CAS 2018/O/5671 International Association of Athletics Federations (IAAF) v. Russian Athletics Federation (RUSAF) & Lyukman Adams

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Jacques Radoux, Legal Secretary to the European Court of Justice, Luxembourg

in the arbitration between

International Association of Athletics Federations (IAAF), Monaco

Represented by Mr. Ross Wenzel, Mr. Nicolas Zbinden, attorneys-at-law with Kellerhals Carrard, Lausanne, Switzerland

Claimant

and

Russian Athletics Federation (RUSAF), Moscow, Russia,

First Respondent

and

Mr. Lyukman AdaMs, Moskow, Russia

Represented by Mr. Philippe Bärtsch, Mr. Christopher Boog, Mr. Stefan Leimgruber, attorneys-at-law with Schellenberg Wittmer, Geneva, Switzerland

Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (the "Claimant" or the "IAAF") is the world governing body for track and field, recognized as such by the International Olympic Committee (the "IOC"). One of its responsibilities is the regulation of track and field, including, under the World Anti-Doping Code ("WADC"), the running and enforcing of an anti-doping programme. The IAAF, which has its registered seat in Monaco, is established for an indefinite period of time and has the legal status of an association under the laws of Monaco.

2. The Russian Athletics Federation (the "First Respondent" or the "RUSAF") is the national governing body for the sport of Athletics in Russia, with its registered seat in Moscow, Russia. The RUSAF is a member federation of the IAAF for Russia, but its membership is currently suspended.

3. Mr. Lyukman Adams (the "Second Respondent" or the "Athlete"), born on 24 September 1988, is a Russian athlete specialising in triple jump. He competed, *inter alia*, in the 2012 London Olympic Games in which he ranked ninth, in the 2012 IAAF World Indoor Championships in Istanbul in which he ranked third, in the 2014 IAAF World Indoor Championships in Sopot in which he won the title and in the 2014 European Athletics Championships in Zurich in which he ranked second. It is uncontested that, for the purposes of the IAAF Competition Rules (the "IAAF Rules"), he is an "International-Level Athlete".

II. FACTUAL BACKGROUND

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

5. This case concerns a claim by the IAAF against the Second Respondent for having violated Rule 32.2 (b) of the 2014 IAAF Competition Rules (*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*). The RUSAF has been included in the claim as First Respondent, as it has not been able, due to the suspension of its IAAF membership, to conduct a hearing process in the present case.

6. The claim is mainly based on elements relating to the so-called "*Washout Schedules*" which have been described by Prof. Richard H. McLaren in his first report, submitted on 16 July 2016 (the "First McLaren Report"), as well as in his second report, submitted on 9 December 2016 (the "Second McLaren Report") and the underlying evidence (the "EDP Evidence").

7. The key findings of the First McLaren Report were summarized 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 Positives 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 athletes' analytical results or sample swapping, with the active participation and assistance of the Russian Federal Security Service, the Centre of Sports Preparation of National Teams of Russia and both Moscow and Sochi Laboratories.

8. The Second McLaren Report confirmed these key findings and contained a description of the so-called "*washout testing*" prior to certain major events, including the 2012 London Olympic Games and the 2013 IAAF World Championships in Moscow. According to Prof. McLaren, the washout testing started in 2012, when Dr. Grigory Rodchenkov, the former director of the formerly World Anti-Doping Agency ("WADA") accredited laboratory in Moscow, developed a secret cocktail called the "Duchess" with a very short detection window. According to the Second McLaren Report, "*this process of pre-competition testing to monitor if a dirty athlete would test 'clean' at an upcoming competition is known as washout testing.*

9. The Second McLaren Report went on to describe that the washout testing was used 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, according to said Report, providing samples in official doping control BEREG-Kits. While the results of the Laboratory's initial testing procedure ("ITP"), which show the presence of Prohibited Substances, were recorded on the washout list, the samples were automatically reported as negative in the Anti-Doping Administration and Management System ("ADAMS") as described in the Second McLaren Report.

10. The Second McLaren Report went on to explain that the covering up of falsified ADAMS information only worked if the sample stayed within the control of the Moscow Laboratory, and later destroyed. Given that BEREG-Kits are numbered and can be audited or also seized and tested, the Moscow Laboratory realized that it would be only a matter of time before it was uncovered that the content of samples bottle would not match the entry into ADAMS.

11. Therefore, according to the Second McLaren Report, the washout testing program evolved prior to the 2013 IAAF World Championships in Moscow. It was decided that the washout testing would no longer be performed with official BEREG-Kits, but from containers selected by athletes, such as Coke and baby bottles filled with their urine. The athlete's name would be written on the selected container to identify his or her sample.

12. The Second McLaren Report went on to explain that this "under the table" system consisted of collecting samples in regular intervals and subsequently testing those samples for quantities of prohibited substance to determine the rate in which those quantities were declining so that there was certainty the athlete would test "clean" in

competition. If the washout testing determined that the athlete would not test "clean" at competition, he or she was not sent to the competition.

13. According to the Second McLaren Report, the Moscow Laboratory developed a schedule to keep track of those athletes who were subject to this unofficial washout testing program (the "Moscow Washout Schedule"). This Washout Schedule was updated regularly when new washout samples arrived in the Laboratory for testing.

14. The Moscow Washout Schedule was made public by Prof. McLaren on a website (https://www.ipevidencedisclosurepackage.net/). Amongst other documents that were made public were numerous email exchanges containing references to or from the Washout Schedule. All documents contained on the website were anonymized for privacy reasons. However, each identified athlete was attributed one or more code numbers which were substituted for their name on the relevant documents. Prof. McLaren then informed the IAAF that the code numbers for the Athlete were A0009 and A1227.

15. On 27 October 2017, the Athletics Integrity Unit of the IAAF informed, on behalf of the IAAF, the Athlete that the evidence provided by Prof. McLaren indicated that he had used prohibited substances in the years 2012 to 2014 and that he benefitted from the Disappearing Positives Methodology and Washout Testing and that, as a consequence, the IAAF intended to refer this evidence against the Athlete to the Court of Arbitration for Sport ("CAS") with a view to seeking an increased period of ineligibility up to a maximum of four years in accordance with Rule 40.6 of the 2014 IAAF Competition Rules on the basis of aggravating circumstances. The passage of this letter referring to the evidence concerning the Athlete reads as follows:

> *"[...]*
>
> *All documents contained on the EDP website were anonymized, not least in order to protect the integrity of the on-going investigations. However, each Identified Athlete was attributed one or more codes, which were substituted for their name on the relevant documents.*
>
> *You were one of the Identified Athletes and your codes for the purposes of the EDP website are A0009 and A1227. You may access the relevant documents on the EDP website, in particular by entering into the search bar your individual athlete codes, any relevant sample codes or by entering a specific EDP document reference code (e.g. EDP1166).*
>
> *The principal evidence of your anti-doping rule violations is summarized below and the most relevant EDP document codes are provided for convenience.*
>
> ***(i) London Washout Testing***
>
> *Three of your (official) doping control samples feature on the London Washout Schedules as follows: (i) sample 2730565 collected on 16 July 2012 (see, for example, EDP0019), (ii) sample 2727722 collected on 21 July 2012 (see, for*

example, EDP0021) and (iii) sample 2727845 collected on 27 July 2012 (see, for example, EDP0024).

The following information is recorded on the London Washout Schedules in respect of the 16 July 2012 sample (see EDP0019):

- *Dehydroepiandrosterone*
- *Desoxymethyltestosterone 460,000*
- *T/E 10*
- *Phtalates (blood transfusion?)*

The following information is recorded on the London Washout Schedules in respect of the 21 July 2012 sample (see EDP0021):

- *Desoxymethyltestosterone 40,000*
- *T/E 10*

The following information is recorded on the London Washout Schedules in respect of the 27 July 2012 sample:

- *T/E 6.*

All three samples were reported as negative in ADAMS.

(ii) Sample 2747269 – High T/E Value

In an email dated 19 October 2012 to inter alia Liaison Person Zhelanova, the latter was informed that your sample with Code number 2747269 and collected on 12 October 2014 [sic!] had revealed a T/E ratio of 9.5. This is described in the email as a "suspiciously high value" (see EDP1182).

Sample 2747269 was reported as negative in ADAMS.

(iii) Moscow Washout Testing

Three (unofficial) samples on the Moscow Washout Schedules are listed as belonging to you; they date from 6, 17 and 25 July 2013 respectively (see for example EDP0028).

It is indicated on the face of the Moscow Washout Schedules that you are following a "heavy scheme!!!."

The following information is recorded on the Moscow Washout Schedules in respect of the 6 July 2013 sample:

- *T/E 15*

- *Nandrolone 200,000 (impurity)*
- *Trenbolone 15m*
- *Oxandrolone 50m*
- *Metenolone 50m*

The following information is recorded on the Moscow Washout Schedules in respect of the 17 July 2013 sample:

- *T/E 9*
- *Oxandrolone 30,000*

The following information is recorded on the Moscow Washout Schedules in respect of the 25 July 2013 sample: T/E 6. The sample is considered to be "clear".

(iv) Sample 2868440 – DPM for Ostarine and Oral Turinabol from March 2014

In an email dated 2 March 2014 to Dr. Rodchenkov, the latter was informed that your sample with Code number 2868440 and collected on the occasion of a training camp in Novorgorsk on 26 February 2014 had tested positive for "ostarine in very trace amounts" and "trace oral-turinabol (but possible)" (see EDP0276).

Ostarine and Oral Turinabol (which is a commercial synonym for dehydrochloromethyltestosterone) are Exogenous Androgenic Anabolic Steroids prohibited under section S.1(a) of the WADA Prohibited List.

Pursuant to an email from Liaison Person Alexey Velikodniy to the Moscow Laboratory dated 3 March 2014, sample 2868440 was "SAVED" along with nine other samples (EDP0278).

Dr. Rodchenkov responded to the email from Alexey Velikodniy later on the same day in the following terms:

"I can't just ignore CLEARLY POSITVE samples in front of everybody.

Where on earth are they planning to go? To get caught with their pants down??

I am personally responsible for accreditation and performance at both laboratories: Sochi and Moscow.

And I won't cover up for some freaks at the cost of tremendous and unjustified risks, furthermore, all samples collected 3 months prior to the World Championship IAAF are considered pre-competition and could be called back to Cologne or Lausanne for the retest in an instance [...]"

Sample 2868440 was reported as negative in ADAMS.

(v) Sample 2920565 – DPM for Boldenone from July 2014

In an email dated 22 July 2014 to Dr. Rodchenkov and Alexey Velikodniy (EDP0432), sample 2920565 was recorded as having a T/E of 5.5 and boldenone (although the latter was stated to be possibly endogenous with an IRMS being required).

Boldenone is an Exogenous Androgenic Anabolic Steroid prohibited under section S.1(a) of the WADA Prohibited List.

Alexey Velikodniy advised that the sample should be "SAVED" pursuant to an email to Dr. Rodchenkov on 22 July 2014 (EDP0434).

Sample 2920565 was reported as negative in ADAMS."

16. The IAAF granted the Athlete an opportunity to admit the violation by 10 November 2017 or to provide his explanations in respect of this evidence by 17 November 2017 at the latest and informed him that on the basis of this evidence he would, if established, merit the imposition of an increased period of ineligibility of up to four (4) years. Further, the IAAF informed the Athlete that if he promptly admitted the violations described above by 10 November 2017 at the latest, he could avoid the application of the increased sanction and limit said period of ineligibility to a maximum of two (2) years. The IAAF added that the Athlete could admit the asserted anti-doping rule violations and accept a two-year period of ineligibility together with disqualification of his results from 16 July 2012 (i.e. the date of the first sample on the London Washout Schedules) by signing and returning the enclosed Acceptance of Sanction Form.

17. On 11 November 2017, the Athlete informed the IAAF that he never committed any doping offense and therefore could not admit the alleged violations. On 16 November 2017, the Athlete disputed the allegations put forward against him. Regarding the London Washout allegations, he asked the IAAF to supply all the entries from ADAMS. Concerning the Moscow Washout allegations, the Athlete contested ever having provided an unofficial sample. On top he did not compete in the 2013 IAAF World Championships in Moscow. As regards the sample 2647269 and sample 2920565, he argued that the high levels of testosterone had an endogenous origin and he requested all relevant documents to be found in ADAMS. Regarding sample 2868440, he invited the IAAF to study the existing evidence objectively and take into consideration the extended data on the analysis of this sample in ADAMS, including primary screening. Finally, he contested having handed over a sample on February 26, 2014 in Novogorsk.

18. Not convinced by the explanations given by the Athlete, the IAAF informed the latter that his case would be referred to the CAS. The IAAF granted the Athlete a deadline to state whether he preferred a first instance CAS hearing before a sole arbitrator with a right to appeal to the CAS (IAAF Rule 38.3) or a sole instance before a panel of three arbitrators with no right to appeal, save to the Swiss Federal Tribunal (IAAF Rule 38.19).

19. Although the Athlete had, within the given deadline, indicated his preference for his case to be heard as a single hearing, it was impossible for the IAAF to proceed as wished, as WADA did not give its consent to the Athlete's request.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 6 April 2018, the IAAF filed its Request for Arbitration against the RUSAF and Mr. Lyukman Adams (together the "Respondents") in accordance with Article R38 of the Code of Sports-related Arbitration (the "Code"). The IAAF asked for this Request to be considered as its Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the Code and requested, in compliance with IAAF Rule 38.3, the matter to be submitted to a sole arbitrator, acting as a first instance body.

21. On 13 April 2018, the CAS Court Office initiated the present arbitration and specified that, in accordance with IAAF Rule 38.3, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the CAS Appeals Arbitration Division rules, Articles R47 *et seq.* of the Code. The Respondents were invited to submit, in line with Article R55 of the Code, their Answer within 30 days.

