

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES  
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

**Before:**

*Dr Anna Bordiugova (Chair)*

**Between:**

**INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF)**

*Anti-Doping Organisation*

**-and-**

**LEBAKENG SESELE**

*Respondent*

---

**DECISION OF THE IAAF DISCIPLINARY TRIBUNAL**

---

**INTRODUCTION AND FLOW OF PROCEDURAL CORRESPONDENCE**

1. This is the decision of the IAAF Disciplinary Tribunal convened under Article 8.4 of the IAAF Anti-Doping Rules ("the ADR") to determine an Anti-Doping Rule Violation ("ADRV") alleged against Mr. Lebakeng SESELE ("the Athlete").
2. The ADRV relates to an alleged violation of Articles 2.1 and 2.2 of the ADR.
3. The Athlete was charged by the AIU letter dated 27 February 2018.

4. On 05 March 2018 the Athlete requested a hearing to be held by the Disciplinary Tribunal and the Panel was appointed by the Chair of the Disciplinary Tribunal (the "Panel").
5. On 01 May 2018 the Athlete requested and was granted assistance from pro bono counsel.
6. A preliminary meeting with the Chair of the Panel was held via a telephone conference on 14 June 2018 at which the parties were represented. Directions were thereafter issued, and an oral hearing was scheduled to take place on 26 July 2018.
7. On 21 June 2018 the Athlete's representative informed the Panel and the AIU that he could not get into contact with the Athlete and requested an extension of time for providing submission on behalf of the Athlete, initially set for 5pm (BST) on 21 June 2018 until 5pm (BST) on 26 June 2018, to which the AIU did not object. The Chair granted the requested extension until 5pm (BST) on 25 June 2018. A respective extension was granted to the AIU until 5pm (BST) on 02 July 2018.
8. On 25 June 2018, due to impossibility of contacting the Athlete, his representative requested a second extension until 5pm (BST) on 27 June 2018. In absence of objection from the AIU, the Chair granted a second extension until 5pm (BST) on 27 June 2018. The deadline for the AIU was also moved to a later date, i.e. 5pm (BST) on 04 July 2018.
9. On 27 June 2018, following Directions issued by the Panel Chair on 14 June 2018 as a result of a preliminary meeting with the parties, the Athlete via his pro bono counsel confirmed that his previous statements and evidence provided to the AIU constituted his full explanation as to the matter.
10. On 03 July 2018 the AIU informed the Panel that, following the Athlete's representative's request for application of Article 10.6.3 ADR (Prompt Admission of an Anti-Doping Rule Violation after being confronted with a Violation sanctionable under Article 10.2.1 or Article 10.3.1), the AIU submitted the details of this matter to WADA and requested an extension of 7 days to file its Brief (i.e. until 5pm (BST) on Wednesday 11 July 2018) in order for discussions with WADA (and between the parties) to be concluded in relation to the above request.
11. On 04 July 2018 the Athlete's representative requested a further extension of time, until Thursday 19 July 2018, to submit the answer brief (originally set for 12 July 2018).

12. For the whole of July the AIU, WADA and the Athlete's representative were liaising regarding the matter of the Athlete's prompt admission.

13. On 10 August 2018 the AIU informed the Panel that the parties were unable to reach an agreement pursuant to Article 10.6.3 and therefore the Directions to determine this matter were replaced as follows:

*"by 5pm BST on Friday 24 August 2018, the AIU shall submit a brief with arguments on all issues that the IAAF wishes to raise at the hearing and written witness statements from each fact and/or expert witness that the AIU intends to call at the hearing, setting out the evidence that the IAAF wishes the Disciplinary Tribunal to hear from the witness, and enclosing copies of the documents that the AIU intends to introduce at the hearing;*

*by 5pm BST on Friday 7 September 2018, the Athlete shall submit an answer brief, addressing the AIU's arguments and setting out any arguments on the issues that the Athlete wishes to raise at the hearing, as well as written witness statements from the Athlete and/or from each other witness (fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes the Disciplinary Tribunal to hear from the witness, and enclosing copies of the documents that the Athlete intends to introduce at the hearing;*

*by 5pm (BST) on Friday 21 September 2018, the AIU may submit a reply brief, responding to the Athlete's answer brief and producing any rebuttal witness statements and/or documents;*

*by 5pm (BST) on Friday 21 September 2018, the AIU shall provide soft copy bundles for the Panel and a further copy to the Athlete;*

*a hearing is set for Tuesday 2 October 2018, [time TBC], to take place both in London and via video/telephone conference."*

14. On 24 August 2018 the AIU submitted its written brief.

15. On 07 September 2018 the Athlete's representative submitted an answer brief to which witness statement of the Athlete was attached.

