

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
WORLD ATHLETICS**

Before:

Nick De Marco QC (Chair)
Dr. Tanja Haug
Dominique Gavage

BETWEEN:

World Athletics

Anti-Doping Organisation

and

Mr Dzmitry Nabokau

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

Introduction

1. This Tribunal has been appointed to determine a charge alleging Anti-Doping Rule Violations brought by the Athletics Integrity Unit (the '**AIU**') of World Athletics (formerly the International Association of Athletics Federations (the '**IAAF**'), the International Federation governing the sport of Athletics worldwide.

2. World Athletics is represented in these proceedings by the AIU which has delegated authority for Results Management and Hearings on behalf of the IAAF pursuant to Article 1.2 of the IAAF anti-doping rules (ADR).
3. The Charge is brought against Mr Dzmitry Nabokau (the '**Athlete**') a 24-year-old high-jumper from Belarus.
4. By a Notice of Charge dated 27 November 2019, the Athlete was charged by the AIU with Anti-Doping Rule Violations pursuant to Article 2.1 and Article 2.2 of the 2019 IAAF Rules in connection with the presence of Furosemide in a Sample collected from the Athlete In-Competition on 9 September 2019.
5. Furosemide is a Prohibited Substance under the WADA 2019 Prohibited List under category S5. Diuretics and masking agents. It is a Specified Substance prohibited at all times.
6. As Furosemide is a Specified Substance, the burden was on the AIU to prove its use was intentional. The AIU accepted that it did not have evidence upon which it could prove intentional use. It follows that, the Athlete having admitted the presence of Furosemide in his Sample, he shall be subject to a mandatory period of Ineligibility from the sport for two years, subject to a reduction where he can establish he was at '*No Fault or Negligence*' (Article 10.4) or '*No Significant Fault or Negligence*' (Article 10.5) of the 2019 IAAF Rules. To so prove, the Athlete must establish how the Prohibited Substance entered his system. His explanation for its presence was that his grandmother was taking Furosemide as prescribed medication for a heart condition, and that she had prepared and provided food for him. The Athlete submitted evidence, to which we return later, that Furosemide can be transmitted by manual contact and said that he had eaten food provided by his grandmother before providing the Sample. The key issue in these proceedings was whether the Athlete was able to so establish.

B. The facts

7. On 9 September 2019, at sometime between 21:42 and 22:23 hours, the Athlete provided an In-Competition urine sample at the 'The Match Europe v USA' held in Minsk, Belarus (the '**Sample**') with reference number 4391957.
8. The Sample was analysed by the World Anti-Doping Agency ('**WADA**') accredited laboratory in Warsaw, Poland (the '**Laboratory**') which, on 22 October 2019, reported the presence of

Furosemide, which resulted in an '**Adverse Analytical Finding**'. As set out above, Furosemide is a Specified Substance prohibited at all times.

9. On 24 October 2019, the AIU notified the Athlete of the Adverse Analytical Finding, informed him of his right to have the B Sample analysed and invited him to provide an explanation for the Adverse Analytical Finding.
10. On 28 October 2019, the Athlete responded and accepted a voluntary Provisional Suspension.
11. On 30 October 2019, the AIU wrote to the Athlete and confirmed that the estimated concentration of Furosemide in the A Sample was 17ng/ml.
12. On 31 October 2019, the Athlete wrote to the AIU by email and explained that he had never taken any Prohibited Substance intentionally and that he did not know how Furosemide had come to be present in the Sample. The Athlete requested the B Sample analysis of the Sample and copies of the Laboratory Documentation Packages ('**LDP**').
13. On 12 November 2019, the AIU provided the Athlete with a copy of the A Sample LDP and on, 14 November 2019, the AIU wrote to the Athlete with the results of the B Sample analysis which confirmed the Adverse Analytical Finding. The estimated concentration of Furosemide in the B Sample was 17.78ng/ml. The Athlete was provided with a copy of the B Sample LDP and was requested to provide his explanation and any supporting documents for the presence of Furosemide in the Sample by no later than 21 November 2019.
14. On 21 November 2019, the Athlete wrote to the AIU by email stating that he had never taken anything forbidden, including Furosemide, that he opposed doping and openly spoke about the principles of a clean and fair fight in sport, and that the analysis results had been a huge shock to him. He explained that as he believed the results of the A sample could have been a laboratory error he had requested the B Sample, and that now he would make every effort to clarify the situation and try and find out how Furosemide was found in his Sample.
15. On 27 November 2019, the AIU issued the Athlete with the Notice of Charge for violations of Article 2.1 and Article 2.2 of the 2019 IAAF Rules pursuant to Article 8.4.2 ADR (the '**Charge**') and invited him to confirm how he wished to proceed with the matter by no later than 7 December 2019.