22. On 30 April 2018, the CAS Court Office noted the fact that the Second Respondent was represented by legal counsels and invited the Claimant and the First Respondent to state whether they had an objection to the Second Respondent's request for an extension of time until 29 June to file his Answer. No such objections having been raised, the CAS Court Office, on 7 May 2018, informed the Parties that the Second Respondent was granted until 29 June 2018 to submit his Answer to the CAS.

23. On 15 May 2018, the CAS Court Office acknowledged receipt, the same day, of a correspondence by the Athlete himself qualified by the latter as "Answer".

24. On 16 May 2018, the CAS Court Office noted the agreement of the other Parties to the First Respondent's request to see the deadline to file its Answer extended to 29 June 2018 and, thus, granted the extension.

25. On 30 May 2018, the CAS Court Office, pursuant to Article R54 of the Code, informed the Parties that the arbitral panel appointed to hear the present case was constituted by: Mr. Jacques Radoux, Legal Secretary to the European Court of Justice in Luxembourg.

26. On 5 June 2018, the Second respondent informed the CAS that he did not have the financial means to advance his share of the costs and that, moreover, the proceedings should be free of charge under Rule 38.3 of the 2017 IAAF Competition Rules.

27. On 20 June 2018, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that the documents sent by the Athlete on 15 May 2018, was to be considered as part of the file but not as the Athlete's official Answer to the request for arbitration.

28. On 29 June 2018, the Second Respondent filed his Answer. On the same date, the First Respondent informed the CAS Court Office that it would not file an Answer in the present matter.

29. On 13 July 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the present matter and asked the Parties whether they were available for such hearing on 15 August 2018. Further, the Claimant was invited to indicate to the CAS whether a retesting of the Athlete's sample provided on 6 August 2012 during the 2012 London Olympic Games had been ordered and, if so, what the results of said retest were.

30. On 20 July 2018, the IAAF indicated that the Athlete's sample provided on 6 August 2012 had been retested and that it was negative. Further, the IAAF requested a thirty (30) day deadline to submit additional written submission in order to properly respond to the challenge of the authenticity and contemporaneity of the EDP documents contained in the McLaren Evidence. In his letter dated 2 July 2018, the Second Respondent considered that, in absence of any exceptional circumstances in the present case, the Claimant's demand for a second round of written submissions was unfounded and should be dismissed.

31. On 3 August 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had, after having reviewed the Parties' position and in view of the circumstances of the case, decided to authorize a second round of written submissions and invited the Parties to state whether they would be available for a hearing on 4 or 5 October 2018.

32. On 9 August 2018, the Second Respondent asked the Sole Arbitrator to reconsider his decision to hold a second round of written submissions and pointed out that given the schedule set out in the letter dated 3 August 2018, the Second Respondent's right to equal treatment were infringed, as the Claimant had twice the amount of time to file its reply than the Second Respondent to file his Rejoinder. Thus, the latter reserved his right to request an extension of the deadline to file said Rejoinder.

33. On 15 August 2018, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that the Sole Arbitrator considered that it was preferable to have a further exchange of written observations limited to the issue of the authenticity and reliability of the EDP documents in order to gather more information on the relevant facts at stake. This should enable him to limit the number of questions in this regard at the hearing and will thus, allow the Parties to focus their pleadings on other aspects of the present case. It was further pointed out that the Sole Arbitrator had taken due notice of the Second Respondent's reserve to eventually request an extension of the deadline to file the Rejoinder.

34. On 28 August 2018, the Parties were informed that given their availability, the hearing would be held on 19 October 2018, at 9h30 am (Swiss time) at the CAS, in Lausanne.

35. On 30 August 2018, within the given deadline, the Claimant filed its reply. On 3 September 2018, the Respondents were granted a deadline until 28 September to file their Rejoinder.

36. On 19 September 2018, the Second Respondent requested an extension until 12 October 2018 to file his Rejoinder. He considered that such extension was necessary in order to analyse and address the new evidence submitted by the Claimant with its reply. Further, this extension would be justified by the fact that the Claimant was granted almost two months to prepare its reply whereas the Second Respondent was

only granted twenty-three days. On 24 September 2018, the Claimant informed the CAS Court Office that it was opposed to the requested extension of time to file the Rejoinder, as the deadline suggested by the Second Respondent would leave only four (4) business days to the Claimant to analyse said Rejoinder and prepare for the hearing. On 25 September 2018, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that the Second Respondent's request for extension to file his Rejoinder was partly accepted until 8 October 2018 at 4pm (Swiss time).

37. On 1 October 2018, the First Respondent informed the CAS Court Office that it would not submit a Rejoinder and pointed out that its decision not to file a submission in these proceedings, which concern Mr. Lyukman Adams, cannot and must not be deemed as an acceptance of any of IAAF's arguments, including in relation to the findings of the McLaren reports. Further, the Second Respondent informed the CAS Court Office that it would not attend the hearing in the present case.

38. On the same day, the Second Respondent objected to the conditions under which Dr. Rodchenkov was willing to testify. In particular, the Second Respondent objected to the non-disclosure of Dr. Rodchenkov's appearance and to the presence of the latter's counsel during his testimony. This objection was rejected by the Sole Arbitrator on 18 October 2018.

39. On 3 October 2018, on behalf of the Sole Arbitrator, the CAS Court Office issued an Order on Procedure that was sent to the Parties. The First Respondent signed it on 4 October 2018. The Claimant and the Second Respondent signed it on 10 October 2018.

40. On 8 October 2018, the Second Respondent filed his Rejoinder.

41. On 19 October 2018, a hearing took place at the CAS Court Office. The Sole Arbitrator was assisted by Mrs. Andrea Zimmermann, Counsel to the CAS, and joined by the following participants:

For the IAAF:
Mr. Ross Wenzel, Mr. Nicolas Zbinden, and Mrs. Cléa Muralti (in person);
Mr. Andrew Sheldon (expert) (by skype);
Dr. Grigory Rodchenkov (witness) (by skype)
Mrs. Tatiana Hay (interpreter) (by skype)
Mrs. Avni P. Patel (counsel for Dr. Rodchenkov) (by skype)

For the Athlete:
Mr. Philippe Bärtsch, Mr. Sebastiono Nessi, Mr. Damien Clivaz, Ms. Ksnea Iliyash (counsels) (in person);
Mr. Lyukman Adams (by skype);
Mr. Alexandre Ponomarev (interpreter) (in person);
Mrs. Irène Wilson (expert) (by skype);
Mr. Manuel Rundt (expert) (in person).

42. The Interpreters as well as the experts and the witness were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law.

43. At the inception of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel. At the end of the hearing, the Parties confirmed that their right to be heard and their right to a fair trial had been fully respected and that they had no objections as to the manner in which the proceedings had been conducted.

IV. SUBMISSIONS OF THE PARTIES

A. The IAAF's submissions

44. In its Request for Arbitration, the IAAF requested the following relief:

i. CAS has jurisdiction to decide on the subject matter of this dispute.

ii. The Request for Arbitration of the IAAF is admissible.

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

iv. A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete 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 the Athlete from 16 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 pursuant to Rule 38.3 of the IAAF Competition Rules 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 the IAAF's legal and other costs.

45. The IAAF's submissions, in essence, may be summarized as follows:

- It follows from article R58 of the Code that the IAAF Anti-Doping Rules (the "IAAF ADR"), which entered into force on 6 March 2018, apply. Pursuant to Rule 13.9.5 of the IAAF ADR: "*In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise.*" The Athlete having been affiliated to RUSAF and having participated in competitions of RUSAF and IAAF, including at the time of the asserted ADRVs in the years 2012 to 2014, he is subject to the IAAF ADR Pursuant to Rule 21.3. of the IAAF 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 2016-2017 IAAF Competition Rules, effective from 1st November 2015

(the "2016-2017 IAAF Rules"). The IAAF anti-doping regulations in force at the time of the asserted ADRVs, which shall apply for substantive matters, were the IAAF Competition Rules in place between the years 2012 and 2014. For the sake of convenience, only the 2014 IAAF Competition Rules (the "2014 IAAF Rules") should apply in the present matter. Rule 32.2(b) of the 2014 IAAF Rules forbids the Use or attempted Use by an athlete of a Prohibited Substance or a prohibited Method. Pursuant to rule 33.3 of the 2014 IAAF Rules, facts related to ADRVs "*may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information*".

- The IAAF submits that it follows from the Moscow Washout Schedule and the other McLaren Evidence that the Athlete committed Use violations in the years 2012, 2013 and 2014. He was one of the protected athletes who featured on the London and Moscow Washout Schedules. Out of the three samples that feature on the London Washout Schedules, two tested positive (samples from 16 and 21 July 2012) for exogenous anabolic steroids and revealed an elevated T/E ratio. All positive samples were automatically reported as negative in ADAMS.

- Several months later in October 2012, it is reported to one of the Liaison Persons that a further one of the Athlete's official doping control samples had revealed a suspiciously high T/E value of 9.5.

- On the Moscow Washout Schedule the Athlete is reported as following a "*heavy scheme*". The Athlete's first sample on this Washout Schedule contained all three of the components of the Duchess cocktail developed by Dr. Rodchenkov, i.e. Metenolone, Oxandrolone and Trenbolone.

- Further, two of the Athlete's official doping control samples from 2014 are reported by the Moscow Laboratory as containing exogenous steroids and bearing elevated T/E ratios. Both samples were notified to Mr. Alexey Velikodny, the Liaison Person, and "SAVED" pursuant to Disappearing Positive Methodology emails.

- Thus, there is ample evidence, that the Athlete used prohibited substances, in particular a range of exogenous substances, over the course of the three years. Consequently, the Athlete has breached Rule 32.2(b) of the 2014 IAAF Rules.

- Pursuant to Rule 40.2. of the 2014 IAAF Rules, the period of ineligibility for a violation of Rule 32.2(b) shall be two years, unless, inter alia, the conditions for increasing such period are met. Rule 40.6 of the 2014 IAAF Rules provides: "*if it is established in an individual case involving an anti-doping rule violation [...] that aggravating circumstances at present which justify the imposition of the 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 [...] can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping violation." The 2014 IAAF Rules list examples of aggravating circumstances such as "*the Athlete [...] committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping violations; the Athlete [...] used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed the 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 [...] engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.*" Further, according to Rule 40.7(d) of the 2014 IAAF Rules, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances in the sense of Rule 40.6.

- In the present case there are several aggravating circumstances, namely (1) the use of a whole range of exogenous anabolic steroids, i.e. Oxandrolone, Trenbolone, Metenolone, Ostarine, Oral Turinabol and Desoxymethyltestosterone, on multiple occasions; (2) the Athlete was part of a centralized doping scheme and he provided unofficial samples for washout testing and those of his official samples that did test positive for prohibited substances were "SAVED" and reported as clean in ADAMS; (3) the unofficial washout testing was carried out in the run up to the most important events, i.e. the 2012 London Olympics Games, the 2013 IAAF World Championships in Moscow and the 2014 IAAF Indoor World Championships in Sopot. Its aim was to ensure that the athletes sent to the competition would not test positive. It is no surprise that all of the athletes on the Moscow Washout Schedule have at least one dirty sample; these athletes were unofficially tested precisely because they were known to be using prohibited substances. In view of the multiplicity of the aggravating circumstances and the fact that there is evidence of doping over the course of several years, the IAAF submits that the only appropriate period of ineligibility would be the maximum four (4) years.

- Pursuant to rule 40.10 of the 2014 IAAF Rules, the period of ineligibility should start on the date of the CAS award.

- Further, in application of Rule 40.8 of the 2014 IAAF Rules, all the Athlete's competitive results obtained from the date of the first positive sample, i.e. 16 July 2012, should be disqualified through to the commencement of the ineligibility period with all the resulting consequences for the Athlete. Given the severeness of the violations, fairness would not require any of the Athlete's results to be maintained.

- As regards the Athlete's submission that the IAAF relies purely on Prof. McLaren's findings, the IAAF points out that it relies primarily on the EDP evidence that was the basis for the two McLaren Reports.

- Concerning the Second Respondent's challenge of the authenticity and contemporaneous nature of the EDP evidence , the IAAF argues that in view of the sheer volume of, and the interlinks within, the EDP evidence, such challenge is untenable. In particular, the IAAF notes that:

  - First, the most relevant EDP documents are produced in their native format (i.e. excel, eml, etc) and without any redaction or other modification. With respect to the London and Moscow Washout Schedules in particular, it is clear from the properties of the documents that they were created and worked upon at the relevant times in 2012 and 2013.

  - Second, certain EDP documents, including the London Washout Schedules and one of the Clean Urine Schedules, were attached to contemporaneous emails (EDP0756, EDP1167, EDP1169 and EDP1172) which were sent at the relevant time to Liaison Persons Mr. Velikodny and/or Mrs. Zhelanova.

  - Third, in his report, Mr. Sheldon, a computer forensic consultant specializing in the detection of computer crime, digital piracy, fraud and abuse in computer systems since 1989, comes to the conclusion that all the messages are authentic and have been sent and received between Gmail, Yandex, minstm.gov.ru and RUSADA email-accounts and that there are no signs of changes to the Internet Transport headers, all the mails having been created between the 19th July 2012 and the 30th April 2015. Four of the emails contained attachments and for one Mr. Sheldon was able to establish that is was opened. Moreover, according to Mr. Sheldon, all of the London and Moscow Washout Schedules featuring the Athlete's samples have been verified as being created and last modified contemporaneously.

  - Fourth, in his witness statement, Dr. Rodchenkov, inter alia, explains the background to, and confirms the operation of, the various anti-detection methodologies including the Disappearing Positives Methodology and Washout testing. Moreover Dr. Rodchenkov attests the authenticity of the London and the Moscow Washout Schedules.