16. On 21 September 2018 the AIU submitted a reply brief, responding to the Athlete's answer brief of 07 September 2018.

17. On 01 October 2018, on request of the parties and with agreement of the Chair, the oral hearing scheduled for 02 October was vacated, and the Chair proceeded with resolving the matter based on respective parties' written submissions.

## **JURISDICTION**

18. This matter was referred to the Disciplinary Tribunal in accordance with Article 8.4 of the *IAAF Anti-Doping Rules*. The jurisdiction was not challenged by any of the parties.

19. The International Association of Athletics Federations is the world governing body for the sport of athletics ("IAAF"). IAAF has adopted the ADR as its anti-doping rules. The ADR apply to all IAAF members, i.e. national athletic associations and to all their members who, by virtue of that membership and participation in competitions under IAAF aegis, agree to be bound by and to comply with them.

20. ADR Articles 1.6 and 1.7 provide:

*1.6 These Anti-Doping Rules shall apply to the IAAF and to each of its National Federations and Area Associations. All National Federations and Area Associations shall comply with the Anti-Doping Rules and Anti-Doping Regulations. The Anti-Doping Rules and Anti-Doping Regulations shall be incorporated either directly, or by reference, into the rules or regulations of each National Federation and Area Association, and each National Federation and Area Association shall include in its rules the procedural regulations necessary to implement the Anti-Doping Rules and Anti-Doping Regulations effectively (and any changes that may be made to them). The rules of each National Federation and Area Association shall specifically provide that all Athletes and other Persons under its jurisdiction shall be bound by the Anti-Doping Rules and Anti-Doping Regulations, including submitting to the results management authority set out in such rules.*

*1.7 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:*

*(a) all Athletes, Athlete Support Personnel and other Persons who are members of a National Federation or of any member or affiliate organisation of a National Federation (including any clubs, teams, associations or leagues);*

*(b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;*

*(c) all Athlete Support Personnel and other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and*

*(d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping.*

21. Pursuant to ADR Article 1.7 (a), at all material times the Athlete, Mr. Lebakeng Sesele, DOB 05 June 1990, was a registered member of Athletics South Africa (ASA), and thus subject to, and bound to comply with, the ADR. The Athlete at that time was included into the IAAF Registered Testing Pool and provided his Whereabouts to the IAAF as of 16 October 2017. Therefore, in accordance with Article 8.2(a) ADR the Disciplinary Tribunal has jurisdiction to consider this case.

22. The Athlete submitted a request for arbitration to the IAAF by email dated 05 March 2018.

## **BRIEF FACTS**

23. On 12 November 2017 the Athlete provided a urine Sample Out-of-Competition in Pretoria, South Africa. The testing authority, on behalf of the IAAF, was the AIU.

24. The Athlete signed the Doping Control form and declared the following substances on the form: No-xplode, aminos, creatine. All procedures for testing were adhered to and no

anomalies in testing, storing or transportation have been reported for this case. The Sample was analysed at the Laboratory for Doping Analysis in Cologne and returned an Adverse Analytical Finding for the presence of Metabolites of dehydrochloromethyltestosterone (“DHCMT”) and trenbolone, Non-Specified Substances, specifically exogenous anabolic androgenic steroids prohibited at all times under S1.1a of the WADA Prohibited List. This is to be considered as a violation of the ADR, namely Articles 2.1 and 2.2.

## **THE CHARGE**

25. The Athlete is charged by the AIU with committing the following ADRVs (the “Charge”):

- a. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample, pursuant to Article 2.1 ADR, by virtue of the presence of Metabolites of DHCMT and trenbolone in a urine Sample, numbered A4121408, provided Out-of-Competition on 12 November 2017; and
- b. Use of Prohibited Substances, namely DHCMT and trenbolone, pursuant to Article 2.2 ADR.