16. Following a request by the Athlete, the AIU agreed to extend the deadline for the Athlete's response to the Charge until 5 January 2020.

17. On 4 January 2020, the Athlete wrote to the AIU by email and requested time until 1 March 2020 to conduct an experiment to assist him demonstrate that the suspected source of Furosemide in the Sample was through contact with objects or products that his grandmother (who had been taking Furosemide) had contact:

“Due to the fact that I did not intentionally take furosemidum and want to use all the chances to prove my innocence, I continue to look for variants how this substance could get into my body. It is very important that throughout 2019 I was in the international pool, and repeatedly went to international competitions and passed doping control. The result was always negative. In December, I conducted an analysis of all my sports supplements and medications that I had been using in the period from the last doping control up to The Match Europe - USA. Analysis of data in the Minsk laboratory did not reveal the presence of furosemidum. Having excluded the mistakes of the laboratory where I rechecked the B sample, as well as contamination of all the vitamins and supplements I took, knowing that I definitely did not intentionally take furasemidum, I continue to do everything possible to defend my right to be able to prove my innocence. Now I have found out that my grandmother has been using furasemidum for a long time on the recommendation of a doctor and keeps the pills in free access. According to an anti-doping expert, this substance could potentially have entered my body through contact with objects or products that my grandmother had contact with. I ask you to give me some time until March 1, so that I can conduct an experiment and deal with this version, because today, I do not have any other variants for this very unexpected, difficult and unpleasant case that happened to me.”

18. On 10 January 2020, the AIU granted the Athlete until 31 January 2020 to respond to the Charge. The AIU also requested that the Athlete provide the AIU with a detailed account of his interaction with his grandmother (and her residence) in the 2-weeks prior to 9 September 2019, a copy of his grandmother's prescription for Furosemide, and a copy of the reports regarding the Athlete's supplements/medication analysis by the Minsk Laboratory by no later than 15 January 2020.

19. On 15 January 2020, the Athlete provided copies of the results from analysis of his supplements and medications by the Minsk Laboratory to the AIU and confirmed that he had last visited his grandmother in July and that in the two weeks prior to 9 September 2019, she had been in Belynychy:

“In the period from August 26 to September 9, my grandmother was only in Belynychy, going to the city for her needs. When it's possible and I free, I visit my grandmother, who in turn gives me various fruits, vegetables, frozen berries and various kinds of pastries. Before the match, I visited her in July. My

grandmother has heart problems, Hypertension, atrial fibrillation, CHD, for this reason, she was prescribed furosemide, which she periodically took. It is not possible to provide a prescription from my side since it is withdrawn from the pharmacy when receiving the drug.”

20. Following a further request for evidence, on 11 February 2020, the Athlete provided 3 documents in Belarusian and confirmed that previous prescriptions were unavailable because they had been left in the pharmacy at the time the medication had been purchased.
21. The AIU acknowledged receipt of the 3 medical documents and asked for a translation by 18 February. The AIU granted the Athlete until the 29th of February 2020 to provide a full explanation regarding the adverse finding in his Sample. On 18 February 2020, the Athlete provided the AIU with the translation of one medical prescription and two pages of a cardiologist examination. The date of the prescription and the medical report was 11 February 2020. It is not clear from the prescription whether the Athlete’s grandmother was ever prescribed with Furosemide at any time before 11 February 2020, including before the Athlete provided his Sample in September 2019.
22. On 29 February 2020, the Athlete contacted the AIU and requested further time to collect additional evidence in support of his explanation for the Adverse Analytical Finding:

“I have only one thought about how Furosemide came to my body - contact with persons who use it. This month I carefully double-check all information about it. I waited for the answer for the request of the Belarus Athletics Federation to Borisovsky factory of medical preparations. This factory confirmed that the shedding of the tablet is up to 1%. I need more time because I want to collect more evidence that I not guilty. Next week I want to pass hair analysis as well as in 2 weeks I want to organize research with volunteers on furosemide that understand can it come into the body through the foods if this food had a contacts with this Substance. I want to do it in Minsk Laboratory. Can I do this research?”

23. On 2 March 2020, the AIU granted the Athlete a final extension until 31 March 2020 to reply to the Charge and to submit his full explanation and supporting evidence for the Adverse Analytical Finding. On 19 March 2020, the Athlete submitted results of hair analysis from hairs on his left and right hands which were negative for the presence of Furosemide. The Athlete also said the following:

“According to the leading expert in Eastern Europe in the field of chemistry - Vladimir Khripach, Head of the Laboratory of Steroid Chemistry of the Institute of Bioorganic Chemistry of the National Academy of Science of the Republic of Belarus, Professor, D. Sc. (chemistry), - and also based on the official data from the manufacturer on the abrasion of Furosemide tablets to 1%, the amount of Furosemide that was found in my sample (about 17 ng/ml) could get into my body in an uncontrollable situation. The expert's

opinion confirms the information that the amount of Furosemide found in my sample assumes the possibility of accidental domestic contact with dishes or food with which the person who uses this substance came into contact. [...]

24. Further, on 30 March 2020, the Athlete wrote to the AIU by email requesting he be given an opportunity to conduct an experiment to see if he could establish how the Furosemide was found in his Sample:

“As I stated in the previous email, according to an expert from Belarus, the dose of Furasemid that was detected in my sample is very likely to be the result of my unintentional contact with an object or surface the person taking Furasemid had contact with. After receiving the information about the abrasion of the Furasemid from the Belarusian manufacturer, it can be assumed, based on the expert’s opinion, that one of the possible ways for getting a scanty dose into my body could be contact with my grandmother, who systematically takes Furasemid according to the doctor’s prescription, or the use of products that she constantly delivers to me. According to the expert’s recommendation, in order to make sure of this version, I need to conduct an experiment with a volunteer. Due to the COVID-19, access to many institutions is restricted in Belarus, and the access in the only laboratory where I can conduct this experiment is also currently restricted. I ask you to give me the opportunity to conduct this experiment as soon as the access to this laboratory will be opened in Belarus.”

25. On 2 April 2020, the Athlete clarified that the experiment would involve the excretion of Furosemide in the urine after taking small doses of Furosemide dosage of 0.1 mg. The AIU responded on 22 April 2020 stating:

“Your explanation for the presence of furosemide in your Sample is that your grandmother takes “furasemidum” (furosemide) and that the presence of furosemide in your sample was caused by you coming into contact with objects or products that your grandmother has had contact with, such as fruits, vegetables, frozen berries, and various pastries, which she gives to you. The AIU rejects this explanation as being sufficient to explain the presence of furosemide in your Sample.

Moreover, upon scientific review, the AIU does not consider that the experiment you have described supports your explanation. The experiment contemplates an excretion study based on the direct ingestion of a small amount of furosemide. The proposed excretion study is therefore not relevant to your explanation of indirect ingestion of furosemide through contact with objects that have been handled by a third party that has ingested furosemide. In such circumstances, the AIU is not prepared to provide you with any further extensions to respond to the Notice of Charge dated 27 November 2019.”