  - Fifth, one of the specific elements that transpire from Dr. Rodchenkov's witness statement is that certain of the samples featuring on the Moscow Washout Schedules – those described in the column to the right of the athlete's name as "Russia", "out-of-competition" or "WC" were in fact official samples.

  - Sixth, it follows from the entirety of the submitted EDP emails (hundreds of emails), exchanged between a range of protagonists, covering a period from July 2012 to July 2015 and referring to a dozen different individual sports and around hundred different prohibited substances, that these were real emails, sent, at the time, to real people dealing with real doping.

- At the hearing the IAAF added, *inter alia*: (i) that it is well aware of the fact that other International Federations (IFs) have considered that Prof. McLaren's investigations had not revealed enough evidence to charge individual athletes. However, as the London and Moscow Washout Schedules just list track and field athletes and contain clear references to prohibited substances found in those athlete's samples, the IAAF finds itself in a completely different position from other international federations; (ii) that even the Schmid Commission and the CAS Panel in CAS 2017/A/ 5379 found that the alleged Russian doping scheme did exist; (iii) that the Russian Sports Minister, Mr. Kolobkov, has acknowledged the existence of such scheme in Russia; (iv) the EDP documents submitted by the IAAF in the present case are clearly related to this scheme and constitute contextual evidence.

B. The Athlete's submissions

46. In his Rejoinder, the Athlete requested the Sole Arbitrator to grant the following relief:

i. declare that Mr. Lyukman Adams is not guilty of any anti-doping rule violation under Rule 32.2(b) of the 2014 IAAF Competition Rules.

ii. dismiss the IAAF's request for a period of ineligibility of four years or any other period commencing on the date of the final CAS award;

iii. dismiss the IAAF's request for disqualification of all competitive results obtained by Mr. Lyukman Adams from 16 July 2012 through to the commencement of any period of provisional suspension or ineligibility;

iv. order the IAAF to compensate Mr. Lyukman Adams for all costs of the arbitral proceedings including, Mr. Lyukman Adams attorney fees and expenses.

47. The Athlete agrees with the IAAF on the fact that the applicable rules are the 2014 IAAF Rules for substantive issues and the 2016-2017 IAAF Rules for procedural matters. Concerning all other issues, his submissions may be summarized as follows:

- The burden and standard of proof are set out in Rule 33(1) of the 2014 IAAF Rules, pursuant to which the IAAF bears the burden of proving that an ADRV occurred. The 2014 IAAF Competition Rules set a high standard of proof, that is, the IAAF must establish an ADRV "*to the comfortable satisfaction of the relevant hearing panel bearing in mind the seriousness of the allegation which is made.*" While it is true that, according to Rule 33.3 of the IAAF Rules, there are various means to establish an ADRV, it should be emphasized that the IAAF has adduced no reliable documentary evidence, no reliable witness and no reliable expert evidence in support of its case. Given the serious nature of the alleged ADRVs, the relevance and reliability of evidence tendered in support of an allegation (or rather the lack thereof) should be carefully weighed and considered. In light of well-established CAS jurisprudence it is incumbent on the IAAF to adduce particularly cogent evidence of Mr Adam's personal involvement in the alleged doping schemes. In particular it is insufficient for the IAAF to merely establish the existence of an overarching doping scheme to the comfortable satisfaction of the Sole Arbitrator. Rather, the IAAF must go

further and establish, in Mr. Adam's individual case that he knowingly engaged in conduct that involved the commission of a specific and identifiable ADRV. This means the Sole Arbitrator must be comfortably satisfied that Mr. Adams personally and individually committed an ADRV.

- The IAAF's case against Mr. Adams is entirely based on the two reports issued by Prof. McLaren in 2016. However, Prof. McLaren's investigation as well as his Reports do not withstand scrutiny and by no means meet the evidentiary standards applicable in this arbitration. Indeed, first, Prof. McLaren did not have the required level of independence and impartiality due to his prior ties to WADA and the strong views he had already expressed on the matters he was supposed to investigate. Second, WADA gave Prof. McLaren a one-sided mandate and not sufficient time to conduct a thorough investigation. This led to many inconsistencies and errors in the Reports. Third, the McLaren Report is completely silent on the identity of the members of the members of the investigative team, their background and, more importantly, their specific tasks. As such, it is impossible to determine which part of the investigation was actually conducted by Prof. McLaren and if any individuals with a potential conflict of interest participated in the investigation. This, combined to a series of errors contained in the Reports, leads to legitimate doubts as to how independently and impartially the documents reviewed by the investigative team were handled. Fourth, although the McLaren Reports purport to reveal a conspiracy of historical dimensions and "*the greatest scandal in sporting history*", they are almost exclusively based on the allegations of on single witness: Dr. Rodchenkov, the former director of the Moscow Laboratory. Prof. McLaren, who had no first-hand knowledge of any of the alleged events, relied on Dr. Rodchenkov who, in turn, had no first-hand knowledge regarding many of his central allegations. Indeed, significant parts of Dr. Rodchenkov's story were qualified as mere hearsay by the CAS Panels in cases CAS 2017/A/5379 and 5422. The CAS Panels did not attach any probative value to Dr. Rodchenkov's speculative allegations. As a consequence, the CAS Panels' findings cast serious doubts on the allegations of Dr. Rodchenkov and, consequently, on the McLaren Reports. In addition, Dr. Rodchenkov has repeatedly changed his story throughout the years whenever convenient to his own personal interests: his allegations regarding a purported institutional conspiracy were only brought up after his criminal activities and in particular the test results manipulation scheme he ran at the Moscow Laboratory with the help of his sister and a few others, and which involved the extortion of athletes and requests for and acceptance of bribes had been exposed. Fifth, neither Prof. McLaren nor any of his team members ever travelled to Russia to visit the Moscow or Sochi Laboratories as part of their investigation, nor did they ever even attempt to do so. Neither Prof. McLaren and his team nor any other competent persons or organizations were ever prevented from visiting Russia. On the contrary, Russian authorities regularly offered to cooperate in the investigation. This constitutes a violation of the investigative standards amongst which WADA's own International Standard for Testing and Investigations 2015 (the "ISTI"), which provide that the investigator should make full use of all investigative resources, site inspection being one of the main sources of evidence. These further highlights that the McLaren

investigation did not meet internationally accepted standards of investigations and cannot be relied upon to impose sanctions on athletes.

- The McLaren Investigation relied on insufficient and unreliable evidence. Indeed, the purported evidence relied upon in the McLaren Report remains dubious. According the expert report submitted by the Second Respondent, the "documentary evidence" relied on by Prof. McLaren does not constitute forensically viable and reliable evidence. When dealing with the recovery of data from electronic media, three core forensic principles must be adhered to whilst recovering and examining the data in order for digital information to be admissible as evidence in legal proceedings. First, the source of evidence must be identified and, crucially, there needs to be strong supporting documentation to verify the authenticity of the source. Some of the commonly used evidence authentication methods are Chain of Custody forms or the presence of an independent witness during the data collection process. Additionally, the collection process needs to be thoroughly documented with information such as the name of the various individuals involved in the collection process, the precise time of the events, the identification information (e.g. computer ID tags, serial numbers, server names, desk numbers, login credentials), and the step-by-step details of the process should be documented in a document signed by all of the Parties involved. Second, it is crucial that evidence is never altered because even the smallest change casts a shadow on the reliability of the entire evidence. Therefore, IT Forensics experts and scholars agree that various measures should be put in place to ensure integrity of the evidence.' For example, the evidence should always be kept in secure storage to prevent unauthorized tampering or alteration. Additionally, a list of people with access to the data unauthorized tampering or alteration. Moreover, other arrangements such as the identification of the evidence via hash-values or the usage of data acquisition tools which do not alter the evidence (such as physical write-blockers) or the backup of the pristine data should be implemented. Third, anyone should be able to reproduce the work and get the same results. Therefore, it is vital that all actions performed on an item of evidence to produce a result are documented in detail. This is particularly important if counter-expertise is requested.

- In the present case, all of these standards seem to have been ignored in the McLaren Investigation. In this respect, the Second Respondent argues, first, that the origin and authenticity of the documentary evidence relied upon by Prof. McLaren is not clear and cannot be verified. There is no statement in the McLaren Report (or elsewhere) as to the chain of custody of handling the evidence relied upon by Prof. McLaren. Such chain of custody, however, is indispensable in any thorough investigation. As set out in the ISTI, one of the investigator's tasks is to gather and record all relevant information and documentation to develop them into admissible and reliable evidence. This is particularly important where, as in the present case, this evidence not only serves as basis for the McLaren Report, but is submitted by the IAAF as "forensic evidence" for alleged ADRVs by an individual athlete. As such, this evidence should have been collected and handled in accordance with the IT forensics applicable standards in order to be able to ascertain the integrity of

the evidence. A thorough documentation of the step-by-step process followed when collecting the data is mandatory to ensure that the "authenticity and integrity" of the data maintained. In the present case, Mr. Adams has not been given access to the original data and metadata submitted by the IAAF. Without access to the original data and metadata or to detailed documentation about the identification and forensic acquisition of the original files, the computer forensics experts consider that it is impossible to ascertain their origin and authenticity. In the present case, the forensic recovery of the original files purportedly located on Dr. Rodchenkov's hard drive and their metadata would have been the only way of ascertaining the authenticity of the documents. However, this has not been done. Second, the EDP documents contain a number of errors and mistakes. These mistakes and inconsistencies go far beyond mere translation or redaction errors and call into question the reliability of the whole EDP evidence. WADA and the IOC have both publicly acknowledged that the EDP contains errors and inconsistencies. WADA saw itself forced to write a letter to the international sports federations to inform them of some of the discrepancies or issues that have been identified since the publication of the McLaren Reports and how these matters should be remedied or addressed, or will be remedied or addressed in the near future. WADA further stated in the same letter that "*certain Athlete Code references [...] have been misattributed by the IP Team*". Before another CAS Panel, Prof. McLaren declared that "*there were some mistakes, but whenever we found them we corrected them*". When asked whether there are other mistakes in the EDP that would need to be corrected, Prof. McLaren stated: "*I would hope not [...] but could I be absolutely certain of that? No, of course I can't.*" Third, Prof. McLaren relies on "testimony" given by anonymous witnesses to (i) support his allegations and findings, and (ii) corroborate Dr. Rodchenkov's story. This is problematic because the veracity and reliability of the evidence cannot be assessed behind the veil of anonymity. Furthermore, this goes against WADA'S own investigative standards. Such unfairness and inequality of arms based on unchallenged anonymous evidence and the effect which it produces on the outcome of the findings violates Article 6 of the European Convention on Human Rights as interpreted by the European Court of Human Rights ("ECHR") in its jurisprudence. For all of the above reasons, the reliance on unnamed witnesses and unspecific testimony should be disregarded. Fourth, Prof. McLaren is inconsistent regarding the evidence he relied on, as he held, during another CAS hearing, that he did not rely on Dr. Rodchenkov's diary and yet, at the same time, it follows from the First McLaren Report, that he did rely on said diary as he referred to alleged meetings between Dr. Rodchenkov and Mr. Mutko, the former Minister of Sports of Russia. Fifth, in addition to not being the proper person to conduct the investigation, Prof. McLaren did not conduct such investigation in accordance with the investigation standards adopted by WADA itself as set out in paragraphs 12.3.3 and 12.3.4 of the ISTI. In particular, the following important steps have not been taken: to conduct the investigation fairly, objectively and impartially; to make full use of all investigative resources including obtaining information and assistance from relevant authorities and interviewing potential witnesses and persons subject to the investigation; to gather and record all relevant information and documentation in order to develop them into admissible and reliable evidence,

and to document fully the evaluation of information and evidence identified in the course of the investigation.

- Many central findings in the McLaren Report have proven wrong since the issuance of the Report. Following the publication of the McLaren Report the IOC Executive Board appointed a commission chaired by Mr. Samuel Schmid, former member of the Swiss federal Council and president of the Swiss Confederation, whose purpose was to assess the validity of the allegations made by Dr. Rodchenkov, which formed the basis of the McLaren Report: the purported existence of a state-organized doping scheme in the Russian Federation. On 2 December 2017, the Schmid Commission released a written report of its findings to the IOC Executive Board (the "Schmid Report"). With regard to Dr. Rodchenkov's central allegation of a purported state-organized doping system the Schmid Commission held that it had "*not found any documented, independent and impartial evidence confirming the support or the knowledge of this system by the highest State authority*". Further, the Schmid Commission found no evidence of the involvement of the Minister of Sport or of senior government officials in the alleged manipulation scheme.

- The McLaren Report cannot be relied on to sanction individual athletes - as confirmed by several independent panels Indeed, first, the McLaren Report merely sets out the subjective conclusions of Prof. McLaren and cannot serve as evidence of individual ADRVs committed by the Athlete. Prof. McLaren himself has confirmed on numerous occasions that his Report was never intended as an investigation into potential ADRVs by individual athletes, but rather aimed to find evidence of an alleged institutional "*conspiracy involving Russian state agencies*". Prof. McLaren has also repeatedly distanced himself from his report being misused as "*evidence*" against individual athletes. There is no indication that the McLaren Report has been verified or tested since its publication. In particular, the IAAF has made no attempt to verify the content of the McLaren Report. Thus, the McLaren Report must be considered a mere manifestation of Prof. McLaren's personal views. Second, sports federations like the FIFA and the FIL concluded that the evidence adduced by Prof. McLaren and Dr. Rodchenkov was insufficient to prove any wrongdoing by individual Russian athletes. Third, in the course of other proceedings before the CAS, several panels have expressed their views on the probative value that should be attached to the McLaren Report. According to the Second Respondent, in case CAS 2016/A/4486, the Panel did not find the evidence contained in an affidavit of Prof. McLaren, in which he explained the findings of the McLaren report in relation to the Washout Schedules and some findings related to the athlete, as particularly strong. So while such affidavit was accepted to the file, the Panel did not rely upon it to a substantial extent. In another case (CAS 2017/A/5379), the panel concluded that the probative value of the McLaren Report "*is insufficient to overcome the absence of direct evidence that the Athlete committed an ADRV of use of a prohibited method*".