26. A Provisional Suspension was imposed on the Athlete pursuant to Article 7.10.1 ADR on 01 December 2017 and remained in force, barring the Athlete temporarily from participating in any competition or activity until this matter is fully determined. The Provisional Suspension was respected by the Athlete.

## **SUBMISSIONS OF THE PARTIES**

27. The following outline is a summary of the main positions of the parties to the case and does not comprise each and every contention put forward by them. The Chair, however, has carefully considered all the submissions made by the Athlete and the AIU, even if no explicit reference has been made in what follows. The parties’ written submissions and documentary evidence were all taken into consideration.

28. The charge against the Athlete is based on the Adverse Analytical Finding Report produced via ADAMS by the WADA accredited Laboratory for Doping Analysis in Cologne.

29. On 01 December 2017, the AIU wrote to the Athlete requesting his explanation as to the Adverse Analytical Finding. On the same day the Athlete was provisionally suspended.

30. On 06 December 2017 the Athlete explained that he had suffered an injury of his hamstring tendon on 07 September 2017. Since he had no financial means to obtain professional medical assistance he opted for getting information on how to treat an injury from the Internet and books, and ordered the Prohibited Substances found in his Sample online.

31. The Athlete stated that he himself injected 1ml of each substance once every week for four weeks. The Athlete knew that he risked being discovered but believed that by using Prohibited Substances in an "Out-of-Competition" period he will not be competing and thus will have no advantage over other athletes. The Athlete had admitted his Fault in committing an ADRV.

32. Further questions were addressed by the AIU to the Athlete and answered by him on 12 January 2018 and on 09 February 2018. The answers can be summarised as follows:

- The Athlete clarified that the hamstring injury was sustained in October 2017 after the Athlete learned that he had been selected in the preliminary South African team for the Commonwealth Games, for the first time in his career;
- He further explained that he did not purchase the substance by credit card or make the purchase online. Instead, an unnamed friend introduced the Athlete to an individual named "Adam" who worked at an unidentified supplement shop in Pretoria, South Africa. The Athlete sought advice from Adam in relation to the treatment of his injury having regard to the time constraints that he was under to qualify for the Commonwealth Games. The Athlete was given advice by Adam [in relation to his injury] and informed that it was too risky for him to take the substance because it remained in the body for a long time. Nevertheless, the Athlete paid Adam R2,500 to purchase the substances.



- A certificate from Dr. Jeanne van Straten stating that on 26 September 2017 she was contacted by the Athlete and they had two meetings on 26 and 28 September, after which the Athlete went for biokinetic rehabilitation was adduced by the Athlete.

33. In essence, the Athlete did not dispute the validity of the Adverse Analytical Finding, he did not request a copy of the laboratory documentation related to the analysis, nor did he request to have the B Sample analysed.

34. In the eyes of the AIU the Athlete failed to provide an adequate explanation for the presence of Metabolites of DHCMT and trenbolone in his sample, and therefore could not demonstrate that he did not act intentionally. The AIU subsequently charged the Athlete with committing ADRVs under Articles 2.1 and 2.2 of the ADR and the Notice of Charge was sent to the Athlete on 27 February 2018.

35. *Inter alia*, by the above-mentioned Notice, the Athlete was requested to inform the AIU by no later than 09 March 2018 if he was admitting the ADRV and its consequences or if he was requesting a hearing before the Disciplinary Tribunal.

36. By email dated 05 March 2018 the Athlete requested that a hearing before the Disciplinary Tribunal be held. On 01 May 2018 the Athlete requested and was granted assistance from pro bono counsel to assist him in making his case. As per Article 8.7 ADR a preliminary meeting with the Chair of the Panel was held via a telephone conference on 14 June 2018 at which the parties were represented. Directions were thereafter issued.

37. During the Preliminary meeting the Athlete's representative requested that the AIU get in contact to discuss the application of Article 10.6.3 ADR (Prompt Admission of an Anti-Doping Rule Violation after being confronted with a Violation sanctionable under Article 10.2.1 or Article 10.3.1).

38. On 27 June 2018 the Athlete's representative confirmed that the Athlete's response to the Notice of Adverse Analytical Finding by reference to the emails dated 07.12.2017, 12.01.2018 and 09.02.2018, and the response to the Notice of Charge dated 05.03.2018 constituted his full explanation for the Adverse Analytical Finding. He confirmed that the Athlete admitted to the ADRV but wished to dispute the consequences.