26. On 29 April 2020, the Athlete confirmed that he had never used Furosemide and provided a copy of a research protocol for a programme of research from the Belarus National Anti-Doping Laboratory. On 13 May 2020, the Athlete wrote to the AIU and the Tribunal Secretariat providing results from an experiment conducted by the Belarus National Anti-Doping Laboratory in Russian. A translation was later provided in June 2020.

C. Jurisdiction, burden and standard of proof and the Applicable rules.

(i) Jurisdiction

(a) The Athlete

27. Article 1.2 of the 2019 IAAF Rules states:

“In accordance with Article 16.1 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit (“Integrity Unit”) with effect from 3 April 2017 whose role is to protect the Integrity of Athletics, including fulfilling the IAAF’s obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to 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, Sanction and Appeals. The references in these Anti-Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit).”

28. The application of the 2019 IAAF Rules to Athletes is set out in Article 1.6 of the 2019 IAAF Rules:

“1.6 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, by 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 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.”

29. On 9 September 2019, the Athlete was participating in “*The Match: Europe v USA*” in Belarus, an international Competition recognised by World Athletics and agreed between European Athletics (a World Athletics Area Association) and USA Track and Field (a World Athletics Member Federation). The Athlete was therefore subject to the 2019 IAAF Rules.

(b) The AIU

30. By Article 7.2 of the 2019 IAAF Rules jurisdiction for results management is conferred on the AIU in certain circumstances, including:

7.2 The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances:

[...] 7.2.4 For potential violations arising in connection with any Testing conducted on an International-Level Athlete by a National Anti-Doping Organisation (or other relevant Testing authority).”

31. The presence of Furosemide arose in connection with Testing undertaken by European Athletics in connection with *The Match Europe v USA*. The Athlete is an International-Level Athlete for the purpose of the 2019 IAAF Rules, so the AIU has results management responsibility in this matter.

(c) The Tribunal

32. World Athletics has established the Disciplinary Tribunal (the ‘**Tribunal**’) in accordance with Article 1.4 of the 2019 IAAF Rules, which provides that the Tribunal shall determine Anti-Doping Rule Violations committed under the Rules.

33. Article 8.1(a) of the 2019 IAAF Rules sets out that the Tribunal shall have jurisdiction over all matters in which:

“(a) An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;”

34. Article 1.8 of the 2019 IAAF Rules sets out the criteria for International-Level Athletes and includes:

“(b) An Athlete who is in the International Registered Testing Pool;”

35. On 9 September 2019, the Athlete was a member of the International Registered Testing Pool and had provided his whereabouts information to World Athletics. The Athlete is therefore an International-Level Athlete and the Tribunal has the jurisdiction to hear and determine the Anti-Doping Rule Violations alleged against the Athlete, pursuant to Article 8.1(a) of the 2019 IAAF Rules.

36. The Athlete accepted the Tribunal’s jurisdiction in this case.

(ii) Burden and standard of proof

37. Article 3.1 of the Anti-Doping Rules (‘the **ADR**’) provides that World Athletics shall have the burden of establishing that an Anti-Doping Rule Violation has occurred to the comfortable satisfaction of the Tribunal:

“3.1. The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation 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.”

(iii) Applicable rules

38. Article 2 of the 2019 IAAF Rules specifies the circumstances and conduct that constitute Anti-Doping Rule Violations. This includes Article 2.1, which specifies:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample

2.1.1 It is each Athlete’s duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence, or knowing Use on the Athlete’s part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1.

2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete’s B Sample is analyzed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample; or, where the Athlete’s B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.”

39. The presence of a Prohibited Substance or its Metabolites or Markers in an athlete’s sample is therefore sufficient to establish that an athlete has committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the 2019 IAAF Rules.

40. Article 2.2 of the 2019 IAAF Rules also states that the following shall constitute an Anti-Doping Rule Violation:

“2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence, or knowing Use on the Athlete’s part be demonstrated in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method.”