- It is well-established case CAS case law, that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to "*substantiate its allegations*" and to affirmatively prove the facts on which it

relies with respect to that issue. In the present case, the IAAF has failed to substantiate its allegations as it did not explain how the thousands of pages of emails and EDP documents it filed with its reply are relevant to its case against the Athlete. The vast majority of these documents does not concern the Athlete and should thus be fully disregarded by the Sole Arbitrator.

- Regarding the expert report filed by the IAAF in relation to the authenticity and contemporaneous nature of the submitted by the IAAF, the Second Respondent reiterates its argument that all of the forensic principles of evidence collection were ignored by Prof. McLaren and his team. Even concerning the documents provided to Mr. Sheldon, the IAAF has provided no elements in relation to the chain of custody. The documents and the expert report filed by the IAAF do not permit any assessment regarding the authenticity or the date of creation of these documents given that metadata can "*easily be edited or removed unwillingly or intentionally with only a very rudimentary knowledge of IT or an ability to use a search engine online and follow a few simple steps*", as Mrs. Wilson has stated in her report. In this regard, Mr. Rundt confirms that "*to make assessments about the authenticity and creation dates of any exported evidence item it needs to be traced back to the original evidence by a strong and detailed documentation and by a complete and gapless chain of custody*". However, none of this has been proven by the IAAF in the present case and the Second Respondent has not been given access to the original documents, meaning pristine copies of the documents retrieved during the alleged forensic extraction process. As Mr. Sheldon had no access to the hash values of the originally preserved documents, he cannot make any valid assessments on their authenticity or their creation/modification date. Mr. Rundt further noted, in his report submitted with the Rejoinder of the Second Respondent, that the IT forensic analysis presented by Mr. Sheldon does not meet the standards set out by the forensic best practices established within the IT forensic community and that the report by M. Sheldon contains numerous mistakes. This could be explained by the fact that Mr. Sheldon did not have sufficient information to make any of these statements. It is, inter alia, not established how the 11 email messages analyzed by Mr. Sheldon came into the possession of Dr. Rodchenkov.

- Concerning the witness statement of Dr. Rodchenkov, the Second Respondent notes that said statement is very general, irrelevant to the present case and unsupported by any objective evidence and/or false or inaccurate. The Second Respondent reiterates his argument that, in any event, Dr. Rodchenkov is not a truthful and credible witness as: (i) his story was found to be mere "*hearsay and uncorroborated by any evidence*" by two independent CAS Panels in previous proceedings; (ii) sports federations like FIFA or the World Curling Federation have found, each following a thorough independent internal investigation, that they could and would not initiate proceedings against an athlete incriminated by Dr. Rodchenkov; (iii) the Independent Commission (appointed by the WADA in 2015) concluded that Dr. Rodchenkov was indeed "*not credible*"; (iv) his allegations were made under the threat of deportation from the United States and for his personal gain, including selling his story to the streaming service Netflix and doing so before going to the authorities; (v)

he has changed his story repeatedly and whenever it has served him; (vi) his credibility is undermined by the fact that he is a chronically unstable person, having a long history of alcohol and substance abuse as well as mental instability resulting, *inter alia*, in various hospitalizations and a failed suicide attempt. This last argument has however not been upheld at the hearing.

- As regards the alleged ADRVs, the Second Respondent contests having committed any ADRV and observes that, in any event, the specific evidence against him is clearly insufficient. He argues, *inter alia*, that although the IAAF heavily relies on the London Washout Schedules, it has failed to provide any explanation or evidence as to who created the London Washout Schedules; when they were created; for what exact purpose they have been created, and why these three lists, which were purportedly drafted within no more than 11 days look completely different and contain different information. Moreover, the IAAF has not produced any witness evidence supporting the allegation that the Athlete was part of the alleged London Washout Testing program. Rather, the IAAF exclusively relies on the general account of the alleged London Washout Testing program contained in the McLaren Report. By contrast, the Athlete expressly confirms in his witness statement that he has never been offered and has never taken any prohibited substance, that he had no knowledge of any doping program and has never taken part in one.

- Regarding the London Washout Schedule and sample n° 2730565, the Athlete strongly disputes the allegation that this sample contained any prohibited substances. The IAAF has failed to offer any explanation or adduce any evidence, let alone cogent evidence, with regard to (i) what happened to Mr. Adams' sample after it was tested, (ii) where it was taken, (iii) where it was analyzed, (iv) by whom it was analyzed (v) whether there is a B-sample, and (vi) why the sample has not been retested to verify the alleged presence of prohibited substances. In these circumstances, the London Washout Schedule in respect of sample n° 2730565 would have no evidentiary value whatsoever.

- Regarding the London Washout Schedule and sample n° 2727722, the Athlete points out that the evidence submitted by the IAAF in this regard fails to demonstrate that he ever took any prohibited substances. Nothing in that table links the said sample to a positive doping test result. The IAAF has no grounds to claim that sample n° 2727722 was positive. A connection between sample n°2727722 and a positive doping result only derives from another version of this Schedule, which is to be found in the EDP evidence. In the EDP version, each of the samples on the first page is numbered and the table has lines. The alleged doping test results on the second page are also given numbers which correspond to the samples on the first page. It is only through this numbering, which must have been subsequently added by the McLaren investigation team, that sample n° 2727722 is linked to a doping positive test result. However, these numberings were not present in the "original" version of the so-called London Washout Testing Schedule submitted by the IAAF. Nor has the IAAF explained by whom and on what basis the numbering was added. Thus, the IAAF has failed to establish to the standard of comfortable satisfaction that any prohibited substances were present in sample n° 2121122.

- Regarding London Washout Schedule and sample n° 2727845, the Athlete notes that row 7 of the list contains an entry for said sample and indicates a T/E ratio of 6. However, as explained by the IAAF in its Request for Arbitration, a T/E ratio in excess of 4 is one of the indicators that may trigger an IRMS confirmation analysis to determine the presence of exogenous steroids. Further, IAAF acknowledged that "*no prohibited substance is indicated on the relevant London Washout Schedule*" in relation to this sample. For its part, RUSADA confirmed, on 15 November 2017, that the elevated T/E ratio was "*endogenous, which illustrates that no anti-doping rules have been bent*". Thus, this sample cannot be considered as evidence of an alleged ADRV by the Athlete.

- The sample provided by the Athlete on 6 August 2012 during the 2012 London Olympic Games retested negative for prohibited substances. This fact thus contradicts the scenario depicted by the IAAF and confirms the Athlete's argument that he never used any prohibited substances. This is further corroborated by the fact that the Athlete's results at the 2012 London Olympic Games, where he only reached a distance of 16.78 meters, were far below his best results during the year 2012 and do therefor not suggest that he was involved in a "*heavy doping scheme*" as the IAAF suggests.

- In respect of the Moscow Washout Schedule, the Athlete holds, first, that the origin of the Moscow Washout Schedule is dubious. It would be unclear who created the Moscow Washout Schedule, and for what purpose. There is absolutely no record of the circumstances in which these so-called "unofficial" samples were collected nor of the fact that they have been collected at all. Thus, there is no explanation or evidence as to who collected the alleged "unofficial samples'; where those samples were collected; how it can be ascertained, back then and today- that a certain sample belonged to a certain athlete, and who conducted the analysis. Without such information, the IAAF's case must fail. Even assuming that "unofficial samples" were in fact collected from the Athlete, quod non, the absence of such record makes the samples and, even more so, the Schedules completely unreliable as evidence for proving any ADRV. In addition, there is no evidence that these "unofficial samples" have indeed been collected from the Athlete. Rather, the Athlete explains in his witness statement that he has "*never provided any urine sample in non-official containers such as Coke or baby bottles*" as alleged by the IAAF. Second, there are many different versions of this Washout Schedule (EDP0028) document which, at first glance, appear to be identical or very similar to one another (for example EDP0029 to EDP0038). However, the different versions of the Moscow Washout Schedule contain numerous discrepancies, which can only be explained by the fact that these schedules have repeatedly been modified and saved as new files. The IAAF offers no explanation for these discrepancies let alone for the confusion that apparently existed at the time. In these circumstances, these documents are devoid of any probative value. Third, given the personal condition of the Athlete, it made no sense for him to be enrolled in any doping program during summer 2013. Indeed, in February 2013, he underwent a surgery in order to get his bone callus removed from his

ankle. He was, in 2013, more focused on recovering then on competing as his results show.

- As regards the email dated 19 October 2012, allegedly referring to sample n° 2747269, the Athlete argues: that the origin and authenticity of the emails adduced and relied upon by the IAAF have not been proven; that the only official (and reliable) data in respect of a doping test is the ADAMS system which clearly indicates that sample n° 2747269 was clean; that the only evidence adduced by the IAAF in support of its (groundless) accusations is an email setting out a list of samples together with some comments from a person whose name has been redacted and who has not submitted any witness evidence in these proceedings; that the fundamental pillar of the IAAF's case is missing as this email only indicates that the Athlete's T/E ratio was elevated (9.5), while falling short of constituting evidence of the alleged use of prohibited substances; that the athlete confirms in his witness statement that he has never taken any prohibited substances in his entire career, and that the situation portrayed by the IAAF in its Request for Arbitration is contradicted by the evidence itself as an IRMS of that very sample has been performed and confirmed the endogenous origin of the Athlete's elevated T/E ratio.

- Regarding the emails dated 2 March and 3 March 2014, allegedly referring to sample n° 2868440, the Athlete argues: that the origin and authenticity of these emails adduced and relied upon by the IAAF have not been proven; that the only official and thus reliable data in respect of a doping test are the entries in ADAMS which clearly indicates that sample n° 2868440 was clean; that the IAAF's allegations are not just unsupported by the purported "evidence" adduced by the IAAF itself but are on top contradicted by it; that in the absence of any witness testimony to the contrary of the Athlete's testimony that he never took any prohibited substances in his entire career, his testimony is the only cogent evidence on record, and that the Athlete was officially tested during the IAAF World Indoor Championships in Sopot on 9th March 2014 and his sample tested negative.

- As regards the two emails dated 22 July 2014, the Athlete holds that this purported "evidence" is far from proving any wrongdoing let alone an ADRV on his side as: the origin and authenticity of the emails adduced and relied upon by the IAAF has not been proven; the only official data in respect of a doping test are the entries in ADAMS, which clearly indicate that the Athlete's sample n° 2920565 was clean; the only piece of "evidence" adduced by the IAAF does not suggest, let alone prove, that the Athlete has taken any prohibited substances as the first email, dated 22 July 2014, states that to the extent Boldenone was found, it was "*quite possibly*" of endogenous origin; the Athlete confirms that he has not taken any prohibited substances in his entire career and that his testimony is the only reliable evidence on record; the IRMS tests show that any atypical findings in sample n° 2920565 were of endogenous origin, and that less than three weeks after the alleged exchange of emails of 22 July 2014, the Athlete participated in the 2014 European Athletics Championships and underwent a doping control in which he tested negative.

- Given that the IAAF has not been able to establish the alleged ADRV on the part of the Athlete, no sanction can be imposed on the Athlete. As the aggravating circumstances alleged by the IAAF contain the same elements as those asserted to show the Athlete's ADRV, it has to be considered that for the same reasons than those already mentioned, the IAAF has failed to discharge its burden of proving aggravating circumstances to the standard of comfortable satisfaction. More specifically, the Athlete argues that: (i) the only evidence adduced by the IAAF with respect to the alleged use of a whole range of exogenous anabolic steroids, are the London and Moscow Washout Schedules and a few emails which, as explained above, appear to contradict each other and do not take into account the endogenous character of the Athlete's naturally elevated T/E ratio; (ii) even if the use of Oral-Turinabol had been endemic amongst certain Russian athletes, for which the IAAF provides no support, this would not constitute an aggravating factor of any kind in the present case; (iii) the only evidence adduced by the IAAF with respect to the alleged centralized doping scheme are the London and Moscow Washout Schedules and a few emails whose authenticity and authorship remain unknown. None of these documents, by themselves, set out any details of any centralized doping scheme. For that, the IAAF relies on the McLaren Report which does not contain any specific evidence of the Athlete's purported involvement in this alleged centralized doping scheme, (iv) the timing of the alleged Moscow Washout Testing program is not an aggravating factor in itself. In any event, the IAAF has failed to establish any involvement of the Athlete in such washout testing in the first place so that this issue has become moot; (v) with respect to the alleged presence in the Athlete's samples of the three substances allegedly constituting the Duchess cocktail, this would again not constitute in itself an aggravating factor. In any event, as the Athlete has demonstrated that the Moscow Washout Schedules do not constitute sufficient evidence of an ADRV, this point need not be addressed in further detail.

- Furthermore, even if the Sole Arbitrator were to find that the IAAF has established an ADRV by the Athlete as well as the aggravating factors to the standard of comfortable satisfaction, the period of ineligibility of four years would be unreasonable and grossly disproportionate with regards to the circumstances of the case at hand. Indeed, pursuant to constant CAS jurisprudence, the appropriate period of ineligibility should be determined in light of the gravity of the aggravating circumstances and the particular circumstances of the case. The principle of proportionality requiring that there must be a "reasonable balance" between the misconduct and the sanction. In the present case, Adams is an athlete with a clean doping record with no prior positive doping test results or anti-doping rule violations. According to CAS jurisprudence, a four-year period of ineligibility is disproportionate for a first anti-doping rule offence even if there are aggravating circumstances. In the case at hand, if any, the standard sanction of a two-year period of ineligibility under Rule 32.2(b) of the 2014 IAAF Rules should be applied.

