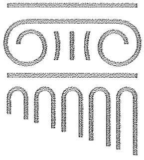


TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/O/9507 World Athletics v. Russian Athletic Federation & Mr. Nikolay Chavkin

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Ms. Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany

between

World Athletics

Represented by Messrs. Nicolas Zbinden, Adam Taylor and Michael Kottmann, Attorneys-at-law, Kellerhals Carrard in Lausanne, Switzerland

Claimant

and

Russian Athletic Federation

First Respondent

and

Mr. Nikolay Chavkin

Represented by Messrs. Sergei Mishin and Sergei Lisin, Attorneys-at-law with Lisin & Partners in Moscow, Russia

Second Respondent

I. THE PARTIES

1. World Athletics (the "Claimant" or "WA") is the international federation governing the sport of athletics worldwide and a signatory to the World Anti-Doping Code ("WADA Code"). WA has its registered seat and headquarters in Monaco.

2. The Russian Athletic Federation (the "First Respondent" or "RUSAF") is the national federation governing the sport of Athletics in Russia, with its registered seat in Moscow, Russia. RUSAF is the relevant member federation of WA for Russia, but its membership has been suspended since 26 November 2015.

3. Mr. Nikolay Chavkin (the "Second Respondent" or the "Athlete") is a thirty-eight-year-old Russian middle-distance runner. He is an International-Level Athlete for the purposes of the WA Rules, having competed, *inter alia,* at the 2012 London Olympic Games and the 2015 IAAF Beijing World Championships.

4. WA, RUSAF and the Athlete are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

5. 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 Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

6. The two relevant samples in the present case were collected from the Athlete in-competition on 4 July 2012 (sample no. 2727383, hereinafter the "4/7/2012 Sample") and out-of-competition on 17 July 2012 (sample no. 2728693, hereinafter the "17/7/2012 Sample" and, together with the 4/7/2012 Sample, the "2012 Samples"). The 2012 Samples were reported as negative in World Anti-Doping Agency's ("WADA") Anti-Doping Administration & Management Systems ("ADAMS"), a web-based database management system for use by WADA's stakeholders. As will be further elaborated on below, WA, in these proceedings, contends that the respective ADAMS reportings were false, because the 2012 Samples allegedly contained Prohibited Substances.

7. Following investigations by WADA of the existence of sophisticated systemic doping practices within RUSAF, WA decided to suspend RUSAF's membership in November 2015. This decision was repeatedly confirmed, with the result that RUSAF's WA membership remains suspended until today.

8. In May 2016, WADA appointed Prof. Richard McLaren to investigate allegations made by whistleblowers regarding the alleged existence of a sophisticated state-sponsored doping program in Russian sport, from which WA alleges the Athlete benefitted.

9. On 18 July 2016, Prof. McLaren delivered his first report (the "First McLaren Report"). The three "key findings" of the First McLaren Report were as follows:

> "*1. The Moscow Laboratory operated for the protection of doped Russian athletes, within a State-dictated failsafe system, described in the report as the Disappearing Positive Methodology.*
>
> *2. The Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian athletes to compete at the Games.*
>
> *3. The Ministry of Sport directed, controlled and oversaw the manipulation of athlete's analytical results or sample swapping, with the active participation and assistance of the FSB* [the Federal Security Service of the Russian Federation], *CSP* [the Center of Sports Preparation of National teams of Russia], *and both Moscow and Sochi Laboratories.*"

10. On 9 December 2016, Prof. McLaren delivered his second report (the "Second McLaren Report", and together with the First McLaren Report the "McLaren Reports"). In the Second McLaren Report, Prof. McLaren affirmed that *"[t]he key findings of the 1st Report remain unchanged"* and that:

> *"An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, and the Moscow Laboratory, along with the FSB* [the Russian Federal Security Service]. *The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported on in the 1st Report."*

11. In its report of 2 December 2017, the IOC Disciplinary Commission chaired by Samuel Schmid, Member of the IOC Ethics Commission, (the "Schmid Commission") also agreed that there was a *"systemic manipulation of the anti-doping rules and system in Russia, through the Disappearing Postive Methodology and during the Olympic Winter Games Sochi 2014"* (the "Schmid Report"). The findings of the Schmid Report were expressly accepted by the Russian Ministry of Sport on 13 September 2018.

12. Together with the Second McLaren Report, Prof. McLaren published Evidence Disclosure Packages ("EDPs") containing evidence relating to athletes he considered were involved in or benefitted from the above schemes. According to the McLaren Reports, relevant key elements of these schemes, which have been addressed also in other CAS cases (see, e.g., CAS 2021/A/7838 and 7839) involved the following:

(i) "Disappearing Positives Methodology" ("DPM")

13. Where the initial screen of a sample revealed a Presumptive Adverse Analytical Finding ("PAAF"), the athlete would be identified and the Russian Ministry of Sport would (through a Liaison Person) decide either to "SAVE" or to "QUARANTINE" the athlete in question. The PAAF would typically be notified by email from the Moscow Laboratory to one of the liaison persons, who would respond in order to advise whether athlete(s) should be "SAVED" or "QUARANTINED". If the athlete was "SAVED", the Moscow Laboratory would report the sample as negative in ADAMS; conversely, if the athlete was "QUARANTINED", the analytical bench work on the sample would continue and an adverse analytical finding would be reported in the ordinary manner. According to the Second McLaren Report, the DPM was used from late 2011 onwards.

(ii) "Washout Testing"

14. The McLaren Reports described a program of "Washout Testing" prior to certain major events, including the 2012 London Olympic Games and the Moscow World Championships. The Washout Testing was deployed in 2012 in order to determine whether the athletes on a doping program were likely to test positive at the 2012 London Olympic Games. At that time, the relevant athletes were providing samples in official doping control Bereg kits. Even when the samples screened positive, they were automatically (i.e. without the need for a specific SAVE order) reported as negative in ADAMS. As explained by Prof. McLaren, although the Washout Testing program had started earlier, the Moscow Laboratory, through its Deputy Director Dr. Timofei Sobolevsky, only developed schedules to keep track of those athletes who were subject to this Washout Testing in advance of the London Olympic Games (the "London Washout Schedules").

(iii) The "LIMS Data"

15. As explained in the joint witness statement of Mr. Aaron Walker and Dr. Julian Broséus of WADA Intelligence & Investigations ("WADA I&I") (the "WADA Statement"), on 30 October 2017, WADA I&I secured from a whistleblower a copy of the Moscow Laboratory Information Management System ("LIMS") data for the years 2011 to August 2015 (the "2015 LIMS"). The 2015 LIMS was found to include presumptive adverse analytical findings made on the initial testing of samples which had not been reported in ADAMS or followed up with confirmation testing.

16. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. Conceptually, the LIMS is a warehouse of multiple databases organized by year. The most relevant anti-doping data within the LIMS are those related to sample reception, analysis, and the actions of users within the system. This pertinent data is housed in key tables including: "bags", "samples", "screening", "found" (or "scr_results" prior to 2013), "confirmation", "MS_data" (or

"Pro_4" prior to 2013) and "pdf".

17. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency ("RUSADA"), WADA required that, *inter alia*, authentic analytical data from the Moscow Laboratory for the years 2012 to 2015 be provided. In January 2019, access to the Moscow Laboratory was given to a team of WADA-selected experts, which were allowed to remove data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the "2019 LIMS") as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the "Analytical Data"). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.

18. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable (and the 2019 LIMS was not), as explained at paragraphs 14 and 71 of the WADA Statement as follows [footnotes omitted]:

> *"14. ...* [w]*e assert that the 2015 LIMS Copy is an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory's analytical procedure and its contents can be relied upon as being accurate and forensically valid information, particularly the forensic validity of the detected Prohibited Substances. In other words, the 2015 LIMS Copy accurately records the true analysis results of samples analyzed by the Moscow Laboratory.*
>
> *71.* [...] *(i) The 2015 LIMS Copy is reliable evidence. The 2019 LIMS Copy is not."*

19. WADA I&I also identified evidence of deletions/alterations of Analytical Data to remove evidence of positive findings prior to WADA's retrieval mission in January 2019.

(iv) WA's case against the Athlete

20. On 4 July 2012, the Athlete was subject to an in-competition urine doping control. WA contends that the 2015 LIMS indicates that methyltestosterone was found in the 4/7/2012 Sample. Methyltestosterone is an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List. The 4/7/2012 Sample was reported as negative in ADAMS.

21. On 17 July 2012, the Athlete was subject to an out-of-competition urine doping control. WA contends that the 2015 LIMS indicates that, again, methyltestosterone was found

in the 17/7/2012 Sample. The 17/7/2012 Sample was reported as negative in ADAMS.

22. By letter of 30 June 2022 the Athletics Integrity Unit ("AIU") of WA notified the Athlete of a potential anti-doping rule violation ("ADRV") based on the evidence relating to the 2012 Samples. The Athlete was invited to provide a full and detailed explanation with respect to the potential ADRVs.

23. By email dated 9 July 2022 the Athlete replied, denying the ADRVs and stating the following: "*I can only say that I have never used any prohibited substances and the evidence that you have made available appears contradictory and incomplete. Possibly due to the mistakes and irregularities at the Moscow laboratory that have been exposed after 2015.*"

24. On 30 August 2022, the AIU informed the Athlete that it maintained its assertion that he had committed one or more ADRVs and that his case would be referred to CAS. The Athlete was granted a deadline until 13 September 2022 to state whether he wanted a hearing, failing which a decision would be rendered. He was also asked to confirm, provided he requested a hearing, whether he requested the matter to proceed under Rule 38.3 (first instance CAS hearing before a Sole Arbitrator with a right of appeal to the CAS) or 38.19 (sole instance before a three-member CAS Panel with no right of appeal, save to the Swiss Federal Tribunal) of the 2016-2017 Competition Rules (the "2016 Rules").

25. On 12 September 2022, the Athlete, through his legal counsel, requested a hearing before a Sole Arbitrator of the CAS sitting as a first instance hearing panel pursuant to Rule 38.3 of the 2016 Rules.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 16 March 2023, the Claimant filed a request for arbitration ("Request for Arbitration") with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). The Claimant requested that the matter be heard by the CAS as a first-instance body, but pursuant to provisions applicable to the CAS Appeals Arbitration Division (Articles R47 et seq.), in accordance with Rule38.3 of the 2016 Rules.

27. On 22 March 2023, the CAS Court Office initiated the arbitration procedure and invited the Claimant, in accordance with Article R51 of the CAS Code, to file its Appeal Brief. It further informed the Parties that, in accordance with Rule 38.3 of the 2016 Rules, and pursuant to Article S20 of the CAS Code, the arbitration had been assigned to the Ordinary Arbitration Division of the CAS but would be dealt with according to the Appeals Arbitration Division rules (Articles R47 et seq.) by a sole arbitrator. The First Respondent was invited to forward the CAS letter to the Second Respondent and to provide the CAS Court Office with respective proof.

28. On 4 May 2023, within the extended time limit (upon request by the Claimant), the Claimant filed its Appeal Brief.

29. On 8 May 2023, the CAS Court Office invited the Respondents to submit their respective Answers within 20 days.

30. On 13 June 2023, within the extended time limit (upon request by the Second Respondent), the Second Respondent filed his Answer. The First Respondent did not file any Answer.

31. On 19 June 2023, the Parties were invited by the CAS Court Office to state whether they preferred a hearing and a case management conference ("CMC") to be held in the pertinent matter.

32. On 3 July 2023, the Claimant informed the CAS of its preference that a hearing be held, but that it did not consider the CMC necessary.

33. On 7 August 2023, pursuant to 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 case is constituted as follows:

Sole Arbitrator: Ms. Annett Rombach, Attorney-at-law in Frankfurt am Main, Germany

34. On 22 August 2023, the Parties were informed that the Sole Arbitrator had decided to hold a hearing and a CMC (for organizational purposes) via videoconference.

35. On 29 August 2023, a CMC was held between the Sole Arbitrator, the Parties and the CAS Counsel.

36. On 30 August 2023, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Second Respondent to provide comments with respect to the appearance of certain of its witnesses during the hearing, after the Claimant had represented that those witnesses were not under its control.

37. On 5 September 2023, the Second Respondent requested the Sole Arbitrator to provide her consent to the Second Respondent's request for judicial assistance from the Swiss courts at the seat of the arbitration in Switzerland, in accordance with Article 184 of the Swiss Private International Law ("PILA") ("Request for Judicial Assistance"). The request was related to securing the presence of certain witnesses presumably located in the United States for the envisaged hearing.

38. On 8 September 2023, the CAS Court Office informed the Second Respondent of the Sole Arbitrator's preliminary concerns with respect to his Request for Judicial Assistance. The Second Respondent was invited to inform the CAS Court Office on how he wished to proceed with respect to the witnesses he was unable to secure, by no later than 18 September 2023.

39. By e-mail of 18 September 2023, the Second Respondent further commented on his Request for Judicial Assistance as follows:

"I refer to the letter of CAS Court Office dated 8 September 2023 in the above matter

and specifically to the request to "inform the CAS Court Office by no later than 1 September 2023 about how [the Second Respondent] intends to proceed in respect of Messrs. Rodchenkov, Sobolevskiy and Migachev".

As mentioned in previous correspondence, there are two ways to request the judicial assistance of Swiss courts to obtain evidence, written and/or oral, by the above individuals:

1. *The Tribunal itself may request judicial assistance from the Swiss state courts at the seat of the arbitration (Lausanne), which in turn requests judicial assistance from the US state courts.*

2. *The Tribunal authorizes the Second Respondent to request judicial assistance from the Swiss courts in Lausanne, which in turn will request judicial assistance from the US authorities.*

Should the Tribunal choose to authorize the Athlete to file an assistance request with Swiss court, the Athlete will instruct Swiss lawyers (Ad Metam law firm in Lugano) to file a respective application. For that purpose, the Athlete suggests that:

1. *A letter form CAS Court Office/Tribunal be issued to the Athlete confirming that the Tribunal authorizes the Athlete to request judicial assistance from the Swiss courts.*
2. *A list of questions addressed to Messrs. Rodchenkov, Sobolevskiy and Migachev be agreed by the Claimant and the Respondent and approved by the Tribunal.*
3. *Unless any new information regarding the whereabouts of these individuals becomes available to the Athlete, requests for judicial assistance be directed to competent US courts (i) in Los Angeles – in respect of Messrs. Sobolevskiy and Migachev who are reportedly employed by UCLA Olympic Analytic Laboratory, and (ii) in New York – in respect of Mr. Rodchenkov who is assisted by the lawyers at Walden Macht & Haran LLP with an office in New York.*
4. *The hearing of this case, provisionally listed for 11 October, be delayed until such time as the Tribunal deems necessary, to account for the time necessary to complete the judicial assistance process."*

40. Upon the request of the Second Respondent, a second CMC took place on 10 October 2023, in which the Second Respondent's Request for Judicial Assistance was discussed between the Sole Arbitrator and the Parties. The Parties had the opportunity to present their respective positions on the request and answer questions of the Sole Arbitrator.

