



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2020/A/7377 El Mahjoub Dazza v. World Athletics**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr Jacques Radoux, Référendaire at the European Court of Justice,  
Luxembourg

Arbitrators: Dr Karim Adyel, Attorney-at-Law in Casablanca, Morocco  
Mr Pierre Muller, former Judge in Lausanne, Switzerland

**in the arbitration between**

**El Mahjoub Dazza**, Rabat, Morocco

Represented by Mr Vassil Dimitrov, Attorney-at-Law in Sofia, Bulgaria

**Appellant**

**and**

**World Athletics**, Monaco, Principality of Monaco

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden, Attorneys-at-Law with Kellerhals  
Carrard, Lausanne, Switzerland

**Respondent**

**I. PARTIES**

1. Mr El Mahjoub Dazza (the “Appellant” or the “Athlete”) is an International-Level Athlete under the rules of World Athletics specializing in long-distance running, more particularly, in marathon. He was born on 3 March 1991 in Morocco and is of Moroccan nationality.
2. World Athletics (the “Respondent” or “WA”), formerly known as International Association of Athletics Federations (“IAAF”), is the world governing body for track and field, recognized as such by the International Olympic Committee. 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.
3. WA has delegated its powers in relation the implementation of its Anti-Doping Rules (“ADR”), in the present case the “2019 IAAF ADR”, to the Athletics Integrity Unit (the “AIU” or the “Integrity Unit”), including but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: education, testing, investigations, results management, hearings, actions and appeals.
4. The Appellant and the Respondent are collectively referred to as the “Parties”.

**II. FACTUAL BACKGROUND****A. Background Facts**

5. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
6. Blood doping is strictly prohibited under the WADC and is defined by the World Anti-Doping Agency (“WADA”) as *“the misuse of certain techniques and/or substances to increase one's red blood cell mass, which allows the body to transport more oxygen to muscles and therefore increase stamina and performance”* (see WADA Questions & Answers on Blood Doping).
7. Three widely known substances or methods are used for blood doping, namely (i) administering recombinant human erythropoietin (“rEPO”) (by injection to trigger erythropoiesis, the stimulation of red blood cells); (ii) the use of synthetic oxygen carriers (*i.e.*, infusing blood substitutes such as haemoglobin-based oxygen carrier or perfluorocarbons to increase haemoglobin (“HGB”) concentration well above normal levels); and (iii) blood transfusions (*i.e.*, infusing a matching donor’s or an athlete’s own (previously extracted) red blood cells to increase the HGB well above normal. rEPO is a Prohibited Substance included in class “S.2 Hormones and related substances” on the WADA Prohibited List. Synthetic oxygen carriers and blood transfusions are Prohibited

Methods under class “*M1. Enhancement of oxygen transfer*” on the WADA Prohibited List.

8. The Athlete Biological Passport (“ABP”) – developed and refined by WADA since it was introduced in 2009 – consists of an electronic record that compiles and collates a specific athlete’s test results and other data over time, unique to that particular athlete. The haematological module of the ABP records the values in an athlete’s blood samples of haematological parameters known to be sensitive to changes in red blood cell production. From 2014 onwards, the haematological module was complemented by the steroidal module which monitors an athlete’s steroidal variables over time that may be indicative of steroid abuse. These steroidal variables form a “steroid profile” that is established from the athlete’s urine samples. In the present case, only the haematological values and profile of the Athlete are relevant.
9. The values, collected and recorded in the Anti-Doping Administration & Management System (“ADAMS”), include, *inter alia*, HGB concentration, percentage of reticulocytes (“RET%”), the statistical combination of which is used to calculate the “OFF-score”, a value sensitive to changes in erythropoiesis.
10. For instance, when an athlete, in the lead up to a competition, takes rEPO and thus artificially stimulates erythropoiesis, there is an increase in RET% (*i.e.*, the percentage of immature red blood cells) and then a rapid increase in the level of HGB. When the athlete stops taking the rEPO before the competition event (to avoid detection at an in-competition doping test), the stimulation of erythropoiesis will stop abruptly, leading to a significant and prolonged decrease of RET% and, in turn, a high OFF-score. Each collected sample is analysed following the appropriate analytical protocol and the biological results are incorporated into ADAMS. The statistical model developed for the ABP programme is then applied to the results of analyses to determine an abnormal profile score.
11. More specifically, once the new biological data are entered in ADAMS, a notification is sent to the Athlete Passport Management Unit (“APMU”), which updates the ABP and applies the Adaptive Model, which is a “[a] mathematical model that was designed to identify unusual longitudinal results from Athletes. The model calculates the probability of a longitudinal profile of Marker values assuming that the Athlete has a normal physiological condition” (see section 2.5.3 of the Athlete Biological Passport Operating Guidelines (2017 edition), the “ABP Guidelines”). The Adaptive Model uses an algorithm that considers both (1) variability of such marker values within the population generally (*i.e.*, blood values reported in a large population of non-doped athletes) and (2) factors affecting the variability of an athlete’s individual values, including gender, ethnic origin, age, altitude, type of sport, and instrument-related technology. The selected markers are monitored over a period of time and a longitudinal profile is created that establishes an athlete’s upper and lower limits within which the athlete’s values are expected to fall, assuming normal physiological conditions (*i.e.*, the athlete is healthy and has not been doping). The athlete becomes his/her own point of reference, and each time a blood sample is recorded, the Adaptive Model calculates where the reported HGB, RET% and OFF-score values fall within the athlete’s expected distribution. Following a new test, a new range of expected results for the athlete is determined.

12. The main goal of assessing the ABP data is to differentiate between normal and abnormal profiles and assess possible causes for abnormalities. The assessment is performed by an automated software system that provides a probability for each ABP profile to be normal (*i.e.*, a profile found in a healthy, undoped population of athletes). If the Adaptive Model determines that an athlete's values fall outside his or her expected individual range, the results are considered to be atypical and require further investigation and/or analysis. The “*specificity*” of the limits generated by the Adaptive Model (*i.e.*, the software's ability to identify clean athletes) is 99%, in accordance with the WADA ABP Operating Guidelines (*i.e.*, at most, only one in 100 athletes who are not doping and with normal physiological conditions would produce values outside the range by chance). The further the value lies outside the limits of the range predicted by the Adaptive Model, the less likely it is that the value reflects normal physiological conditions.
13. According to Article 8.11 of the 2019 IAAF Anti-Doping Regulations (the “2019 IAAF AD-Regulations”), “[*t*]he Adaptive Model predicts for an individual an expected range within which a series of Marker values falls assuming a normal physiological condition. Outliers correspond to those values outside of the 99%-range, from a lower limit corresponding to the 0.5th percentile to an upper limit corresponding to the 99.5th percentile (1:100 chance or less that this result is due to normal physiological variation). A specificity of 99% is used to identify both haematological and steroidal Atypical Passport Findings (“ATPFs”). In the case of sequence deviations (sequence ATPFs), the applied range is 99.9% (1:1000 chance or less that this is due to normal physiological variation)”.
14. Pursuant to Article 8.14 of the 2019 IAAF AD-Regulations, “[*f*]or the Haematological Module, an ATPF is generated when the haemoglobin concentration (HGB) and/or stimulation index OFF-score (OFFS) value of the last test falls outside the expected intra-individual ranges. Furthermore, the longitudinal profile composed of (up to) the last 20 valid HGB and/or OFFS values is also considered as an ATPF when deviating from the expected ranges, as determined by the Adaptive Model (sequence ATPF). An ATPF is only generated by the Adaptive Model based on values of the primary Markers, HGB and OFFS or the sequence thereof”.
15. The AIU implements the ABP through a 4-step procedure designed to safeguard an athlete's due process in establishing whether the anti-doping rule violation (“ADRV”) occurred. Indeed, according to Article 8.20 of the 2019 IAAF AD-Regulations an ABP “generating an ATPF, or for which a review is otherwise justified, shall be sent by the APMU to an Expert for anonymous review in ADAMS. This should take place no later than 7 working days following the generation of the ATPF in ADAMS. The review of the Passport shall be conducted anonymously (without reference to the specific Athlete by name) based on the profile and other basic information (e.g. competition schedules), which could be already available”.
16. In case that, after the initial review and in view of the information contained in the ABP, it is likely that the ABP is the result of the Use of a Prohibited Substance or Prohibited Method and it is highly unlikely that it may be the result of a normal physiological or pathological condition, the APMU submits the ATPF to a panel of three Experts, including the initial Expert (article 8.28 and 8.29 of the 2019 IAAF AD-Regulations).

Each of the Experts shall provide their reports in ADAMS no later than 7 working days after reception of the request (Article 8.32 of the 2019 IAAF AD-Regulations).

