, which establishes that the presence of "any" quantity of a prohibited substance (including Epitrenbolone) shall, in principle, constitute an ADRV. This is confirmed by the WADA Technical Document TD2018 MRPL itself, which makes it clear (p. 1) that the "*MRPL is not a threshold (T) nor is it a Limit of Detection (LOD)*" and that "*Adverse Analytical Findings may result from concentrations below the established MRPL values*". Therefore, the Athlete's premise that he should benefit from alleged differences in the technical equipment and capabilities of detection of WADA-accredited laboratories is ill-founded from the outset. The Athlete's premise would lead to the consequence that the "weakest" laboratory in terms of detection capability would set the standard for the determination of an Adverse Analytical Finding. Such a concept would severely harm the fight against doping.

62. Dr. Zarbl's related allegation that Trenbolone is a "*long lived environmental contaminant*", which increases the risk that its metabolites are detected in low quantities in the human body as a result of the consumption of (contaminated) meat has been rebutted by the statistical data of doping laboratories presented by Claimant's expert Prof. Ayotte. According to the numbers presented in Prof. Ayotte's expert reports, the increased capabilities of laboratories to detect even minimum quantities of Epitrenbolone in human urine samples has not resulted in an increase of Adverse Analytical Findings. In South Africa, only 5 Trenbolone cases were reported in the past 3 years, with levels similar to the level found in the Athlete's Sample. In the United States and Canada, only

7 samples analysed in Prof. Ayotte's laboratory (which analyses appr. 38,000 samples per year) since 2013 revealed the presence of Epitrenbolone, and no positive finding for Epitrenbolone was reported since the end of 2019.

63. Hence, the Panel is not persuaded by the Athlete's explanations that attempt to challenge the Adverse Analytical Finding. As a result, the Panel concludes that the Respondent committed an ADRV within the meaning of Article 2.1 and Article 2.2 of the 2019 IAAF ADR.

B. WHAT IS THE APPROPRIATE SANCTION TO BE IMPOSED ON THE ATHLETE?

64. Having found that the Respondent committed an ADRV, the Panel moves to examining the consequences that must be drawn from such finding.

65. The Panel notes that in the present case, the Athlete argues that i) he bears no fault or negligence and thus that his period of ineligibility must be eliminated pursuant to Article 10.4 of the 2019 IAAF ADR and ii) that, in any event, his ADRV was not intentional pursuant to Articles 10.2.1 and 10.2.3 of the 2019 IAAF ADR. In support of these conclusions, the Athlete exclusively claims that he ate meat the night before the Sample was taken and that this meat was contaminated by Trenbolone.

1. The standard duration of the Ineligibility Period

66. Article 10.2 of the 2019 IAAF ADR provides that the sanction to be imposed for anti-doping rule violations under Article 2.1 of the 2019 IAAF ADR (*presence*) and Article 2.2 of the 2019 IAAF ADR (*use*) is as follows:

> *"The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*
>
> *10.2.1 The period of Ineligibility shall be four years where:*
>
> *(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.* [...]"

67. Trenbolone is not a specified substance. The standard Period of Ineligibility should therefore be four (4) years pursuant to Article 10.2.1 (a) 2019 IAAF ADR, unless the Athlete can establish that the ADRV was not intentional.

68. Article 10.4 of the 2019 IAAF ADR provides that

> *"If an Athlete or other Person establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated".*

69. The Panel should thus consider whether the Athlete "*bears No Fault or Negligence*" (10.4) or whether it can be directly established that the ADRV "*was not intentional*" (10.2.1 a)).

2. Burden and Standard of Proof

70. The Athlete bears the burden of establishing that the violation was not intentional (Art. 10.2.1 a) of the 2019 IAAF ADR and/or that he bears no fault or negligence.