41. Analysis of the Sample returned an Adverse Analytical Finding for Furosemide. The finding of Furosemide in the A Sample was confirmed by the B Sample analysis. The Athlete does not challenge the analytical results.

42. Furosemide is a Prohibited Substance under S.5 Diuretics and Masking Agents of the WADA 2019 Prohibited List. It is a Specified Substance prohibited at all times.

43. Article 10.2 of the 2019 IAAF Rules provides the consequences to be imposed for the Anti-Doping Rule Violations pursuant to Article 2.1 and Article 2.2:

“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 antidoping 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.*
- (b) The Anti-Doping Rule Violation involves a Specified Substance and the Integrity Unit establishes that the Anti-Doping Rule Violation not intentional.*

10.2.2 If Article 10.2.1 does not apply, the period of ineligibility shall be two years.”

44. The Athlete accepted the Anti-Doping Rule Violation. As set out above, his case is that any period of Ineligibility imposed as a result of the violation should be eliminated or reduced in accordance with Article 10.4 and/or Article 10.5 of the 2019 IAAF Rules. Those Articles provide as follows:

“10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6:

- (a) Specified Substances*

Where the Anti-Doping Rule Violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the degree of Fault of the Athlete or other Person.”

45. The definitions of No Fault or Negligence and No Significant Fault or Negligence set out in the 2019 IAAF Rules require the Athlete to establish precisely how the Prohibited Substance (in this case Furosemide) entered his system:

“No Fault or No Negligence: The Athlete’s or other Person’s establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his system.

No Significant Fault or No Significant Negligence: The Athlete’s or other Person’s establishing that his Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his system.”

D. The Hearing

46. A hearing was held by video conference on 19 August 2020. The AIU was represented by Mr Ross Wenzel (instructed by Tony Jackson of the AIU). The Athlete was represented by Mr Simon McCann (instructed by Simon Eastwood of Hempsons). We are grateful to both advocates and to their instructing solicitors for the helpful submissions that they made. We record our special appreciation to the lawyers acting for the Athlete who so acted on a pro bono basis. It is important athletes of all means have proper legal representation in proceedings of this nature, and without the Athlete’s lawyers agreeing to pursue his case on a pro bono basis the Athlete may have not had the opportunity of such representation.

47. The proceedings were conducted in English. The Athlete does not speak English but does speak and understand Russian. A Russian interpreter was present throughout the proceedings and

translated all of the evidence and submissions so that the Athlete could understand and fully participate.

48. The proceedings were organised and recorded by Sport Resolutions. We are grateful for their effective administrative and technical support.

49. Two live witnesses were called: the Athlete gave evidence on his own behalf and was cross-examined by the AIU; the AIU called Professor Martial Saugy, an expert in anti-doping and the Director of the Center of Research & Expertise in anti-doping sciences (REDs) of the University of Lausanne, Switzerland. Professor Saugy had submitted a short report on the Athlete's experiment and was cross-examined by Mr McCann.

(i) The Athlete's case

50. In his oral evidence, the Athlete provided more details of his explanation of how the Furosemide was found in his Sample. He said it was only after the Test, and his shock about the analysis results, that he discovered his grandmother took Furosemide tablets. He said she took the tablets sporadically, based on her condition. She had severe problems with her heart, and she would take the medication when she felt unwell.

51. He explained that that in addition to visiting his grandmother, she would send him food parcels consisting of various foods including meat, sweet pies and fruit. The food parcels would sometimes be delivered to him by an intermediary. He was unable to remember the exact date the food parcel was delivered to him and who delivered it to him. He couldn't give the name of the intermediary (a friend of his grandmother). He didn't mention this explanation in his emails.

52. On the day of the Test, the Athlete was staying at his home until around 17.00 hours when he went to the stadium to participate in the Competition which commenced at 20:00 hours. He said he did have one of his grandmother's food parcel in his home, he ate something from it in the morning of the day of the Competition, and that this breakfast was his only meal before the Competition. He doesn't remember what exactly he ate in the morning of the day of the Competition, but he is sure that he definitely ate honey, provided by his grandmother.