17. According to Article 8.34 of the 2019 IAAF AD-Regulations, “*a unanimous opinion among the three Experts is necessary in order to proceed further towards declaring an APF [Adverse Passport Finding, ‘APF’], which means that all three Experts come to the conclusion that considering the available information contained within the Passport at this stage, it is likely that a Prohibited Substance or Prohibited Method had been used, and highly unlikely that the biological profile is the result of any other cause. The conclusion of the Experts must be reached with the three Experts assessing the Athlete’s Passport with the same data (...)*”.
18. If the Expert Panel confirms its previous position that it is likely that a Prohibited Substance or Prohibited Method had been used, and highly unlikely that it is the result of any other cause, the APMU will issue an APF (article 8.44 of the 2019 AD-Regulations). Such APF represents, according to Article 8.45 of the 2019 IAAF AD-Regulations, the end result of the Expert review of the longitudinal profile of Markers and other Passport information. After reviewing the ABP Documentation Package, the WA shall, pursuant to Article 8.46 of the 2019 IAAF AD-Regulations, (a) notify the athlete of the APF and inform WADA that it is considering the assertion of an ADRV against the athlete; (b) provide the athlete and WADA the ABP Documentation Package, and (c) invite the athlete to provide his/her own explanation, in a timely manner, of the data provided to WA.
19. Between 4 May and 4 November 2019, WA collected eight (8) ABP blood samples from the Athlete each of which was analysed by a WADA-accredited laboratory and logged in ADAMS using the Adaptive Model.
20. On 5 May 2019, the Athlete ran and won the Prague Marathon, in the Czech Republic, in a time of 2:05.58. On 1 December 2019, he competed in the Fukuoka Marathon, in Japan, and won that competition in a time of 2:07:10.
21. The Adaptive Model shows that the probability of the Athlete’s blood profile sequence being abnormal is in excess of 99.9% for HGB and OFF-score. The Athlete’s ABP also contains a number of individual outlier samples for HGB and OFF-score, meaning that such samples are abnormal with a probability in excess of 99.9%.
22. Below is a table summarizing the eight (8) samples of the Athlete used for the ABP.

No.	Date of Sample	HGB (g/dl)	RET%	OFF-score
1.	4 May 2019	17.40	0.32	140.00
2.	2 July 2019	15.5	0.58	109.31
3.	23 July 2019	13.1	1.22	64.7
4.	21 August 2019	12.8	1.59	52.3

No.	Date of Sample	HGB (g/dl)	RET%	OFF-score
5.	9 September 2019	13.4	1.79	53.7
6.	24 September 2019	13.6	1.1	73.1
7.	16 October 2019	14.3	0.59	96.9
8.	4 November 2019	15.6	0.64	108

23. The Athlete's ABP was submitted to a panel of experts for review on an anonymous basis. The panel was comprised of Dr. Yorck Olaf Schumacher, Dr. Jakob Morkeberg and Prof. Michel Audran (the "Expert Panel"). In its joint expert report dated 22 October 2019 (the "First Expert Report"), based only on the Athlete's first 5 samples, the Expert Panel made, *inter alia*, the following remarks:

*"In our view, the data of the athlete bears as main abnormal feature a very high OFF score (140) in sample 1, obtained on 4.5.2019, the day prior to the Prague Marathon.*

*Such pattern, characterised by the pairing of high haemoglobin with low reticulocytes (thus the high OFF score, which is calculated based on haemoglobin concentration and reticulocyte%), is typically observed when the red blood cell mass of the organism is supraphysiologically elevated (...): Haemoglobin concentration is high and the body tries to rebalance (downregulate) his red blood cell mass to a physiological level by reducing its own red cell production. Reticulocytes (=young red blood cells) are therefore very low. The abnormality of sample 1 is further highlighted when comparing its values with the ones of the other samples in the profile (tests 3-5), which likely display the true baseline of the athlete. (The model flags these values as abnormal as the projected individual reference ranges are influenced by the first (abnormal) sample of the profile).*

*The pattern visible in sample 1 is pathognomonic for the use and discontinuation of an erythropoietic stimulant or the recent application of a blood transfusion. Based on the typical erythrokinetics, it can safely be assumed that a suspected application of erythropoiesis stimulating substances very likely took place in the weeks prior to sample 1 and was stopped approximately 1 week to 10 days before the test (...). If a blood transfusion was used, it is probable that it was applied around the same time.*

*When considering potential confounding factors, the athlete declares an altitude sojourn on the doping control forms (samples 1, 3, 4, 5).*

*In theory, altitude can cause alterations in the profile of an athlete, as demonstrated in several scientific studies (...). If an athlete has sojourned at sufficient altitude for a sufficient time to elicit a haematological adaptation (...), the changes most relevant for the athlete biological passport are typically observed after return to sea level: In fact, the red cell mass which is elevated due to the hypoxia of altitude will be downregulated to re-adapt to sea level conditions. For this purpose, the body's red cell production is*

*reduced, visible in lower reticulocytes. This leads to an increase in OFF score (see above), the peak is usually observed around 7-10 days after return to sea level. The OFF score changes are mild in magnitude, usually around 10 points (...).*

*When relating these facts to the current profile, it appears that the changes in sample 1 are much more important: The normal OFF score baseline appears to be around 50-60 (see samples 3-5), whereas it is 140 in sample 1. It is also of note that in other samples, where altitude has been declared (samples 3, 4, 5), no such changes are visible. It is therefore unlikely that altitude alone is the cause for the abnormality observed in sample 1.*

*When comparing the athlete's data to population averages, it is highly unlikely to randomly observe an OFF score such as in the current data in undoped athletes: The likelihood of finding an OFF score similar to the one observed in the athlete in an undoped population at altitude ranges around 1 in 10000 (...).*

*Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation it is likely that a Prohibited Substance or Prohibited Method had been used, and highly unlikely that the biological profile is the result of any other cause."*

24. On 3 December 2019, the AIU informed the Athlete that an investigation against him had been opened and that he was given the opportunity to provide an explanation for the alleged abnormalities in his ABP before the charges would eventually be brought against him. Attached to this notification were (a) the laboratory analysis documentation package (1 to 5), (b) the Doping Control Forms ("DCFs"), (c) the English version of First Expert Report, (d) the notification of the UGPA of 30 October 2019, (e) the overview of the Athlete's profile and (f) the French version of the 2019 IAAF AD-Regulations.
25. On 14 December 2019, the Athlete answered to the AIU that he had never engaged in illegal behaviour in his career - by taking Prohibited Substances or any other maneuvers. He argued that the variations in his profile could be explained by a new training program implemented with the help of his coach, which consisted, *inter alia*, of regular stays in high altitude, in a change of the intensity of the trainings, exposure to varying temperatures, increase of the work rhythm in aerobic power and a specific alimentary diet.
26. These explanations having been submitted to the Expert Panel, the latter issued, on 21 December 2019, its Second Expert Report (the "Second Expert Report"). The Expert Panel stated, *inter alia*:

*"(...)*

*Changes in training load*

*In general, changes in training duration and intensity can cause changes in plasma volume and will thus impact all concentration based variables such as haemoglobin concentration (...). However, most changes are relatively short lived and do not impact reticulocytes, which are one of the key abnormalities in the suspect sample 1.*

*The ABP procedures furthermore aim at eliminating short term changes caused by exercise through the preanalytical requirements (...). (Samples cannot be taken for ABP within 2 hours of exercise).*

*It has also to be highlighted the changes in training occur in all athletes and are taken into consideration by the individual reference ranges calculated by the adaptive model (= the red lines in the ADAMS ABP graphs). In comparison (and already stated in our joint opinion), an OFF score of 140, such as in the present profile is only observed in 1 out of 10 000 undoped athletes, even taking into account all confounding factors (...).*

#### *The impact of altitude training*

*The impact of altitude on markers used in the ABP has been studied extensively (...). We have already addressed this issue in our joint expert report (...). There is agreement that altitude of sufficient duration and height will cause mild changes in the ABP: As main feature, a mild increase in the OFF score is visible within 7 to 10 days upon return to sea level. The magnitude of this change ranges between 10 and 20 points from baseline.*

*In the present case, both the timeline and the magnitude of the changes do not support altitude alone as a potential cause for the abnormal values of the profile.*

*As mentioned above, the blood picture changes caused by altitude will normally be visible 7 to 10 days after return to sea level (increase in OFF score). However, the high OFF score in the present case occurs after one month at sea level and prior to a major competition: Based on his statement, the [A]thlete returned to training from a short injury at sea level on 7.4.2019. Sample 1 in question here was obtained one month later, on 4.5.2019.*

*Also, the magnitude of changes in OFF score in this profile is beyond anything reported in the scientific literature: The normal OFF score baseline of the athlete seems to range around 50-60 (see samples 3-5), whereas the value measured in sample 1 is 140, thus a difference of about 80.*

#### *Other points*

*In his further explanations, the [A]thlete describes the environmental conditions surrounding samples 2- 4. He seems to imply that these samples have been impacted by the environment (i.e. altitude and training changes). As of the above, this is highly unlikely. The values seen in samples 3-5 are very much in line with values expected from male endurance athletes (...) and highly likely the true, undoped baseline of the [A]thlete.*

*Thus, the described OFF scenario in sample 1 remains without alternative explanation.*

*In conclusion, it is our unanimous opinion that based on the information provided by the [A]thlete at this stage, the likelihood of the abnormalities described above being due to blood manipulation, namely the artificial increase of red cell mass in spring 2019 is very high and the likelihood of them being caused by any other mean, such as a pathology or analytical shortcomings, is very low. We therefore maintain our unanimous opinions set out in the previous joints reports.”*