71. In accordance with Article 3.1 of the 2019 IAAF ADR, to rebut the presumption the standard of proof is the balance of probabilities:

"[...] *Where these Anti-Doping Rules places the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*"

72. The Panel notes that this standard requires the Athlete to convince the Panel that the occurrence of the circumstances on which the Athlete relies is more probable than their non-occurrence (*see* CAS 2016/A/4377, at para. 51).

3. The object of the evidence: source and route of ingestion

73. In theory, unlike for "no fault" or "no significant fault" (Articles 10.4 and 10.5 of the 2019 IAAF ADR), the Athlete does not necessarily need to establish how the substance entered his system in order to claim that the ADRV was not intentional. However, CAS jurisprudence commonly finds that it is very difficult to rebut the presumption of intent without showing how the prohibited substance entered the Athlete's system (see CAS 2021/O/7977). This is confirmed by the official comment to Art. 10.2.1.1 of the 2021 WADA Code, which sets forth that "*it is highly unlikely that* [...] *an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance*".

74. Therefore, both under Article 10.2.1 a) (absence of intention) and Article 10.4 (No Fault or Negligence), an athlete would principally need to establish how the prohibited substance entered his body, on the basis of the "balance of probability" standard (e.g. CAS 2017/A/5248; CAS 2017/A/5295; CAS 2017/A/5335; CAS 2017/A/5392; CAS 2018/A/5570).

75. In the case at hand, the only explanation submitted by the Athlete (meat contamination) is indeed relevant both to justify that he did not act intentionally but also to show that he acted with "no fault". In this sense, it would be contradictory to accept a particular route of ingestion in the analysis of the Article 10.2.1 of the 2019 IAAF ADR and reject the same route of ingestion in the context of Article 10.4 of the 2019 IAAF ADR. Therefore, the Panel finds that the position held by the Athlete regarding the source and route of ingestion of Epitrenbolone should be equally relevant in both situations in the present case.

76. To establish the origin of the prohibited substance, it is not sufficient for an athlete to merely protest his or her innocence and suggest that the substance must have entered his or her body inadvertently from a supplement, medicine, or other product (e.g. *Jonathan Taylor*, Assessing Contamination And Thresholds Under The World Anti-Doping Code: An Advocate's View On Lawson v IAAF, 2020). Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication, or other product that the athlete has taken has contained the substance in question (e.g. CAS 2017/A/5248).

77. However, the Panel notes that other CAS awards - notably CAS 2019/A/6313 on which the Athlete referred substantially, but also CAS 2016/A/4534, CAS 2016/A/4676 & CAS 2016/A/4919 - have found that in *"extremely rare"* cases, an athlete might be able to demonstrate a lack of intent (not, however, a lack of "fault" or "significant fault") even where he/she cannot establish the origin of the prohibited substance. The CAS 2016/A/4534 award refers to the *"narrowest of corridors"* and the CAS 2016/A/4676 & CAS 2016/A/4919award stated that *"in all but the rarest cases the issue is academic"*. In the CAS 2019/A/6313 award, the Panel found *"that the so-called "corridor" must be sufficiently narrow to prevent intentionally doped athletes with a means of evading due sanctions, yet still wide enough to allow unintentionally doped athletes an opportunity to exculpate themselves by means of relevant and convincing evidence."* On the basis of a *"rare set of facts"*, the CAS 2019/A/6313 panel found that, although the likelihood that the portion of beef consumed by the Athlete contained any Trenbolone was – in the abstract – small, this was not *"the end of the story"*, because the other elements of the Athlete's proof of lack of intent were in fact so overwhelming that the panel concluded that contaminated meat was more likely than not the origin of the Epitrenbolone found in the athlete's body in that specific case (CAS 2019/A/6313). Another CAS panel described the need to present compelling evidence in cases where the source of the prohibited substance cannot be established as follows (CAS 2017/A/5248,):

> *"[...] According to CAS praxis, an athlete should then establish lack of intention with other robust evidence, such as the possibility that the prohibited substance came from a specific product, the athlete's credible testimony, evidence by the athlete's doctors that the athlete had no intent to use a prohibited substance, and the implausibility of a scenario that the athlete intentionally used prohibited substances."*

78. Despite the approach of the CAS 2019/A/6313 panel to open the *"corridor"* for exculpation even where an athlete is unable to demonstrate that the meat he ingested contained a prohibited substance, this panel expressly acknowledged that the Anti-Doping Organisation does not have the burden *"to hypothesise, still less prove"* an alternative source, and that the athlete must adduce specific evidence (as opposed to mere speculation) for his innocence (CAS 2019/A/6313, para. 50).The Panel would like to emphasize that accepting the possibility to open the *"corridor"* to demonstrate the absence of intention in *"extremely rare cases"* must never blur the cornerstone principle that a mere "possibility" is not enough, and that a panel must be satisfied on the balance of probabilities in all cases (including meat contamination cases) that the prohibited substance entered the athlete's body through a contaminated product, see, e.g., CAS OG 16/25:

> *"... the nature and quality of the defensive evidence put forward by the athlete, in light*

of all the facts established, must be such that it leaves the tribunal actually satisfied (albeit not comfortably so) that the athlete's defence is more likely than not [to be] *true*". [Emphasis added]

79. Hence, for the Panel to let the Athlete pass through the *"narrowest of corridors", i.e.* to find a lack of intent even where he cannot scientifically prove that the meat he consumed was contaminated, it must be satisfied, on the basis of the evidence on record, that it is more likely than not that meat contamination is the reason for the Athlete's Adverse Analytical Finding (see also, e.g., CAS 2020/A/7068).

4. Did the Athlete rebut the Presumption of his ADRV being Intentional?

80. As a starting point for the discussion whether or not the Athlete met his burden of proof to show on a balance of probabilities that the meat he consumed the night before his doping test was contaminated with Trenbolone, the Panel finds it useful to summarize the facts on which the Parties either expressly agreed, or which have not been challenged by either party during the proceedings:

- On the evening of 3 November 2019, the Athlete had dinner at the Time Out Café. He consumed two portions of beef comprising braised and stewed meat that was sourced from "*more inferior cuts of meat*", such as the neck, chuck and brisket.

- Most of the meat used by the Time Out Café is sourced from a company called Kalahari Cuts, which purchases its meat from the Doornplaat Group. The Doornplaat Group uses Trenbolone as a growth promoter in its feedlots.

- Trenbolone is permitted for use as a growth promotor in the rearing of cattle in South Africa, and it is, in fact, widely used. The use of Trenbolone is regulated by the Department of Agriculture Land Reform and Rural Development. This includes the prescription of maximum residue levels of hormones permitted in meat.

- When used properly and in compliance with the applicable rules and regulations, Trenbolone in livestock farming does not leave residues in edible meat at a quantity that could explain the level of Epitrenbolone found in the Athlete's sample. This presumption has not been challenged by the Athlete, and his expert Dr. Zarbl confirmed in his report that it requires some form of illicit use to explain the existence of the level of Epitrenbolone found in the Athlete's body. The uncontested data presented by Prof. Ayotte for the United States and Canada further demonstrates that the analysis of roughly 300,000 samples analysed at WADA-accredited laboratories between 2013 and 2020 revealed only 7 positive findings for Trenbolone, with 5 samples that were not related to meat contamination because they contained other prohibited substances.

- Pursuant to the applicable rules and regulations, it is standard practice in South Africa that the Trenbolone implant (pellet) is being placed under the skin behind the ear of the cattle, at least 70 days before the cattle's slaughter.

- The production and inspection of meat in South Africa is governed by the Meat Safety Act 2000 and the associated Red Met Regulations. In accordance with this legislation, abattoirs (including the abattoir used by the Doornplaat feedlot that supplied the meat to the Time Out Café where the Athlete ate) are subject to mandatory, independent inspection of all carcasses by trained, qualified meat inspectors before the meat can be dispatched for human consumption.

81. In light of these undisputed facts, it becomes clear that only a form of illicit or irregular use of Trenbolone on cattle, together with a misadministration of legal inspection requirements, could possibly explain the Athlete's Adverse Analytical Finding. The discussion of various scenarios of improper use of Trenbolone was at the centre of the discussion between the Parties and their experts during the oral hearing. The main scientific debates were between Prof. Edward Webb and Dr. Shaun Morris as regards to the possibility or likelihood of Trenbolone hormone implants being mistakenly injected, and between Prof. Christiane Ayotte and Dr. Helmut Zarbl as to the possibility or likelihood of hormone residues being present in a stew in sufficient concentration to cause the Athlete's ADRV.

82. The following three scenarios of illicit or irregular use of Trenbolone on cattle as a potential explanation for the Epitrenbolone level found in the Athlete's body formed the subject of the scientific debate at the hearing:

(1) The implant of more than one pellet of Trenbolone into the cattle (as opposed to only one treatment being permitted by law) ("**Scenario 1**");

(2) Early slaughter of an animal, e.g. emergency slaughter that happens earlier than the 70 days minimum period that should elapse after the Trenbolone implant ("**Scenario 2**");

(3) Misplacement of a Trenbolone implant, i.e. an implant that is not injected into the cattle's ear, but directly into the cattle's muscle that will later be distributed to (end) customers ("**Scenario 3**").

83. With respect to Scenario 1, the Panel concludes that the assumed treatment of cattle with more than one Trenbolone pellet at a time is not a plausible (let alone a probable) explanation for the Athlete's ADRV. First, there is no evidence that additional pellets are injected at feedlots of the Doornplaat Group. While Dr. Morris, who has regularly visited the feedlots at Doornplaat, testified that the treatment with more than one pellet occasionally happens in South Africa, he has not testified that he observed this practice being administered at Doornplaat feedlots. Second, the Panel is satisfied by Prof. Webb's testimony that animals who receive multiple excessive doses of Trenbolone will not respond to the higher amount of the substance; there is no additional benefit for the growth of the animal in implanting more Trenbolone pellets than prescribed by the rules. Third, the Panel understands that not even largely excessive doses of Trenbolone in meat could have resulted in the level of Epitrenbolone found in the Athlete's Sample. A direct link between the assumed mistreatment of cattle and the Adverse Analytical Finding is all the more unlikely in light of the fact that the Athlete ate a stew comprised of different parts of meat, and of different animals. As a result, the Panel finds that Scenario 1 cannot explain the Athlete's ADRV.

84. The same accounts for Scenario 2, which assumes that meat from cattle that was slaughtered early as a result of an emergency enters the commercial food supply. The Athlete maintains that he possibly ate meat from an animal that was slaughtered well before the 70 days period which usually elapses between the administration of a Trenbolone injection and the slaughter of the cattle. The Panel is, however, persuaded by the expert evidence on record that the early slaughter does not scientifically result in higher Trenbolone residue concentrations in the cattle. As Prof. Webb has explained on the basis of various studies, the highest concentration of Trenbolone in the bodies of steers and heifers have been measured between day 70 and day 105 after the implant. Prof. Ayotte also confirmed that Trenbolone is a slow-release product that is disbursed over time and not in one moment after the injection. While Dr. Morris stated the contrary, namely that it is a fast-release product, he did not offer any scientific support for this assumption (as opposed to Prof. Webb). Hence, the Panel finds that early slaughter is not (scientifically) an even possible explanation for an Adverse Analytical Finding. Furthermore, the Panel notes that it would also not make any commercial sense for farmers to slaughter their cattle early. There is no incentive in doing so, and where a livestock is subject to an emergency slaughter due to sickness, it is highly unlikely that the meat from a sick animal would even be released into the market (as confirmed by Prof. Webb). Finally, as with Scenario 1, the fact that the Athlete's meal was comprised of meat from different animals makes it close to impossible that the entire stew was contaminated.

