CAS 2019/A/6313 Jarrion Lawson v. International Association of Athletics Federations

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Stephen L. Drymer, Attorney-at-Law in Montreal, Canada

Arbitrators: Prof. Richard H. McLaren, O.C., Professor of Law in Ontario, Canada

Mr. Murray Rosen, Q.C., Barrister in London, England

in the arbitration between

Mr. Jarrion Lawson, United States of America

Represented by Mr. Paul Greene and Mr. Matt Kaiser, Attorneys-at-Law with Global Sports Advocates in Portland, Maine

Appellant

and

International Association of Athletics Federations, Monaco Cedex

Represented by Mr. Ross Wenzel, Attorney-at-Law with Kellerhals Carrard in Lausanne, Switzerland

Respondent

I. PARTIES

1. Mr. Jarrion Lawson (the "Athlete" or "Appellant") is a professional American track and field athlete competing in Long Jump, as well as the 100m and 200m sprints. He has competed internationally, including at the 2016 Rio de Janeiro Olympic Games.

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

II. FACTUAL BACKGROUND

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

A. The Alleged ADRV

4. On 2 June 2018, the Appellant provided an out of competition urine sample at 08h03 in Arkansas. This was approximately 19 hours after he ate a teriyaki beef bowl at [...] Restaurant. This sample was his first urination of the day. The doping control session was completed 17 minutes later, at 08h20.

5. On 14 June 2018, the Athlete's A Sample was analyzed by the WADA-accredited laboratory in Los Angeles, California (the "Laboratory") and revealed the presence of Epitrenbolone (or otherwise known as Trenbolone) (the "AAF"). Epitrenbolone is listed as in S1.1a Exogenous Anabolic Androgenic Steroids of the World Anti-Doping Agency 2018 Prohibited List. It is a non-specified substance prohibited in- and out-of-competition at all times.

6. Thereafter, the Appellant competed at the U.S. National Championships in Des Moines, Iowa on 21 June 2018, a meet in Rabat, Morocco on 13 July 2018, a meet in Sotteville-lès-Rouen, France on 17 July 2018 and a meet in London, England on 22 July 2018.

7. On 3 August 2018, the Respondent, by and through the Athletics Integrity Unit ("AIU"), notified the Appellant of his positive result and provisionally suspended him from any further competition.

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[1] On 9 June 2019, the IAAF announced that the IAAF Council had approved a change of the body's legal name to World Athletics, to be "*rolled out*" in October 2019. The Parties and the Panel nonetheless continued to use the name "IAAF" in their submissions and communications in this case.

8. On 9 August 2018, the Laboratory analyzed the Athlete's B Sample, which confirmed the presence of Epitrenbolone.

9. On 10 August 2018, the Appellant was informed that the concentration of Epitrenbolone in his A-sample was 0.65ng/ml and the concentration in his B-sample was 0.80ng/ml.

10. On 23 August 2018 and 7 September 2018, the Appellant, by and through his legal counsel, Mr. Paul Greene, filed various submissions and expert evidence with the AIU seeking to lift his provisional suspension noting, in particular, that the source of the Epitrenbolone was contaminated meat ingested on 1 June 2018.

11. In support of his explanation, the Athlete adduced the following evidence:

- Evidence that he ate the teriyaki beef bowl by way of (i) a restaurant receipt; (ii) bank account records confirming the purchase of lunch at [...] Restaurant; and (iii) text message exchanges with Ms. Alexis McCain setting up the lunch meeting at [...] Restaurant.
- Results of a (negative) hair analysis conducted by Dr. Pascal Kintz
- Expert report of Dr- Helmut Zarbl
- Pictures of the packaged meat received by the [...] Restaurant from National Beef Packing Company
- Affidavit from the Co-Owner of the [...] Restaurant stating that the meat used in the teriyaki beef bowl was New York Strip Steak sourced from the Performance Food Group.

12. In response to the Athlete's submissions and expert evidence, the AIU requested that the Athlete provide additional information/documentation such as (1) purchase orders, invoices, receipts, etc. relating to the New York Strip Steak ordered by the [...] Restaurant (including relevant product codes, item IDs, and further confirmation of the specific supplier; (2) confirmation of the inventory management platform/software used by the [...] Restaurant and copies of all stock inventories related to the New York Strip Steak for a certain time period; and (3) copies of all refrigerator/storage records for all New York Strip Steak in the [...] Restaurant during a certain time period.