27. On 10 January 2020, the AIU informed the Athlete that the Expert Panel had provided its explanations and had maintained its opinion that it was highly likely that he had used a Prohibited Substance or Method and highly unlikely that his longitudinal profile was the outcome of any other cause. In those circumstances, the AIU informed the Athlete that it considered that he had committed an ADRV within the meaning of Article 2.2 of the 2019 IAAF ADR and had decided to impose, with immediate effect, his provisional suspension for competitions and activities in athletics pending the resolution of his case. At that time, the English version of the Second Expert Report has been communicated to Athlete.
28. In a first letter dated 16 January 2020, the Athlete denied again having used Prohibited Substances and gave more precise details about his training program between January and November 2019. In support of his explanations, he provided data from his watch and the Garmin Connect application. In particular, the Athlete explained the result of the analysis of the first sample as follows: (i) the training in January 2019 in Ifrane consisted of an overload, with a total of 200 to 220 km per week in a cold climate (between 5 °C and 10 °C); (ii) following a hip injury, he had suspended his training, which he had resumed on 7 April 2019, for 14 days. In this wake, *“il y a lieu de préciser que le climat froid, le programme d’entraînement léger pendant 10 jours avant la compétition, ainsi que la période de repos pendant ma blessure sont tous des facteurs ayant contribué à un off-score d’environ 140 ”* [Free translation : it should be noted that the cold climate, the light training program for 10 days before the competition, as well as the rest period during my injury, are all factors which contributed to an off-score of approximately 140].
29. In a second letter from the same day, the Athlete continued to claim his innocence, while again stating that he had never used Prohibited Substances. In that context, he requested permission to exercise his right to be heard in front of the relevant bodies with full jurisdiction. He further observed that none of his samples had ever tested positive and that the Expert Panel had merely stated that it was *“highly likely”* that he had used a substance or a prohibited substance, which did not rule out that that was not the case. In his view, the Expert Panel had only mentioned a *“suspicion, et non une culpabilité formelle car cela aurait sans aucun doute fait ressortir un résultat scientifiquement concluant ”* [free translation: “suspicion, and not a formal culpability because this would undoubtedly have revealed a scientifically conclusive result.”]. The Athlete requested the AIU to give due consideration to the veracity and the sincerity of his legal statements and asked to be granted with what he was entitled to.
30. On 30 January 2020, the AIU informed Sport Resolutions, the secretariat of WA (‘Secretariat’) that the Athlete’s samples 6 to 8 provided respectively, on 24 September, 16 October and 4 November 2019, would be submitted to the assessment of the Expert Panel in order to complete the biological profile of the Athlete. As a result, the Expert Panel established, on 24 February 2020, a third report (the “Third Expert Report”) which reads as follows:

“(…)

*Access to the profile coded BP75BLE6 was given in ADAMS and documents summarising the data in tables and graphs were available in pdf format. The documentation packages/certificates of analysis for the eight valid samples of the profile*

*were also evaluated. With the profile, we received a summary of the peri-analytical/analytical information contained in the documentation packages (APMU documentation package). In addition to the blood data, the competition schedule of the [A]thlete in question from 2009 until 2019 was reviewed.*

*In the automated analysis by the adaptive model, which determines whether fluctuations in the biomarkers of the Athlete Biological Passport are within the expected individual reference ranges for an athlete or not, the profile was flagged with abnormalities at 99.0% specificity three times for sample 1 (lower limit reticulocytes, upper limit haemoglobin concentration and OFF score), twice for sample 3 (lower limit haemoglobin and OFF score), once for sample 4 (upper limit reticulocytes), three times for sample 5 (lower limit haemoglobin concentration, upper limit reticulocytes, lower limit OFF score) and once for sample 7 (lower limit reticulocytes). The sequence is abnormal at >99.5% for all markers.*

*All samples were scrutinized for their analytical details outlined in the documentation packages and certificates of analysis. In the available documentation, there is no indication that any analytical or pre-analytical issues might have influenced the results in a way that would explain the abnormalities in the profile or influence the analytical result to the disadvantage of the [A]thlete.*

*In our view, the data of the athlete bears as main abnormal features a very high OFF score (140) in sample 1, obtained on 4.5.2019, the day prior to the Prague Marathon and, to a lesser degree, features of erythropoietic suppression for samples 2, 7 and 8.*

*A high OFF score, characterised by the pairing of high haemoglobin with low reticulocytes (calculated based on those two markers), is typically observed when the red blood cell mass of the organism is supraphysiologically elevated (...): Haemoglobin concentration is high and the body tries to rebalance (downregulate) his red blood cell mass to a physiological level by reducing its own red cell production. Reticulocytes (=young red blood cells) are therefore very low. The abnormality of sample 1 is further highlighted when comparing its values with the ones of the other samples in the profile (tests 3-5), which are more in line with values expected in a male endurance athlete. (The model flags these values as abnormal as the projected individual reference ranges are influenced by the first (abnormal) sample of the profile). Samples 2, 7 and 8 also show very low reticulocytes, especially when compared to the rest of the profile, which might indicate suppression of erythropoiesis, although the pattern is less pronounced than in sample 1.*

*The pattern visible in sample 1 (and to a lesser degree in samples 2, 7, 8) is pathognomonic for the use and discontinuation of an erythropoietic stimulant or the recent application of a blood transfusion. Developing a doping scenario for sample 1 based on the typical erythrokinetics, it can safely be assumed that a suspected application of erythropoiesis stimulating substances very likely took place in the weeks prior to sample 1 and was stopped approximately 1 week to 10 days before the test (...). If a blood transfusion was used, it is probable that it was applied around the same time.*

*When considering potential confounding factors, the [A]thlete declares an altitude s[e]jour on the doping control forms (samples 1, 3, 4, 5, 6, 7). In theory, altitude can cause alterations in the profile of an athlete, as demonstrated in several scientific studies*

*(...). If an athlete has sojourned at sufficient altitude (usually >2000m) for a sufficient time (usually 10 days or longer) to elicit a haematological adaptation (...), the changes most relevant for the athlete biological passport are typically observed after return to sea level: In fact, the red cell mass which is elevated due to the hypoxia of altitude will be downregulated to re-adapt to sea level conditions. For this purpose, the body's red cell production is reduced, visible in lower reticulocytes. This leads to an increase in OFF score (see above), the peak is usually observed around 7-10 days after return to sea level. The OFF score changes are mild in magnitude, usually around 10 points (...).*

*When relating these facts to the current profile, it appears that the changes in sample 1 and 7 are much more important compared to the above and the rest of the profile. It is also of note that in other samples, where altitude has been declared (samples 3, 4, 5), no such changes are visible. Furthermore, the timeframe of expected physiological changes of the red blood cell system after return to sea level from altitude described above (increase in OFF score) does not match for sample 1, as it was taken while still at altitude. Overall, the reaction to altitude is rather inconsistent in the [A]thlete. It is therefore unlikely that altitude alone is the cause for the abnormality observed in sample 1.*

*When comparing the [A]thlete's data to population averages, it is highly unlikely to randomly observe an OFF score such as in the current data in undoped athletes: The likelihood of finding an OFF score similar to the one observed in the [A]thlete's sample 1 in an undoped population at altitude ranges around 1 in 10000 (1).*

*Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation it is likely that a Prohibited Substance or Prohibited Method had been used, and highly unlikely that the biological profile is the result of any other cause."*

31. On 31 March 2020, the Athlete submitted supplementary observations, calling into question the validity of the proceedings opened against him, *inter alia*, on the basis of the fact that his mother tongue is French and that he could not seize the sense of the numerous documents in English that were addressed to him. In addition, he relied on a press article dated 17 December 2016, in which the comments of Mr Pierre Sallet, presented as an anti-doping specialist, were reported. According to the latter, the complexity of the analyses related to the ABP opens the "possibility for possible errors in the interpretations" and the blood tests ought to be carried out within 48 hours of the sampling. In reference to four scientific articles in English, the Athlete highlighted that samples 1 and 8 were analysed outside that 48-hour period and had, therefore, to be "écarté(s) des débats" [free translation: "dismissed from the debates"]. To the extent that the charges brought against him were based mainly on the values to those two samples, the Athlete alleged that he was to be freed of all charges.
32. On 10 April 2020, the Expert Panel established another report (the "Fourth Expert Report") in which it assessed the arguments put forward by the Athlete in his 2<sup>nd</sup> and 3<sup>rd</sup> submission dated 14 January 2020 and 31 March 2020. The English version of the Fourth Expert Report was notified to the Athlete on 16 April 2020 whereas the French translation of that report as well as the scientific publications referred to therein were provided to the Athlete on 21 April 2020. The Fourth Expert Report states as follows:

“(…)

*In the following, we will evaluate the profile in view of the newly submitted statements from the 2<sup>nd</sup> and 3<sup>rd</sup> submission (dated 4.1.2020 and 31.3.2020) and the scientific literature.*

#### *Changes in training load*

*We refer to our previous explanations on this point (report dated 21.12.2019, page 1-2). In summary, we stated that the impact of training is already taken into account through the individual reference ranges. It must also be repeated and highlighted that variations in training induce changes in haemoglobin though shifts in plasma volume, thus purely changes in concentration (=dilution or concentration of the blood). Such changes can obviously influence concentration-based markers (such as haemoglobin concentration, measured in g/dl (grams per decilitre)), but not the reticulocyte%, which are measured as a percentage of red cells. This measure is thus independent of any change in concentration. In view of the abnormalities in sample 1 of the profile, the low reticulocyte percentage triggering the high OFF score is the key abnormality.*

*It must be noted that there are some inaccuracies and inconsistencies in the [A]thlete's declarations of his training: He states on page 1 of his submission that he was submitted to an anti-doping test on 4.6.2019, however, there is no such test reported in ADAMS. He also declares that he underwent another anti-doping test on 4.11.2019, allegedly two days after he started training after an injury. However, in the previous sentence, he indicated that he re-started his training the same day (page 2).*