53. He did not take the food parcel or any food with him to the stadium. He was not eating during the Competition.

54. The Athlete had recalled previously seeing various medicines on the shelf of his grandmother's house and in a basket within an oven of a country house belonging to her, but he was not aware what the medication was at the time and had not asked.
55. As set out in his emails above, the Athlete said he was unable to provide his grandmother's previous prescriptions for Furosemide, despite the AIU's request for them, as they were no longer in his grandmother's possession because they had to be handed in when she collected her medicine from the pharmacy. Only until his grandmother's visit to the doctor in February 2020, he was not able to provide any medical document. However, the prescription issued on 11 February 2020 contained no information as to whether the Athlete's grandmother had also been prescribed Furosemide in previous periods, especially in the summer of 2019.
56. When we asked the Athlete why he had not at least asked his grandmother to obtain a note from her doctor confirming that she had previously been prescribed Furosemide (before the Athlete's test), he answered that he did not realise how important such evidence was, and he did not know what to do about the doping Charge generally. He was acting on his own without any external help except a translation agency and sporadic advice.
57. The Athlete was also asked why he had not mentioned the honey in his emails, and he gave a similar answer. He went on to say he still had the honey, and confirmed it was a jar of purchased honey supplied by his grandmother, not honey that she had made.
58. The Athlete relied on the experiment carried out by the Belarus Anti-Doping Laboratory in Minsk in May 2020 (the '**Experiment**'). In short, the Experiment can be summarised as follows:
- 58.1. First, a Furosemide tablet (40mg) was held in a volunteer's hand for a minute and then the volunteer thoroughly rinsed his hands in a vessel of water. This was then repeated with the volunteer handling the Furosemide tablet for ten minutes before rinsing his hands.
- 58.2. The total amount of Furosemide found in the rinsing water was 0.0242 mg following the handling for one minute and 0.0167 mg for the ten-minute test.
- 58.3. Secondly, a volunteer took a single small dose of Furosemide (0.1 mg) orally and then provided 3 urine samples at 3, 5 and 7.5 hours afterwards.

58.4. The results of the urine test showed that after 3 hours the Furosemide concentration was 47.7 ng/ml, after 5 hours it was 40.5 ng/ml, and after 7.5 hours it was 7.23 ng/ml.

59. It was the Athlete's case that Furosemide could also be transmitted on surfaces and in foods and that the source of the Furosemide in his Sample must have been a result of inadvertent ingestion of it while touching or eating the food provided by his grandmother.

60. The Athlete also relied on the fact that he had submitted to a voluntary test of hair from his hands some months after the test which did not identify the presence of Furosemide.

61. In closing submissions made on behalf of the Athlete we were asked to bear in mind how difficult it is for an impecunious athlete like the Athlete in question, based in a relatively poor country like Belarus, to establish his innocence or provide the type of forensic evidence the AIU said was necessary for him to establish how the Furosemide came to be in his Sample.

62. Mr McCann argued that the Athlete's case was consistent, was corroborated by the Experiment and that his evidence was credible such that we should accept his explanation.

(ii) The AIU's case

63. Professor Saugy gave evidence that (i) the hair sample test is really only an identifier of regular use, not one off or occasional use of Furosemide; and (ii) that there were a number of flaws in the Experiment.

64. With respect to the flaws in the Experiment, the following were identified in particular: (i) the amount of Furosemide ingested before the urine samples were taken was much greater than the amount found in the rinsing water – one would have expected a more reliable experiment to test for ingestion of the amount of Furosemide found in the water; (ii) the Experiment did not test the Athlete's explanation: it did not test for transmission of Furosemide on food stuffs or surfaces.

65. Professor Saugy noted that the maximum concentration of Furosemide was reached in the period of 3 to 5 hours after ingestion. He opined that even if one assumed transfer could take place on surfaces or in food stuffs, the quantity of Furosemide transferred is likely to be diluted by transfer and there was therefore an "*extremely low probability*" that the Athlete's explanation of contact with surfaces/food contaminated by his grandmother with Furosemide could explain the final concentration of Furosemide in his Sample.