13. On 13 December 2018, the Athlete informed the AIU that despite his efforts, the [...] Restaurant did not have the requested information but that even if it did, they would not produce them without a subpoena.

14. On 27 February 2019, the AIU sent a notice of Charge to the Athlete.

15. On 4 March 2019, the Athlete accepted that he has committed an anti-doping rule violation but noted that he would challenge the consequences thereof.

B. The Disciplinary Tribunal Decision

16. On 24 May 2019, the Respondent's Disciplinary Tribunal, following a full hearing, rendered its decision determining as follows:

a) The Disciplinary Tribunal has jurisdiction to decide the present dispute.

b) Mr. Jarrion Lawson has committed Anti-Doping Rule Violations pursuant to Articles 2.1 and Art. 2.2 ADR.

c) A period of Ineligibility of four years is imposed upon Mr. Jarrion Lawson, commencing on the date of the Tribunal Award. The period of Provisional Suspension imposed on Mr. Jarrion Lawson from August 3, 2018 until the date of the Tribunal Award shall be created against the total period of Ineligibility, provided that it has been effectively served on him.

d) Mr. Jarrion Lawson's results from June 2, 2018 until the date of his Provisional Suspension on August 3, 2019 shall be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.8 ADR.

e) No costs are awarded to any party.

(the "Appealed Decision")

17. The Appealed Decision (by a tribunal of three arbitrators) included the following findings, among many others:

(a) that the Athlete must demonstrate that his explanation of his alleged non-intentionality is not merely *"possible"*, but *"probable"* in the sense of being more likely than not (i.e. more than 50% likely), and his explanation must be supported by *"actual evidence as opposed to mere speculation"; the choice facing a tribunal is* not simply binary, that is, a choice between accepting the Athlete's explanation or finding that he is a liar; in determining whether the Athlete's explanation is probable, his *"demeanour is not the only, nor even the primary aspect, of the inquiry insofar as the Tribunal's analysis is concerned;*

(b) that deliberately injecting a Trenbolone implant into the cattle's longissimus muscle would prevent the intended systemic benefit resulting from diffusion in the animal's bloodstream and be "*against the economic interest of beef producers since the longissimus is one of the most high-valued wholesale cuts and implanting into it would lessen its value";* and the *"scabs and lesions that such an injection would create would be noticeable at the slaughterhouse, by the in-house, federal and sometimes pharmaceutical company inspectors, by distributor or the supplier, by the butchers, and at the restaurant";*

(c) that it would be *"extremely difficult to penetrate the skin and connective tissues surround[ing] the longissimus muscle"* and the fact that the cattle are held in a restraining device when the implants occur *"lowers, if not eliminates, the chance that an implant intended for the ear would end up in the animal's hindquarters";*

(d) that *"the use of the metaphor "lightning strike" deployed by Dr. Zarbl is vivid but itself underscores the rarity of what he asserts occurred (indeed, Dr. Zarbl expressly declared at the hearing that a "lightning strike" is a rare event, while averring that "accidents" do occur)."*

(e) that the outcome of other cases involving meat contamination (whether involving Trenbolone or otherwise) did not provide reliable guidance in the present case, since they turned on specific facts and evidence, and their assessment by different panels treated them differently.

(f) that as evidenced by Professor Ayotte: (i) Trenbolone *"has various potential benefits including increasing muscle mass, aiding recovery, improving muscle repair and stamina" and is "one of the most frequently reported anabolic androgenic steroids by all WADA-accredited laboratories*"; (ii) there was no known real-world example of a Trenbolone implant being misplaced into the body of a cow (although such implants were studied by Daxenberger and others in the late 1990s for academic purposes); and (iii) between 2013 and 2018, there were only 16 cases of Trenbolone positives in the Montreal laboratory (out of approximately 125,000 samples), of which 14 cases involving other prohibited substances, and (iii) there was *"... no indication that residues of that substance in meat are causing adverse analytical findings";* and

(g) that the fact that the Athlete had competed in Osaka on 20 May 2018 was *"far from conclusive, or even probative of [his innocence] given the uncertainty of such matters as for how long the Trenbolone in the amount ingested would remain detectable in his system"* and that *"the Athlete has failed to satisfy his burden of establishing how the Prohibited Substance Epitrenbolone entered his body. His denials are, in the overall evidential context, insufficient, even coupled with Mr. Doyle's testimonial to his moral character, to enable him to pass the 50% threshold."*

18. Following the hearing, on 14 June 2019, the Appellant volunteered for and underwent a polygraph examination by a former FBI polygraph chief Mr Kendall Shull, who reported that the Athlete was truthful when he said he did not intentionally ingest Epitrenbolone.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 5 June 2019, the Athlete filed his statement of appeal against the Respondent with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports related Arbitration (the "Code"). Within his statement of appeal, the Athlete nominated Prof. Richard McLaren as an arbitrator.

20. On 21 June 2019, the Respondent nominated Mr. Murray Rosen QC as arbitrator.

21. On 10 July 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Mr. Stephen L. Drymer as President of the Panel in accordance with Article R54 of the Code.

22. On 29 August 2019, the Appellant, following agreed-upon extensions of time, filed his appeal brief in accordance with Article R51 of the Code.

23. On 22 October 2019, the Respondent, following agreed-upon extensions of time, filed its answer in accordance with Article R55 of the Code.

24. On 21 November 2019, a hearing was held in New York City. The Panel was assisted by Mr. Brent J. Nowicki, CAS Managing Counsel, and joined by the following

For the Appellant:

Mr. Jarrion Lawson (Athlete)
Mr. Paul J. Greene (Counsel)
Mr. Matthew D. Kaiser (Counsel)
Dr. Helmut Zarbl (Expert)
Dr. Pascal Kintz (Expert)
Mr. Kendall Shull (Expert)
Ms. Amanda Hitt (Expert)
Mr. Paul Doyle (Athlete's Agent)
Mr. Travis Geopfert (Athlete's Coach)

For the Respondent

Mr. Ross Wenzel (Counsel)
Mr. Magnus Wallsten (Counsel)
Professor Christiane Ayotte (Expert)
Professor Bradley Johnson (Expert)

25. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

26. The Panel has considered all of the parties' written and oral submissions. It refers here and in the discussion that follows only to those aspects of the Parties' positions that it considers necessary to explain its reasoning and conclusions.

A. The Appellant's Submissions

27. The Appellant's submissions may be summarized as follows:

- The IAAF Disciplinary Tribunal was misled by Dr. Ayotte that, in her experience, every Trenbolone level she had ever reviewed was indeed as low as – or similarly low as – the Appellant's levels. However, in reality, the Appellant's Trenbolone levels in his A and B Samples were the lowest seen since 2013.

- The Appellant's burden to prove meat contamination was made more difficult by the Respondent's inexcusable failure to report his positive test results for almost 2 months after the test. This was a breach of the Respondent's duty pursuant to Article 7.3 of the WADC which requires anti-doping organizations to "promptly notify" athletes of positive test results. During this 2-month delay, the opportunity to secure vital evidence was lost.

- The Appellant underwent a hair sample test by Dr. Pascal Kintz, one of the world's leading toxicologists, as soon as he was notified of the positive test. Dr. Kintz found that the Athlete's hair was clean and produced no positive results for Trenbolone. Dr. Kintz added that there was no reason for an athlete to use trenbolone on a single occasion.

- In the United States, Trenbolone use on cattle is legal. However, compliance with good veterinary practices cannot be assumed and injections of the substance into areas other than the ear is possible due to inadequate immobilization. The sudden increase in positive tests at the Montreal lab coincides with the decrease in inspections of beef because of the Trump administration. Even Dr. Ayotte commented that the risk of beef contamination in the United States is now on par with the risk of beef contamination in Mexico.

- The Athlete was routinely tested (20 times) by USADA. It was not his fault his last test was 52 days prior and he cannot be faulted for the gap between the two tests.

- The above warrants a finding of No Fault or Negligence. At the very least the sanction should be reduced from 4 years to 2 years of ineligibility under Article 10.2 of the WADA Code.

28. In his appeal brief, the Appellant requested the following relief:

(1) Uphold the Appellant's appeal;

(2) Set aside the IAAF Disciplinary Tribunal's Decision;

(3) Find he bears No Fault or Negligence and eliminate his period of ineligibility so that he is immediately eligible to compete;

(4) In a worse case scenario, find that his use of trenbolone was unintentional and that his period of ineligibility must be reduced to 2 years, backdate to June 2, 2018, the date of sample collection;

(5) Order any other relief for the Appellant that this Panel deems to be just and equitable including an award of fees and costs in part or in whole.