*We therefore reiterate our previous evaluation that changes in training type and load alone are highly unlikely to have caused the abnormalities seen in sample 1 of the profile.*

#### *Different environmental conditions*

*The [A]thlete further explains that changes in the environmental conditions might have contributed to the changes in his OFF score. We refer to our previous evaluation (report dated 21.12.2019, page 2) for the potential impact of altitude, which he raised in his first submission.*

*In his subsequent submission dated 14.1.2020, he details his training and the environmental conditions before and after the Prague marathon. In brief, the [A]thlete states that his training was rather light before the Prague marathon (due to an injury) and was conducted in cold conditions, whereas he gradually increased his training load after the Marathon (June-September), which also coincided with higher temperatures. This has allegedly caused the changes in the profile.*

*It is well known that different environmental conditions can influence plasma volume and thus concentration-based markers, similar to what has been described above for exercise: Most studies show increases in plasma volume (and thus lower haemoglobin) during the warmer period of the year (...). The magnitude of such changes is small (approx. 0.5g/dL in haemoglobin concentration), there is no relevant impact on reticulocytes.*

*When relating these facts to the profile, it is obvious that the most abnormal feature of the profile, namely sample 1, is unlikely to be explained by the environmental difference alone. The key difference is the much lower reticulocyte% in this test compared to most other measures in the profile. It is also of note that while haemoglobin is lower in some of the summer samples (when the athlete was not competing), it is highest in the two samples closest to the two most important competitions (Marathon Prague (sample 1) and Marathon Fukuoka (sample 8)).*

*We therefore believe that it is highly unlikely that environmental changes alone have caused the abnormalities highlighted in our previous reports.*

#### *Storage of samples - Prolonged collection to analysis time*

*In his last submission dated 31.3.2020, the [A]thlete contests the validity of samples 1, 2, 7, 8 due to an excessive collection-to-analysis time. This has allegedly impacted the analytical results to the disadvantage of the athlete.*

*In his statement, the [A]thlete cites the duration of transport as the critical variable to impact the stability and thus the validity of the sample. He wrongly states that analyses of ABP blood tests need to take place within 36 or 48h after sampling. He argues that the most relevant samples of the passport (sample 1 and 8) have been taken outside such time intervals and should therefore be invalidated.*

*There has been a considerable amount of research into the topic of sample stability, as this is an important factor to guarantee scientifically valid outcomes in the process of the ABP. Whereas in the early days of the ABP, fixed time windows were used, it became more and more apparent through many research studies that sample degradation is a function of both transport duration and storage temperature (a selection of these studies is accurately cited by the [A]thlete on page 5 of his last submission): In brief, the longer and warmer the storage conditions are, the more the sample will potentially be impacted. As already mentioned by the [A]thlete in his submission, a so-called blood stability score (BSS) (...) has therefore been developed to better describe this relationship between temperature and duration. Based on the scientific data, a BSS of less than 85 guarantees sample stability for the markers relevant in the ABP.*

*The table below displays the BSS of the samples in the profile. Not all BSS were explicitly mentioned in the Documentation packages, some were calculated for this table based on the reported raw data.*

	<i>Blood Stability Score</i>	<i>Collection-to-analysis time (h)</i>	<i>Average transport Temperature (C)</i>
<i>Sample 1</i>	<b>71</b>	55	5.5
<i>Sample 2</i>	<b>59</b>	41	6.5
<i>Sample 3</i>	n/a	22	*
<i>Sample 4</i>	n/a		*

<i>Sample 5</i>	<b>43.8</b>	27	5.6
<i>Sample 6</i>	<b>41</b>	27	4.6
<i>Sample 7</i>	38.5	25	4.5**
<i>Sample 8</i>	<b>63.6</b>	47	5.2

\*=No temperature recordings were available, as only certificates of analyses were required

\*\*=The temperature logger was activated 43 min after the sample was collected

*It is obvious that all samples of the profile meet the requirements outlined by the WADA ABP guidelines in force in 2019 (BSS less than 85) which are based on the recommendations emanating from the studies mentioned above and cited in the submission of the athlete.*

*It is therefore highly unlikely that the hypothesized shortcomings in the preanalytical handling of the samples have caused the abnormalities seen in the profile.*

*In summary, the typical OFF scenario in sample 1 as well as the milder suppression picture in samples 2, 7 and 8 remain without alternative explanation.*

*In conclusion, it is our unanimous opinion that based on the information provided by the [A]thlete at this stage, the likelihood of the abnormalities described above being due to blood manipulation, namely the artificial increase of red cell mass is very high and the likelihood of them being caused by any other mean, such as a training related or environmental factors or analytical shortcomings, is very low. We therefore maintain our unanimous opinions set out in the previous joint reports.”*

## **B. Proceedings before the Previous Instance**

33. On 16 January 2020, the Athlete informed the AIU that he requested a hearing to be held in front of the Disciplinary Tribunal of Sports Resolutions. A first-instance procedure was thereafter opened and the allegations against the Athlete were heard.
34. On 24 July 2020, the Disciplinary Tribunal rendered its decision (the “Appealed Decision”) which reads as follows:

- “1. *Le Tribunal disciplinaire est compétent pour connaitre de la présente affaire.*
2. *La requête en nullité formée par M. El Mahjoub Dazza dans le cadre de la présente affaire est rejetée.*
3. *M. El Mahjoub Dazza a commis une Violation des Règles antidopage en vertu de l’Article 2.2 RAD.*
4. *M. El Mahjoub Dazza est sanctionné d’une période d’inéligibilité de 4 ans (quatre ans) commençant à la date de l’entrée en force de la présente décision. Toute période de suspension provisoire, imposée le 10 janvier 2020, respectée*

*par l’Athlète avant l’entrée en force de la décision sera déduite de la période d’inéligibilité imposée.*

5. *Tous les résultats de compétition obtenus par M. El Mahjoub Dazza depuis le 4 mai 2019 sont annulés avec toutes les conséquences qui en résultent, incluant le retrait de l’ensemble des titres, récompenses, médailles, points, gains, primes de participation et primes de notoriété.*
6. *M. El Mahjoub Dazza doit payer une contribution aux frais et dépens de World Athletics à hauteur de GBP 1000.*
7. *Toutes les autres conclusions des Parties sont rejetées. ”*

Free translation:

1. The Disciplinary Tribunal has jurisdiction to hear the case.
2. Dismisses the claim for annulment lodged by Mr El Mahjoub Dazza in the course of the proceedings.
3. Mr El Mahjoub Dazza committed a violation of the anti-doping rules under Article 2.2 RAD.
4. Mr El Mahjoub Dazza is subject to a 4-year period of ineligibility (four years) commencing on the date of the entry in force of the present decision. All period of temporary suspension, imposed on 10 January 2020, complied with by the Athlete shall be deducted from the period of ineligibly imposed on the Athlete.
5. All competitive results obtained by Mr El Mahjoub Dazza since 4 May 2019 are annulled with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, gains as well as prize and appearance money;
6. Mr El Mahjoub Dazza must pay a contribution to the costs and expenses of World Athletics in the amount of GBP 1000.
7. All the other submissions of the parties shall be rejected

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

35. On 19 August 2020, the Athlete filed his statement of appeal/appeal brief before the Court of Arbitration for Sport (the “CAS”), in Lausanne, Switzerland, in accordance with Articles R47 and R51 of the Code of Sports-related Arbitration (the “Code”), against the WA with respect to the Appealed Decision requesting that Decision be set aside. The Appellant nominated Mr Karim Adyel, Attorney-at-Law, in Casablanca, Morocco, as arbitrator.
36. On 3 September 2020, the CAS Court Office sent a letter to the Respondent informing it, *inter alia*, that according to Article R55 of the Code it should submit its answer within thirty (30) days of receipt of the said letter.

37. On 8 September 2020, the Parties agreed that, although the procedure being in English, they could file exhibits in both English and French.
38. On 20 October 2020, the CAS Court Office acknowledged receipt, on 15 October 2020, of the Respondent's answer and invited the Parties to state whether they considered a hearing in this procedure necessary. In its answer, the Respondent nominated Mr Pierre Muller, former Judge in Lausanne, Switzerland, as arbitrator.
39. On 23 October 2020, the Appellant informed the CAS that he did not consider a hearing necessary and asked the Panel to issue an award based solely on the Parties' written submissions.
40. On 12 November 2020, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide on the present appeal was constituted as follows:  
  
President: Mr Jacques Radoux, Référendaire at the European Court of Justice, Luxembourg  
  
Arbitrators: Mr Karim Adyel, Attorney-at-Law in Casablanca, Morocco,  
Mr Pierre Muller, former Judge in Lausanne, Switzerland.
41. On 14 November 2020, the CAS Court Office informed the Parties that the Panel had decided to render a decision based solely on their written submissions.
42. On 18 December 2020, the CAS Court Office circulated an Order of Procedure. The Respondent and the Appellant returned signed copies to the CAS Court Office on 18 and 19 December 2020, respectively.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. The Appellant's submissions**

43. In his statement of appeal/appeal brief, the Appellant requested from the CAS:
  1. *To declare that CAS has jurisdiction in the present case.*
  2. *To annul the decision of the WA (IAAF) Disciplinary Tribunal because of the multiple procedure violations committed against the Appellant and the fact that the decision is erroneous and is based on incorrect interpretation of the facts and the evidence available.*
  3. *To decide the case de novo without referring it back to the WA (IAAF).*
  4. *To acquit the Appellant of any alleged wrongdoing or violation of the WA (IAAF) ADR, because the WA (IAAF) failed to overcome the burden of proof and did not provide undisputed evidence of the guilt and intention of the Appellant in the alleged violations.*