41. On 12 October 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to dismiss the Second Respondent's Request for Judicial Assistance under Article 184(2) PILA, and that the reasons for such decision would be communicated in the final Award (see below at **VI.**). Furthermore, the Parties were informed that the oral

hearing would take place on 2 November 2023, via videoconference.

42. On 2 November 2023, a hearing was held by video-conference. In addition to the Sole Arbitrator and Ms. Andrea Sherpa-Zimmermann, Counsel to the CAS, the following persons attended the video hearing:

For WA:	Mr. Adam Taylor, Counsel Mr. Nicolas Zbinden, Counsel Ms. Laura Gallo, Legal Affairs, WA
For RUSAF:	Ms. Kristina Kucheeva, Head of RUSAF anti-doping and athletics integrity department
For the Athlete:	Mr. Nikolay Chavkin, Athlete Mr. Sergei Mishin, Counsel Mr. Sergei Lisin, Counsel
Witnesses	Prof. Christiane Ayotte, Director of the Doping Control Laboratory for the WADA-accredited INRS Centre Armand Frappier Health Biotechnology, called by WA Mr. Aaron Walker, WADA I&I, called by WA

43. The hearing began at 1:00 pm and ended at 5:45 pm without any technical interruption or difficulty. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. The witnesses were questioned by the Parties and the Sole Arbitrator. After the Parties' final and closing submissions, the hearing was closed, and the Sole Arbitrator reserved her detailed decision for this written Award.

44. At the end of the hearing, the Parties expressly confirmed that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings.

45. On respectively 26 and 29 February 2024, the Parties returned to the CAS Court Office duly signed copies of the Order of Procedure issued by the CAS Court Office on behalf of the Sole Arbitrator, on 20 February 2024.

46. In reaching the present decision, the Sole Arbitrator has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

IV. THE POSITIONS OF THE PARTIES

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

A. WA's Position and Request for Relief

48. WA submits the following in substance:

- Substantial evidence demonstrates that the Athlete committed a use-violation under Rule 32.2(b) of the 2012-2013 IAAF Competition Rules. The 2012 Samples contained methyltestosterone, an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List.
- The violation primarily relates to the two samples collected from the Athlete on 4 July 2012 and 17 July 2012 (as evidenced by respective doping control forms). Both samples were falsely identified in the ADAMS system as negative. For both the 4/7/2012 Sample and the 17/7/2012 Sample, the 2015 LIMS indicated a finding of methyltestosterone. The 2015 LIMS data is corroborated by underlying analytical pdfs and raw data explaining the 2015 LIMS entries.
- Prof. Ayotte explains that the data relating the 4/7/2012 Sample supports the presence of methyltestosterone metabolites. However, she also explains that the data for the 17/7/2012 Sample appears negative. As explained in the WADA Statement, this conclusion is consistent with a pattern of manipulations observed in relation to data extracted from the Moscow Laboratory, as explained by WAD I&I.
- Furthermore, the 17/7/2012 Sample was recorded in a London Washout Schedule (EDP0020) with the following parameters that can be linked to the Athlete:

8974	2728693	m	17.07.2012	methyltestosterone (5 ng/ml)

- The London Washout Schedules comprised athletes whose doping was monitored prior to the London Olympic Games, to avoid a positive test during the event. The Athlete's 17/7/2012 Sample is recorded in a London Washout Schedule with reference to methyltestosterone.
- The same document, with an added "b" at the end, was sent on 20 July 2012 by Dr. Sobolevsky to Ms. Zhelanova, who acted as a liaison person for the Russian Ministry of Sport.
- The forensic evidence on which WA's case rests is reliable, as has been established, *inter alia*, in previous CAS cases:
    - o The 2015 LIMS was found by the CAS to be "*an accurate, authentic and contemporaneous account of the original data and its contents can be relied upon as accurate and valid*" (CAS 2021/A/7839, CAS 2021/A/7838). Additionally, the analytical data presented in the WADA Statement explains and confirms the history, presentation and reliability of the 2015 LIMS data.
    - o The reliability of the EDP documents (including the London Washout Schedules) was carefully scrutinized by four different CAS arbitrators in the

context of thirteen prior cases. All of them considered that these documents were reliable evidence for the purposes of establishing an ADRV under the WA Rules.

- The Athlete was heavily protected by the Russian scheme, as is evidenced, in particular, by the fact that (1) a sample of the Athlete featured in the London Washout Schedules, (2) his name is mentioned in the LIMS in relation to three of his samples, which is highly irregular as analyses are meant to be anonymous, (3) the Athlete's name features on a number of sheets, including pre-departure lists, which were meant to ensure that an athlete would not test positive at a competition abroad, and (4) LIMS and Analytical Data relating to one of the Athlete's samples were deleted and/or manipulated prior to its release to WADA by Russian authorities on 17 January 2019, in an effort to cover up the positive.

49. WA requests the following relief:

"*(i) CAS has jurisdiction to decide on the subject matter of this dispute.*

(ii) The Request for Arbitration of World Athletics is admissible.

(iii) Nikolay Chavkin is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(b) of the 2012-2013 IAAF Competition Rules.

(iv) A period of ineligibility of four years, or in the alternative between two and four years, is imposed on Nikolay Chavkin, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by Nikolay Chavkin until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.

(v) All competitive results obtained by Nikolay Chavkin from 4 July 2012 through to 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).

(vi) The arbitration costs be borne entirely by the First Respondent or, in the alternative, by the Respondents jointly and severally.

(vii) The First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to World Athletics' legal and other costs."

B. The RUSAF's Position

50. RUSAF chose not to file any submissions of relevance to the merits of the case with CAS.

C. The Athlete's Position and Request for Relief

51. The Athlete submits the following in substance:

- Any evidence against the Athlete obtained after 2012 should be ignored. Such evidence is inadmissible, and does not satisfy the required standard of proof. Notably, the case against the Athlete is based almost entirely on evidence collected by WADA I&I in the course of their massive multi-year investigation. WA has not independently investigated or corroborated the findings of WADA I&I.

- The WADA Statement is unreliable and confusing evidence. In essence, it is a witness statement by Mr. Walker and Dr. Broséus, who did not personally witness any of the events described in the Joint Statement. They did also not personally perform discovery and analysis of the Moscow Laboratory data used to incriminate the Athlete.

- Between July 2012 and August 2014, the Athlete was repeatedly tested, and all of his doping tests were recorded as negative in ADAMS, including a sample collected by the IAAF in Braunschweig, Germany (in June 2014), which was analyzed outside of Russia.