B. The Respondent's Submission

29. The Respondent's submissions, in essence, may be summarized as follows:

- There is no reported example of any cattle being subject to an administration of Trenbolone directly into the longissimus muscle nor would it make commercial or farming sense.
- Old cases cannot be relied upon because the cases cited involved findings of fact and regardless CAS cases are not binding.
- The alleged meat contamination would require two rare events: an off-site injection into longissimus and serving Athlete a cut of meat with the injection site – this is referred to as the lightning strike.
- An accidental injection can be excluded because it would be hard to penetrate skin and the way the animal is secured would make it hard to accidentally injected into the body
- Hair analysis does not rule out a single use.
- The polygraph examination was inadmissible, as ruled in previous CAS decisions.

30. In the answer, the Respondent requested the following relief:

1. *Dismiss the appeal brought by the Appellant;*
2. *Orders that the IAAF is granted a significant contribution its legal and other costs.*

V. JURISDICTION

31. Article R47 CAS Code reads 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 him prior to the appeal, in accordance with the statutes or regulations of that body.*"

32. The jurisdiction of the CAS is derived from Article 13.2.4 of the IAAF Anti-Doping Rules, which permits the Appellant to appeal to the CAS within 30 days receipt of the Appealed Decision (i.e. as from 31 May 2019).

33. The jurisdiction of the CAS is not disputed between the Parties and was confirmed by them in signing the Order of Procedure.

34. In the light of the foregoing, the Panel finds that the CAS has jurisdiction in this procedure.

VI. ADMISSIBILITY

35. Article R49 of the CAS Code reads as follows:

In the absence of a time limit set in the statutes or regulations of the federation ... the time limit for appeal shall be twenty-one days from receipt of the decision appealed against....

36. As set out above, Article 13.2.4 of the IAAF Anti-Doping Rules permits the Athlete to file his appeal within 30 receipt of the Appealed Decision. Accordingly, the deadline for such appeal was 30 June 2019.

37. The Athlete filed his appeal on 5 June 2019. As such, his appeal is admissible in accordance with Article 13.2.4 of the IAAF Anti-Doping Rules, as well as Article R49 of the Code.

38. The Respondent consented to the admissibility of this appeal and no objection has been raised to the contrary.

39. The Panel, therefore, confirms that this appeal is admissible.

VII. APPLICABLE LAW

40. 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.*"

41. The Panel further notes that Article 13.9.5 of the IAAF Anti-Doping Rules provides as follows:

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

42. Neither Party made any specific argument as to the law applicable to this dispute. This said, both Parties mutually relied on the provisions set out in the 2018 IAAF Anti-Doping Rules and various CAS jurisprudence when presenting their cases in writing and orally at the hearing.

43. The Panel has no reason to deviate from the approach taken by the Parties, and as directed by Article 13.9.5 of the IAAF Anti-Doping Rules, and will proceed accordingly.

VIII. MERITS

A. The Anti-Doping Rule Violation and Sanction

44. Pursuant to Art. 2.1 (Presence) and 2.2 (Use) of the IAAF ADR, the Presence and Use of a Prohibited Substance or its Metabolites or Markers in an athlete's sample constitutes

an ADRV. Epitrenbolone is listed under S1.1a Exogenous Anabolic Androgenic Steroids of the 2018 WADA Prohibited List.

45. On 4 March 2019, the Athlete explicitly accepted the presence of the Prohibited Substance and that he had committed an ADRV under Art. 2.1 and Art. 2.2 of the IAAF ADR. The Athlete continues to accept the fact of the ADRV in these proceedings. Therefore, this case is about sanction.

46. Article 10.2 of the 2018 ADR provides that the sanction to be imposed for anti-doping rule violations under Article 2.1 ADR (presence) and Article 2.2 ADR (use) is as follows:

> ***10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility to be imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping rule violation shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*
>
> *10.2.1 The period of Ineligibility shall be four years where:*
>
> *(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.*

47. Trenbolone is not a specified substance. The period of Ineligibility should therefore be four (4) years pursuant to Article 10.2.1(a) ADR, unless the Athlete can establish that the anti-doping rule violation was not intentional.

48. As the Athlete bears the burden of establishing that the violation was not intentional (within the above meaning), a series of CAS cases have held that it usually follows that he must necessarily establish how the substance entered his body (for example, CAS 2017/A/5248, CAS 2017/A/5295, CAS 2017/A/5335; (iv) CAS 2017/A/5392; and CAS 2018/A/5570).