*Or alternatively, only in the case CAS decides that the Appellant is guilty of any violation:*

5. *To declare that the final suspension imposed to the Appellant cannot exceed 6 months of ineligibility, because the suspension imposed by WA (MAF) is contrary to the principle of proportionality.*

*In any event[:]*

6. *To order the Respondent to bear all the costs incurred with the present procedure.*
7. *To order the Respondent to cover all legal and other expenses of the Appellant related to the present procedure, in an amount to be determined at the discretion of the CAS Panel, but in any event not less than 5,000 EUR as contribution to the Appellant's expenses for legal representation.*

44. The Appellant's submissions, in essence, may be summarized as follows:

- The procedural infringements committed by the Disciplinary Tribunal should lead to the annulment of the Appealed Decision and the sanction imposed on the Appellant. Indeed, first, the Appellant was prevented from using a French-Arab interpreter during the hearing and could, thus, not properly defend himself. Second, the refusal of the Disciplinary Tribunal to accept Dr Kootstra's complementary report, allegedly for having been submitted too late, violated the Appellant's right to a fair trial. Third, by not stating how exactly the Appellant violated the 2019 IAAF ADR the Respondent failed to overcome its burden of proof, which is mandatory for rendering decisions regarding disciplinary sanctions. Fourth, the fundamental principles set out by the CAS jurisprudence, for example in CAS 2014/A/3630, for disciplinary procedures, were clearly breached by the Respondent as (i) the procedure was conducted with extreme prejudice and the Appellant was treated as guilty at all times; (ii) the presumption of innocence was not honoured; (iii) the Appellant was not given the chance to provide all exculpatory evidence he had available; (iv) the Appellant was never informed about the type of ADRV he allegedly had committed. The latter would be a clear violation of the principle of legality recognised by the CAS case law. In the present case, the Respondent failed to demonstrate and prove with undisputed evidence which prohibited substance or method was allegedly used by the Appellant. In addition to the above violations, the Respondent abdicated its power to conduct an investigation and delegated case management of the matter to a third party, *i.e.* Sports Resolutions.
- Should the above mentioned infringements not be sufficient to annul the Appealed Decision, the Appellant argues that the data contained in his ABP is insufficient to demonstrate without a doubt that an ADRV occurred. As he has never failed an anti-doping test, regardless of in- or out-of-competition, conclusions drawn solely from assumptions related to his haematological profile would not be a sufficient basis for such harsh punishment like a four (4) year period of ineligibility.

- It would be evident from his training data, that the special training program he followed, *i.e.* training under the conditions of high altitude combined with high air temperature caused his haemoglobin concentration to rise, while the percentage of his reticulocytes decreased. The expert of the Respondent had confirmed that the training regimen in high altitude has an impact on the ABP data but failed to explain why the influence on the OFF-score can only be 10-20 points. In the present case, the disciplinary sanction would be based on the baseless assumption, that the altitude can only increase the OFF-score by 10-20 points. The Respondent's experts use words like "*likely*" and exaggerations like the findings were "*quite convincing*" and, thus, failed to provide scientific evidence which backs the allegation that the Appellant used a prohibited substance or method. High altitude training not being a prohibited method under the ADR, it would be obvious that the whole case was built on the premise which is not supported by scientific data and the Appellant was not given the benefit of the doubt.
- Furthermore, the manner in which the samples were handled would be questionable. Indeed, for samples 3 and 4, the BSS has not been established and there would be no data in relation to the average transport temperature. Further, for sample 7, the temperature was measured 43 minutes after the sample was collected. These elements would put the whole ABP data into question. This would even be the case for samples 1, 2 and 8, as these were analysed way outside the 24 hours period that Dr Kootstra considered to be the normal time span, as the time elapsing between sample collection and sample analysis could alter the results. Given the careless treatment regarding the transport temperature, it would be safe to say that the samples, whose analysis was delayed, *i.e.* 1, 2 and 8, are the ones which showed abnormal results. It would be clear from Dr Kootstra's expert report and scientific studies cited therein, that analysing the sample more than 24 hours after their collection would invalidate the results. On top of all these violations, the Appellant was not given enough time for rehydration before the samples were collected and this would be, according to Dr Kootstra, another reason to invalidate the ABP results.
- According to CAS jurisprudence, a mere suspicion based on the ABP data would not be enough to prove the guilt of an athlete and the Appellant would have the right to question the reliability of the evidence contained in the samples collected for his ABP and the interpretation of data, while taking into account all facts and circumstances (CAS 2015/A/4010).
- It would be well established and accepted by the CAS (CAS 2010/A/2235), that exposure to high altitude and consistent heavy training in such conditions is capable on increasing the haemoglobin values in the ABP of an athlete. In the present case the alleged "abnormal" values could be easily explained by the extreme conditions in which the Appellant prepared himself for his marathon races.
- In the event the Panel found that the Appellant committed an ADRV, the latter argues that the principle of proportionality shall be taken into account and the four (4) year period of ineligibility reduced accordingly. Indeed, pursuant to

constant CAS jurisprudence, the sanctions must comply with that principle (CAS 2005/A/976 & 986, CAS 2013/A/3297). It would be contrary to the principle of proportionality to sanction an athlete with a four (4) year period of ineligibility when there is little to no evidence that said athlete breached the anti-doping rules. In the present case, the Respondent did not take into consideration that the Appellant was always willing to assist and cooperate during the procedure, that he has no history of other doping offences and did not engage in any prohibited methods. Even if the Appellant had committed an ADRV, *quod non*, there would be no significant fault or negligence from his part. Therefore the maximum period of ineligibility of four (4) years should be reduced to six (6) months in order to be proportionate to the alleged offence. In this respect, the Appellant adds, that, according to CAS jurisprudence (CAS 2011/A/2670 and CAS 2013/A/3358), the disciplinary bodies shall exhaust all available sanctions before imposing the most severe one and shall take into account the mitigating circumstances and the behaviour of the accused when rendering their decision on what sanction is the most appropriate.

#### **B. The Respondent's submissions**

45. In its prayers for relief, the Respondent requests the Panel to issue an award holding that:
1. *The appeal filed by El Mahjoub Dazza is dismissed.*
  2. *The arbitration costs (if any) are borne by El Mahjoub Dazza.*
  3. *El Mahjoub Dazza is ordered to make a significant contribution to Word Athletics' legal and other costs.*
46. The Respondent's submissions may be summarized as follows:
- As to the procedural arguments raised by the Appellant, first, that it was not the Respondent who prevented him from benefiting from an interpreter during the hearing, but the Disciplinary Tribunal. The latter's decision was motivated in the Appealed Decision and was, considering the circumstances under which the request for an interpreter was submitted, justified and reasonable. The Disciplinary Tribunal even tried its best to accommodate the Appellant and invited him to find someone who could translate for him at the hearing, but to no avail. The absence of an interpreter would be of the Appellant's own making and neither the Disciplinary Tribunal nor, *a fortiori*, the Respondent can be blamed for it.
  - Second, considering that Dr Kootstra's complementary report was filed at 21:10 the night before the hearing, which was due to start at 09:00 the following day, the Respondent had no choice but to challenge the admissibility of this report. It was however the Disciplinary Tribunal who ultimately decided to not accept that report into the file. This decision was legitimate and reasonable in view of the fact that the complementary report was filed outside of the procedural calendar. In any event, that Dr Kootstra was heard at the hearing on all relevant matters, including the one he raised in his complementary report, and although the hearing was in French, the Disciplinary Tribunal and the Respondent even

accepted that Dr Kootstra's testimony be given in English. Thus, it would be obvious that the Appellant's right to be heard was fully respected.

- Third, the argument according to which the Respondent had allegedly delegated its investigation powers to Sports Resolution would be flawed. Indeed, the investigation, or rather results management, was handled by the AIU in accordance with the ADR. The Respondent only delegated to Sports Resolutions the power to appoint and manage the hearing process before the Disciplinary Tribunal.
- Fourth, even assuming that any of the Respondent's procedural arguments had any merit, any procedural flaws at first instance would, in any event, be cured by the present proceedings as "*it is widely recognised that the de novo power of review that is granted to CAS Panels by Article R57(1) of the Code allows, in principle, violations of procedural rights in first instance to be 'cured' by CAS in appeal proceedings*".
- Regarding the Appellant's arguments on the merits, the Respondent recalls that the ABP has consistently been found by the CAS to be a reliable means to establish an ADRV (CAS 2012/A/2773 and CAS 2014/A/3614 & 3561). In the present case, the Appellant's claim, according to which the abnormalities in his ABP could be explained by his training at "*high altitude*" with temperature variations, is not supported by any evidence. This argument has already been duly considered and rejected by the Expert Panel in their Third and Fourth Expert Reports, as well as by Dr Schumacher during the hearing before the Disciplinary Tribunal. The Appellant's expert having expressly agreed with Dr Schumacher in relation to this argument, the Disciplinary Tribunal was right in rejecting this argument.
- The Appellant's claim concerning Samples 3 and 4, the Respondent observes that the absence of the temperature data is due to the fact that these samples were not considered as evidence of an ADRV and that, hence, no laboratory documentation package was requested. However, in view of the Appellant's line of argumentation, the Respondent has requested the relevant information from the APMU. As would be clear from that information, the average transport temperature for Samples 3 and 4 was 7.8°C and 8.8°C respectively and thus within the parameters envisaged by the International Standard for Testing and Investigations ("ISTI"). As to Sample 7 and the alleged delay of 43 minutes, this delay would be due to the fact that the data logger was not set to the same time zone as the place of collection of the sample (*i.e.*, GMT+2 vs. GMT+1). When taking this time difference into account, it would be clear that the data logger was activated before the sample was placed in the cool box, in full compliance with the applicable rules.
- The Appellant's claim that the reliability of the samples has been affected by the alleged delays in transportation, would be unfounded. Indeed, as Dr Schumacher explained during the hearing before the Disciplinary Tribunal, in accordance with the ISTI, the integrity of the sample would be guaranteed when the BSS remains below 85. As the BSS of all the Appellant's Samples was significantly

below 85, all of these samples would be valid and reliable. The Disciplinary Tribunal was correct in finding that Dr Kootstra's explanations were "*not convincing as they were not documented and seemed to rely principally on his own personal opinion*".