66. Professor Saugy did accept in cross-examination that Furosemide could be transmitted from one person to food stuffs or surfaces and then transmitted onwards to someone who hand handled or eaten those objects. He explained that Furosemide is a very stable compound and that if it was in food stuffs its concentration was likely to remain stable over a long period of time; though if it was on surfaces it was likely to be diluted by each contact with those surfaces.

67. In closing, Mr Wenzel on behalf of the AIU submitted that the Athlete's case is bound to fail because he had not established how Furosemide had been found in his Sample. It was not enough to show it was possible that he had come into contact with Furosemide; the burden was on the Athlete to show concrete and specific evidence that he did come into contact with Furosemide and that the specific circumstances of that contact led to the results and level of concentration found in the Sample.

68. The Athlete would have to establish two things in order to establish how Furosemide had been found in his Sample: (i) that his grandmother was taking Furosemide at the relevant time; and (ii) that the scenario he describes in his explanation would have led to the level of concentration found. It was submitted that he failed on both counts:

- (i) There was no evidence at all that his grandmother was prescribed with or using Furosemide before or at the time of doping Test. The only evidence was of a prescription provided months after the Test, and after the AIU had requested evidence from the Athlete.
- (ii) The Experiment was for a completely different kind of transmission than that relied on by the Athlete in his explanation and had the flaws identified by Professor Saugy.

69. In addition, the Experiment itself demonstrated that the peak excretion period for Furosemide was between 3–5 hours after ingestion, but on the Athlete's own case the last time he had handled or eaten from food stuffs provided by his grandmother was in "the morning" of the day of the Test. Even assuming that it was at 11:30 a.m., that was some 11 hours earlier than the doping Test.

70. Mr Wenzel said that if we were to find that the Athlete had established how the Furosemide was found in his Sample at the level found then his explanation was one that would allow him to rely on a reduction of sanction for No Significant Fault or No Significant Negligence but would not meet the

much higher threshold of No Fault or No Negligence which would allow for the elimination of the period of Ineligibility.

(iii) Discussion

71. The Athlete is a young man without substantial means living in a relatively poor country. He appeared genuinely surprised and upset with the doping results. We had some sympathy with the submissions made on his behalf that it would be unfair to criticise him for not carrying out the level or forensic experiments, or producing the quality of evidence, that the AIU had argued was necessary for him to establish how the Furosemide came to be in his Sample.

72. However, be that as it may, the Rules require that that it is for the Athlete to establish how the Prohibited Substance entered his body. We accepted the submissions made by the AIU that in order to establish it is not enough to posit one possible explanation; it is necessary to demonstrate that the explanation is probable, that it is more likely than not. We were taken to a number of CAS authorities that make this clear. It is not necessary to cite all of them, but the following capture the correct approach:

- (i) CAS 2014/A/3820 **WADA v Damar Robinson & JADCO**, in which the Panel found at [80]:

“In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation.”

- (ii) CAS 2010/A/2277 **Roberto La Barbera v. International Wheelchair & Amputee Sports Federation** (IWAS) at [36]:

“In the present case, Mr La Barbera’s explanations only amount to a speculative guess or explanations uncorroborated in any manner. One hypothetical source of a positive test does not prove to the level of satisfaction required that such explanations are factually or scientifically probable. Mere speculation is not proof that it did actually occur. Mr La Barbera has a stringent requirement to offer persuasive evidence of how such contamination occurred.”