- The evidence on which WA's case against the Athlete rests is not reliable:

    - The LIMS cannot be relied upon, because – contrary to modern laboratory information management systems – it did not have certain (cybersecurity) features that would ensure its data integrity and security. Consequently, for the purpose of a "presence" anti-doping case, only paper records (including chain of custody documents) kept by the laboratory would have a probative value.

    - Limited weight should be given to any LIMS data (specifically, 2015 LIMS or 2019 LIMS) unless they are corroborated by other reliable evidence (witness statements of the individuals involved in processing and/or analyzing relevant data, other digital or physical evidence if it meets forensics reliability criteria).

    - The evidentiary value of the analytical files (pdf or raw format) related to the 2012 Samples is theoretically higher than the value of the LIMS records as the files are generated by computer instruments with little or no human participation. However, it is undisputed between WADA and Russian authorities that certain pdf files from the Laboratory have been manipulated.

    - With respect to the Athlete's data package, included in the WADA Statement, it is submitted that the evidentiary value of these data is undermined by the failure of WADA I&I to follow basic forensic chain of custody rules. No independent forensic opinion has been presented to confirm the uninterrupted chain of custody of these data

from the moment WADA came into possession of the 2015 LIMS until the moment the data related to the 2012 Samples have been extracted, translated, and assembled. The 2015 LIMS' evidentiary value is undermined for the same reasons.

- The analytical evidence against the Athlete cannot be trusted, because the Moscow Laboratory was not ISL compliant and analytically reliable. This is confirmed by the expert report of Dr. De Boer ("De Boer Report"). Furthermore, illegal practices were performed at the Moscow Laboratory, such as undercover testing and testing of performance-enhancing drugs. It has been widely accepted by WADA and CAS that both official and "unofficial" urine samples were processed at the same time using the same instruments (machines) at the Laboratory run by Dr. Rodchenkov and his staff in 2012 and thereafter.

- Numerous departures by the Laboratory from the ISL shift onto WA the burden to prove that such departures did not cause the presumptive Adverse Analytical Finding ("AAF") in the 2012 Samples, as required under Rule 33.3(a) of the IAAF Competition Rules.

- The intensity of the "unofficial" testing by the Laboratory in 2012-2014 (including "washout testing") together with poor quality management might have reasonably caused (i) contamination of the 2012 Samples with Methyltestosterone and/or (ii) a technical error by the staff leading to the attribution of Methyltestosterone to the 2012 Samples.

- Use of Methyltestosterone as ISTD (internal quality standard) by the Moscow Laboratory increased the chances of cross-contamination of the 2012 Samples during ITP, as observed by Dr. De Boer.

- In 2013, following a site visit, WADA requested the Moscow Laboratory to undertake a number of corrective actions that would improve the analytical reliability of the Laboratory. On 17 November 2013, the Disciplinary Committee of WADA decided to suspend the accreditation of the Laboratory for six months if certain corrective actions were not completed by 1 December 2013 and by 1 April 2014. This decision by WADA demonstrates that, notwithstanding the corrective actions ordered by WADA following visits to the Laboratory in 2013, WADA was not satisfied with the Laboratory's quality management system and the accuracy and reliability of the results reported by the Laboratory.

- The alleged positive finding of methyltestosterone only indicates a presumptive AAF, *i.e.,* the results of the Initial Testing Procedure (ITP) where a batch of samples are analyzed simultaneously to screen for possible prohibited substances. A confirmation procedure (CP) when the suspect sample is analyzed individually is required to confirm the AAF.

- Notably, no communication between the Laboratory and the Russian Ministry of Sport that would authorize the protection, a customary SAVE email from the liaison person, has been discovered in relation to the 2012 Samples.
- No independent forensic evidence has been presented by WA to confirm the authenticity of the "London Washout Schedule". Given that most data in the spreadsheet appears to be deleted, it is unclear when and by whom this file has been manipulated. No witness statement from Dr. Sobolevsky to corroborate the inclusion of the Athlete on the "London Washout Schedule" is available although he is logically the person with direct knowledge of the document.
- There is no proof that the Athlete was knowledgeable of, or somehow involved with, any athlete protection scheme.

52. The Athlete requests the following relief:

"(a) dismiss the WA's appeal.

(b) declare that Mr. Chavkin is not guilty of any anti-doping rule violation under the IAAF ADR.

(c) declare that no period of ineligibility is imposed on Mr. Chavkin.

(d) declare that none of Mr. Chavkin's results are disqualified.

(e) order WA to bear the costs of the arbitration in these proceedings (if applicable).

(f) order WA to compensate Mr. Chavkin for the legal fees and other expenses incurred in connection with these proceedings, from the date of the notice of allegation of ADRV untill [sic] *the date of the hearing, and*

(g) order any other relief that the Sole Arbitrator deems just and appropriate."

V. JURISDICTION

53. In accordance with Rule 38.1 of the 2016 Rules, "[e]*very Athlete shall have the right to request a hearing before the relevant tribunal of his National Federation before any sanction is determined in accordance with these Anti-Doping Rules*".

54. Rule 38.3 of the 2016 Rules 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 [...]*."*

55. The Sole Arbitrator observes that in the present case, it is undisputed that the Athlete was an international-level athlete and that RUSAF was the National Federation that should have heard this case in the first instance, even though its membership from WA has been suspended since 26 November 2015. Therefore, due to such suspension from membership, it was *per se* impossible for the First Respondent to hold a hearing "*within two months*" with regard to any of the ADRVs, as set out by Rule 38.3 of the 2016 Rules. Under these circumstances, WA was entitled to submit the matter to the CAS for a first instance decision to be rendered by a Sole Arbitrator (see also, e.g., CAS 2020/O/6759; CAS 2020/O/6761; CAS 2016/O/4463; CAS 2016/O/4464).

56. Furthermore, neither of the Respondents challenged the jurisdiction of the CAS during these proceedings. Therefore, the Sole Arbitrator finds that CAS has jurisdiction in the present case, in accordance with Rule 38.3 of the 2016 Rules.

VI. APPLICABLE LAW

57. Article R58 of the CAS Code states as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*

58. Rule 13.7.4 of the WA Anti-Doping Rules that entered into force on 1 January 2021 (the "WA ADR") states as follows:

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

59. Rule 13.7.4 of the WA ADR further provides as follows:

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

60. Rule 1.4.2 of the WA ADR states that:

> "[t]*hese Anti-Doping Rules shall apply to* [...]
>
> *(f) the following Athletes, Athlete Support Personnel and other Persons:*

i) all Athletes who have signed an agreement with World Athletics or have been accredited or granted an official status by World Athletics/the Integrity Unit (for example, by way of inclusion in the International Registered Testing Pool or by designation of a Platinum, Gold, Silver or Bronze Label status) and all Athlete Support Personnel who have been accredited or granted an official status by World Athletics (for example, by way of an identity card) or who participate in International Competitions organised or sanctioned by World Athletics;

(ii) all Athletes, Athlete Support Personnel and other Persons who are members of or authorised by any Member Federation, or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues);

(iii) all Athletes, Athlete Support Personnel and other Persons preparing for or participating in such capacity in Competitions and/or other activities organised, convened, authorised, sanctioned or recognised by (i) World Athletics (ii) any Member Federation or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues), or (iii) any Area Association, wherever held, and all Athlete Support Personnel supporting or associated with such Athletes' preparation or participation [...]*"*

61. As an athlete affiliated to RUSAF who has participated in the activities and competitions of RUSAF and WA for a number of years, the Athlete is subject to the WA ADR.