- As to the Appellant's argument that he had trained within the 2 hours period before sample collection, the Respondent notes that this fact, if established, would not lead to the invalidity of the sample but would be taken into account by the Expert Panel. However, in any event, in the present case, it would be clear from the DCF's, that the Athlete had not trained or competed the 2 hours prior to the sample taking as he ticked the relevant box on the DCF's. This would further be confirmed by the training data provided by the Appellant himself.
- Regarding the proportionality of the sanction, the Respondent recalls that according to constant CAS jurisprudence (CAS 2016/A/4534, CAS 2017/A/5015, CAS 2018/A/5546 & 5571, CAS 2019/A/6541) the sanctions foreseen in the WADC are proportionate as the principle of proportionality is embodied in its provisions. In the present case, the ADRV involves blood manipulation and is thus covered by article 10.2.1 of the ADR, which provides for a four (4) year period of ineligibility, unless the athlete can establish a lack of intent to commit the violation. However, in a case like the present one, which involves blood manipulation and therefore either a repeated use of EPO or a blood transfusion, it would be inconceivable that the ADRV was not committed intentionally and the only possible outcome would, therefore, be a four-year period of ineligibility. In any event, the definition of No Significant Fault or No Significant Negligence in the ADR specifically requires the athlete to establish "*how the prohibited Substance entered his system*" in order to benefit from any reduction. In the present case, the Athlete has manifestly failed to do so.

## V. JURISDICTION

47. Article R47 of the Code provides, *inter alia*, as follows:

*"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body."*

48. The 2019 IAAF ADR provide in Article 13.2.2:

*"In cases [...] involving International-Level Athletes [...], a decision may be appealed exclusively to CAS."*

49. According to Article 13.2.4 of the 2019 IAAF ADR:

*"In cases under 13.3.2, the following parties shall have the right to appeal to CAS:*

*(a) the Athlete [...];*

(b) *the other party to the case in which the decision was rendered;*

(c) *the IAAF;*

*[...].”*

50. In the present case it is undisputed that the Appellant is an “*International-Level Athlete*” in the sense of the 2019 IAAF ADR. Further, it is uncontested that the Appealed Decision, adopted by the Disciplinary Tribunal, constitutes a “*decision*” in the sense of Article 13.2.2 of the same 2019 IAAF ADR.

51. In the light of the foregoing, the Panel finds that the CAS has jurisdiction to hear the present appeal.

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

## VI. ADMISSIBILITY

53. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...].”*

54. In its relevant parts, Article 13.7.1 of the 2019 IAAF ADR provides that “[*t*]he deadline for filing an appeal to CAS shall be 30 days from the date of receipt of the reasoned decision in question by the appealing party (and where the IAAF is the prospective appellant in a proceeding other than before the Disciplinary Tribunal, 30 days from the date of receipt of the full reasoned decision and the complete file relating to the decision in English or French). Where the appellant is a party other than the IAAF, to be a valid filing under this Article 13.7.1, a copy of the appeal must be filed on the same day with the IAAF. [...].”

55. The Appellant received notification of the Appealed Decision on 24 July 2020 and filed his statement of appeal, which also constitutes the appeal brief, on 19 August 2020.

56. By doing so, the Appellant clearly respected the thirty (30) day period set out by the 2019 IAAF ADR to file the appeal. Moreover, the Respondent did not object to the admissibility of this appeal.

57. In the light of the foregoing, the Panel finds that the appeal is admissible.

## VII. APPLICABLE LAW

58. 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.”*

59. Article 13.9.4 of the 2019 IAAF ADR reads as follows:

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

60. Further, Article 13.9.5 of the 2019 IAAF ADR provides that 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”*.

61. According to Article 20.2 of the 2019 IAAF ADR, the 2019 IAAF ADR are to be interpreted in a manner that is consistent with the WADC.

62. In view of the above, the Panel applies the various rules and regulations of WA, in particular the 2019 IAAF ADR, and, subsidiarily, Monegasque law.

## VIII. MERITS

63. Concerning the Appellant’s submissions that several of his procedural rights were violated by the Disciplinary Tribunal and that these violations should lead to the annulment of the Appealed Decision and the four-year period of ineligibility imposed on the Athlete, the Panel recalls that it is widely recognised that the *de novo* power of review that is granted to CAS Panels by Article R57(1) of the Code allows, in principle, violations of procedural rights in first instance to be “cured” by CAS in appeal proceedings.

64. The Panel further adheres to the analysis in CAS 2009/A/1880-1881, where it was determined that:

*“[T]he Panel must point out that there is a long line of CAS awards, even going back many years, which have relied on Art. R.51 of the CAS Code (“The Panel shall have full power to review the facts and the law”) to firmly establish that the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation’s (or other sports body’s) internal procedure. Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made. This is exactly what happened in the present CAS proceedings, where the*

*Appellants were given any opportunity to fully put forward their case and to submit any evidence they wished.”*

65. Therefore, even in case the Appellant’s procedural rights had been violated in the proceedings before the Disciplinary Tribunal, any such violation was in any event cured in the present arbitration before CAS under its *de novo* competence.

66. Regarding the Appellant’s argument that the Respondent delegated its powers of investigation to a third party, *i.e.* Sport Resolutions, the Panel notes that according to Articles 5 (Testing and Investigations) and 7 (Results Management), in the present case, the AIU was the responsible body. This follows, in particular from Article 7.5 of the 2019 IAAF ADR pursuant to which the “*management in respect of the [ABP] programme of the [AIU] shall be conducted in accordance with the procedures set out in the [2019 IAAF Anti-Doping Regulations]. At such time as the [AIU] Unit is satisfied that an [ADRV] has been committed, it shall send the Athlete a Notice of Charge in accordance with Article 8. [...]*”. The Appellant has not submitted any evidence that the AIU failed to properly assume its responsibilities as set out in Articles 5 and 7 of the 2019 IAAF ADR. Further, as the Respondent rightly pointed out, the only “delegation” that occurred was the delegation by the Respondent to Sports Resolution of its power to appoint the Disciplinary Tribunal and manage the hearing process before that Tribunal. This does however, contrary to what the Appellant has argued, obviously not amount to a “delegation of the investigation powers” or a failure, by the Respondent, to discharge its burden of proof.

67. Thus, this argument is ill-founded and has to be dismissed.

68. As regards the alleged ADRV, the Panel notes that pursuant to Article 3.1 of the 2019 IAAF ADR:

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

69. Accordingly, the Panel holds that the relevant standard of proof is that it must be comfortably satisfied that the Athlete committed an ADRV before making a finding against the Athlete. In this respect, the Panel adheres to the well-established CAS jurisprudence according to which that standard is “*a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be ‘comfortable satisfied’*”.

70. Pursuant to Article 3.2 of the 2019 IAAF ADR, facts related to an ADRV may be established by “*any reliable means*”. The commentary to the analogue provision in the WADC specifies that, for example, an Anti-Doping Organization may establish an



ADRV under Article 2.2 based on conclusions drawn from the profile of a series of the athlete's "*blood or urine Samples, such as data from the Athlete Biological Passport*".