39. On 03 July 2018 the AIU informed the Panel that, following the Athlete's representative's request for the application of Article 10.6.3 ADR, the AIU submitted the details of this matter to WADA. For the whole of July, the AIU and the Athlete representative were liaising regarding the matter of the Athlete's prompt admission. On 10 August 2018 the AIU informed the Panel that the parties were unable to reach an agreement pursuant to Article 10.6.3 and that the Athlete had refused the proposal of the AIU and WADA and insisted that a hearing be held by the IAAF Disciplinary Tribunal.

40. Following failure to reach an agreement between the Athlete, AIU and WADA, on 24 August 2018 the AIU submitted its written brief with arguments on all issues that the IAAF wished to raise at the hearing. The AIU arguments can be summarised as follows:

- The Athlete admitted committing an ADRV and his guilt;
- The ADRV was intentional;
- The applicable sanction shall be four years of Ineligibility starting on the day when the Provisional Suspension was applied, i.e. 01 December 2017;
- The competitive results obtained by the Athlete in the period from 12 November (date of Sample collection) and 01 December 2017 (the day when the Provisional Suspension was applied) shall be disqualified with all resulting consequences, including the forfeiture of any medals, titles, ranking points, prize and appearance money.

41. In response, the Athlete's representative provided an answer brief on 07 September 2018, where he argued the following:

- The Athlete did not commit any previous ADRV and candidly admitted the ADRV following a Sample collection on 12 November 2017;
- The Athlete contested only the sanction and that issue is for the Tribunal to determine;
- The Athlete, requesting application of Article 10.5.2 ADR, claimed that his Fault was not significant because his income is not sufficient to allow him to obtain proper medical assistance, he had never received any anti-doping education, and the only

reason he had used Prohibited Substances was to hasten his recovery from an injury in order to participate in the Commonwealth Games preliminaries. Based on these grounds, the Athlete pleaded for his sanction to be reduced to two years;

- The request for application of Article 10.6.3 ADR (Prompt Admission of an Anti-Doping Rule Violation after being confronted with a Violation sanctionable under Article 10.2.1 or Article 10.3.1) was re-submitted and the AIU and WADA were again invited to approve a reduction of the otherwise applicable sanction;

- Credit toward Provisional suspension already served and backdating of Ineligibility period commencement to date of Sample collection together with permission to return to training before expiry of Ineligibility period were requested;

- The Athlete opposed the AIU's request for contribution to its legal costs from the Athlete.

42. A personal witness statement of the Athlete was attached to the above brief, where the Athlete, contradicting his previous statements submitted to the AIU, explained the following:

- He had been practicing athletics for 10 years, since he was 18 years old. He has always been an unsponsored athlete with very limited income. On 07 September 2017 he suffered a hamstring tendon injury which he had no financial means to treat with the assistance of medical doctors.

- He was desperate to heal before the start of the Commonwealth Games preliminaries in December 2017 and asked assistance of his friend called Adam. Adam introduced him to a person named Chris who could help him to heal on time by injecting a particular substance. Adam, however, did alert the Athlete that those substances were not meant for athletes, but for bodybuilders.

- The Athlete had used Prohibited Substances by receiving injections from Chris each consecutive Monday for four weeks, not knowing what those substances precisely were. The Athlete believed them to be testosterone.

- The Athlete confirmed that he knowingly took the risk of using Prohibited Substances in an Out-of-Competition phase and did not have any intention to cheat nor to gain an advantage over other athletes.

- The Athlete was regretful of committing the ADRV with which he is being charged.

43. On 21 September 2018 the AIU provided its reply brief where it opposed the Athlete's claims:

- the AIU maintained that the violation was intentional within the meaning of Article 10.2.1(a) and that the applicable sanction should be four years of Ineligibility;

- the AIU further maintained that Article 10.5.2 makes it expressly clear that the provision is not applicable to violations that include intent as an element of the sanction, with specific reference made in the commentary to Article 10.2.1;

- Reduction of the period of Ineligibility on grounds of prompt admission pursuant to Article 10.6.3 ADR cannot be argued again before the Tribunal because it was in the sole discretion of WADA and the AIU, and their proposal to the Athlete was rejected by the latter;

- The AIU maintained its request for an award of costs.