49. However, other CAS awards – notably CAS 2016/A/4534 (Villanueva), CAS 2016/A/4676 and CAS 2016/A/4919 (Iqbal) - have found that in *"extremely rare"* cases, an athlete might be able to demonstrate a lack of intent even where he/she cannot establish the origin of the prohibited substance. The *Villanueva* award refers to the *"narrowest of corridors"* and the *Iqbal* award stated that *"in all but the rarest cases the issue is academic"*. These cases emphasised how rare it will be for an athlete to be able to rebut the presumption of intentionality without establishing the origin of the prohibited substance.

50. The burden to establish the origin of the prohibited substance or pass through the "*narrowest of corridors*" otherwise to rebut the presumption of intentionality, lies solely on the Athlete. The Anti-Doping Organisation, does not have the burden *"to hypothesise,*

still less prove" an alternative source. And the athlete must in that regard adduce specific evidence (*as opposed to mere speculation):* see e.g. CAS 2014/A/3820.

51. As it was put in CAS 2010/A/2230:

> *"To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination - two prevalent explanations volunteered by athletes for such presence - do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body"*

52. Evidence establishing that a scenario is possible is not enough to establish the likely origin of the prohibited substance. The Panel endorses this statement in CAS OG 16/25:

> *"... the nature and quality of the defensive evidence put forward by the athlete, in light of all the facts established, must be such that it leaves the tribunal actually satisfied (albeit not comfortably so) that the athlete's defence is more likely than not [to be] true".*

53. In alleged meat contamination cases, therefore, it is usually necessary to trace the specific source of the meat and to demonstrate the likelihood that it was contaminated.

54. In CAS 2016/A/4563, it was stated that:

> *"In cases of meat contamination, it must - as a minimum - be a requirement that the Athlete sufficiently demonstrates where the meat originated from. For example, where did the butcher buy the Brazilian meat, how was the Brazilian meat imported into Egypt, has any of the other imports of meat been examined or tested for the presence of ractopamine etc.?"*

55. But that minimum is not usually enough. In the *Contador* cases (CAS 2011/A/2384 and CAS 2011/A/2386), even though the athlete traced the piece of meat he ate to a farmer whose brother had been convicted for illicit use of the prohibited substance in question, it was held that he had failed to meet his burden to establish contaminated meat as the origin of the adverse finding.

B. The Scientific Debates

56. The Athlete's diligence in undergoing Dr Kintz's hair test and then Mr Shull's polygraph test, both of which the Athlete initiated, tends to show that he believed himself innocent and was accordingly prepared to risk an adverse result which demonstrated the opposite. His perception, however, does not prove his case.

57. Nonetheless the hair test showed that he had not ingested repeated or frequent doses of Trenbolone and while it did not exclude the possibility of a low or seldom dose, and it is not inherently impossible that the athlete intentionally took a single or a few doses shortly before 2 June 2018, the implausibility of such a coincidence should not be wholly disregarded.

58. The main scientific debates were between Professor Johnson and Ms Hitt as regards to the possibility or likelihood of a hormone implant being mistakenly injected into a cattle's body rather than ear, and between Professor Ayotte and Dr Zarbl as to the possibility or likelihood hormone residues being present in a steak cut from the cattle's longissmus muscle in sufficient concentration to cause the Athlete's ADRV.

59. On the first question, notwithstanding their credentials, Professor Johnson and Ms Hitt both gave the impression to the Panel members to be advocates respectively for and against the practices of the American meat industry. Concerns as to the risk of bad practices causing or enabling mis-implanted Trenbolone into the shoulder or other parts of the cattle go back to at least to Dr Daxenberger's study, which found that when implants were misplaced, they left milligrams of residue in edible beef and were not always detectable on carcasses.

60. The Panel concludes from all the evidence on that aspect of the case, that it was reasonably possible that a hormone implant was misplaced, but that, if the enquiry were limited to actual evidence of the specific origin of the beef consumed by the Athlete on 1 June 2018, and of the presence of Trenbolone in that beef, it was impossible to say that this had actually occurred in this case. As discussed below, however, the Panel does not consider that the relevant enquiry is so limited.

61. As for the testimony of Dr Zarbl and Professor Ayotte, the Panel does not concur with Dr Zarbl's "*lightning strike*" theory or indeed his analogy in that regard, which inspired much rhetoric on both sides but distracted from the common-sense evaluation of the evidence as a whole.

62. Nor was the Panel entirely persuaded by Professor's Ayotte's evidence. Before the Tribunal below, she testified that Trenbolone and metabolite levels measured in her laboratory were always low and therefore intentional cheaters could not be separated from athletes measured at levels of picograms consistent with food contaminated by hormones.

63. She said that athletes with high levels were rarely seen after the 1990s. But in fact, her lab records showed that some levels measured were large and that the Athlete's level was below 18 out of the 21 reported since 2013. Moreover, the data she produced for this appeal showed that, indeed, many urine samples in 2018/19 for athletes in America (where Trenbolone is legal as a muscle promoter in cattle) were positive for Trenbolone metabolities at low levels (of less than 2 ng/ml).

64. Thus, while the Panel agrees (with respect) with many of the points made in the Appealed Decision, it is not prepared to rely on Professor Ayotte's evidence to the same effect found below. Moreover, given how the case was presented, in contrast to the approach below, the Panel is not able to dismiss the Athlete's explanation as scientifically speculative or as less than the 50%+ likelihood required for him to avoid sanctions.

65. The state of the relevant science as presented to the Panel, combined with the totality of the other evidence, viewed with common sense and bolstered by the Athlete's credibility, opened up the corridor for him to establish his lack of intentionality without concretely proving the origin of the tiny amount of Epitrenbolone found in his urine on

2 June 2018. No one could quantify by science the percentage likelihood that the particular steak that he consumed, from the longissmus muscle, contained hormone residues from the implant in the particular cattle, details of which are not available, or the consequent likelihood that the quantity of Trenbolone in that steak caused his ADRV. But that was a reasonable possibility and, even if the likelihood were to be considered scientifically less than 50%, it would be more than unfair and harsh to treat that as negating the Athlete's efforts to do all that he could to obtain the best possible evidence.

C. Discussion

66. It has long been the rule that athletes are held to a high standard of accountability when it comes to prohibited substances found in their bodies. An athlete is strictly liable for the substances found in his or her body, and an anti-doping rule violation occurs whenever a prohibited substance (or its metabolites or markers) is found in bodily specimen, whether or not the athlete intentionally used a prohibited substance or was negligent or otherwise at fault.

67. As it relates to the consequences for such liability, the athlete has the possibility to avoid or reduce sanctions if he or she can establish to the satisfaction of the panel how the substance entered his or her system, demonstrate that he or she was not at fault or significant fault, or in certain circumstances, did not intend to enhance his or her sport performance. This means that the burden of proof is on the athlete.

68. As a long line of CAS jurisprudence establishes, the strict liability rule provides a reasonable balance between anti-doping enforcement for the benefit of all clean athletes, and fairness in those exceptional circumstances where it can be shown that a prohibited substance entered an athlete's system through no fault or negligence on the athlete's part.

69. It is, therefore, crucial for the legitimacy of the anti-doping regime that the provisions of the WADC and the List of Prohibited Substances are justifiable, and as it concerns this procedure, take into consideration the actualities of specific cases.

70. This appeal presents a rare set of facts whereby the Panel is tasked with examining this strict liability principle on balance against the Athlete's thorough, documented and diligent attempts to establish the source of the prohibited substance present in his sample.

71. The Panel begins with what it considers the foundation of its analysis, namely whether establishing the specific source of a prohibited substance is required when an athlete seeks to prove no fault or negligence or no significant fault or negligence under the definitions of No Fault or Negligence and No Significant Fault or Negligence in the IAAF anti-doping rules.

72. The Parties do not dispute the Panel's starting point in this regard. Indeed, the Parties acknowledge the principle set forth in CAS 2016/A/4534 that "*when an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.*" The Parties differ, however, as to the width of that corridor through which the Athlete must pass.

73. The Athlete asserts that he need not be required to present the *perfect* case for this Panel to be convinced that he is entitled to a No Fault or Negligence reduction. Instead, he says, he need only show that it is more likely than not that the presence of 0.65 ng/ml of Trembolone in his urine resulted from eating the contaminated teriyaki beef bowl 19 hours before his positive test.

74. For its part, the Respondent asserts that in order to avoid the imposition of a four-year period of ineligibility, the Athlete *must* establish the origin of the prohibited substance and only in the extremely rarest of cases might an athlete be able to demonstrate a lack of intent even when he or she cannot establish such origin (citing *inter alia* CAS 2016/A/4534, CAS 2916/A/4676, CAS 2016/A/4919).

75. The Panel agrees that the so-called "*corridor*" must be sufficiently narrow to prevent intentionally doped athletes with a means of evading due sanctions, yet still wide enough to allow unintentionally doped athletes an opportunity to exculpate themselves by means of relevant and convincing evidence.