71. Regarding the ABP model, the Panel shares the view of other CAS panels according to which the ABP profile is a method of proving blood doping but not an ADRV in and of itself (CAS 2019/A/6226). However, the Panel recalls that, according to the well-established jurisprudence of the CAS (CAS 2010/A/2235, CAS 2012/A/2773, CAS 2013/A/3080, CAS 2019/A/6226), an ABP profile is a reliable and accepted means of evidence in establishing an ADRV. As such, if, in interpreting abnormal values in an ABP and any other evidence from a quantitative and qualitative standpoint, a panel is convinced that the abnormal values were caused by a "doping scenario", an ADRV can thereby be properly established, even without establishing a specific reason for the blood manipulation. The inference drawn from abnormal blood values is enhanced where the ascertainment of such values occurred at a time when the athlete in question could benefit from blood doping (*i.e.*, if the levels coincide with the athlete's racing schedule) (CAS 2019/A/6226).
72. With regard to the Appellant's argument that he was treated as guilty from the beginning, the Panel shares the view, already expressed by another CAS panel, that a request for an athlete to provide an alternative explanation to the abnormal values in his or her ABP does not create a presumption of guilt nor a shift in the burden of proof. Indeed, in a case like the present, the burden to prove that the allegedly abnormal values in the ABP were caused by a "doping scenario" as opposed to any of the hypothesis put forward by the Athlete rests with the Respondent (CAS 2019/A/6226).
73. The Panel notes that, in the case at hand, and even though the Appellant argues that the "investigating body", *i.e.* the Respondent, did not establish what type of prohibited substance or method was allegedly used, the First Expert Report explicitly refers to "*the use and discontinuation of an erythropoietic stimulant or the recent application of a blood transfusion*". Thus, it is clear that the ADRV that is reproached consists of blood doping and it is thus irrelevant to know whether the alleged ADRV involved rEPO or blood transfusions.
74. As regards the Appellant's ABP profile, the Panel finds that none of the arguments raised by the Appellant puts into doubt the reliability of the Appellants ABP profile as such. Indeed, it is clear from the recording of the hearing before the Disciplinary Tribunal, Dr Kootstra acknowledged, after Dr Schumacher's explanations, that the analytical method used in the context of the Athlete's ABP did not give rise to criticism.
75. Concerning the Appellant's different Samples provided for the ABP, the Panel finds that the values found in Sample 1 (4 May 2019) are highly abnormal. Indeed, this Sample has a high HGB of 17.4 and low RET% of 0.32 resulting in a very high OFF-score value of 140.00. As explained by the Expert Panel, the abnormality of this Sample is further highlighted when comparing its values to the other samples of the profile, in particular tests 3-5. The Expert Panel held that the likelihood of finding an OFF score similar to the one observed in the Athlete in an undoped population at altitude ranges around 1 in 10000 and concluded that in the "*absence of an appropriate physiological explanation it is likely that a Prohibited Substance or Prohibited Method had been used, and highly unlikely that the biological profile is the result of any other cause.*"

76. This finding is reinforced by the fact that the abnormal levels in Sample 1 of the Appellant's ABP coincide with the latter's competition schedule, *i.e.* the Prague Marathon on 5 May 2019, and thus occurred at a time when he could benefit from blood doping.
77. The same observation, although to a lesser extent, can be made in respect to Samples 2, 7 and 8, showing a high HGB (15.5, 14.3 and 15.6) and a low RET% (0.58, 0.59 and 0.64) resulting in a high OFF-score value (109.31, 96.9 and 108). In this regard, the Expert Panel stated that "*Samples 2, 7 and 8 also show very low reticulocytes, especially when compared to the rest of the profile, which might indicate suppression of erythropoiesis, although the pattern is less pronounced than in sample 1*". Although not in immediate proximity to a competition, Samples 7 and 8, were provided on 16 October and 4 November 2019, that is in the lead to a competition, *i.e.* the Fukuoka Marathon on 1<sup>st</sup> December 2019.
78. It must be added that the Expert Panel's assessments, according to which the Appellant's normal OFF-score baseline would seem to range around 50-60 and the values found in Samples 3, 4 and 5 are very much in line with the values expected from male endurance athletes, have not been contested by Dr Kootstra's reports nor by Dr Kootstra expert testimony. The Panel considers that, in absence of any scientific argument putting into doubt the assessments of the Expert Panel and Dr Schumacher's statements, it is not sufficient for the Appellant to argue that the Expert Panel's conclusions are based on "assumptions" to invalidate these conclusions.
79. Thus, in the present case, the Panel considers that the Respondent has established, to the Panel's comfortable satisfaction, that the ABP profile of the Athlete contains abnormalities which, if not explained by one of the grounds invoked by the Appellant, lead to the conclusion that the latter committed an ADRV.
80. Concerning the Appellant's first argument, according to which the variations in his ABP profile are due to his trainings in high altitude, the Panel refers to the statement made by the Expert Panel in its First Report, and constantly repeated in the following reports, that in "*theory, altitude can cause alterations in the profile of an athlete, as demonstrated in several scientific studies (...). If an athlete has sojourned at sufficient altitude for a sufficient time to elicit a haematological adaptation (...), the changes most relevant for the athlete biological passport are typically observed after return to sea level: In fact, the red cell mass which is elevated due to the hypoxia of altitude will be downregulated to re-adapt to sea level conditions. For this purpose, the body's red cell production is reduced, visible in lower reticulocytes. This leads to an increase in OFF score (...), the peak is usually observed around 7-10 days after return to sea level. The OFF score changes are mild in magnitude, usually around 10 points (...). When relating these facts to the current profile, it appears that the changes in sample 1 are much more important: The normal OFF score baseline appears to be around 50-60 (see samples 3-5), whereas it is 140 in sample 1. It is also of note that in other samples, where altitude has been declared (samples 3, 4, 5), no such changes are visible. It is therefore unlikely that altitude alone is the cause for the abnormality observed in sample 1.*"
81. These explanations, which the Panel finds very cogent, are further confirmed by the fact that Sample 1, *i.e.* showing an OFF-score of 140, has been provided on 4 May 2019 and

thus more or less one month after the Appellant had, according to his own data and statements, returned to Rabat (Morocco) on 7 April 2019 and started training on sea level. The Panel notes that the Appellant has not provided any explanation as to how such an OFF-score could be explained after such a long period at sea level. Further, it is obvious that all other stays and training periods in altitude (Samples 3, 4 and 5) did not lead to an OFF-score anything close to the one found in Sample 1. Thus, the Panel considers that altitude is not a credible explanation for the abnormality found in the Appellant's Sample 1.

82. Regarding the Appellant's second argument, according to which the values in Sample 1 could be explained by his training method in combination with the variations in temperature and his diet, the Panel observes that these elements have already been submitted to the Expert Panel who stated, in its Fourth Expert Report, *"that the impact of training is already taken into account through the individual reference ranges. It must also be repeated and highlighted that variations in training induces changes in haemoglobin though shifts in plasma volume, thus purely changes in concentration (...). Such changes can obviously influence concentration-based markers (...), but not the reticulocyte%, which are measured as a percentage of red cells. This measure is thus independent of any change in concentration. In view of the abnormalities in sample 1 of the profile, the low reticulocyte percentage triggering the high OFF score is the key abnormality. (...) We therefore reiterate our previous evaluation that changes in training type and load alone are highly unlikely to have caused the abnormalities seen in sample 1 of the profile"*.
83. As regards the different environmental conditions, *i.e.* changes in temperature, the Expert Panel noted, in the same Report, that it *"is well known that different environmental conditions can influence plasma volume and thus concentration-based markers, similar to what has been described above for exercise: Most studies show increases in plasma volume (and thus lower haemoglobin) during the warmer period of the year (...). The magnitude of such changes is small (...), there is no relevant impact on reticulocytes. When relating these facts to the profile, it is obvious that the most abnormal feature of the profile, namely sample 1, is unlikely to be explained by the environmental difference alone. The key difference is the much lower reticulocyte% in this test compared to most other measures in the profile. It is also of note that while haemoglobin is lower in some of the summer samples (when the athlete was not competing), it is highest in the two samples closest to the two most important competitions (Marathon Prague (sample 1) and Marathon Fukuoka (sample 8)). We therefore believe that it is highly unlikely that environmental changes alone have caused the abnormalities highlighted in our previous report"*.
84. The Panel notes that the Appellant has not submitted any scientific evidence prone to put these assertions of the Expert Panel into doubt. In particular, as is clear from the recording of the hearing before the Disciplinary Tribunal, neither the Appellant nor Dr Kootstra disagreed with Dr Schumacher when the latter reiterated and developed the Expert Panel's view on this topic. In fact, Dr Kootstra expressly agreed with Dr Schumacher.
85. The only question Dr Kootstra had regarding Dr Schumacher's explanations was related to the possible effects that an intensive training could have if it immediately preceded

the sample taking. In response to that question, Dr Schumacher pointed out that such a situation could give rise either to a haemoconcentration (where the haemoglobin is increased) or a haemodilution (where the haemoglobin is a bit lower than normal) and that, in order to avoid any inconsistencies, there is a “two hour rule” according to which, ideally, no sample should be taken within a period of two hours after any training or competition. However, if a sample is taken within that time span, the athlete may indicate that in an annex to the DCF and this indication will then be taken into account by the experts in the context of their assessment. These explanations of Dr Schumacher were equally not contested by Dr Kootstra.