73. At its highest, the Athlete had provided an explanation that provides one possible route by which he may have inadvertently ingested the requisite amount of Furosemide for the result found in the

Sample. His explanation was speculative. We found that he had failed to establish his explanation was more likely than not. In particular:

- 73.1. He had failed to establish that his grandmother was taking or in possession of Furosemide at the relevant time. The fact she was prescribed the medication months after the doping Test was not evidence that she was taking it before the doping Test. While it may have been impossible to provide earlier prescriptions because they had been handed in at the pharmacy, we failed to see why the Athlete could not have obtained a note or some evidence from the doctor explaining that his grandmother had used Furosemide earlier, or even a statement from his grandmother. There were emails to him from the AIU explicitly asking for such evidence and he realised the importance of the issue because he had obtained the later prescription. In the circumstances, the failure to provide any evidence that his grandmother had Furosemide at the relevant time was, in itself, fatal to the Athlete's case.
 - 73.2. Second, we agreed with the broad criticisms of the Experiment made by Professor Saugy, whose evidence we found to be fair and compelling. We would have expected an experiment that more closely mirrored the Athlete's explanation of ingestion to have been carried out, and it was not possible, on the basis of the different Experiment that was carried out (with its various flaws) for us to conclude the Athlete's explanation was likely.
 - 73.3. Third, the analysis results (concentration of Furosemide of about 17 ng/ml) do not correspond to the Athlete's statement that he only ate in the morning of the day of Competition, and that the intake was due to inadvertent ingestion. As the Experiment itself showed there is a sharp drop in the values after 7.5 hours, which is why the analysis values of a test taken around 22:00 in the evening, should have been significantly lower according to the Athlete's case.
 - 73.4. Fourth, it emerged in evidence that the Athlete was still in possession of the honey he claimed his grandmother had provided him and from which he had eaten on the day of the Test. We were surprised that the Athlete had not offered the honey to be tested at an earlier stage, for example when he carried out the Experiment. Had he done so he may have been in a better position to properly test his explanation.
74. For all of these reasons, we find the Athlete has failed to establish the origin of the Furosemide found in his Sample and is therefore unable to rely on any reduction (or elimination) of the period of Ineligibility pursuant to Article 10.4 and/or Article 10.5 of the 2019 IAAF Rules.

E. Sanction

75. It follows that we must apply the mandatory sanction of two years pursuant to Article 10.2 of the 2019 IAAF Rules. The AIU agreed that the Athlete should be given credit for the period of Provisional Suspension he has voluntarily accepted from 28 October 2019 until the date of this Award. That period is 10 months and 4 days.

76. In the circumstances the Athlete's period of Ineligibility will expire on 27 October 2021.

77. In addition, we order the disqualification of any results obtained by the Athlete between 9 September 2019 and 28 October 2019 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.8 of the 2019 IAAF Rules.


78. We were further invited by the AIU to award World Athletics a contribution to its legal costs of these proceedings. We have declined to do so. We note that Article 8.9.3 of the ADR provides us with a broad discretion to make a costs order against any party, "*where it is proportionate to do so*". The Athlete conducted these proceedings in a reasonable and co-operative manner. He is not a man of substantial means. We therefore do not find it proportionate to make any order of costs against him.

F. Award

79. We therefore make the following Award:

- (i) The Tribunal has jurisdiction to decide on the subject matter of this dispute;
- (ii) The Athlete has committed Anti-Doping Rule Violations pursuant to Article 2.1 and Article 2.2 of the 2019 IAAF Rules;
- (iii) A period of Ineligibility of two years is imposed upon the Athlete for the Anti-Doping Rule Violations, commencing on the date of the Tribunal's Award;
- (iv) The Athlete is given credit for the period of Provisional Suspension voluntarily accepted by him from 28 October 2019 until the date of the Tribunal's Award against the total period of Ineligibility; provided that it has been effectively served by the Athlete.

- (v) There be a disqualification of any results obtained by the Athlete between 9 September 2019 and 28 October 2019 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.8 of the 2019 IAAF Rules; and
- (vi) There be no order as to costs.
- (vii) This decision may be appealed to the CAS by the parties according to Article 13 of the ADR and its subsections.



Nick De Marco QC (Chair of the Tribunal)

Dr. Tanja Haug

Dominique Gavage

1 September 2020

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