V. JURISDICTION

48. The IAAF ADR, which are applicable because the Request for Arbitration was filed on 6 April 2018, expressly permit ADRV cases to be filed directly with the CAS and referred to a single arbitrator appointed by the CAS. In this regard, IAAF ADR Rule 38.3 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. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. 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. A failure of a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45.*"

49. In this case, RUSAF was suspended and could therefore not hold a hearing in the deadline set out in Rule 38.3 of the IAAF ADR Further, it is established that the Athlete is an International-Level Athlete in the sense of the IAAF ADR.

50. In the light of the foregoing, the Sole Arbitrator finds that the CAS has jurisdiction in this procedure. In addition, he observes that the jurisdiction of CAS was not contested by the Respondents.

VI. ADMISSIBILITY

51. Although the present procedure is a first-instance procedure and has, thus, been assigned to the Ordinary Arbitration Division, pursuant to Rule 38.3 of the IAAF ADR cited above, the rules of the appeal arbitration procedure set out in the Code shall apply. It has however to be noted that Rule 38.3 clearly states that this application is "*without reference to any time limit for appeal*". Thus, the request for arbitration in the present case has to be considered made in a timely manner.

52. The Sole Arbitrator further notes that the Request for Arbitration, to be considered as combined Statement of Appeal and Appeal Brief for the purposes of articles R47 and R51 of the Code, complies with the formal requirements set out by the Code. In addition, there are no objections as to the admissibility of the IAAF's claims.

53. In these conditions, the Sole Arbitrator finds that the Request for Arbitration is admissible.

VII. APPLICABLE LAW

54. The present procedure is based on Rule 38.3 of the IAAF ADR As already mentioned above, it follows from that rule that in a case directly referred to CAS "*the case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time of limit for appeal)*".

55. Thus, the provisions of the Code applicable to the appeal arbitration procedure are relevant in the present procedure.

56. Article R58 of the Code provides 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.*"

57. Rule 13.9.4 of the IAAF ADR provides as follows:

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

58. This case is not an appeal. However, the purpose of the direct hearing at the CAS is to shortcut the otherwise applicable procedure. The substantive outcome of the shortcut should not differ from the outcome of the otherwise applicable procedure. Therefore, Rule 13.9.4 must apply by analogy.

59. Pursuant to Rule 13.9.5 of the IAAF ADR, the governing law shall be Monegasque law. However, the IAAF rules in question are to be interpreted in a manner harmonious with other WADC compliant rules.

60. Pursuant to Rule 21.3 of the IAAF ADR, anti-doping rule violations committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged anti-doping rule violation. With respect to the procedural matters, Rule 21.3 of the IAAF ADR provides that "*for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules*" shall apply and that "*for Anti-Doping Rule Violations committed prior to 3 April 2017, the 2016-2017 IAAF Competition Rules*" shall apply. Thus the procedural issues of the present arbitration shall be governed by the 2016-2017 IAAF Rules.

61. According to Rule 21.3 of the IAAF ADR: "*the relevant tribunal may decide it appropriate to apply the principle of* lex mitior *in the circumstances of the case*".

62. The IAAF argues that the Athlete's alleged ADRVs occurred in the years 2012 to 2014 and that, as the substantive anti-doping provisions were the same in the IAAF Rules in place between 2012 and 2014, the 2014 IAAF Rules should apply to the present case. The Athlete expressly agreed with the IAAF on this point.

63. The Sole Arbitrator thus holds that the substantive aspects of the present procedure are to be governed by the 2014 IAAF Rules. He further considers that in view of the wording of Rule 21.3 of the IAAF ADR the sanction should be determined on basis of the *lex mitior*, which could be the IAAF ADR.

64. Sole Arbitrator notes that, pursuant to Rules 33.1 of the 2014 IAAF Rules, the burden of proof that an ADRV has occurred is on the IAAF and that the relevant standard of proof is that he must be comfortably satisfied that the Athlete committed an ADRV before making a finding against said athlete (see, e.g. CAS 2015/A/4163; CAS 2015/A/4129 and CAS 2016/A/4486).

VIII. EVIDENCE RELIED ON BY THE PARTIES

A. Evidence relied on by the IAAF

65. In the present case, the IAAF, although repeatedly referring to the McLaren Reports in the broader sense, mainly relied on the EDP documents produced by Prof. McLaren's investigations, the most relevant being (i) emails at EDP0148, EDP0276, EDP0278, EDP0279, EDP0432, EDP0434, EDP0756, EDP0167, EDP1169, EDP172 and EDP1182 as well as (ii) other EDP documents at EDP0019-0038, EDP0757, EDP1168, EDP1170 and EDP1773, to establish the alleged ADRV. It further relied on an expert report by Mr. Sheldon to demonstrate that said documents were authentic and of contemporaneous nature. Finally, it relied on a witness statement by Dr. Rodchenkov and on the oral testimony of the latter during the hearing.

66. In his expert report, Mr. Sheldon, explained that he had received, on 8, 9 and 13 August 2018, what he considers to be "the original files" stored on a forensic image files in Encase L01 format. He then processed the forensic image files using multiple tools including the Intella forensic review engine, X-Ways forensics software, FTK Imager and other analysis utilities. Processing the contents of the L01 forensic image files in this manner allowed him, according to his own words, to examine the contents and metadata of the files in the various L01 images contained without making changes and further allowed him to perform multiple tool validation of the extracted data. He points out that he was able to calculate an MD5 hash value for every email and document contained in the forensic images. Additionally, all files that were found as attachments to emails were extracted and an MD5 hash value was also calculated for these files. He holds that, by using the file names and their associated MD5 hash values extracted from the forensic image, he was able to manually compare the same details found in the supplied schedule of the files named and associate the unique EDP reference number from the schedules with the same file within his forensic system. He listed his findings in two different sections. In the section related to the emails

(EDP0148, EDP0276, EDP0278, EDP0279, EDP0432, EDP0434, EDP0756, EDP1167, EDP1169, EDP1172 and EDP1182), he provided the detailed analysis of the headers of the emails that led him to the conclusion that these emails were authentic, were created between 19 July 2012 and 30 April 2015 and that four emails contained attachments. In the section related to the examined documents, he explained that as soon as Microsoft Word/Excel opens a document, the edit time clock starts ticking and is updated within the metadata in real time for as long as the document is open. If it is a new blank document, the created time is the time Microsoft Word/excel opened the blank document. He further stated that he produced a schedule of the document files he examined for this matter with their associated EDP reference number and that there are 24 items he recognised as being documents in various formats. Using forensic software he examined the contents of each file in turn and examined the raw filesystem and internal metadata associated with each file. He then conducted a manual review of each documents metadata to determine their characteristics and determine authenticity and indicate a summary of his findings for each document examined (EDP 0019-0038, EDP 0757, EDP1168, EDP 1170 and EDP 1173). He identified a number of duplicate documents based on their MD5 hash value and noted a number of files that all have the same creation date and time but have had content added or removed at different dates. The earliest version of the file being EDP0035 and the latest being EDP0032. According to Mr. Sheldon EDP0031 and EDP0036 are duplicates, as are EDP0033 and EDP0037 as well as EDP0034 and EDP0038.

67. In his witness statement, Dr. Rodchenkov, who was the director of the Moscow Laboratory during the relevant years, explained that the methodology used at the Moscow Laboratory to protect doped Russian athletes involved hiding potentially positive sample results and making false entries into ADAMS. This methodology has been described by Prof. McLaren as the "*Disappearing Positives Methodology*". He confirmed the existence of two scenarios. The first scenario occurred when sample codes of known protected athletes were sent to the Moscow Laboratory. In such case, the urine analysis was terminated after the ITP and the results were reported as negative in ADAMS. Protected athletes' sample codes were typically communicated to the Moscow Laboratory via text message (SMS) from involved Russian officials or via messenger to the Moscow Laboratory as a document including a table of athlete sample codes. If laboratory analysts detected prohibited substances, those findings were reported to Deputy Minister of Sport, Mr. Yury Dmitrievich Nagornykh. The second scenario occurred when the Moscow Laboratory conducted urine analysis of a Sample Code without knowing whether it belonged or not to a protected athlete. In this scenario, if laboratory analysts identified prohibited substances in a urine sample after the ITP, the Moscow Laboratory would send an email (or a SMS on rare occasions) to a member of Deputy Minister Nagornykh's staff, i.e. liaison persons Mr. Alexey Velikodny or Mrs. Natalia Zhelanova, for a directive on how to treat the athlete (i.e. protect/SAVE or not protect/QUARANTINE). However, unlike the first scenario above, further analysis was not necessarily halted after the ITP. Instead, the Confirmation Procedure would typically be undertaken. The emails sent to the Liaison by the Moscow Laboratory staff, or by Dr. Rodchenkov himself, typically included the sample code, place and date of sample collection, mission code, athlete gender, the relevant sport and the basic analytical results. The liaison person would contact the Russian Anti-Doping Agency (RUSADA) to request the athlete identity associated

with the Sample Code. Upon instruction from Deputy Minister Nagornykh, the liaison person would communicate the code "SAVE", generally via email, to the laboratory, or Dr. Rodchenkov if the athlete was to be protected. If that was not the case, the code "QUARANTINE" was communicated in the same manner. If the liaison person communicated the "SAVE" directive, the sample would be falsely reported as negative in ADAMS. Dr. Rodchenkov states having been directly involved in this false reporting. If a "QUARANTINE" directive was received, then the AAF was accurately reported into ADAMS after the finding.

68. Regarding the alleged Washout Schedule before the 2012 Olympic Games, Dr. Rodchenkov states that in order to "*ensure that no athlete would test positive at the 2012 London Olympic Games, members of the Russian National Team were subject to official doping controls in June and July 2012, sometimes repeatedly, to check what the status of their urine was. [...] These athlete samples were officially tested and, at least for the protected athletes under the supervision of Mrs. Rodionova, positive results were automatically reported as negative in ADAMS. I communicated the real results to, amongst others, Deputy Minister Nagornykh, Mrs. Rodionova and Liaison Zhelanova. On 17 July 2012, I left for the 2012 London Olympic Games, and Dr Tim Sobolevsky took over the washout testing program and started drafting the washout tables (London Washout Tables). He would provide the London Washout Tables to the Liaison who reported to Deputy Minister Nagornykh (see, for example, the emails and attachments at EDP 1167 to EDP 1173 [...]). For example, in an email exchange, which is illustrated by EDP1169 and EDP1171 [...], Dr Sobolevsky referred to Deputy Minister Nagornykh as to ЮД (YuD). These letters are the initials of the given and patronymic name of Deputy Minister Nagornykh, which is Юрий Дмитриевич (Yury Dmitrievich). The London Washout Tables recorded the prohibited substances that had been detected in the relevant samples (if any). Often, the London Washout Tables also refer to numbers next to the prohibited substance. The numbers reflect the peak height, which provides an approximate estimation of the concentration of the relevant substance (or metabolite). For example, 60,000 means that the concentration is around 6 ng/ml. I have reviewed the documents at EDP0019 to EDP0027 [...] and can confirm that these are the London Washout Schedules that were produced by the experts from Moscow Laboratory in the lead-up to the London Olympic Games.*"

69. As regards the alleged Moscow Washout Schedule, Dr. Rodchenkov stated that during "*preparation for the 2013 Moscow World Championships, a washout-testing program was conducted using unofficial samples. Deputy Minister Nagornykh, Mrs. Rodionova, and Mr. Melnikov had discussed which athletes to include in the washout-testing program. The athletes on the Moscow Washout Tables were known to be using doping protocols for years, and they knew they were protected. Unlike the tables created for the 2012 Olympic Games, on the 2013 Moscow Washout Tables, the names of the relevant athletes were identified on documents entitled 'Tim_Nag' (i.e. Timofei (Sobolevsky) – Nagornykh). These documents (Moscow Washout Tables) were updated to reflect the progress of the washout testing. [...] Liaison Velikodny usually made the deliveries in person, either in a box or in bags. However, samples were also delivered to me by other people, including Mrs. Rodionova and Mr. Kiushkin. I even recall the odd occasion where Mr. Melnikov drove into the laboratory compound and handed me samples from his car. Immediately after the analyses were completed, I would ask Mr. Velikodny to remove all samples from the Moscow Laboratory. [...].*

Each week, Mrs. Rodionova, Mr. Velikodny, and I met with Mr. Nagornykh in his office to discuss the results of the unofficial testing. Usually, the results were included in the Moscow Washout Tables, which we printed out and took with us when we met with Deputy Minister Nagornykh to provide a status update. The Moscow Washout Tables also helped organize the pre-testing before the World Championships. The IAAF was operating its pre-competition testing through RUSADA such that it was often possible for RUSADA officials to postpone and interfere with the timing of doping controls. Therefore, when it was expected that an athlete would not test positive in view of the results of an unofficial sample (marked with 'параллельный зачет' in the Moscow Washout Table, see EDP0034, [...]), (s)he was sent to RUSADA to provide an official out-of-competition sample. The official out-of-competition sample provided by the athlete was marked 'внесоревновательный' in the Moscow Washout Table. Moreover, the official samples from the Russian National Championships were marked 'Россия' and the official samples from the World Championships were marked 'ЧМ', which was short for 'Чемпионат Мира' (Championships of the World). I have reviewed the documents at EDP0028 to EDP0038 [...] and can confirm that these are the Moscow Washout Schedules that Dr Sobolevsky created in the lead-up to the Moscow World Championships".