62. Pursuant to Rule 1.7.2(b) of the WA ADR, ADRVs committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged ADRV and, for procedural matters, to the 2016 Rules, effective from 1 November 2015.

63. The anti-doping regulations in force at the time of the asserted ADRVs in 2012 were the 2012-2013 IAAF Competition Rules ("the 2012 Rules"), and more particularly, Chapter 3 thereof.

64. In summary, therefore, the 2012 Rules shall govern the substantive aspects of the ADRVs and the procedural aspects shall be governed by the 2016 Rules. To the extent that the WA Rules do not deal with a relevant issue, Monegasque law shall apply (on a subsidiary basis) to such issue.

VII. THE ATHLETE'S REQUEST FOR JUDICIAL ASSISTANCE UNDER ARTICLE 184 (2) PILA

65. Article 184 PILA provides as follows:

"(1) The arbitral tribunal takes the evidence itself.

(2) Where state legal assistance is required for the taking of evidence, the arbitral tribunal or a party with the consent of the arbitral tribunal may request the participation of the state court at the seat of the arbitral tribunal.

(3) The state court shall apply its own law. On request, it may apply or take account of other forms of procedure."

66. As summarized above (para. 37 et seq.), the Athlete requested that the Sole Arbitrator provides her consent within the sense of Article 184 (2) PILA for him to seek the assistance of Swiss state courts in relation to witness testimony to be obtained from witnesses presumably located in the United States. While the arbitral tribunal has no obligation to provide its consent to a party's request for judicial assistance, in order to preserve the parties' right to be heard, it may not withhold such consent without a valid reason (see *Veit* in: Arroyo, Arbitration in Switzerland, The Practitioner's Guide, Art. 184 para. 71).

67. In the present case, the Sole Arbitrator and the Parties discussed the Second Respondent's Request for Judicial Assistance during the Second Case Management Conference. At that occasion, upon the Sole Arbitrator's inquiry, the Second Respondent submitted that he had not tried himself to reach out to the witnesses Messrs. Rodchenkov, Sobolevskiy and Migachev, despite his knowledge of how these witnesses could potentially be reached. The Second Respondent explained that from experience in other CAS cases, he expected that the witnesses would be unresponsive and not provide any testimony without the Sole Arbitrator's intervention.

68. The Sole Arbitrator notes that as a matter of principle, arbitral tribunals are hesitant to apply for state court assistance (or to provide their respective consent), and usually use this possibility as a last resort (*Veit* in: Arroyo, Arbitration in Switzerland, The Practitioner's Guide, Art. 184 para. 71). Involving state courts in the taking of evidence may significantly delay the arbitration proceedings, which is why the party requesting judicial assistance must demonstrate that this measure is necessary for the protection of its rights. In the present case, however, the Second Respondent – as per his own submission that he had not even tried to contact the witnesses – has failed to demonstrate that judicial assistance was "*required*" for the taking of evidence. The purpose of Article 184 (2) PILA is not to relieve a party of its principal responsibility to track down the evidence on which it seeks to rely. To the contrary, judicial assistance under Article 184 (2) PILA may only be considered – as a last resort – if the party shows that it took every necessary step to obtain the desired evidence, but that – due to a lack of coercive powers of arbitral tribunals – it cannot secure the evidence for its benefit, e.g. because the witness refuses to appear in an oral hearing. Hence, Article 184 (2) PILA has the purpose to overcome the lack of coercive power by tribunals in private arbitration; it is not to assist a party in finding evidence it needs for the establishment of its case.

69. As a result, in the absence of any attempt by the Second Respondent to even reach out to the witnesses it wanted to hear, the Sole Arbitrator, exercising due and reasonable discretion, decided not to grant consent to the Respondent's Request for Judicial Assistance, in order to preserve the efficiency of the present proceedings.

VIII. MERITS

70. Considering all Parties' submissions, and after the oral hearing, the main issues to be

resolved by the Sole Arbitrator are the following:

A. Did the Athlete commit an anti-doping rule violation?

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

A. Did the Athlete Commit an Anti-Doping Rule Violation?

71. Before addressing the merits of the Parties' factual and legal arguments, the Sole Arbitrator finds it necessary to identify the relevant provisions which define (1) the anti-doping rule violations allegedly committed, (2) the burdens and standards of proof, as well as (3) the means of proof in their respect. On such basis, the Sole Arbitrator will then determine (4) whether the Athlete committed the alleged anti-doping rule violation(s).

1. Use of a Prohibited Substance

72. Rule 32.2 (b) of the 2012 Rules reads as follows:

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

(i) 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.

(ii) 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 antidoping rule violation to be committed."

73. "*Use*" is defined in the 2012 Rules as:

"the utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method."

74. As the above quotes demonstrate, the application of Rule 32.2 (b) of the 2012 Rules does not presume that an athlete used a prohibited substance knowingly.

75. Methyltestosterone is a Non-specified Substance prohibited at all times pursuant to Section 1.1 (Anabolic Androgenic Steroids) of the relevant WADA Prohibited Lists.

2. Burdens and Standards of Proof

76. Rule 33 of the 2012 Rules (which is in line with Article 3.1 of the WADC) provides the following:

"Burdens and Standards of Proof

1. *the IAAF, Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. the standard of proof shall be whether the IAAF, Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which 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.*

2. *Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules 40.4 (Specified Substances) and 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof."*

77. In accordance with this provision, the burden of proof is firmly on WA to prove the alleged anti-doping rule violation. The applicable standard of proof is that of comfortable satisfaction.

78. CAS jurisprudence has established the meaning and application of the "*comfortable satisfaction*" standard of proof. The test of comfortable satisfaction "*must take into account the circumstances of the case*" (CAS 2013/A/3258 para. 122). Those circumstances include "[t]*he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities*" (CAS 2009/A/1920; CAS 2013/A/3258).

79. CAS awards have also confirmed repeatedly that a panel is allowed to consider the cumulative effect of circumstantial evidence (see, e.g., CAS 2018/O/5667 para. 85; CAS 2021/A/7839, para. 106). Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, taking their cumulative weight together, they may suffice. As described in CAS 2021/A/7839, No. 4 [guiding principle]:

"In case there is no direct but only circumstantial evidence, the adjudicatory body must assess the evidence separately and together and must have regard to what is sometimes called "the cumulative weight" of the evidence. It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt. There may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion, but the whole taken together, may create a strong conclusion of guilt."