44. On 21 September 2018 the AIU submitted a request to vacate the oral hearing due to the fact that there was no dispute of fact between the parties and that the Athlete accepted that the violation was committed intentionally. The AIU put forward that the only matter for determination was the relevant period of Ineligibility to be imposed which could be properly dealt with by the Panel Chair as sole arbitrator on the papers.

45. On 01 October 2018 the Athlete's representative, who finally managed to contact the Athlete, confirmed that the Athlete did not object for the matter to be resolved in writing on the condition that the AIU withdraws its request for an award of costs, which the AIU effectively did the same day. Therefore, the Chair ordered that the oral hearing scheduled to take place on 02 October 2018 be vacated.

## DECISION ON THE ADRV

46. After reviewing the file, including all the above-mentioned statements of the Athlete, the Panel is comfortably satisfied that the Athlete committed the ADRV pursuant to Articles 2.1 and 2.2. of the ADR.

47. The Panel noted that it was not disputed on behalf of the Athlete that the ADRV had indeed occurred. The Athlete, however, applied for a reduction of the otherwise applicable period of Ineligibility on the basis of Prompt admission and on the basis of No Significant Fault.

48. ADR Article 10.6.3 "Prompt Admission of an Anti-Doping Rule Violation after being confronted with a Violation sanctionable under Article 10.2.1 or Article 10.3.1" states as follows:

*"An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection) may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete or other Person's degree of Fault, by promptly admitting the asserted Anti-Doping Rule Violation after being confronted with it, upon the approval and at the discretion of WADA and the Integrity Unit" [emphasis added]*

49. The AIU engaged in discussions with WADA concerning possible reduction of the period of Ineligibility otherwise applicable. After lengthy discussions an offer was made to the Athlete which the latter refused. Since the Athlete did not agree to the proposal of WADA and the AIU, the Panel, at this stage, has no power to apply Article 10.6.3 ADR at its own discretion.

50. Concerning the applicability of Article 10.5.2, which contains the following provision:

*"Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1:*

*In an individual case where Article 10.5.1 is not applicable, if an Athlete or other Person establishes that he bears No Significant Fault or Negligence, then (subject*

*to further reduction or elimination as provided in Article 10.6) the otherwise applicable period of Ineligibility may be reduced based on the degree of Fault of the Athlete or other Person, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years" [emphasis added].*

51. As a starting point the Panel notes that No Significant Fault or Negligence means that "the Athlete or other Person's establishing that his Fault or Negligence, when viewed in the totality of the circumstances and considering the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation. (...) the Athlete must also establish how the Prohibited Substance entered his system". Therefore, the rule provided for two conditions, namely (1) that the Athlete must demonstrate how the Prohibited Substance entered his system, and (2) that the Athlete could not have reasonably known or suspected that he had used a Prohibited Substance. These are considered below in turn.

52. If anything, the evidence given by the Athlete has been inconsistent. The Athlete gave different dates of alleged injury. He first claimed that he learnt from books and the Internet how to heal an injury in his first explanation to the AIU. However, before this Panel he changed his statement claiming that a friend of his, named Adam, advised him to use Prohibited Substances and gave him contact details of a person named Chris in order to purchase those substances.

53. In his initial response to the AIU, the Athlete claimed to have injected substances himself, whereas before this Panel in his Witness statement dated 06.09.2018 he claimed that it was a person named Chris who was injecting him with Prohibited Substances for four weeks on each consecutive Monday.

54. At no point in time had the Athlete identified the source of Prohibited Substances.

55. The Athlete has confirmed on numerous occasions that he was aware of the fact that he was going to use Prohibited Substances and that he knowingly took the risk of committing an ADRV.

56. A conduct is considered to be intentional if a person “engaged in conduct which he or she knew constituted an ADRV or knew there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded it”.

57. In these proceedings the Athlete claimed that it was not his intention to violate the rules and that he had no intention to cheat. In his submissions the Athlete put forward two arguments attempting to demonstrate that he did not intend to cheat, namely (1) the Athlete had no anti-doping education, and (2) he only opted to use Prohibited Substances, Out-of-Competition, because he was unable to afford medical treatment to assist in the treatment of his injury.