70. At the hearing, Dr. Rodchenkov confirmed the content of his witness statement and pointed out that he had been approached by the Athlete's coach in 2008 in relation to the alleged use of steroids by the Athlete, but confirmed that he has never had direct contact with the Athlete, that he has never provided the latter with prohibited substances, that he has never seen the Athlete take prohibited substances or provide clean urine. With regards to the London Washout Schedules, he confirmed that during the period these schedules were established, he was in London and that his colleagues in Moscow, in particular Dr Sobolevsky who created the London Washout Schedules, registered the results of the ITP. Dr. Rodchenkov further pointed out that although it was true that Dr Sobolevsky had "*created*" the documents containing the Moscow Washout Schedule, he was the one who filled out the documents and registered the results of the ITP into said tables. As regards the entries related to the Second Respondent on the Moscow Washout Schedules, Dr. Rodchenkov gave explanations on the comments that can be found, on said schedules, besides the analytical results that are reported therein. He noted that EDP0028 does not seem to be his table, but he agreed that EDP0028 and EDP0029 are very similar. He also confirmed that he gave instructions to his colleague Sobolevsky to register the false reports into ADAMS except for the Sochi Games where he was himself responsible for this registration. Dr. Rodchenkov highlighted that he had never any direct contact with the athletes and that he did not get any financial return by the athletes. The fact that in the IC Report it is said that he was an "*integral part of the extortion scheme*" should be understood as referring to the circumstance that he was at the source of the scheme because he was, in his function of director of the Moscow Laboratory, responsible for making disappear the positive results. So it can be considered that he was part of the scheme, but he did never receive any financial return or advantages from the athletes for hiding the test results. Moreover, Dr. Rodchenkov confirmed having left Russia on 17 November 2015 and not having returned ever since.

B. Evidence relied on by the Second Respondent

71. In order to contest the alleged ADRV, the Second Respondent relies, first, on his own witness statement in which he claims, inter alia, never having heard of any doping program directed or controlled by the Ministry of sport or any other Russian officials; never having been involved (directly or indirectly) in any doping program; never having benefited from any "*protection*" and no such protection ever having been necessary since his samples have never been "*dirty*"; never having taken or been offered any prohibited substances; never having been approached by Mr. Rodchenkov and, as matter of fact, "*never [have] heard of Mr. Rodchenkov until November 2015 when the alleged Russian doping scandal*" was widely publicized in the media.

72. Regarding the alleged London Washout Testing, he states, inter alia, that the tests of the samples provided on 16, 21 and 27 July 2012 were all negative and that the results have been duly recorded in ADAMS. He notes that: there is no information on who compiled (and for which purpose) the data set out in relation to these three samples); contrary to what is stated by the IAAF, he has never taken prohibited substances such as Dehydroepiandrosterone, Desoxymethyltestosterone or any other doping substance; the evidence submitted by the IAAF does not seem to suggest that the sample of 27 July 2012 was positive for any prohibited substance; RUSADA confirmed in a letter dated 5 June 2018 that samples 2722722 and 2730565 contained no prohibited substances; the atypical finding in the sample of 27 July 2012, can be explained by the fact that the elevated T/E ratio is of "endogenous" nature as confirmed by RUSADA, in a letter from 5 June 2018.

73. As regards the alleged Moscow Washout Testing, he states, *inter alia*, that: he never provided any urine sample in non-official containers; there is no record of the circumstances in which he is supposed to have provided those unofficial samples or who collected them where and when; he has never taken prohibited substances such as Nandrolone, Trenbolone, Oxandrolone or Metenolone; given his ankle surgery in February 2013, it would not have made sense to be part of a doping scheme in July 2013.

74. Concerning the sample 2747269 of 12 October 2012, the Second Respondent states that the email relied upon by the IAAF only mentions an elevated T/E ratio. However, it is would be well established by RUSADA and ADAMS that his high level of T/E is of endogenous origin. The same comment would have to be made as regards sample 2868440 of 26 February 2014. In connection to this sample, the Second Respondent further states "*that I do not know Mr. Rodchenkov, and that I have never taken any prohibited substance in my entire career*". Finally, the negative anti-doping test of his sample provided at the IAAF Indoor World Championships in Sopot on 9 March 2014 would prove that the allegations brought forward by the IAAF in relation to sample 2868440 are groundless and contradicted by the facts. As regards sample 2920565 of 18 July 2014, the Second Respondent reiterates that he has never taken any prohibited substance and that the only reliable data in respect of doping tests, ADAMS, shows that the sample provided on 18 July 2014 was clean. Further, he notes that the high T/E ratio is of endogenous nature and that if ever Boldenone would have been found in said sample, this substance could very well have been of endogenous nature too. Thus, this email would not prove any ADRV.

75. At the hearing, the Second Respondent testified via skype. In response to a question from his own counsels, he confirmed the content of his witness statement. When asked when he had heard about Dr. Rodchenkov for the first time, he said it was "*back in 2009*". According to the Second Respondent, Dr. Rodchenkov talked, in 2009, to his coach about the Athlete's high level of testosterone, telling the coach that doping had been found in his blood but that "*for a certain amount of money he could solve this problem so that [the athlete] would not be disqualified*". When asked for reasons he believes Dr. Rodchenkov had given these information to his coach, the Second Respondent answered that he believes it was to "*cheat* [his] *coach*" and "*use it to his advantage*". In his Answer to questions from the IAAF, the Second Respondent stated, inter alia, that he knew that sample 2747269 had been collected on 12 October 2012 and that Mr. Capdevielle had made an error when referring to 12 October 2014. When asked "*why he tried to use that mistake to say that this was evidence of a manipulation or scheme against him*", the Second Respondent answered that "*he read the charges and compared the dates and understood it the way he understood it and that he thought that this had to be pointed out*". Finally, when asked if he had ever heard other Russian athletes, especially the ones he trained with, talk about doping, the Second Respondent answered that he does "*not talk to other athletes, not even to people from the same group who train with*" him as he does "*not find it interesting*".

76. In support of his argument that the authenticity and the contemporaneous nature of the EDP evidence submitted by the IAAF are not established, the Second Respondent submitted two expert reports. The first one, established by Mrs. Wilson has already been, in substance described in para. 47 above. The second expert report, established by Mr. Rundt, contains, aside from elements described in the same para. 47, further arguments according to which the Mr. Sheldon's report does not suffice to establish the authenticity and contemporaneous nature of said evidence. In particular, Mr. Rundt states that in absence of any information on the origin of the emails in possession of Dr. Rodchenkov the authenticity of said emails cannot be assessed. Indeed, since emails can be forged easily, the emails' source and the documentation of the forensic evidence preservation process regarding these emails would be essential for their evidentiary value. However, in the present case, the evidence provided to Mr. Sheldon and to the Second Respondent's experts cannot be traced back to the original evidence or to pristine forensic evidence preservation. Furthermore, there would be signs that the evidence was not handled in a forensically sound way during the forensic evidence preservation and the forensic extraction and production processes. This could be seen from the corresponding file system timestamps that show artefacts that point to an improper evidence handling process. Concerning the forensic best practices, Mr. Rundt then recalls the principals highlighted by Mrs. Wilson in her report. Regarding the proof of authenticity, Mr. Rundt holds that "*[a]ny proof of authenticity of an evidence that needs to be assessed can only be obtained by comparing the hash values of the evidence received to the hash values of the original evidence that were calculated during the first forensic evidence preservation/collection in a specific case. If any evidence received by a forensic expert has the same hash as the original evidence during the first forensic evidence preservation the expert can prove that it has not been tampered with and that no alterations of this evidence have taken place since the first forensic evidence preservation. Proving the authenticity of a document in forensic terms means that the evidence can be traced back to the original evidence that was preserved during the first forensic evidence preservation and to that very*

point in time when the preservation was made. It does not mean that the contents or the metadata of a document are correct or true. [...] If a document was forged prior to the first forensic evidence preservation, then the forensic expert can prove that the evidence before him or her is an authentic copy of this original (forged) document as it was preserved for the purpose of evidence taking, while it is not possible to make any assessments on the 'authenticity' (in non-technical terms) of the contents or metadata of this file in general, as they were forged prior to the first forensic evidence preservation. [...] To make assessments about authenticity of the creation dates and the contents of the evidence you need to find supporting evidence that will support the timestamps found in the metadata of the document. This is especially true when the timestamps that need to be assessed are in question themselves. In this case you can only establish trust in the timestamps by correlating timestamps from as many other independent sources as possible to the timestamps in question. This does not only apply to the timestamps from internal metadata and the file system itself, but especially also to other timestamps like the timestamps of Link-files and Windows Jump-lists that are associated with the original document and to timestamps in the windows registry (like timestamps from Most Recently Used (MRU), UserAssist- and other registry keys that relate to the original document)." Mr. Rundt further notes that as Mr. Sheldon did not receive any hash value lists from the original evidence preservation and did not have access to the original file system timestamps of the documents during the first evidence preservation, he did not have all information available that is necessary to correctly establish the authenticity of the documents he analysed and had to fall back on other, forensically less sound, means of establishing the authenticity of the documents, relying only on the documents' metadata and the file system timestamps he received in the encase Logical Evidence files. He maintains, *inter alia*, that as the timestamps in the file system are mostly not related to the document metadata (except for one file) one would have to ask the question what happened on those days. However, given the circumstances, there could be no sound answer to this question. Finally, Mr. Rundt notes that the "*content creation timestamp*" mentioned by Mr. Sheldon in his report does not exist in any file system used in modern computers and that Mr. Sheldon must have invented said timestamp to correlate the timestamps of the internal metadata of the evidence against this file system timestamp.

77. In respect to Mr. Sheldon's findings regarding the emails, Mr. Rundt states, in his report, that as emails can easily be forged and as there is no explanation on where the emails came from and how they got there, no sound forensic conclusion as to their authenticity can be made. Mr. Rundt's report further analyses in a detailed manner all the emails and documents reviewed by Mr. Sheldon.

IX. MERITS

A. The Anti-Doping Rule Violations

78. The IAAF claims that the Athlete breached Rule 32.2(b) of the 2014 IAAF Rules, which prohibits the Use or Attempted Use of a Prohibited Substance or a Prohibited Method.

B. Discussion on the evidence taken into account by the Sole Arbitrator

79. In reaching his decision, the Sole Arbitrator has accepted into evidence all the evidence provided by the IAAF, in particular the EDP evidence, as well as Dr. Rodchenkov's witness statement and testimony. The Sole Arbitrator has equally taken into account all the evidence adduced by the Second Respondent, including his witness statement and testimony as well as the expert reports.

80. In this regard, the Sole Arbitrator recalls that the admittance of evidence is subject to procedural laws. Given that the 2016-2017 IAAF Rules govern the admittance of evidence, the Sole Arbitrator has to refer to Rule 33(3) of these rules, which provides: "*Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information.*"

81. As regards the alleged ADRV, considering the very large scope of elements that could be admitted as evidence, the Sole Arbitrator holds that the McLaren/EDP Evidence has to be considered as evidence in the sense of the 2016-2017 IAAF Rules and that if considered as reliable, this evidence can be relied upon for the purpose of establishing facts related to an ADRV.

82. Further, when evaluating whether he was comfortably satisfied that an ADRV had occurred, the Sole Arbitrator did take into consideration all relevant circumstances of the case. In the context of the present case, and by analogy to other cases handled by the CAS concerning similar issues relating to similar evidence (CAS 2017/A/5379 and CAS 2017/A/5422), the relevant circumstances include, but are not limited, to the following:

- the IAAF is not a national or international law enforcement agency. Its investigatory powers are substantially more limited than the powers available to such bodies. Since the IAAF cannot compel the provision of documents or testimony, it must place greater reliance on the consensual provision of information and evidence and on evidence that is already in the public domain. The evidence that it is able to present before the CAS necessarily reflects these inherent limitations in the IAAF's investigatory powers. The Sole Arbitrator's assessment of the evidence must respect those limitations. In particular, it must not be premised on unrealistic expectations concerning the evidence that the IAAF is able to obtain from reluctant or evasive witnesses and other source.

- in view of the nature of the alleged doping scheme and the IAAF's limited investigatory powers, the IAAF may properly invite the Sole Arbitrator to draw inferences from the established facts that seek to fill in gaps in the direct evidence. The Sole Arbitrator may accede to that invitation where he considers that the established facts reasonably support the drawing of the inferences. So long as the Sole Arbitrator is comfortably satisfied about the underlying factual basis for an inference that the Athlete has committed a particular ADRV, he may conclude that the IAAF has established an ADRV notwithstanding that it is not possible to reach that conclusion by direct evidence alone.

- at the same time, however, the Sole Arbitrator is mindful that the allegations asserted against the Athlete are of the utmost seriousness. The Athlete is accused, inter alia, of having used Prohibited Substances and having knowingly benefitted from a doping scheme and system that was covering up his positive doping results and registered them as negative in ADAMS. Given the gravity of the alleged wrongdoing, it is incumbent on the IAAF to adduce particularly cogent evidence of the Athlete's deliberate personal involvement in that wrongdoing. In particular, it is insufficient for the IAAF merely to establish the existence of an overarching doping scheme to the comfortable satisfaction of the Sole Arbitrator. Instead, the IAAF must go further and establish, in each individual case, that the individual athlete knowingly engaged in particular conduct that involved the commission of a specific and identifiable ADRV. In other words, the Sole Arbitrator must be comfortably satisfied that the Athlete personally committed a specific violation of a specific provision of the 2014 IAAF Rules.

- in considering whether the IAAF has discharged its burden of proof to the requisite standard of proof, the Sole Arbitrator will consider any admissible "reliable" evidence adduced by the IAAF. This includes any admissions by the Athlete, any "credible testimony" by third Parties and any "reliable" documentary evidence or scientific evidence. Ultimately, the Sole Arbitrator has the task of weighing the evidence adduced by the Parties in support of their respective allegations. If, in the Sole Arbitrator's view, both sides' evidence carries the same weight, the rules on the burden of proof must break the tie.

83. As to the reliability of the EDP Evidence, the Sole Arbitrator, notes, first, that the findings of the Second McLaren Report in relation to the "Disappearing Positives Methodology", meet – according to the report – a high threshold, as the standard of proof that was applied was "beyond reasonable doubt" and, thus, can be considered as sufficiently reliable (OG AD 16/009, and CAS 2017/O/5039). In this regard, the Sole Arbitrator further notices that Dr. Rodchenkov has, on several occasions, testified that the results that were supposed to be reported in ADAMS have been systematically registered as negative and that said testimony has, until now, not been proven wrong. Moreover, even the Second Respondent and his counsels agreed that the findings of the McLaren Report concerning the existence of an overarching doping system in Russia could not be contested. In this connection, the Sole Arbitrator observes that it follows from the conclusion of the Schmid Report, Report on which the Second Respondent relies as evidence, that the IOC Disciplinary Commission did not only consider the EDP Evidence, especially the email exchanges attached to the McLaren Reports, to be reliable evidence but also confirmed the existence of the DPM and a widespread culture of doping in Russia, affecting numerous sports for a long period of time.

84. Second, in difference to the information related to Washout Schedules made public by Prof. McLaren, in which the names of the athletes had been replaced by codes, the documents submitted as evidence by the IAAF in the present case, which are the initial documents revised by Prof. McLaren and his team, contain the names of the athletes that provided the samples. Thus, this list is not affected by the errors that might have been made by Prof. McLaren and his team when coding the information contained therein.

85. Third, the authenticity and cotemporaneous nature of the evidence submitted by the IAAF in the present case has been discussed at length by the experts in their reports and during the hearing in the present case. In this regard, if the Sole Arbitrator agrees with the Second Respondent that, in the present case, all IT forensic principals might not have been fully respected during the recovery of the evidence submitted by the IAAF, he bears in mind, first, that the IAAF's investigative powers are limited as explained in para. 95 above; second, that all the experts agreed, during the hearing, that there is no sign or evidence that the emails submitted as evidence by the IAAF were forged; third, that one of the authors of the documents and emails, i.e Dr. Rodchenkov, confirmed in his witness statement and in his testimony before the Sole Arbitrator the origin and the authenticity of the most relevant documents and emails submitted as evidence in the present case. Particularly in view of the fact that Dr. Rodchenkov, from whose hard-disk the submitted evidence has been retrieved, confirmed the authenticity of these documents, even if he pointed out that EDP0028 was "*not his washout schedule*" but must have been changed by Mr. Sobolevsky, the Sole Arbitrator considers that there is no valid ground for him to put into doubt the authenticity and/or contemporaneous nature of the evidence submitted by the IAAF if Dr. Rodchenkov's were found to be a credible and reliable witness in the present matter.

86. In that regard, the Sole Arbitrator, having heard Dr. Rodchenkov's testimony, including his response to questions put to him by the counsels to the Parties as well as the Sole Arbitrator himself, does not doubt the veracity of Dr. Rodchenkov's evidence. Dr. Rodchenkov answered all questions, including in relation to reproaches according to which he had received financial returns from the athletes listed on the Washout Schedules and was allegedly an integral part of a scheme designed to extort money from the athletes, in a forthright, honest and reasonable manner. In the opinion of the Sole Arbitrator, Dr. Rodchenkov neither exaggerated nor sought to play down his personal implication in the doping system described in the McLaren Reports. As a result, the Sole Arbitrator finds Dr. Rodchenkov's witness statement and testimony to be absolutely credible.

87. This finding is corroborated by the fact that while the Athlete stated that he believes Dr. Rodchenkov tried to cheat his coach in 2008 by asking money for preventing the Athlete from being disqualified, he has submitted no evidence in support of that allegation. Moreover, the Sole Arbitrator notes that other allegations contained in the written submissions of the Second Respondent according to which Dr. Rodchenkov had financially benefitted from the scheme designed to extort money from the athletes is not supported by any objective or material evidence and has, therefore, to be considered to be without any grounds. Thus, the allegation brought against Dr. Rodchenkov cannot be compared to the ones put forward by Russian track and field athletes against other Russian Officials, as in those cases there was reliable and substantiated evidence corroborating the accusations (CAS 2016/A/4417-4419-4420). This allegation does moreover not seem convincing as an extortion scheme does not require the creation of documents like the London and Moscow Washout Schedules and certainly does not require, first, the presence of athletes whose samples did not show any adverse analytical finding in the ITP of the Moscow Laboratory and, second, the details and comments which can be found on the Washout Schedules. In addition, there is no explanation as to why Dr. Rodchenkov would have sent or

forwarded the content of the Washout Schedules to someone else but the athletes he allegedly wanted to blackmail. It follows however from the EDP Evidence, that the content of the Washout Schedules was discussed at length with several people, such as Mr. Velikodny and Mrs. Zhelanova, but not with any athlete. Finally, the Sole Arbitrator notes that in his answer to one of the questions raised by the Sole Arbitrator, Dr. Rodchenkov testified, without being contradicted by the Second Respondent, that he did not return to Russia after he had left that country on 17 November 2015. Thus, the Second Respondent's submission, that Dr. Rodchenkov sold his story to the steaming service Netflix after having left the country must be rejected as the documentary in question contains scenes showing Dr. Rodchenkov while he was still in Russia and director of the Moscow Laboratory.

88. In connection with the Second Respondent's witness statement and testimony, the Sole Arbitrator observes that the Athlete contradicted himself when stating, on the one hand, in his witness statement that he had first heard of Dr. Rodchenkov in 2015, and testifying, on the other hand, that he had first heard of Dr. Rodchenkov in 2008 when the latter allegedly tried to cheat his coach. When questioned about this contradiction, the Second Respondent answered that it was due to a translation problem. However, the Sole Arbitrator does not consider this explanation to be convincing as the witness statement contains the same date in the Russian and in the English version. Moreover, the documents attached to the "Answer" submitted by the Athlete on 15 May 2018 show that in late 2008 and early 2009 the Athlete must already have heard of Dr. Rodchenkov, as it was Dr. Rodchenkov who asserted, in a letter dated 13 January 2009, that the Athlete's elevated T/E ratio was within the normal physical variations and as the Athlete was informed of this result. Further, the fact that the Athlete knew, as he confirmed in his testimony, that Mr. Capdevielle had committed an error in his letter of 27 October 2017 when referring to a sample collected on 12 October 2014 (instead of 12 October 2012) and used said error to argue that this was evidence of a manipulation scheme against him, casts a large shadow on the Athlete's good faith and has, in the eyes of the Sole Arbitrator, a negative impact on the Athlete's credibility as witness in the present case. This credibility is further diminished by the Athlete's answer to the question if he had ever heard other Russian athletes, including the ones he trained with, talk about doping, as it does not seem plausible, let alone convincing, that an athlete would not "*talk to other athletes, not even to people from the same group*" he trains with. Thus, the Sole Arbitrator finds that the Second Respondent's witness statement and testimony not fully credible.

89. The weight of the evidence submitted by the Second Respondent is further diminished by the fact that it is uncontested that the results of many of the anti-doping tests he refers to have been registered in ADAMS by Dr. Rodchenkov and/or his colleagues from the Moscow Laboratory, i.e. Mr. Sobolevsky, and have, according to the uncontested testimony of Dr. Rodchenkov, been reported as false negatives. In these circumstances, the Athlete cannot make any valid deduction from these results or the letter from the RUSADA of 5 June 2018 reiterating that according to ADAMS no prohibited substance was found in samples 272722, 2730565 and 2920565.

90. Further, the Sole Arbitrator notes that it is uncontested that Dr. Rodchenkov, as director of Moscow Laboratory, had access to all relevant data and information necessary to establish the Washout Schedules either himself or get them established by

one of his subordinates at the Laboratory. As Dr. Rodchenkov has indicated in his testimony without being contradicted, during his stay at the 2012 London Olympic Games, Dr Sobolevsky, who had created the excels sheets containing the Washout Schedules, registered the ITP results in the London Washout Schedule whereas Dr. Rodchenkov filled out the Moscow Washout Schedules which had been created by Mr. Sobolevsky as well. It is moreover uncontested that the Moscow Laboratory was one of the leading anti-doping laboratories in the world and that it had the capacity to detect even the slightest traces of substances in a reliable manner. Finally, it is uncontested that Dr. Rodchenkov had (and still has) the scientific knowledge and experience required to comment on the findings registered in the Washout Schedules. Thus, the information contained in the Washout Schedules and based on Dr. Rodchenkov's scientific and the Moscow Laboratory's technical expertise can be considered reliable evidence as well.

91. Although the Second Respondent argues that it was not established by whom or for what purpose the Washout Schedules were created, it has to noted that the Second Respondent did not bring brought forward any element to validly contest the argument that Dr. Rodchenkov and his colleagues from the Moscow Laboratory, in particular Mr. Tim Sobolevsky, set up the London and the Moscow Washout Schedules for the purpose of assuring that the athletes on the list would not test positive at the events they were preparing. Moreover, the Sole Arbitrator's notes that no convincing element has been brought forward that would explain how Dr. Rodchenkov could have established, after having left his position as director of the Moscow Laboratory but before the publication of the results of the London and Moscow Retests, a list with the names of athletes that allegedly had used prohibited substances, list which then turned out to be largely in line with the list of athletes whose samples provided at the 2012 London Olympic Games and/or the 2013 IAAF World Championships retested positive for exactly those substances referenced in the said Schedules.

92. As regards the argument, raised by the Second Respondent, that the McLaren Evidence contains, as Prof. McLaren has acknowledged during a hearing in another procedure cases (CAS 2017/A/5379 and CAS 2017/A/5422), some errors does not invalidate the reliability of the whole findings as such, as an occasional error in the allocation of the codes in some cases does not affect the veracity of all the codes and the content of the samples allocated to the athletes. In any event, as already mentioned above, in the present matter, the evidence submitted by the IAAF does not contain the code number attributed to the Athlete, but the Athlete's name.

93. Regarding the Second Respondent's argument according to which in other cases (CAS 2017/A/5379 and CAS 2017/A/5422), a Panel held that the mere fact that an athlete was on the Duchess List is not itself sufficient for the Panel to be comfortably satisfied that said athlete used prohibited substance cannot, the Sole Arbitrator finds that such conclusion cannot be transposed to the present or other cases in connection with the Washout Schedules as some of these Washout Schedules refer to samples given on a specific day, by a specific athlete in the context of an official anti-doping test. The fact that said athlete was tested can therefore not be contested. The only element that could be contested is the positive finding by the Moscow Laboratory in its ITP related to the sample. However, as already mentioned above, the Sole Arbitrator considers that there is no convincing explanation other than that the Washout Schedules have been

established in a contemporaneous manner and on basis of the findings in the ITP carried out by the Moscow Laboratory as to how Dr. Rodchenkov could have, *ex post*, established a list of fictive positive tests belonging to a large number of athletes out of which a relatively big part had, as it would turn out later, provided samples at the 2012 London Olympic Games and the 2013 IAAF World Championships that contained the prohibited substances that are to be found on the Washout Schedules. Further, the fact that, in his answer to questions from the Second Respondent's counsel, Dr. Rodchenkov acknowledged not having provided any prohibited substance to the Athlete, not having seen the Athlete take any prohibited substance and not having seen the Athlete provide clean urine outside of an official test, does not, in the present case, lead to the conclusion that Dr. Rodchenkov's testimony is only hearsay as his witness statement and testimony are mainly related to documents and emails that he has first-hand knowledge of and in the creation of which he was either personally involved or closely associated to. In addition, the information contained in said documents and emails being clearly linked to Dr. Rodchenkov's field of expertise. In those conditions, the Sole Arbitrator finds that the analogy drawn by the Second Respondent between the present case and the cases CAS 2017/A/5379 and CAS 2017/A/5422 has to be rejected.

94. With regards to the arguments that, in a previous case, a CAS panel had rejected allegations based on an affidavit by Prof. McLaren, similar to the ones brought forward against the Athlete in the present case, it is sufficient to note that it follows from the award in case CAS 2016/A/4486, that the Panel considered the weight of the McLaren Affidavit to be *de minimis* in those proceedings. Thus, no inference can be made on basis of that case for other proceedings. In any event, it has to be added that the affidavit as well as the attached evidence was expressly admitted and that the Panel, by doing so, implicitly acknowledged that the evidence was reliable.

95. In view of these considerations, the Sole Arbitrator holds that the EDP Evidence. i.e. the London and Moscow Washout Schedules, the emails referred to by the IAAF in the present case, as well as Dr. Rodchenkov's witness statement and testimony are reliable elements that, taken together, form a body of concordant factors and evidence strong enough to establish an ADRV in this specific case.

C. Discussion on liability

96. As regards the alleged violation of Rule 32.2(b) of the 2014 IAAF Rules, the Sole Arbitrator, first, recalls that he does not see any valid indication that the information contained in the McLaren Reports, as far as they are relevant to the present case would not be reliable. Second, he shares the view, expressed by another Sole Arbitrator, that the Washout Schedules must be read in the context of the McLaren Reports as a whole and constitute evidence that an athlete whose name appears on the said Washout Schedules used the prohibited substance(s) listed as having been found in his or her sample(s) (CAS 2017/O/5039).

97. In regard to the specific case of the Athlete, the Sole Arbitrator notes that the London Washout Schedule contains three (3) different entries related to the Athlete out of which two (2) show the presence of prohibited anabolic steroids (Dehydroepiandrosterone and Desoxymethyltestosterone for the first, and

Desoxymethyltestosterone for the second), the first one dating back to 16 July 2012. In this regard, it has to be recalled that it is not contested that the name on the London Washout Schedule refers to the Athlete. Further, it is not contested that on the dates of these entries the Athlete underwent official anti-doping control tests although all samples were reported as negative in ADAMS.

98. In the light of the considerations already developed concerning the lack of reliability of some results listed in ADAMS, the Sole Arbitrator is comfortably satisfied that the Athlete is guilty of having used Prohibited Substances in the lead up to the 2012 London Olympic Games. In particular, the Sole Arbitrator is comfortably satisfied that the Athlete used Dehydroepiandrosterone, featuring on the 2012 WADA Prohibited List as endogenous androgenic anabolic which is prohibited when administered exogenously, and Desoxymethyltestosterone, which also features on the 2012 WADA Prohibited List as exogenous androgenic anabolic steroid, during his preparation for this major event as is shown by the results of the sample (2730565) as listed in the London Washout Schedule and dated 16 July 2012.

99. With regards to sample 2747269, collected on 12 October 2012, and to the email dated 19 October 2012 (EDP1182) in which it was stated that said sample revealed an T/E ratio of 9,5 which would be a "*suspiciously high value*", the Sole Arbitrator notes that the IAAF did not make any inference concerning a possible use of a prohibited substance but seemed to refer to this evidence only in view of establishing that the Athlete was a "protected" athlete and benefited from the overarching doping scheme. In this connection, the Sole Arbitrator is comfortably satisfied that the Second Respondent was a "protected" Athlete and benefited from the Disappearing Positives Methodology.

100. The Moscow Washout Schedule refers to the Athlete three (3) different occasions, in relation to samples provided on 6, 17 and 25 July 2013 in the lead up to the 2013 IAAF World Championships. The Washout Schedule indicates, *inter alia*, that the first sample contained Nandrolone, Trenbolone, Oxandrolone as well as Metenolone and that the second sample contained Oxandrolone. The T/E ratio figuring for these two samples on the Moscow Washout Schedule (EDP 0029) is respectively 15 and 9. The information contained in the Washout Schedule in relation to the third sample states "T/E 6" and "clear". It is uncontested that Nandrolone, Trenbolone, Oxandrolone and Metenolone are all listed as exogenous androgenic anabolic steroids on the 2013 WADA Prohibited List.

101. The argument of the Athlete according to which he has never provided any unofficial sample nor taken part in a scheme cannot, in the eyes of the Sole Arbitrator, be followed. Indeed, first, as already mentioned above, the Athlete did not offer any valid explanation as to why his name appeared on the Moscow Washout Schedule. Second, the allegation that the Washout Schedule has been compiled in order to extort money from the athletes in general and the Second Respondent in particular has already been rejected. Third, the submission that the Moscow Washout Schedule is devoid of any probative value because the different versions of it communicated by the IAAF show some differences and prove that they have been edited and amended many times, cannot conceal the fact that even if said differences affect the levels/concentrations of the substances detected or the other comments marked besides the findings like "*I'm*

confused" they do not have any impact on the findings as such as they entail no change in the substances detected. Fourth, in the view of the Sole Arbitrator, the mere protestation of the Athlete that he never used a Prohibited Substance and/or that he never provided a sample in another container than an official one does not affect the status of the Moscow Washout Schedule as reliable evidence. Indeed, in the present case, the (only) violation that is reproached to the Athlete is the use of one or more prohibited substances, and not the provision of clean urine in non-official containers for the purpose of enabling his positive urine samples to be swapped at a later stage.

102. The Sole Arbitrator is thus comfortably satisfied that the Second Respondent used prohibited substances, i.e. Nandrolone, Trenbolone, Oxandrolone and Metenolone, in his preparation for the 2013 IAAF World Championships in Moscow.

103. Concerning the sample 2868440 provided on 26 February 2014 and the email dated 2 March 2014, from Mr. Sobolevsky to Dr. Rodchenkov, according to which said sample had tested positive for "Ostarine in very trace amounts" and "trace of Oral Turinabol", the Sole Arbitrator notes that, as already mentioned above, he's convinced of the authenticity of said email. The Sole Arbitrator further recalls that the Second Respondent's main argument, according to which the only official and reliable data in respect of this sample can be found in ADAMS, has been rejected for the reasons already mentioned above (para. 89). The two emails dated 3 March 2014, the first from Mr. Velikodny to Dr. Rodchenkov (EDP 0278), and the second from Dr. Rodchenkov to Mr. Velikodny (EDP 0279), confirm, in the eyes of the Sole Arbitrator, that the Athlete's positive anti-doping tests have been registered as negative in ADAMS. Moreover, the fact that the in-competition anti-doping test performed on the Athlete in Sopot on 9 March 2014 did not reveal the presence of any prohibited substance does not allow the Sole Arbitrator to conclude that sample 2868440, provided on 26 February 2014, did not contain traces of Ostarine and Oral Turinabol. Indeed, these traces could have washed out in the eleven days separating the two tests.

104. Consequently, in view of this reliable evidence, the Sole Arbitrator is comfortably satisfied that, in the lead up to the 2014 IAAF Indoor World Championships, the Athlete used Ostarine and Oral Turinabol which are listed as exogenous androgenic anabolic steroids on the 2014 WADA Prohibited List.

105. Concerning the sample 2920565, collected on 18 July 2014, and the two emails dated 22 July 2014, the first from Mr. Sobolevsky to Dr. Rodchenkov and Mr. Velikodny (EDP 0432), the second from the latter to Dr. Rodchenkov (EDP 0434), according to which said sample had revealed a T/E ratio of 5,5 and the presence of Boldenone said substance possibly being of endogenous nature, the Sole Arbitrator notes that the IAAF did not come to any conclusions with regard to the alleged presence of said substance but mainly highlighted the fact that the sample was reported as negative in ADAMS after a "SAVE" order from Mr. Velikodny. This evidence, which is, for the reasons already developed above, reliable evidence in the eyes of the Sole Arbitrator establishes that the Second Respondent was a protected athlete and was part of a scheme in 2014 (benefited from the Disappearing Positives Methodology in 2014).

106. Considering that the use of the above-mentioned substances over the considered period of time and with the result that the Athlete, whenever tested outside of Russia, tested negative requires a well organised and planned doping schedule or programme, the Athlete has to be considered, according to the Sole Arbitrator, as having committed the ADRVs knowingly. Moreover, the Sole Arbitrator holds that in consideration of the fact that the Athlete took, over the course of several years, several different prohibited substances and that none of his official anti-doping tests performed in Russia ever revealed an Adverse Analytical Finding, the Athlete must have understood or at least cannot have reasonably ignored that he was part of an overarching doping scheme and that he was benefiting from what is called the Disappearing Positives Methodology.

107. In the light of all of those considerations, the Sole Arbitrator is comfortably satisfied that the Athlete is guilty of having used Prohibited Substances in the lead up to the 2012 London Olympic Games, the 2013 IAAF World Championships in Moscow and the 2014 IAAF Indoor Word Championships in Sopot. In particular, the Sole Arbitrator is comfortably satisfied that the Athlete used at different moments during the years 2012 to 2014 Dehydroepiandrosterone, Desoxymethyltestosterone, Nandrolone, Trenbolone, Oxandrolone, Metenolone, Ostarine and Oral Turinabol, all of which were prohibited substances at the time of use.

108. Based on the above, the Sole Arbitrator finds that the Athlete violated Rule 32.2(b) of the 2014 IAAF Rules.

D. Decision on sanction

109. In the present case, it is uncontested that the Athlete has previously not been found guilty of having committed an ADRV. This is thus a first violation case.

110. Pursuant to Rule 40.2 of the 2014 IAAF Rules, in case of a first violation, the period of ineligibility for a violation of Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of ineligibility (Rules 40.4 and 40.5 of the 2014 IAAF Rules) or for increasing it (Rule 40.6 of the 2014 IAAF Rules) are met.

111. Rule 40.6 (a) of the 2012-2013 IAAF provides that:

> "*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 anti-doping rule violation as a 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 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 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."

112. The IAAF argues, that in the present case a certain number of aggravating factors set out in Rules 40.6 of the 2014 IAAF Rules are relevant, *inter alia*: (1) the Athlete used multiple exogenous anabolic steroids on multiple occasions over the course of several years and (2) the Athlete was part of a centralised doping system in which he provided unofficial samples for washout testing and his official samples that did test positive were reported as being clean.

113. The Sole Arbitrator notes (1) that the London Washout Schedule shows that the Athlete used multiple prohibited substances in the lead up to the 2012 London Olympic Games; (2) that the Moscow Washout Schedules show that the Athlete used other multiple prohibited substances in the lead up to the 2013 IAAF World Championships; (3) that the Athlete used further prohibited substances on or around 26 February 2014, and (4) that all of these ADRV were committed as part of a (centralised) doping plan or scheme as the Athlete's name appears with the name of other athletes on the Washout Schedules, in email correspondence involving other people than himself and as some of his official samples that tested positive for prohibited substances in the ITP were registered as negative in ADAMS.

114. In view of those considerations, the Sole Arbitrator is comfortably satisfied that the Athlete committed the violation(s) of Rule 32.2(b) of the 2014 IAAF Rules as part of a scheme, that the Athlete used multiple prohibited substances and that he used these prohibited substances (mainly exogenous anabolic steroids) on multiple occasions.

115. Consequently, considering the seriousness of the Athlete's ADRV, the Sole Arbitrator finds that Rule 40.6(a) shall apply and that a period of ineligibility of four (4) years is appropriate to the specific circumstances of the present case.

116. Thus, in absence of any substantial delay in the hearing process or other aspects of Doping Control that would justify the application of Rule 10.10.2 (c) of the IAAF ADR, the period of ineligibility of four (4) years should, in principle, start on the date of the present award.

E. Disqualification

117. This case concerns ADRVs committed in 2012, 2013 and 2014 and the applicable rules should, according to the Parties, be the 2014 IAAF Rules. Rule 40.8 of these Rules provides:

"*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."

118. The IAAF sought, in its written submissions, that the Athlete's results should be disqualified from the date of the proof of the earliest ADRV, i.e. 16 July 2012, until the date of commencement of his ineligibility Period and highlighted, at the hearing, that in the present case the fairness exception developed by the CAS should, given the seriousness of the ADRVs not apply.

119. The Second Respondent considers that it would be unfair to disqualify all of his results achieved from 2012 up to 2017 especially as for the years 2015 and 2016, there are numerous anti-doping tests from inside and outside of Russia that prove that he was not using any prohibited substances at the time.

120. The Sole Arbitrator notes that according to the wording of Rule 10.8 of the IAAF ADR, all the competitive results of the Athlete as from the moment of the earliest violation, i.e. 16 July 2012, until the start of his ineligibility period, i.e. the date of the present award, would have to be disqualified, unless fairness requires otherwise.

121. While being aware that when assessing whether a sanction is excessive, a judge must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender (CAS 2017/O/5039), the Sole Arbitrator also notes that the question of fairness and proportionality in relation to the length of the disqualification period vis-à-vis the time which may be established as the last time that the Athlete objectively committed a doping offence can be taken into consideration (CAS 2016/O/4682).

122. In the present case, although having held, when assessing the appropriate sanction, that the ADRVs committed in the years 2012 to 2014 were severe as he has accepted the existence of aggravating circumstances according to Rule 40.6 of the 2014 IAAF Rules, the Sole Arbitrator, in the absence of any evidence that the Athlete used prohibited substances or methods in the years 2015 to 2017, the Sole Arbitrator does not consider it fair to disqualify the results achieved by the Athlete between 14 September 2014, date of his last competition in 2014, and the beginning of Period of Ineligibility imposed by the present award.

X. COSTS

123. Pursuant to article R64.4 of the Code:

"*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 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."

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

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule 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.*"

125. Pursuant to Rule 38.3 of the 2016-2017 IAAF Rules, in a case like the one at hand, "*the hearing [by the CAS] 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*".

126. As regards the arbitration costs, the IAAF, primarily, requested that these costs be born entirely by the First Respondent pursuant to Rule 38.3 of the 2016-2017 IAAF Rules.

127. Given the clear wording of Rule 38.3 of the 2016-2017 IAAF Rules, the Sole Arbitrator determines that the costs of arbitration, to be calculated by the CAS Court Office and communicated separately to the Parties, shall be borne entirely by the First Respondent.

128. As a general rule, the CAS grants the prevailing party a contribution towards the legal fees and other expenses incurred in connection with the proceedings. In the present matter, having taken into consideration the complexity of the case, the outcome of the proceedings, the conduct and the financial resources of the Parties, especially the fact that, according to the uncontested testimony of the Athlete, the First Respondent appointed and pays the counsels of the Second Respondent, the Sole Arbitrator finds that the First and Second Respondent shall each bear their own costs and that the First and Second Respondent shall jointly and severally pay a total amount of CHF 10'000 (ten thousand Swiss francs) as a contribution towards the legal fees and other expenses of the IAAF in connection with these proceedings.

129. The present award may be appealed to CAS pursuant to Rule 42 of the 2016-2017 IAAF Rules.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed by the International Association of Athletics Federations (IAAF) with the Court of Arbitration for Sport (CAS) against the Russian Athletics Federation (RUSAF) and Mr. Lyukman Adams on 6 April 2018 is admissible and partially upheld.

2. Mr. Lyukman Adams committed anti-doping rule violations according to Rule 32.2(b) of the 2014 IAAF Competition Rules.

3. Mr. Lyukman Adams is sanctioned with a period of ineligibility of four (4) years starting on the date of notification of the present award.

4. All competitive results obtained by Mr. Lyukman Adams from 16 July 2012 through to 14 September 2014 included shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.

5. The costs of this arbitration, to be determined and served upon the Parties by the CAS Court Office, shall be borne by the Russian Athletics Federation (RUSAF).

6. The Russian Athletics Federation (RUSAF) and Mr. Lyukman Adams shall each bear their own costs and are jointly and severally ordered to pay to the International Association of Athletics Federations (IAAF) the amount of CHF 10'000 (ten thousand Swiss Francs) as a contribution towards the International Association of Athletics Federations' legal fees and expenses incurred in relation to the present proceedings.

7. All other or further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 31 January 2019

THE COURT OF ARBITRATION FOR SPORT

Mr Jacques Radoux
Sole Arbitrator