80. The gravity of the particular alleged wrongdoing is also relevant to the application of the comfortable satisfaction standard. In CAS 2014/A/3625 (para. 132), the panel stated that the comfortable satisfaction standard is

> *"... a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be 'comfortably satisfied'".*

3. Means of Proof

81. Pursuant to Rule 33.3 of the 2012 Rules, and in line with constant CAS jurisprudence, WA may resort to any reliable means to prove the alleged anti-doping rule violations. See, e.g., CAS 2021/A/7839 No. 3 [guiding principle]:

> *"As a general rule, facts relating to anti-doping rule violations (ADRV) may (i.e., it is permissible) be established by "any reliable means". This rule gives greater leeway to anti-doping organisations to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, it is not even necessary that a violation be proven by a scientific test itself. Instead, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation. This rule is not a requirement that the evidence adduced be "reliable evidence". Rather, it is a rule as to the method or manner or form in which the facts that are necessary to sustain an allegation of an ADRV may be established, and the rule provides (in a nonexhaustive list) a number of examples of means of establishing facts which are characterised as "reliable"."*

82. Such "reliable means" include circumstantial evidence, including but not limited to the LIMS data, EDP evidence and Washout Schedules (see also CAS 2019/A/6168, para. 215), as will be discussed further below.

4. Violation of Rule 32.2 (b) of the 2012 Rules

83. It is undisputed that the Athlete's 2012 Samples were reported as negative in the ADAMS system. As a result, no anti-doping rule violation based on the "presence" of a prohibited substance (Rule 32.2 (a) of the 2012 Rules) can be found. However, the absence of a sample reported as positive in the ADAMS system does not necessarily disprove an anti-doping rule violation under Rule 32.2 (b) of the 2012 Rules. The *prima facie* evidentiary value of the reporting in ADAMS can be overturned by evidence demonstrating that the reporting was false. The crucial question is whether the evidence submitted by WA is sufficient to allow for the conclusion that the samples were indeed positive, and that the Athlete had actually used a prohibited substance.

a. The Russian Doping Scheme

84. As a starting point, the Sole Arbitrator considers that there was a systemic cover-up and manipulation of the doping control process within Russia in the manner described by Prof. McLaren in the McLaren Reports, commonly referred to as the Russian doping scheme during the 2010s (including during the period in which the 2012 Samples were collected from the Athlete). According to the First McLaren Report, *"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." The Second McLaren Report confirmed the key findings of the First McLaren Report. In particular, the McLaren Reports uncovered and described a number of counter-detection methodologies including the Disappearing Positives Methodology and Washout Testing. Together with the Second McLaren Report, Prof. McLaren published the EDP containing evidence relating to athletes he considered were involved in or benefitted from the above schemes.

85. The general evidential reliability of the McLaren Reports has been confirmed by previous CAS panels. For example, in CAS 2021/A/7840, para. 107,

> *"... the Panel accepts the McLaren Reports as a fair account of the Russian doping scheme and, in particular, accepts that the account of the Disappearing Positives Methodology set forth in the McLaren Reports is an accurate and compelling account of what took place in this regard. To be clear, on the basis of the McLaren Reports the Panel makes findings of fact as follows:*
>
> a. *The historic position in Russia was that doping of athletes was undertaken on an ad hoc, decentralised basis where coaches and officials working with elite athletes "in the field" provided those athletes with an array of performance-enhancing drugs (or "PEDs"). The difficulty with this approach was that it could not keep abreast of the developments in doping control, including in particular the introduction of the Athlete Biological Passport ("ABP") so that the athletes were at risk of being caught.*
>
> b. *In response, in or about 2012, the Russian Ministry of Sport sought to 'centralise' the doping effort and bring it under the control of the Moscow Laboratory.* [...].
>
> c. *Part and parcel of this new program was the Disappearing Positives Methodology deployed by the Moscow Laboratory. Samples were provided by the athletes and sent to the Moscow Laboratory for testing and analysis. The Moscow Laboratory conducted an ITP. Where the ITP revealed a potential AAF, the Moscow Laboratory would (through a liaison person) inform the Russian Ministry of Sport which would then decide either to "SAVE" or to "QUARANTINE" the athlete in question, and communicate that decision to the Moscow Laboratory. If the decision was made to "SAVE" the athlete, the Moscow Laboratory would report the sample as negative in ADAMS and, conversely, if the athlete was to be "QUARANTINED", the analytical bench work would continue and the AAF would be reported in the ordinary manner."*

86. The existence of a general doping scheme has also been acknowledged (to some extent) by the Russian Ministry of Sport in its letter to WADA of 13 September 2018 (see also CAS 2019/A/6168, para. 197).

87. On that basis, and also given that the Athlete does not expressly deny the existence of a general doping scheme in Russia, the Sole Arbitrator has no doubt about the existence of such scheme. Evidently, this doping scheme could only succeed, to the extent that it did, with the benefit of falsified results being recorded in ADAMS. Hence, due to the

extensive doping practices in the Russian sport in the 2010s (including in 2012, the year in which the 2012 Samples were collected) and the partially corrupted Russian anti-doping regime in place during that time, the ADAMS entries by the Moscow Laboratory cannot enjoy unreserved reliability. What is more, the ADAMS entries are no evidence that the Athlete's samples were clean. Similarly, while the Sole Arbitrator accepts that the mere existence of a doping scheme does not suffice for the purposes of establishing an anti-doping rule violation in individual cases, the existence of such a scheme is a relevant fact to be taken into account in the evaluation of specific evidence available for individual athletes (see also CAS 2019/A/6168, para. 197).

b. The specific evidence against the Athlete

88. World Athletics bases its claims regarding the Athlete's anti-doping rule violation primarily on the 4/7/2012 and the 17/7/2012 Samples. There is no evidence as to the particulars of the alleged anti-doping rule violation: It is not known precisely when and how the prohibited substances were allegedly administered by the Athlete. It is not known who allegedly administered the substances. And it is not known whether the Athlete was aware of the alleged doping, or even of the existence of a general doping scheme.

89. The Athlete denies any such knowledge. However, the Sole Arbitrator notes that it is each athlete's personal duty to ensure that no prohibited substance enters his or her body (Rule 32.2(b)(i) of the 2012 Rules). 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. In addition, the success or failure of the use or attempted use of a prohibited substance is not material: it is sufficient that the prohibited substance was used or attempted to be used for an anti-doping rule violation to be committed (Rule 32.2(b)(ii) of the 2012 Rules).

90. In support of the alleged use of a prohibited substance by the Athlete, WA relies on the following analytical and contextual evidence, to be assessed by the Sole Arbitrator separately and together (see also CAS 2019/A/6168, para. 212):

- the 2015 LIMS, which identifies the 2012 Samples as positive for methyltestosterone;
- A London Washout Schedule (EDP0020), which recorded the 17/7/2012 Sample as positive for methyltestosterone;
- the expert opinion of Prof. Ayotte, who considered the analytical data relating to the samples;
- the WADA Statement (including the underlying analytical data), which analyses the history, presentation and reliability of the 2015 LIMS data as well as the evidence against the Athlete.

91. The primary evidence against the Athlete is the 2012 Samples. While the Athlete does not dispute the collection of these samples *per se*, he alleges an inconsistency with

respect to the exact date of the 4/7/2012 Sample. The Athlete contends that the 4/7/2012 Sample was collected already on 3 July 2012, while the 2015 LIMS only identifies a sample that was taken one day later, on 4 July 2012. The supposed inconsistency, however, does not exist, because the Doping Control Form ("DCF") indicates that the Athlete's doping control began on 3 July 2012 at 8:50 pm and was concluded on 4 July 2012, at 3:30 am. Hence, the sample was correctly recorded as a 4 July 2012 sample. Mr. Walker of WADA I&I confirmed that there was no "human error" with respect to the recording of the 4/7/2012 Sample, in light of the identical sample codes displayed on the DCF and in the 2015 LIMS.

92. The 2012 Samples were recorded in the 2015 LIMS and identified as positive for methyltestosterone. Further, there are underlying analytical PDF and raw data of the analyses reported in the 2015 LIMS. The Moscow Laboratory maintained raw data files in respect of each sample assessed by it and prepared analytical PDFs for each sample and such PDFs were stored on the Moscow Laboratory server and the name and location were recorded in the 2015 LIMS. The Athlete's main argument is that the analytical evidence, including the 2015 LIMS, cannot be trusted, and should have been corroborated by witness testimony of the people who processed and analyzed the relevant data. The 2015 LIMS lacked certain security features ensuring date integrity.

93. The LIMS data were obtained subsequent to the McLaren Reports (in October 2017 from a whistleblower and in January 2019 from the Moscow Laboratory). WADA also obtained (and shared with WA) the underlying analytical PDFs and raw data of the analyses reported in the LIMS. In line with previous CAS case law (e.g. CAS 2021/A/7840 paras. 110 *et seqq.*), the Panel accepts that, upon forensic examination, the 2015 LIMS is an accurate, authentic, and contemporaneous account of the original data and its contents can be relied upon as accurate and valid. The WADA Statement addresses and confirms the history, presentation and reliability of the 2015 LIMS data, in particular at paragraphs 16 to 19. Therefore, the 2015 LIMS data can provide evidence for an anti-doping rule violation.

94. The Athlete's objections to the use of the LIMS data do not rebut the suitability and reliability of the evidence. The Athlete's theory as to a potential manipulation of the LIMS or underlying pdf files remains vague and speculative. The same accounts for his challenge of a lack of proof of an uninterrupted chain of custody. If the LIMS data, or the analytical files relating to the Athlete, were manipulated and not a true account of the data secured from the Moscow laboratory, such false date would likely not be corroborated by other evidence. This is, however, the case here.

95. With respect to the 4/7/2012 Sample, the LIMS data evidence is corroborated by Prof. Ayotte's review of the raw data and the underlying PDF documents. According to Prof. Ayotte's analysis, the pdf file generated from the initial testing procedure, and the corresponding raw files showed the presence of three characteristic metabolites of methyltestosterone, with clear and intense signals for which Prof. Ayotte saw no indication that they would not be confirmed during a confirmation procedure. Prof. Ayotte, during the hearing, also excluded the possibility of microbial activity as a potential cause for the detection of methyltestosterone in the Athlete's 4/7/2012 Sample.

This theory had been introduced by the Athlete's expert Dr. de Boer. Prof. Ayotte explained that while microbial degradation could indeed result in a "false positive", a pattern of degradation would be highly recognizable, and that she found no sign of such degradation in the relevant data underlying the Athlete's 4/7/2012 Sample, and could, therefore, exclude this possibility. The Second Respondent's expert, Dr. de Boer, who did not testify during the hearing, confirmed in his report that while microbial activity is a theoretical cause for sample contamination, he accepted that there were no signs corroborating this theory for the Athlete's Samples.

96. Similar analyses by Prof. Ayotte have been accepted as reliable evidence in previous CAS cases (e.g. CAS 2021/A/7840, para. 113 *et seqq.*; CAS 2019/A/6168, para. 155 *et seqq.*). The Sole Arbitrator notes that there is no reason here to deviate from this case law. There was no serious challenge to the expertise of Prof. Ayotte or to her expert evidence in relation to the material. Prof. Ayotte confirmed her key findings during her examination at the hearing and also explained why Dr. de Boer's contamination argument remained entirely theoretical in the present case. In these circumstances, the Sole Arbitrator readily accepts this evidence, which provides analytical support of the 2015 LIMS data.

97. With respect to the 17/7/2012 Sample, while the analysis of the underlying data by Prof. Ayotte did not confirm the presence of methyltestosterone, both Prof. Ayotte and Mr. Walker of WADA I&I explained that a pattern of subsequent manipulation could be discovered as a result of the EDP documents being public. That such manipulation occurred here is supported by the fact that the 17/7/2012 Sample was also recorded in a London Washout Schedule (in addition to the 2015 LIMS), which means that two independent documents recorded the presence of methyltestosterone. Mr. Walker confirmed his testimony convincingly during the oral hearing.

98. The Athlete's further argument that other samples collected from him following the 2012 Samples, between July 2012 and August 2014 (including one outside of Russia), were all negative does not invalidate the substance and reliability of the evidence reflected in the 2015 LIMS and the London Washout Schedule, and it does not question Prof. Ayotte's conclusions either. Subsequent samples are simply no proof that the samples at issue in this case were negative, too. Rather, the Sole Arbitrator is comfortably satisfied that the evidence presented in this case, involving different indications that the Athlete used a Prohibited Substance in the run-up to the 2012 Olympic Games in London, as confirmed by different experts who analysed the analytical evidence, is sufficient to establish an ADRV.

B. What is the Athlete's sanction?

99. Having found that the Athlete committed an anti-doping rule violation, the Sole Arbitrator moves to examining the consequences that must be drawn from such finding.

1. The duration of the Period of Ineligibility

100. Rule 40.2 of the 2012 Rules provides that the sanction to be imposed for an anti-doping

rule violation under Rule 32.2 (b) of the 2012 Rules is as follows:

> *"The period of Ineligibility imposed for a violation of Rules* [...] *32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method)* [...], *unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:*
>
> *First Violation: Two (2) years' Ineligibility."*

101. Rule 40.6 of the 2012 Rules, which addresses aggravating circumstances, sets forth:

> *"If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) 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.*
>
> *(a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the antidoping 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. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.* [...]"

102. For the sake of clarity and for the avoidance of doubt the Sole Arbitrator wishes to underline that while in the present proceedings, the Athlete has been found to have committed two ADRVs on two different occasions, it follows from Rule 40.7 (d)(i) of the 2012 Rules that the two samples at issue here constitute only one anti-doping rule violation. The occurrence of multiple violations may, however, be considered as a factor in determining aggravating circumstances under Rule 40.6 of the 2012 Rules.

103. The Sole Arbitrator accepts that the use of Methyltestosterone twice in the run-up of the most important event for an athlete – the Olympic Games (2012 in London) – should be considered as an aggravating factor, because it demonstrates a particularly malicious intent to cheat at an event the entire world follows in the expectation to see clean and fair sport.

104. On the other hand, there is no indication, and WA did not submit any proof to that extent, that the Athlete was knowingly involved in the Russian doping scheme. Even though the Sole Arbitrator is comfortably satisfied that the Athlete used prohibited substances, the specific circumstances of such use are unknown. Without any evidence as to the state of knowledge of the Athlete at the time of the anti-doping rule violation, the Sole Arbitrator cannot be satisfied to the required standard that he was aware that he was part of a wider doping plan or scheme. In these circumstances, where it cannot be shown that the Athlete was aware of the existence of a wider doping plan or scheme at the time the prohibited substances were used, the Sole Arbitrator considers that the mere existence of a plan or scheme does not, in and of itself, amount to an aggravating circumstance (see also CAS 2019/A/6161, para. 211; CAS 2022/A/9128 & 9217, para. 143).