76. The Panel is not alone in this logic. Indeed, as renowned experts in the field of anti-doping have stated:

> *"The 2015 Code does not explicitly require an Athlete to show the origin of the substance to establish that the violation was not intentional. While the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of an Athlete's level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional."*
>
> Antonio Rigozzi and Ulrich Haas "Breaking Down the Process for Determining a Basic Sanction Under the 2015 World Anti-Doping Code" International Sports Law Journal, (2015) 15:3-48.

77. The Disciplinary Tribunal itself acknowledged the existence of a line of CAS cases that recognises the possibility for an athlete to rebut the presumption of intentionality without establishing the origin of the prohibited substance – a line of authority which it considered "more consonant" with the ADR than any strict and unequivocal requirement to make such proof. As indicated above, the Panel agrees.

78. The Disciplinary Tribunal nonetheless elected to concentrate its analysis on the origin of the prohibited substance, on the ground that "*the Athlete claims to have identified the origin ... and developed his argument from that premise.*" For its part, the Panel considers it appropriate and indeed necessary in the circumstances to take to broaden the enquiry and to take a different approach than that followed by the Disciplinary Tribunal.

79. This is because the Panel considers that it is effectively impossible in the present case for the Athlete to adduce the sort of "*actual evidence*" required by the Disciplinary Tribunal to prove the origin of the substance found in his system (Appealed Decision at ¶ 57; see also CAS 2014/A/3820) – what the Respondent refers to in its Answer as proof of "*the concrete origin*" of the substance.

80. Although the available evidence concerning the proper administration of Trenbolone (by implantation or otherwise) in cattle may suggest, in the abstract, that the likelihood that the portion of beef consumed by the Athlete contained any Trenbolone is small (for all of the reasons discussed by the Respondent), the Panel does not agree with the Respondent that this is effectively the end of the story.

81. On very careful review and examination of the totality of the evidence and testimony in this procedure, the Panel accepts the Athlete's explanation that he consumed beef which, on the balance of probabilities, was most likely contaminated with Trenbolone.

82. Trenbolone is a substance prohibited by law from being sold for use in humans in the United States. Indeed, it is a felony in the United States to purchase the substance for that purpose. The illegality of the use of the substance means that no testing on humans is possible. No university or other accredited or similarly recognised research body is likely ever to get approval to conduct such research. As a consequence, there is a dearth of scientific studies as to its use and effects in humans and therefore, the Panel was not (understandably so) provided with any reliable studies that would help to determine whether – assuming that the beef eaten by the Athlete was contaminated, which even the Respondent concedes is possible – the quantity consumed could have resulted in his AAF.

83. While this makes it impossible - for all intents and purposes - to prove scientifically that a particular hormone implant would result in the presence of Trenbolone in the particular cattle's longissimus muscle (i.e. the location of the Strip Steak consumed by the Athlete), and that that same substance would be found in the Athlete's specimen, in the content of the totality of the evidence in this case, the Panel considers that such an implant is the likely origin of the prohibited substance found in the Athlete's urine. But even if not, the Athlete's complete inability to scientifically prove such a conclusion is, in this exceptional case, not a bar to his defence and innocence.

84. Aggravating this situation of course is the slowness of the lab's notification of the results of its analysis of the A sample. The Panel agrees with the Athlete that this inexplicable tardiness may well have caused potentially relevant evidence regarding the source of the prohibited substance to become unavailable to him.

85. If the Athlete is not required to prove "*the concrete origin*" of the prohibited substance in order to demonstrate lack of intentionality in the circumstances – which the Panel finds that he is not in this case – then the other elements of his proof of lack of intention loom especially large. They are in fact overwhelming.

86. The Panel accepts that it cannot say with scientific certainty the extent to which the portion of beef in question was or was not actually contaminated. The evidence regarding the recommended and normal use of Trenbolone in beef cattle suggests that this may be small – but as discussed, the Panel does not consider this to be determinative in the circumstances.

87. The Panel also accepts the evidence proffered by the Athlete concerning his approach to training and competition, his disdain for cheating and his impeccable history and attitude to "clean" sport. Again, it is not suggested that this alone is determinative –

arbitrators do not pretend to be able to see into athletes' souls and thereby divine the truth – but the Panel does consider it relevant.