85. Scenario 3 assumes that a Trenbolone pellet was misplaced, either accidentally close to the ear area (where it is supposed to be placed) or intentionally (since it is far away from the ear) directly into the muscle. The Panel is convinced that an accidental misplacement of the Trenbolone pellet into the head or close to the head in the neck area cannot explain the Adverse Analytical Finding, because the head is usually discarded after slaughter, which means that this part of the animal does not get released into the supply chain. Furthermore, the Athlete has not established that his stew contained parts of the animal's head, and any assumption to the contrary would be mere (insufficient) speculation.

86. The only sub-scenario that could theoretically explain the Athlete's Adverse Analytical Finding is the intentional misplacement of the Trenbolone implant directly into the muscle of the cattle. The experts have agreed during the hearing that a person eating meat that contains the injection site, or meat which directly surrounds the injection site, could potentially show the Epitrenbolone levels found in the Athlete's Sample. Based on the record before it, the Panel is, however, not prepared to draw such a conclusion. In the Panel's view, the theoretic possibility that the Athlete ate meat containing the injection site, or meat surrounding the injection site, is close to zero and can be compared, in terms of probability, with a "*lighting strike*". The Panel finds so for the following reasons:

- The experts agreed that farmers have no (commercial) interest in placing the implant into the muscle of the cattle rather than into the ear. A placement directly into the muscle has no benefit in terms of the growth of the cattle compared to a proper placement into the ear. It is difficult to understand why a farmer who decides to employ growth promoters allowed in his country would voluntarily use them differently than recommended with no additional benefit. Even more, a

misplacement could cause injuries to the tissue (such as lesions), exposing the meat to the risk that it becomes unsellable as a result of the injection. Hence, the Respondent's starting premise that farmers would engage in such practice is extremely unlikely from the outset.

- This conclusion is corroborated by the statistical data presented by Prof. Webb. A study examining 25,000 carcasses in South Africa did not find any misplaced implant into the muscle. The data remained uncontested. Furthermore, both Prof. Webb and Dr. Morris confirmed that they have never seen any misplacement of a pellet into the muscle in their practice (let alone at the Doornplaat feedlots, which are regularly visited by Dr. Morris).
- Even if a misplaced injection happened (which is, as has been demonstrated, extremely unlikely to begin with), it would usually be detected during meat inspection before or after slaughter, and the affected cut of the meat would be discarded. In this respect, the Panel wishes to clarify that it is not convinced by Dr. Morris' portrayal of the South-African meat industry as being affected by wide-spread "*dubious practices*", more specifically a lack of supervision before, during and after slaughter. While it might be true that the South African meat industry is not as strictly regulated as other markets (for example in the EU), Dr. Morris has not presented any evidence for his assertion that *"dubious practices"* in South African feedlots occur on a daily basis and remain unnoticed. His testimony also stands in contrast to the testimony of Prof. Webb who, while conceding that the supervisory system is not as good as it should be, explained that mistakes are principally limited to infrequent and isolated incidents, if any. What is more, Dr. Morris did not describe in any detail allegedly dubious practices happening specifically at the Doornplaat feedlots. He only stated that the Doornplaat Feedlot is not part of the National Residue Monitoring Program. His expert testimony was too vague to allow the Panel to conclude that the meat the Athlete consumed must probably have been contaminated by a misplaced implant that had remained unnoticed during any of the inspections administered before, during and after slaughter.
- Assuming, *ad arguendo*, that meat containing the injection site (or the pieces of meat directly surrounding the injection site) exceptionally entered the food supply market, it is extremely unlikely that the Athlete would have consumed that exact part of the meat that contained the misplaced injection. This is particularly true in light of the fact that he had a stew comprised of different parts of meat from different animals.

87. To sum up, the possibility that a livestock at a Doornplaat feedlot received an irregular Trenbolone injection directly into the muscle (where this is illegal and insensible from a commercial perspective), that the (visible) injection remained uncovered during the legally required meat inspection, that the (injured) meat was sold to the Time Out Café, and that the Athlete ate this precise piece of meat, is close to zero. It is nothing more than a theoretical possibility, and the Athlete has not adduced any evidence suggesting that such a "*lightning strike*" event may have happened in his case.

88. The Athlete also failed to provide any other evidence for his alleged innocence (including

his own testimony during the hearing).

89. Based on the above considerations, the Panel finds that the Respondent did not demonstrate, on the balance of probabilities, how the substance entered his body nor otherwise demonstrate that he acted unintentionally.

90. The above Panel's findings exclude any eliminations of the sanction based on No Fault or Negligence, or a reduction of the sanction based on No Significant Fault or Negligence or any other ground. Therefore, the Panel finds that a period of ineligibility of four years shall be imposed on the Respondent.

5. Commencement of the Ineligibility Period

91. Article 10.10.2 of the 2019 IAAF ADR provides as follows (in relevant part):

> *"(a) any period of Provisional Suspension served by the Athlete or other Person (whether imposed in accordance with Article 7.10 or voluntarily accepted by the Athlete or other Person in accordance with Article 7.10.6) shall be credited against the total period of Ineligibility to be served. To get credit for any period of voluntary Provisional Suspension, however, the Athlete or other Person must have given written notice at the beginning of such period to the Integrity Unit, in a form acceptable to the Integrity Unit (and the Integrity Unit shall provide a copy of that notice promptly to every other Person entitled to receive notice of a potential Anti-Doping Rule Violation by that Athlete or other Person under Article 14.1.2) and must have respected the Provisional Suspension in full. No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension, regardless of the Athlete or other Person's status during such period. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility that may ultimately be imposed on appeal;"*

92. The Panel notes that the Athlete has been provisionally suspended by the AIU starting 19 December 2019 until 7 June 2021 and from 30 June 2021 until 22 July 2021. These periods shall be credited against the total period of ineligibility.

6. Disqualification of Results

93. Moreover, the Panel notes that Article 10.8 of the 2019 IAAF ADR states as follows:

> *"In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results of the Athlete obtained from the date the Sample in question was collected (whether In-Competition or Out-of-Competition) or other Anti-Doping Rule Violation occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture*

of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise."

94. The Panel finds that, pursuant to Article 10.8 of the 2019 IAAF ADR, the Respondent's results shall be disqualified from 4 November 2019, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

X. COSTS

95. Article R64.4 of the CAS Code provides as follows:

"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. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

96. Article R64.5 of the CAS Code provides as follows:

"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 and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."

97. The Panel decides on the issue of costs *ex officio* and is not bound by the requests of the Parties. Given that the Claimant entirely succeeded in these proceedings, the Panel finds that the Respondent shall bear the costs of the arbitration in their entirety.

98. Furthermore, pursuant to Article R64.5 of the CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, the Panel rules that the Parties shall bear their own legal fees and expenses incurred in connection with the present arbitration procedure, respectively.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed by World Athletics on 18 May 2021 against Mr Lebogang Shange is upheld.

2. Mr Lebogang Shange is found to have committed anti-doping rule violations pursuant to Rule 2.1 and Rule 2.2 of the World Athletics Anti-Doping Rules in force from 1 November 2019.

3. Mr Lebogang Shange is sanctioned with a four-year period of ineligibility, commencing on the date of the present Award. The period of ineligibility served during the period of provisional suspension imposed on Mr Lebogang Shange from 19 December 2019 until 7 June 2021 and from 30 June 2021 through the date of the present Award shall be credited against the total period of ineligibility.

4. All the competitive results obtained by Mr Lebogang Shange from 4 November 2019 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

5. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office by separate letter, shall be borne in their entirety by Mr Lebogang Shange.

6. Each Party shall bear its own legal fees and expenses incurred in connection with the present arbitration procedure.

7. Any other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Operative part notified on 22 July 2021
Date: 30 March 2022

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
President of the Panel

Ulrich Haas
Arbitrator

Alexis Schoeb
Arbitrator