105. On balance, and in view of her acceptance that multiple positive samples constitute an aggravating factor, the Sole Arbitrator finds it appropriate to impose a period of ineligibility on the Athlete of 2 years and 6 months.

2. Commencement of the Ineligibility Period

106. Rule 40.10 of the 2012 Rules regarding the commencement of the Ineligibility Period stipulates as follows:

> *"10. Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served."*

107. In accordance with this rule, the Athlete's period of Ineligibility shall start on the date of the present Award. Since the Athlete has not been provisionally suspended, no credit is to be applied to the period of Ineligibility imposed herein.

3. Disqualification of Results

108. Moreover, the Sole Arbitrator notes that Rule 40.8 of the 2012 Rules regarding the disqualification of results states 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."*

109. WA submits that the Athlete's results as of 4 July 2012 (the date when the Athlete provided the 4/7/2012 Sample) shall be disqualified. If Rule 40.8 of the 2012 Rules where applied strictly and literally, this would result in a disqualification of results over a period of almost 12 years.

110. Notably, Rule 40.8 of the 2012 Rules does not contain any "fairness exception". However, the Sole Arbitrator finds that fairness considerations must be taken into account despite that Rule 40.8 of the 2012 Rules does not expressly mention them. The 2009 WADA Code, which was applicable at the time the 2012 Rules came into force, expressly provides for the "fairness exception" in its Article 10.8. Pursuant to Article 23.2.2 of the 2009 WADA Code, Article 10 (addressing sanctions against individuals) belongs to those articles which the Signatories to the WADA Code (including WA) must implement without substantive change. Hence, and in view of the drastic outcome a disqualification of results over a period of 12 years would have on the Athlete, compared to the period of Ineligibility imposed on him, the Sole Arbitrator feels compelled to apply the fairness exception in the present case.

111. If the Sole Arbitrator were to follow WA's request, the Athlete would be treated as if he had been continuously doped for more almost 12 years since the collection of the 2012 Samples, despite the fact that he never tested positive within that same period of time for which disqualification is sought.

112. Hence, the Sole Arbitrator finds that the established facts of the present case call for the application of the fairness exception enshrined in Article 10.8 of the 2009 WADA Code, which WA should have implemented without substantive changes. While retroactive disqualification of competitive results is a "*vital part of a credible anti-doping regime for various reasons*", including its "*deterrent effect on doping*" (*Manninen/Nowicki*, "Unless Fairness Requires Otherwise" – A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses", CAS Bulletin 2017/2, p. 8 et seq.), CAS panels have frequently found that the general principle of fairness must prevail in order to avoid disproportionate sanctions (see, e.g., CAS 2016/O/4481, para. 195; CAS 2018/O/5713, para. 71; CAS 2019/A/6167 para. 243 et seq.).

113. Several factors may be taken into consideration by CAS panels when assessing the principle of fairness. The decision is not to rest on any particular factor, but an overall evaluation of the evidence in support of fairness, including delays in results management, the athlete's degree of fault, sporting results unaffected by the administration of the prohibited substance, significant (financial or sporting) consequences, or – in the case of ADRVs based on non-analytical evidence –a long period of time between the commission of the ADRV and the athlete's suspension (see *Manninen/Nowicki*, *supra*, p. 8, 11 et seq.). As a matter of principle, CAS panels enjoy broad discretion in adjusting the disqualification period to the circumstances of the case.

114. In the present case, almost ten years passed between the Athlete's alleged ADRVs (in July 2012) and the WA's notification of a potential ADRV (on 30 June 2022). This long time is not WA's fault, since it is the result of the unprecedented sophistication of the Russian cover-up doping scheme that was not (and probably could not be) detected until late in 2014. At the same time, and as explained above, there is no proof that the Athlete personally knew of the existence of that doping scheme. Yet, because the fairness exception shall be primarily assessed from the point of view of the athlete (*Manninen/Nowicki*, *supra*, p. 10), the extensive time required for uncovering, investigating and prosecuting anti-doping rule violations that were part of the Russian

doping scheme cannot go to the Athlete's detriment when deciding on retroactive disqualification. Furthermore, at least for the time period after the collapse of the Russian doping system, the Panel appreciates that the Athlete never again tested positive.

115. Taking all of these factors into account, and exercising her broad discretion, the Sole Arbitrator finds it fair and appropriate to disqualify the Athlete's results for a period of two (2) years and six (6) months, starting from the date of the 4 July 2012 Sample and until 3 January 2015. This period not only matches the period of Ineligibility, but also accounts for the fact that around the end date, the Russian doping scheme was uncovered and potentially seized to exist. Hence, the Athlete's results between 4 July 2012 and 3 January 2015 shall be disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

IX. COSTS

116. Article R64.4 of the CAS Code provides the following:

> *"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."*

117. Article R64.5 of the CAS Code reads 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."*

118. The Sole Arbitrator decides on the issue of costs *ex officio* and is not bound by the requests of the Parties. In accordance with Article R64.5 of the CAS Code, the Sole Arbitrator has broad discretion in respect of the making of any costs award, which shall

be exercised by reference to all the circumstances of the case including the complexity and outcome of the proceedings and the conduct and financial resources of the parties.

119. The Sole Arbitrator notes that the Claimant lost a (albeit small) part of its claim due to an excessive request in terms of the disqualification of results. As a result, in light of her determination, the Sole Arbitrator exercises her broad discretion in respect of costs so as to order that the arbitration costs shall be borne in the proportions 90% (ninety percent) jointly by the Respondents and 10% (ten percent) by the Claimant.

120. Furthermore, pursuant to Article R64.5 of the CAS Code, the Respondents shall jointly pay an amount of CHF 4,000 (four thousand Swiss Francs) to the Claimant as a contribution to its legal costs and other expenses incurred in the present proceedings. Apart from that, each Party shall bear its own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed by World Athletics against the Russian Athletics Federation and Mr. Nikolay Chavkin is partially upheld.

2. Mr. Nikolay Chavkin is found guilty of an anti-doping rule violation under Rule 32.2(b) of the IAAF Competition Rules 2012-2013.

3. Mr. Nikolay Chavkin is sanctioned with a Period of Ineligibility of two (2) years and six (6) months starting from the date of this Award.

4. All the competitive results obtained by Mr. Nikolay Chavkin from 4 July 2012 until 3 January 2015 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

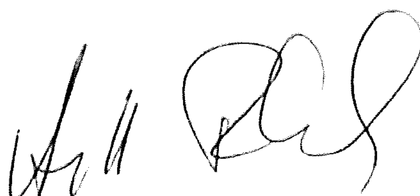
5. The costs of the arbitration, to be determined and served separately to the Parties by the CAS Court Office, shall be borne 90% jointly by the Russian Athletics Federation and Mr. Nikolay Chavkin and 10% by World Athletics.

6. The Russian Athletics Federation and Mr. Nikolay Chavkin shall jointly pay an amount of CHF 4,000 (four thousand Swiss Francs) to World Athletics as contribution to its legal costs and other expenses incurred in the present proceedings.

7. All other and further requests of reliefs are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 28 March 2024

THE COURT OF ARBITRATION FOR SPORT



Annett Rombach
Sole Arbitrator