88. The Panel also recognises the largely uncontradicted evidence of the Athlete's polygraph – with the same caveats as above. The Panel does not accept that this evidence must necessarily be considered inadmissible, or otherwise ignored, on principle, such as to deprive the Athlete of a potentially relevant additional means of discharging the very heavy burden on him. More to the point, the Panel finds that the polygraph evidence before it here – explained in the expert evidence provided by Mr. Shull in his affidavit, on which he was examined at the hearing – is at the very least sufficiently credible to warrant that it be taken into consideration, as supporting the Panel's assessment of his credibility in denying any intentionally doping.

89. So too does the Panel accept the evidence of Dr. Kintz regarding the hair analysis undertaken on Mr. Lawson's behalf – though it finds that the nature of the evidence, reliable as it might be, is of little relevance or weight in the determination of whether the Athlete may have unintentionally ingested Trenbolone. What it does establish is that Mr. Lawson is not ingesting the prohibited substance on a longer time frame than this single instance.

D. Conclusions

90. The above discussion leads inexorably to the question whether the Athlete has provided sufficient evidence to prove that his positive result was unintentional. In this regard the Panel's conclusions differ from those of the Disciplinary Tribunal because of the above-explained different approach taken here. In the opinion of the Panel as explained above, by way of brief summary:

(a) the scientific evidence, such as it is, showed that it was reasonably plausible that the positive urine sample on 2 June 2018 resulted from consumption of beef the previous day which was contaminated by a hormone implant: this was not appropriately described as a (single or double) "*lightning strike*";

(b) the Athlete's credibility and history, supported by the tests which he volunteered and the evidence of his manager and trainer, go beyond a mere denial and corroborate his explanation;

(c) common sense must count strongly against it being a mere coincidence that he tested positive, for such a tiny amount of a dangerous and illegal prohibited substance as to be undetectable in his hair, and for no rational benefit, so soon after having eaten beef from hormone-treated cattle (after numerous tests over his previous career, always negative including tests during a period of injury in 2017/18 and in competition on 20 May 2018);

(d) the Panel finds it more likely than not, that the origin of the Epitrenbolone was contaminated beef innocently consumed and that this is indeed one of those rare cases where the impossibility of proving scientifically that the steak consumed did or did not contain hormone residues does not debar the athlete from establishing his innocent lack of intent under Art 10.2.1(a) of the IAAF ADR.

91. In sum, on very careful review and examination of the evidence and testimony in this procedure, the Panel is unanimously of the view that the Athlete has discharged the burden incumbent on him in the circumstances to establish that he bears No Fault or Negligence for his positive finding under Article 10.4, and thus for his period of ineligibility to be eliminated.

IX. COSTS

92. This appeal is brought against a disciplinary decision issued by an international sports-body. Therefore, according to Article R65.1 and 2 of the Code, the proceedings are free of charge, except for the Court Office Fee, which the Appellant has already paid and is retained by the CAS.

93. Article R65.3 of the Code provides as follows: *"Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, 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.*

94. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the parties beyond the Court Office fee of CHF 1,000 paid by the Appellant prior to the filing of his Statement of Appeal, which is in any event retained by the CAS.

95. Pursuant to Article R65.3 of the Code and in consideration of the Parties' tacit agreement to hold the hearing in New York to accommodate the Athlete and his witnesses, yet balancing the ultimate outcome of the proceedings, as well as the conduct and the financial resources of the parties and the extraordinarily comprehensive steps taken by the Athlete to gather and adduce the best available evidence, the Panel rules that the Respondent should reimburse the amount of CHF 10,000 to the Appellant as a contribution towards his legal fees and other expenses incurred in the present arbitration.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Jarrion Lawson against the International Association of Athletics Federation with respect to the decision rendered by the IAAF Disciplinary Tribunal on 24 May 2019 is upheld.

2. The decision rendered by the IAAF Disciplinary Tribunal on 24 May 2019 is set aside.

3. Mr. Jarrion Lawson is found to have committed an Anti-Doping Rule Violation but bears no fault or negligence and no period of ineligibility shall be imposed on him.

4. This award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr. Jarrion Lawson which is retained by the CAS.

5. The International Association of Athletics Federation is ordered to pay a contribution of CHF 10,000 (ten thousand Swiss Francs) toward the legal fees of Mr. Jarrion Lawson.

6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 6 March 2020

THE COURT OF ARBITRATION FOR SPORT

Mr. Stephen Drymer
President

Prof. Richard McLaren
Arbitrator

Mr. Murray Rosen QC
Arbitrator