86. In the present case, and in view of the fact that in the present appeal the Appellant argues for the first time that this two hour period was not respected, the Panel finds, first, that it is clear from the DCF’s relating to Samples 1, 2, 7 and 8, that the Appellant expressly acknowledged that said two hour period was fully respected. This finding is further corroborated by the fact that the Appellant’s training data shows that none of these four samples has been provided within two hours after a training or competition.
87. Thus, neither the training method, the variations in temperature nor the alleged training prior to the sample taken can explain the abnormalities found in the Appellant’s Sample 1.
88. The same conclusion has to be drawn in relation to the Appellant’s argument that the changes on his diet would have had an influence on the values of his ABP profile as the Appellant did not provide any precision on these alleged changes or explanation on how and why a change in nutrition could affect these values.
89. As to the Appellant’s third argument, derived from the fact that the conditions under which the samples were transported and the delays within they were analysed could have affected the reliability of the results of the analysis, the Panel observes that it is clear from the laboratory documentation package provided by the Respondent that the transportation temperature of Samples 3 and 4 has been within the range prescribed by the ISTI. The regularity of the transport conditions of these samples has, thus, be accepted. In this respect, it is important to note that this evidence, which was only submitted in reaction to the Appellant’s claim, has not been contested by the latter. The same applies to the explanation provided by the Respondent in relation to the Appellant’s argument that, allegedly, the transportation temperature for Sample 7 was only measured 43 minutes after the sample was provided. Indeed, the Appellant did not contradict the Respondent’s explanation according to which the *“data logger records the times in GMT+2, whereas the location where the athlete was tested (Morocco) is at GMT+1. Thus, the data logger was activated before the sample was placed in the coolbox”*. In this respect, the Panel finds this explanation and the acknowledged error in the indication that the *“data logger was activated 43 minutes after the sample had been placed in the cool box”* to be fully persuasive.
90. Concerning the argument that the allegedly long time span between sample provision and sample analysis affected the reliability of the samples and the analysis thereof, the Panel notes, first, that, as is clear from the table in paragraph 32 of the present award, the BSS of the most relevant samples, *i.e.* Samples 1, 2, 5, 6, 7 and 8, is below the score of 85 prescribed by the ISTI. Second, the same is true for the BSS score of the Samples

3 and 4, which do not appear in the mentioned table but were submitted by the Respondent in the present proceedings. Indeed their BSS is 45.4 and 58.4 respectively. These figures have not been contested by the Appellant and neither has the reliability of the studies that led the relevant bodies to consider that a sample with a BSS below 85 is reliable. The Appellant limits himself to reiterating, on basis of Dr Kootstra's expert report, his argument that analysing samples more than 24 hours after collection invalidates the results as reticulocytes would only stay stable for 24 hours at 4 degrees. In this respect the Panel notes that during the hearing before the Disciplinary Tribunal, Dr Schumacher gave a lengthy explanation on how this BSS score was developed and why the 24 hour period referred to by Dr Kootstra was not to be applied for the analysis of the samples in the anti-doping context and specifically stated that Sample 1 clearly respected all the standards. Dr Schumacher, although agreeing that reticulocytes might be affected when stored in improper conditions, pointed out that haemoglobin would not be affected by these storage conditions and that, in any event, the experts have a safeguard as they could measure the size of the blood cells which would increase if the sample had been stored for too long. According to Dr Schumacher, the cell size in Sample 1 was however comparable to the cell sizes in the Appellant's other samples, which would confirm that Sample 1 was reliable. The Panel finds it compelling that Dr Kootstra, under the assumption that all the necessary checks in relation to the Appellant's samples were made, expressly agreed with Dr Schumacher on this point. In the present case it is however not contested that all these checks were made and that the Appellant's Samples all have a BSS below 85. Thus, in absence of any scientific evidence capable of putting into question the validity of the either the BSS fixed by the ISTI or the storage conditions of the samples used for the Appellant's ABP profile, the Panel considers that there is no reason to doubt the findings of the Expert Panel and holds that the abnormalities found in that ABP profile cannot be explained by the time elapsed between sample taking and sample analysing.

91. In view of the above, in particular the fact that the values detected in the Appellant's ABP were highly abnormal and indicated a high probability of doping, that the Appellant has not submitted any contradictory evidence exists and that the timing of the detection of the potential ADRV coincides with the Appellant's competition schedule – the Panel is comfortably satisfied that the abnormal values were caused by a blood doping scenario. The Panel thus holds that the Appellant violated Article 2.2 of the 2019 IAAF ADR.
92. Concerning the possible sanction, Article 10.2.1 of the 2019 IAAF ADR provides that the period of ineligibility imposed for an ADRV under Article 2.2 which is first anti-doping offence, subject to potential reduction or suspension pursuant to Article 10.4 (No Fault or Negligence), 10.5 (No Significant Fault or Negligence) or 10.6 (Substantial Assistance, Admission, Prompt Admission etc.), “*shall be four years where: (a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional. (b) The Anti-Doping Rule Violation involves a Specified Substance and the Integrity Unit establishes that the Anti-Doping Rule Violation was intentional*”.
93. According to Article 10.2.2, if “*Article 10.2.1 does not apply, the period of Ineligibility shall be two years*”.

94. Given that, according to the Expert Panel's view and in line with constant CAS jurisprudence, the use of an erythropoietic stimulant (rEPO) or a blood transfusion can exclusively be done by injections, the ADRV at hand has, in the Panel's view, to be considered as having been committed intentionally. In this regard, the Panel has not been convinced by the Appellant's allegations that he has never engaged in any doping practice as would be shown by the fact that all his anti-doping test were always negative. Moreover, the Appellant did not try to establish the existence of any mitigating circumstances and, although arguing that there was no significant fault or negligence, did not further develop that argument.
95. Thus, there can be no reduction of the period of ineligibility of four (4) years foreseen in Article 10.2.1 of the 2019 IAAF ADR on basis of Articles 10.4 and 10.5 as these require a lack of intent. Article 10.6 of the 2019 IAAF ADR does not apply either as the Appellant neither provided assistance in discovering or establishing the ADRV nor admitted the ADRV.
96. As to the question whether a four (4) year period of ineligibility is, in the present case, to be considered as proportionate, the Panel considers that it is sufficient to recall that the 2015 WADC, on which the 2019 IAAF ADR are based (see Article 20. of the 2019 IAAF ADR), has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction (*inter alia*, CAS 2016/A/4643, CAS 2017/A/5110) and CAS 2018/A/5739). Thus, in the Panel's view, there is no basis for reducing the Appellant's sanction by applying the principle of proportionality.
97. According to Article 10.2.2 (a) of the 2019 IAAF ADR:
- "The period of Ineligibility shall start on the date that the decision is issued provided that :*
- (a) any period of Provisional Suspension served by the Athlete or other Person (whether imposed in accordance with Article 7.10 or voluntarily accepted by the Athlete or other Person in accordance with Article 7.10.6) shall be credited against the total period of Ineligibility to be served. To get credit for any period of voluntary Provisional Suspension, however, the Athlete or other Person must have given written notice at the beginning of such period to the [AIU], in a form acceptable to the [AIU] (and the [AIU] shall provide a copy of that notice promptly to every other Person entitled to receive notice of a potential [ADRV] by that Athlete or other Person under Article 14.1.2) and must have respected the Provisional Suspension in full. No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension, regardless of the Athlete or other Person's status during such period. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility that may ultimately be imposed on appeal".*
98. In the present case, considering that the Appellant's provisional suspension is still in force, namely since 10 January 2020, and that it is uncontested that he respected that provisional suspension, the four-year period of ineligibility shall start on the day of notification of the present award. The period of provisional suspension already served

by the Appellant between 10 January 2020 and the date of notification of the present award, shall be credited against the four-year period of ineligibility to be served.

99. Article 10.8 of the 2019 IAAF ADR provides that:

*“In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results obtained from the date the Sample in question was collected (whether In-Competition or Out-of-Competition) or other [ADRV] occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise.”*

100. In this regard, the Panel observes that it is up to the party, which invokes a specific rule, to establish on the balance of probabilities that that rule applies. In the present case, the Appellant has not raised any argument according to which the “fairness exception” could apply in the present case. In any event, the Panel does not see any ground to apply such exception in the present case.

101. As a result, the Panel concludes that all of the results obtained by the Appellant from 4 May 2019 to 9 January 2020, shall be disqualified, with all resulting consequences, including the forfeiture of any medals, titles, ranking points and prize and appearance money. The Panels observes that, in its Appealed Decision, the Disciplinary Tribunal came to the same conclusion.

102. In view of all of the above considerations, the Panel concludes that the Appealed Decision is lawful and thus to be upheld and that the Appellant’s appeal is to be dismissed.

103. Any other and further claims or requests for relief are dismissed.

## **IX. COSTS**

104. Article R65.1 of the Code provides that:

*“This Article 65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue.”*

105. Article R65.2 of the Code reads as follows:

*“Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.”*

*Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000-- without which CAS shall not proceed and the appeal shall be deemed withdrawn. [...]*

106. Article R65.3 of the Code provides:

*“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award 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 the outcome of the proceedings, as well as the conduct and financial resources of the parties.”*

107. The present appeal being directed against a disciplinary decision from an international sport-body, it is free, except for the CAS Court Office fee of CHF 1,000 paid by the Appellant, which is retained by the CAS.

108. The only point for the Panel to decide is whether the “prevailing party” is to be granted “a contribution towards its legal fees and other expenses incurred in connection with the proceedings”. In this regard, having taken into account the complexity of the proceedings, the outcome of the arbitration, the conduct as well as the financial resources of the Parties, the Panel finds that the Appellant is to pay a contribution towards the legal fees and other expenses which the Respondent has occurred in connection with these proceedings in the amount of CHF 3,000 (three thousand Swiss Francs).



**ON THESE GROUNDS**

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

1. The appeal filed on 19 August 2020 by Mr El Mahjoub Dazza with the Court of Arbitration for Sport against the decision rendered on 24 July 2020 by the World Athletics (IAAF) Disciplinary Tribunal is dismissed.
2. The decision rendered on 24 July 2020 by the World Athletics (IAAF) Disciplinary Tribunal is confirmed.
3. This award is pronounced without costs, except for the CAS Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr El Mahjoub Dazza, which is retained by the CAS.
4. Mr El Mahjoub Dazza is ordered to pay to World Athletics (IAAF) the amount of CHF 3,000 (three thousand Swiss Francs) as a contribution towards its the legal fees and expenses incurred in relation to the present proceedings.
5. All other motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Award issued on 23 April 2021

**COURT OF ARBITRATION FOR SPORT**



Karim Adyel  
Arbitrator



Jacques Radoux  
President of the Panel



Pierre Muller  
Arbitrator