58. While it may be true that the Athlete received no anti-doping education, this does not demonstrate that the Athlete did not know about doping and what Prohibited Substances are. Given that the Athlete has been practicing athletics for 10 years, since he was 18 years old, it is hard to conceive that he did not know what the meaning of doping was.

59. The Panel notes that the Athlete cooperated with the investigation and answered the written questions posed by the AIU. Whilst the factual questions were answered, the Panel sees no mitigating circumstances. It is only when the Athlete was confronted with an AAF and questioned further by the AIU that he provided some information on the ADRV. However, the Panel finds the information and evidence provided by the Athlete during these proceedings to be unsatisfactory and such that it does not prove absence of intent to commit an ADRV.

60. The Athlete knew that his behaviour constituted an ADRV. The substances taken by the Athlete are not intended for the treatment of an injury, were not prescribed by any medical doctor and the Athlete could have used other treatment and avoided the use of Prohibited Substances for his alleged injury. The substances used by the Athlete are anabolic agents and are used in sports only for performance enhancement. The Athlete failed to demonstrate on the balance of probabilities that he bears No Significant Fault or Negligence in committing the ADRV with which he is charged.

61. The Panel is, therefore, comfortably satisfied that the Athlete acted intentionally as defined by the ADR. It follows that the conclusion that a violation was committed

intentionally excludes the possibility of reducing the period of Ineligibility based on Fault-related grounds. Thus, there is no room for reduction of the otherwise applicable sanction.

## SANCTION

62. The Prohibited Substances found in the Athlete's Sample - trenbolone and DHCMT - are both classified as Non-Specified Substances, specifically exogenous anabolic androgenic steroids prohibited at all times under S1.1a of the WADA Prohibited List, therefore Article 10.2.1(a) ADR applies.

63. ADR Article 10.2 "Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method", in portions relevant to the ADRV in this matter, states:

*"The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*

*10.2.1 The period of Ineligibility shall be four years where:*

*(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional."*

64. The relevant section of the definition of intentional at ADR Article 10.2.3 (as also set out in the Code) provides:

*As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk [emphasis added].*

65. The applicable period of Ineligibility is, therefore, four years in the case of presence of a Prohibited Substance in an athlete's Sample and use of a Prohibited Substance.



66. Pursuant to ADR Article 10.10.2(a), any period of Ineligibility imposed should commence with effect from 01 December 2017, being the date the Athlete was notified of his Provisional Suspension. However, the AIU in its reply brief dated 21 September 2018 agreed that the period of Ineligibility should commence on the date of Sample collection, i.e., 12 November 2017 pursuant to Article 10.10.2(b) of the ADR.

67. Additionally, Article 10.8 of the ADR shall apply. Article 10.8 states: "Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation" -

*"In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results of the Athlete obtained from the date the Sample in question was collected (whether In- Competition or Out-of-Competition) or other Anti-Doping Rule Violation occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise. Therefore, Athlete's competition results between 12 November and 1 December 2017 shall be disqualified".*

## **CONCLUSION**

68. The Athlete violated ADR Articles 2.1 and 2.2. in that he used Prohibited substances and Prohibited Substances were found to be present in his urine Sample numbered A4121408 provided Out-of-Competition on 12 November 2017.

69. The Panel imposes a period of Ineligibility of four years upon the Athlete.

70. The period of Ineligibility is ordered to run from 12 November 2017 (the date of the Sample collection) and shall end at midnight on 11 November 2021.

71. The Athlete's competition results between 12 November and 01 December 2017 are disqualified.

72. The Athlete may return to training as part of a team or to use the facilities of a club, other member organisation, or a Signatory's member organisation during the last two months of his period of Ineligibility.

73. Each Party shall bear its own costs related to these proceedings.

## **RIGHT TO APPEAL**

74. Both parties are advised of their right to appeal against this decision as provided for in Article 13 of the ADR and the Procedural Rules.

A handwritten signature in black ink, appearing to read 'A. Bordiugova', is written over a large, light blue circular graphic that is partially obscured by the signature.

Anna Bordiugova  
Disciplinary Panel Chair  
15 October 2018



Sport Resolutions (UK)  
1 Salisbury Square  
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: [resolve@sportresolutions.co.uk](mailto:resolve@sportresolutions.co.uk)

Website: [www.sportresolutions.co.uk](http://www.sportresolutions.co.uk)

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited