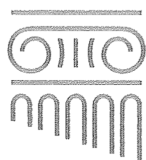


TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/O/9506 World Athletics v. Russian Athletic Federation & Ms. Tatyana Tomashova

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Ms Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany

between

World Athletics

Represented by Mr Nicolas Zbinden and Mr Adam Taylor, Attorneys-at-Law, Kellerhals Carrard in Lausanne, Switzerland

Claimant

and

Russian Athletic Federation

First Respondent

and

Ms Tatyana Tomashova

Represented by Ms Saba Naqshbandi, KC, and Mr Ciju Puthuppally, Barristers with Three Raymond Buildings, Gray's Inn WC1R 5BH in London, United Kingdom

Second Respondent

I. THE PARTIES

1. World Athletics (the "Claimant" or "WA") is the international federation governing the sport of athletics worldwide and a signatory to the World Anti-Doping Code ("WADA Code"). WA has its registered seat and headquarters in Monaco.

2. The Russian Athletic Federation (the "First Respondent" or "RUSAF") is the national federation governing the sport of Athletics in Russia, with its registered seat in Moscow, Russia. RUSAF is the relevant member federation of WA for Russia, but its membership has been suspended since 26 November 2015.

3. Ms Tatyana Tomashova (the "Second Respondent" or the "Athlete") is a 49-year-old Russian-born former athlete, specializing in middle-distance running. She is an International-Level Athlete for the purposes of the WA Rules, having competed, *inter alia,* at the 2012 London Olympic Games and the 2015 IAAF Beijing World Championships.

4. WA, RUSAF and the Athlete are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

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

6. The two relevant samples in the present case were collected from the Athlete out-of-competition on 21 June 2012 (sample no. 2690585, hereinafter the "21/6/2012 Sample") and on 17 July 2012 (sample no. 2730599, hereinafter the "17/7/2012 Sample" and, together with the 21/6/2012 Sample, the "2012 Samples"). The 2012 Samples were reported as negative in World Anti-Doping Agency's ("WADA") Anti-Doping Administration & Management Systems ("ADAMS"), a web-based database management system for use by WADA's stakeholders. As will be further elaborated on below, WA, in these proceedings, contends that the respective ADAMS reportings were false, because the 2012 Samples allegedly contained Prohibited Substances.

7. The Athlete had previously been subject to a period of ineligibility of two years and nine months from 20 October 2008, following the award in CAS 2008/A/1718-1724.

8. Following investigations by WADA of the existence of sophisticated systemic doping practices within RUSAF, WA decided to suspend RUSAF's membership in November 2015. This decision was repeatedly confirmed, with the result that RUSAF's WA membership remains suspended until today.

9. In May 2016, WADA appointed Prof. Richard McLaren to investigate allegations made by whistleblowers regarding the alleged existence of a sophisticated state-sponsored doping program in Russian sport, from which WA alleges the Athlete benefitted.

10. On 18 July 2016, Prof. McLaren delivered his first report (the "First McLaren Report"). The three "key findings" of the First McLaren Report were as follows:

> "*1. The Moscow Laboratory operated for the protection of doped Russian athletes, within a State-dictated failsafe system, described in the report as the Disappearing Positive Methodology.*
>
> *2. The Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian athletes to compete at the Games.*
>
> *3. The Ministry of Sport directed, controlled and oversaw the manipulation of athlete's analytical results or sample swapping, with the active participation and assistance of the FSB* [the Federal Security Service of the Russian Federation], *CSP* [the Center of Sports Preparation of National teams of Russia], *and both Moscow and Sochi Laboratories.*"

11. On 9 December 2016, Prof. McLaren delivered his second report (the "Second McLaren Report", and together with the First McLaren Report the "McLaren Reports"). In the Second McLaren Report, Prof. McLaren affirmed that *"[t]he key findings of the 1st Report remain unchanged"* and that:

> *"An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, and the Moscow Laboratory, along with the FSB* [the Russian Federal Security Service]. *The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported on in the 1st Report."*

12. In its report of 2 December 2017, the IOC Disciplinary Commission chaired by Samuel Schmid, Member of the IOC Ethics Commission, (the "Schmid Commission") also agreed that there was a *"systemic manipulation of the anti-doping rules and system in Russia, through the Disappearing Positive Methodology and during the Olympic Winter Games Sochi 2014"* (the "Schmid Report"). The findings of the Schmid Report were expressly accepted by the Russian Ministry of Sport on 13 September 2018.

13. Together with the Second McLaren Report, Prof. McLaren published Evidence Disclosure Packages ("EDPs") containing evidence relating to athletes he considered were involved in or benefitted from the above schemes. According to the McLaren Reports, relevant key elements of these schemes, which have been addressed also in other CAS cases (see, e.g., CAS 2021/A/7838 and 7839) involved the following:

    (i) "Disappearing Positives Methodology" ("DPM")

14. Where the initial screen of a sample revealed a Presumptive Adverse Analytical Finding ("PAAF"), the athlete would be identified and the Russian Ministry of Sport would (through a Liaison Person) decide either to "SAVE" or to "QUARANTINE" the athlete in question. The PAAF would typically be notified by email from the Moscow Laboratory to one of the liaison persons, who would respond in order to advise whether athlete(s) should be "SAVED" or "QUARANTINED". If the athlete was "SAVED", the Moscow Laboratory would report the sample as negative in ADAMS; conversely, if the athlete was "QUARANTINED", the analytical bench work on the sample would continue and an adverse analytical finding would be reported in the ordinary manner. According to the Second McLaren Report, the DPM was used from late 2011 onwards.

(ii) "Washout Testing"

15. The McLaren Reports described a program of "Washout Testing" prior to certain major events, including the 2012 London Olympic Games and the Moscow World Championships. The Washout Testing was deployed in 2012 in order to determine whether the athletes on a doping program were likely to test positive at the 2012 London Olympic Games. At that time, the relevant athletes were providing samples in official doping control Bereg kits. Even when the samples screened positive, they were automatically (i.e. without the need for a specific SAVE order) reported as negative in ADAMS. As explained by Prof. McLaren, although the Washout Testing program had started earlier, the Moscow Laboratory, through its Deputy Director Dr. Timofei Sobolevsky, only developed schedules to keep track of those athletes who were subject to this Washout Testing in advance of the London Olympic Games (the "London Washout Schedules").

(iii) The "LIMS Data"

16. As explained in the joint witness statement of Mr. Aaron Walker and Dr. Julian Broséus of WADA Intelligence & Investigations ("WADA I&I") (the "WADA Statement"), on 30 October 2017, WADA I&I secured from a whistleblower a copy of the Moscow Laboratory Information Management System ("LIMS") data for the years 2011 to August 2015 (the "2015 LIMS"). The 2015 LIMS was found to include presumptive adverse analytical findings made on the initial testing of samples which had not been reported in ADAMS or followed up with confirmation testing.

17. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. Conceptually, the LIMS is a warehouse of multiple databases organized by year. The most relevant anti-doping data within the LIMS are those related to sample reception, analysis, and the actions of users within the system. This pertinent data is housed in key tables including: "bags", "samples", "screening", "found" (or "scr_results" prior to 2013), "confirmation", "MS_data" (or "Pro_4" prior to 2013) and "pdf".

18. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency ("RUSADA"), WADA required that, *inter alia*, authentic analytical data from the Moscow Laboratory for the years 2012 to 2015 be provided. In January 2019, access to

the Moscow Laboratory was given to a team of WADA-selected experts, which were allowed to remove data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the "2019 LIMS") as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the "Analytical Data"). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.

19. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable (and the 2019 LIMS was not), as explained at paragraph 14 of the WADA Statement [footnotes omitted]

> *"14. ...* [w]*e assert that the 2015 LIMS Copy is an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory's analytical procedure and its contents can be relied upon as being accurate and forensically valid information, particularly the forensic validity of the detected Prohibited Substances. In other words, the 2015 LIMS Copy accurately records the true analysis results of samples analyzed by the Moscow Laboratory."*

and at footnote 10:

> *"The "2015 Database" – produced to the WADA Intelligence and Investigations Department by a "whistleblower" on 30 October 2017 – is the reliable evidence, the "2019 LIMS Copy" – the forensic image of the Moscow LIMS released to WADA on 17 January 2019 – is not."*

20. WADA I&I also identified evidence of deletions/alterations of Analytical Data to remove evidence of positive findings prior to WADA's retrieval mission in January 2019.

(iv) WA's case against the Athlete

21. On 21 June 2012, the Athlete was subject to an out-of-competition urine doping control. WA contends that the 2015 LIMS indicates that boldenone, oxandrolone, metenolone and mesterolone were found in the 21/6/2012 Sample. All four of these substances are non-Specified Substances and exogenous anabolic steroids prohibited under Section 1.1.a of the 2012 WADA Prohibited List. The 21/6/2012 Sample was reported as negative in ADAMS.

22. On 17 July 2012, the Athlete was subject to another out-of-competition urine doping control. WA contends that the 2015 LIMS indicates that boldenone, oxandrolone, and 1-testosterone were found in the 17/7/2012 Sample. WA further contends that the 17/7/2012 Sample was included in a London Washout Schedule (EDP0020). The 17/7/2012 Sample was reported as negative in ADAMS.

23. By letter of 17 December 2021 the Athletics Integrity Unit ("AIU") asserted that the Athlete had committed one or more ADRVs in 2012 and 2015.The Athlete was invited to promptly admit and/or explain the asserted ADRVs.

24. On 23 January 2022, the Athlete replied to WA stating that she did not accept the allegations and that she has never been *"on any special privilege list"*.

25. On 25 March 2022, the AIU informed the Athlete that it maintained its assertion that she had committed one or more ADRVs and that her case would be referred to CAS. The Athlete was granted a deadline until 8 April 2022 to state whether she wanted a hearing, failing which a decision would be rendered. She was also asked to confirm, provided she requested a hearing, whether she requested the matter to proceed under Rule 38.3 (first instance CAS hearing before a Sole Arbitrator with a right of appeal to the CAS) or Rule 38.19 (sole instance before a three-member CAS Panel with no right of appeal, save to the Swiss Federal Tribunal) of the 2016-2017 Competition Rules (the "2016 Rules")

26. On 6 April 2022, the Athlete requested a hearing before a Sole Arbitrator of the CAS sitting as a first instance hearing panel pursuant to Rule 38.3 of the 2016 Rules.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 16 March 2023, the Claimant filed a request for arbitration ("Request for Arbitration") with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). The Claimant requested that the matter be heard by the CAS as a first-instance body, but pursuant to provisions applicable to the CAS Appeals Arbitration Division (Articles R47 et seq.), in accordance with Rule 38.3 of the 2016 Rules.

28. On 22 March 2023, the CAS Court Office initiated the arbitration procedure and invited the Claimant, in accordance with Article R51 of the CAS Code, to file its Appeal Brief. It further informed the Parties that, in accordance with Rule 38.3 of the 2016 Rules, and pursuant to Article S20 of the CAS Code, the arbitration had been assigned to the Ordinary Arbitration Division of the CAS but would be dealt with according to the Appeals Arbitration Division rules (Articles R47 et seq.) by a sole arbitrator.

29. On 4 May 2023, the Claimant, after having been granted respective extensions, filed its Appeal Brief.

30. On 8 May 2023, the CAS Court Office invited the Respondents to submit their respective Answers within 20 days.

31. On 28 May 2023, the Second Respondent requested a 60-day extension of the time limit to file her Answer. On 2 June 2023, the Claimant indicated that it would agree to a 30-day extension, but objected to the requested extension of 60 days. On 5 June 2023, the CAS Court Office informed the Parties that it would be for the President of the CAS Ordinary Arbitration Division (or her Deputy) to decide this issue, pursuant to Article R32 of the CAS Code, and that the Respondent's time limit to file her Answer would

remain suspended as from 28 May 2023.

32. On 3 July 2023, the Second Respondent wrote an email to the CAS Court Office stating her position on the merits of the case. On the same day, the CAS Court Office invited the Second Respondent to clarify whether her correspondence is to be considered as her Answer. On 5 July 2023, the Second Respondent informed the CAS Court Office that her correspondence dated 3 July 2023 was not her final Answer.

33. On 12 July 2023, pursuant to Article R40.3 of the CAS Code, and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Ms Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany.

34. On 18 August 2023, the Second Respondent filed her Answer.

35. On 8 September 2023, the CAS Court Office invited the Parties to express whether they preferred a hearing and/ or a Casemanagement Conference ("CMC") to be held in this case. The Appellant stated its preference to decide the case solely on the basis of the Parties' written submission, whereas the Second Respondent expressed its wish for a hearing and a CMC to be held. The First Respondent did not comment on the issue.

36. On 21 September 2023, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to hold a hearing and a CMC.

37. On 10 October 2023, the CMC took place via videoconference, with the Parties and the Sole Arbitrator.

38. On 11 December 2023, the CAS Court Office informed the Parties that a hearing via videoconference would be held on 14 February 2024.

39. On 21 January 2024, the Second Respondent informed the CAS Court Office that she would be represented from then on by *pro bono* counsel, Ms. Naqshbandi and Mr. Brown. The Second Respondent requested a postponement of the hearing so that her new counsel "*could get familiar*" with her case. On 25 January 2024, the Appellant objected to the postponement of the hearing.

40. On 29 January 2024, the Respondent once again requested the postponement of the hearing to March, due to her counsel's unavailability on the set February date. On 6 February 2024, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to postpone the hearing.

41. On 14 February 2024, the CAS Court Office informed the Parties that the hearing via videoconference would now be held on 21 March 2024.

42. On 15 February 2024, the CAS Court Office delivered to the Parties the Order of Procedure for their signature. The Parties returned duly executed versions of the Order of Procedure between 16 and 22 February 2024.

43. On 6 March 2024, the Second Respondent, pursuant to Article R56 of the CAS Code, requested leave to supplement her Answer by no later than 15 March 2024 (4 pm). On

the same day, the Claimant objected to the Second Respondent's request.

44. On 7 March 2024, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to allow the Second Respondent to supplement her Answer by 13 March 2024, 10 am (the "Supplemented Answer"), the reasons for the decision to be explained in the present Award.

45. On 13 March 2024, at 10:09 pm, the Second Respondent submitted her Supplemented Answer, by e-mail. The Supplemented Answer was also submitted to the CAS e-filing platform on 15 March 2024.

46. On 21 March 2024, a hearing was held by video-conference. In addition to the Sole Arbitrator, Ms. Andrea Sherpa-Zimmermann, Counsel to the CAS, and Mr David Karasek, law clerk, the following persons attended the video hearing:

For WA:	Mr. Adam Taylor, Counsel Mr. Nicolas Zbinden, Counsel Ms. Laura Gallo, Legal Affairs, WA
For RUSAF:	Ms. Kristina Kucheeva, Head of RUSAF anti-doping and athletics integrity department
For the Athlete:	Ms Tatyana Tomashova (with her translator), Athlete Ms. Saba Naqshbandi, KC, Counsel Mr Ciju Puthuppally, Counsel
Witnesses:	Prof. Christiane Ayotte, Director of the Doping Control Laboratory for the WADA-accredited INRS Centre Armand Frappier Health Biotechnology, called by WA Mr. Aaron Walker, WADA I&I, called by WA

47. The hearing began at 3:00 pm and ended at 5:45 pm without any technical interruption or difficulty. At the outset, the Parties confirmed that they had no objections to the constitution of the Panel in this case. Afterwards, the Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. The witnesses were questioned by the Parties and the Sole Arbitrator. After the Parties' final and closing submissions, the hearing was closed, and the Sole Arbitrator reserved her detailed decision for this written Award.

48. At the end of the hearing, the Parties expressly confirmed that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings.

49. In reaching the present decision, the Sole Arbitrator has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarized in the present Award.

IV. THE POSITIONS OF THE PARTIES

50. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that she has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. WA's Position and Request for Relief

51. WA submits the following in substance:

- Substantial evidence demonstrates that the Athlete committed a use-violation under Rule 2.2 of the WA Anti-Doping Rules, that entered into force on 1 January 2021 (the "2021 WA ADR"). To the benefit of the Athlete, the current 2021 WA ADR shall apply, by way of *lex mitior*, rather than the rules in force in 2012 when the Athlete's misconduct took place.

- The violation primarily relates to the two samples collected from the Athlete on 21 June 2012 and 17 July 2012 (as evidenced by respective doping control forms). Both samples were falsely identified in the ADAMS system as negative. For both the 2012 Samples, the 2015 LIMS indicated findings of various exogenous anabolic steroids prohibited under Section 1.1.a of the 2012 WADA Prohibited List, including boldenone, oxandrolone, metenolone, mesterolone (in the 21/6/2012 Sample), and boldenone, oxandrolone, and 1-testosterone (in the 17/7/2012 Sample). The 2015 LIMS data is corroborated by underlying analytical pdfs and raw data explaining the 2015 LIMS entries.

- Prof. Ayotte explains that the results obtained for the 21/6/2012 Sample through the Initial Testing Procedure would likely have been supported by a Confirmation Procedure. By contrast, regarding the 17/7/2012 Sample, Prof. Ayotte opines that the Analytical Data does <u>not</u> corroborate the presence of the substances recorded in the 2015 LIMS. WA asserts that the Analytical Data in relation to the 17/7/2012 Sample has been manipulated to appear negative, in reliance of respective analyses made by WAD I&I.

- The 21/6/2012 Sample was re-tested by the Swiss Laboratory for Doping Analyses in Lausanne in July 2013, which revealed AAFs for the presence of boldenone, DHCMT, metenolone, oxandrolone and 1-testosterone.

- Furthermore, the 17/7/2012 Sample was recorded in a London Washout Schedule (EDP0020) with the following parameters that can be linked to the Athlete:

8964	2730599	f	17.07.2012	oxandrolone 20000, boldenone, 1-testosterone (5 ng/ml)

- The London Washout Schedules comprised athletes whose doping was monitored prior to the London Olympic Games, to avoid a positive test during the event. The London Washout Schedule matched the 2015 LIMS in respect of the same three prohibited substances.

- The forensic evidence on which WA's case rests is reliable, as has been established, *inter alia*, in previous CAS cases:
    - The 2015 LIMS was found by the CAS to be "*an accurate, authentic and contemporaneous account of the original data and its contents can be relied upon as accurate and valid*" (CAS 2021/A/7839, CAS 2021/A/7838). Additionally, the analytical data presented in the WADA Statement explains and confirms the history, presentation and reliability of the 2015 LIMS data.
    - The reliability of the EDP documents (including the London Washout Schedules) was carefully scrutinized by different CAS arbitrators in the context of thirteen prior cases. All of them considered that these documents were reliable evidence for the purposes of establishing an ADRV under the WA Rules.
- The Athlete's involvement in the doping scheme, and therefore the linked ADRVs, is supported by: (a) the use of the Athlete's name within the LIMS files, showing her protected status; (b) the searches carried out by Moscow Laboratory staff for sample 17/7/2012 Sample in 2016 and 2018, as part of a scheme to delete incriminating data; and (c) the deletion of information from the tables for the 17/7/2012 Sample in the 2019 LIMS copy, to remove the presence of Prohibited Substances, as shown by a comparison between the authentic 2015 LIMS copy and the manipulated 2019 LIMS copy.

52. WA requests the following relief:

> *"(i) CAS has jurisdiction to decide on the subject matter of this dispute.*
>
> *(ii) The Request for Arbitration of World Athletics is admissible.*
>
> *(iii) Tatyana Tomashova is found guilty of one or more anti-doping rule violations in accordance with Rule 2.2 of the the World Athletics Anti-Doping Rules 2021.*
>
> *(iv) A period of ineligibility of between 6 years 9 months and 12 years is imposed upon Tatyana Tomashova, commencing on the date of the (final) CAS Award.*
>
> *(v) All competitive results obtained by Tatyana Tomashova from 21 June 2012 through to the commencement of any period of provisional suspension or ineligibility are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
>
> *(vi) The arbitration costs be borne entirely by the First Respondent or, in the alternative, by the Respondents jointly and severally.*
>
> *(vii) The First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to World Athletics' legal and other costs."*

B. RUSAF's Position and Request for Relief

53. RUSAF chose not to file any submissions of relevance to the merits of the case with CAS.

C. The Athlete's Position

54. The Athlete submits the following in substance:

- She has never used or attempted to use boldenone, oxandrolone, metenolone, mesterolone, 1-testosterone or any other prohibited substances. She had no involvement in or awareness of any scheme to manipulate anti-doping test results.

- WA's evidence is materially inconsistent with the Athlete's wider testing history between 2011 and 2016. In that period, she regularly underwent anti-doping tests, including outside of Russia. All of these (negative) test results were recorded in ADAMS.

- Against her record of testing, WA's evidence, which the Athlete cannot verify, must be considered unreliable.

- The Swiss Laboratory for Doping Analyses in Lausanne, by retesting the Athlete's 21/6/2012 Sample (including the B-Sample) in the absence of the Athlete, violated the Athlete's rights.

- The pdf and raw data analyses for the 17/7/2012 Sample do not support the 2015 LIMS entry. Dr. Sobolevsky, who operated the 2015 LIMS, has been working for the WADA-accredited UCLA Laboratory and US Anti-Doping Agency, which could very likely have affected his work with RUSADA.

- The appearance of the Athlete's name in "General comments" field of the 2015 LIMS is irrelevant and does not serve as a proof of the Athlete's "protected status".

- The Athlete intends to start work as a physical education teacher in a school. Disqualification will make it almost impossible to obtain such employment due to its reputational impact, and will have a huge impact on her and her children.

55. The Athlete did not include any specific prayers for relief in her submission.

V. JURISDICTION

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

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

57. In accordance with Rule 38.1 of the 2016 Rules, "[e]*very Athlete shall have the right to request a hearing before the relevant tribunal of his National Federation before any sanction is determined in accordance with these Anti-Doping Rules*".

58. Rule 38.3 of the 2016 Rules provides as follows:

> *"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member* [...]. *If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42* [...]. *"*

59. The Sole Arbitrator observes that in the present case, it is undisputed that the Athlete was an international-level athlete and that RUSAF was the National Federation that should have heard this case in the first instance, even though its membership from WA has been suspended since 26 November 2015. Therefore, due to such suspension from membership, it was *per se* impossible for the First Respondent to hold a hearing "*within two months*" with regard to any of the ADRVs, as set out by Rule 38.3 of the 2016 Rules. Under these circumstances, WA was entitled to submit the matter to the CAS for a first instance decision to be rendered by a Sole Arbitrator (see also, e.g., CAS 2020/O/6759; CAS 2020/O/6761; CAS 2016/O/4463; CAS 2016/O/4464).

60. Furthermore, the Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure, respectively.

61. Therefore, the Sole Arbitrator finds that CAS has jurisdiction in the present case, in accordance with Rule 38.3 of the 2016 Rules.

VI. APPLICABLE LAW

62. Article R58 of the CAS Code states 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."*

63. Rule 13.7.4 of the 2021 WA ADR states as follows:

> *"In all CAS appeals involving World Athletics, the CAS Panel shall be bound by*

the World Athletics Constitution, Rules and Regulations (including these Anti-Doping Rules). In the case of conflict between the CAS rules currently in force and the World Athletics Constitution, Rules and Regulations, the Constitution, Rules and Regulations shall take precedence."

64. Rule 13.7.4 of the 2021 WA ADR further provides as follows:

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

65. Rule 1.4.2 of the 2021 WA ADR states that:

> "[t]*hese Anti-Doping Rules shall apply to* [...]
>
> *(f) the following Athletes, Athlete Support Personnel and other Persons:*
>
> *i) all Athletes who have signed an agreement with World Athletics or have been accredited or granted an official status by World Athletics/the Integrity Unit (for example, by way of inclusion in the International Registered Testing Pool or by designation of a Platinum, Gold, Silver or Bronze Label status) and all Athlete Support Personnel who have been accredited or granted an official status by World Athletics (for example, by way of an identity card) or who participate in International Competitions organised or sanctioned by World Athletics;*
>
> *(ii) all Athletes, Athlete Support Personnel and other Persons who are members of or authorised by any Member Federation, or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues);*
>
> *(iii) all Athletes, Athlete Support Personnel and other Persons preparing for or participating in such capacity in Competitions and/or other activities organised, convened, authorised, sanctioned or recognised by (i) World Athletics (ii) any Member Federation or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues), or (iii) any Area Association, wherever held, and all Athlete Support Personnel supporting or associated with such Athletes' preparation or participation* [...]"

66. As an athlete affiliated to RUSAF, who has participated in the activities and competitions of RUSAF and WA for a number of years, the Athlete is subject to the 2021 WA ADR.

67. Regarding the applicable rules *ratione temporis*, pursuant to Rule 1.7.2(b) of the 2021 WA ADR, ADRVs committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged ADRV and, for procedural matters, to the 2016 Rules, effective from 1 November 2015.

68. The anti-doping regulations in force at the time of the asserted ADRVs in 2012 were the 2012-2013 IAAF Competition Rules. However, the 2021 WA ADR is more favorable as to the Athlete's potential sanction, with respect to the specific multiple violations provision potentially applicable in the present case (Article 10.9 of the 2021 WA ADR). Whereas under the 2012-2013 IAAF Competition Rules a lifetime ban could be imposed for a second ADRV, this is no longer possible under the 2021 WA ADR. Hence, the well-established principle of *lex mitior* applies here for the benefit of the Athlete.

69. In summary, the 2021 WA ADR shall govern the substantive aspects of the ADRVs and the procedural aspects shall be governed by the 2016 Rules. To the extent that the 2021 WA Rules do not deal with a relevant issue, Monegasque law shall apply (on a subsidiary basis) to such issue.

VII. Admissibility of the Athlete's Supplemented Answer

70. As explained in para. 44 above, the Sole Arbitrator decided to accept the Athlete's Supplemented Answer, filed with the CAS by e-mail on 13 March 2024. The Athlete, who was not represented by legal counsel until January 2024 (apparently due to financial constraints) had to be provided with the opportunity to amend her submissions with the benefit of legal expertise, provided by her *pro bono* counsel appointed in January 2024. This was necessary to safeguard the Athlete's right to defend herself effectively, and was all the more important in light of what is at stake for her in the present case: WA requests a period of ineligibility of no less than 6 years and 9 months.

71. Admission of the Supplemented Answer to the case record did also not delay the present proceedings. The hearing was conducted as planned, and WA confirmed, at the end of the hearing, that its right to be heard was respected and that it was treated equally.

VIII. Merits

72. Considering all Parties' submissions, and after the oral hearing, the main issues to be resolved by the Sole Arbitrator are the following:

    A. Did the Athlete commit an anti-doping rule violation?

    B. If question **A.** is answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

A. Did the Athlete Commit an Anti-Doping Rule Violation?

73. The subject matter of the below analysis is the 2012 Samples. Before addressing the merits of the Parties' factual and legal arguments, the Sole Arbitrator finds it necessary to identify the relevant provisions which define (1) the anti-doping rule violations allegedly committed, (2) the burdens and standards of proof, as well as (3) the means of proof in their respect. On such basis, the Sole Arbitrator will then determine (4) whether the Athlete committed the alleged anti-doping rule violation(s).

1. Use of a Prohibited Substance

74. Rule 2.2 of the 2021 WA ADR reads as follows:

> *"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*
>
> *2.2.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate Intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
>
> *2.2.2 The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed."*

75. "*Use*" is defined as:

> *"the utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method."*

76. As the above quotes demonstrate, the application of Rule 2.2 of the 2021 WA Rules does not presume that an athlete used a prohibited substance knowingly.

2. Burdens and Standards of Proof

77. Rule 3.1 of the 2021 WA ADR provides the following:

> *"The Integrity Unit or other Anti-Doping Organisation will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the Integrity Unit or other Anti-Doping Organisation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability."*

78. In accordance with this provision, the burden of proof is firmly on WA to prove the alleged ADRV. The applicable standard of proof is that of comfortable satisfaction.

79. CAS jurisprudence has established the meaning and application of the "*comfortable satisfaction*" standard of proof. The test of comfortable satisfaction "*must take into account the circumstances of the case*" (CAS 2013/A/3258 para. 122). Those circumstances include "[t]*he paramount importance of fighting corruption of any kind in*

sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities" (CAS 2009/A/1920; CAS 2013/A/3258).

80. CAS awards have also confirmed repeatedly that a panel is allowed to consider the cumulative effect of circumstantial evidence (see, e.g., CAS 2018/O/5667 para. 85; CAS 2021/A/7839, para. 106). Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, taking their cumulative weight together (by means of a holistic approach), they may suffice. As described in CAS 2021/A/7839, No. 4 [guiding principle]:

> *"In case there is no direct but only circumstantial evidence, the adjudicatory body must assess the evidence separately and together and must have regard to what is sometimes called "the cumulative weight" of the evidence. It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt. There may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion, but the whole taken together, may create a strong conclusion of guilt."*

81. The gravity of the particular alleged wrongdoing is also relevant to the application of the comfortable satisfaction standard. In CAS 2014/A/3625 (para. 132), the panel stated that the comfortable satisfaction standard is

> *"... a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be 'comfortably satisfied'".*

3. Means of Proof

82. Pursuant to Rule 3.2 of the 2021 WA ADR, and in line with constant CAS jurisprudence, WA may resort to any reliable means to prove the alleged anti-doping rule violation, including admissions. See, e.g., CAS 2021/A/7839 No. 3 [guiding principle]:

> *"As a general rule, facts relating to anti-doping rule violations (ADRV) may (i.e., it is permissible) be established by "any reliable means". This rule gives greater leeway to anti-doping organisations to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, it is not even necessary that a violation be proven by a scientific test itself. Instead, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation. This rule is not a requirement that the evidence adduced be "reliable evidence". Rather, it is a rule as to the method or manner or form in which the facts that are necessary to sustain an allegation of an ADRV may be established, and the rule provides (in a nonexhaustive list) a number of examples of means of establishing facts which are characterised as "reliable"."*

83. Such "reliable means" include circumstantial evidence, including but not limited to the

LIMS data, EDP evidence and Washout Schedules (see also CAS 2019/A/6168, para. 215), as will be discussed further below.

4. *Violation of Rule 2.2 of the 2021 WA ADR*

84. It is undisputed that the Athlete's 2012 Samples were reported as negative in the ADAMS system. As a result, no anti-doping rule violation based on the "presence" of a prohibited substance (Rule 2.1 of the 2021 WA ADR) can be found. Based on the findings of the WADA Statement, WA accepts that the results of the re-testing of the 21/6/2012 Sample by the Swiss Laboratory for Doping Analyses in Lausanne in 2013 could not be used to bring a "presence"-case against the Athlete in light of the fact that the B-bottle was no longer intact.

85. However, the absence of a sample reported as positive in the ADAMS system does not necessarily disprove an anti-doping rule violation under Rule 2.2 of the 2021 WA ADR. The *prima facie* evidentiary value of the reporting in ADAMS can be overturned by evidence demonstrating that the reporting was false. The crucial question is whether the evidence submitted by WA is sufficient to allow for the conclusion that the 2012 Samples were indeed positive, and that the Athlete had actually used a prohibited substance.

a. The Russian Doping Scheme

86. As a starting point, the Sole Arbitrator considers that there was a systemic cover-up and manipulation of the doping control process within Russia in the manner described by Prof. McLaren in the McLaren Reports, commonly referred to as the Russian doping scheme during the 2010s (including during the period in which the 2012 Samples were collected from the Athlete). According to the First McLaren Report, *"the Ministry of Sport directed, controlled and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the FSB, CSP, and both the Moscow and Sochi laboratories."* The Second McLaren Report confirmed the key findings of the First McLaren Report. In particular, the McLaren Reports uncovered and described a number of counter-detection methodologies including the Disappearing Positives Methodology and Washout Testing. Together with the Second McLaren Report, Prof. McLaren published the EDP containing evidence relating to athletes he considered were involved in or benefitted from the above schemes.

87. The general evidential reliability of the McLaren Reports has been confirmed by previous CAS panels. For example, in CAS 2021/A/7840, para. 107,

> *"... the Panel accepts the McLaren Reports as a fair account of the Russian doping scheme and, in particular, accepts that the account of the Disappearing Positives Methodology set forth in the McLaren Reports is an accurate and compelling account of what took place in this regard. To be clear, on the basis of the McLaren Reports the Panel makes findings of fact as follows:*
>
> *a. The historic position in Russia was that doping of athletes was undertaken on an ad hoc, decentralised basis where coaches and officials working with elite athletes "in the field" provided those athletes with an array of*

performance-enhancing drugs (or "PEDs"). The difficulty with this approach was that it could not keep abreast of the developments in doping control, including in particular the introduction of the Athlete Biological Passport ("ABP") so that the athletes were at risk of being caught.

b. *In response, in or about 2012, the Russian Ministry of Sport sought to 'centralise' the doping effort and bring it under the control of the Moscow Laboratory. [...].*

c. *Part and parcel of this new program was the Disappearing Positives Methodology deployed by the Moscow Laboratory. Samples were provided by the athletes and sent to the Moscow Laboratory for testing and analysis. The Moscow Laboratory conducted an ITP. Where the ITP revealed a potential AAF, the Moscow Laboratory would (through a liaison person) inform the Russian Ministry of Sport which would then decide either to "SAVE" or to "QUARANTINE" the athlete in question, and communicate that decision to the Moscow Laboratory. If the decision was made to "SAVE" the athlete, the Moscow Laboratory would report the sample as negative in ADAMS and, conversely, if the athlete was to be "QUARANTINED", the analytical bench work would continue and the AAF would be reported in the ordinary manner."*

88. The existence of a general doping scheme has also been acknowledged (to some extent) by the Russian Ministry of Sport in its letter to WADA of 13 September 2018 (see also CAS 2019/A/6168, para. 197).

89. On that basis, the Sole Arbitrator has no doubt about the existence of such scheme. Evidently, this doping scheme could only succeed, to the extent that it did, with the benefit of falsified results being recorded in ADAMS. Hence, due to the extensive doping practices in the Russian sport in the 2010s (including in 2012, the year in which the 2012 Samples were collected) and the partially corrupted Russian anti-doping regime in place during that time, the ADAMS entries by the Moscow Laboratory cannot enjoy unreserved reliability. What is more, the ADAMS entries are no evidence that the Athlete's samples were clean. Similarly, while the Sole Arbitrator accepts that the mere existence of a doping scheme does not suffice for the purposes of establishing an anti-doping rule violation in individual cases, the existence of such a scheme is a relevant fact to be taken into account in the evaluation of specific evidence available for individual athletes (see also CAS 2019/A/6168, para. 197).

b. *The specific evidence against the Athlete*

90. WA bases its claims regarding the Athlete's alleged ADRV on the 2012 Samples. There is no evidence as to the particulars of the alleged ADRV: It is not known precisely when and how the prohibited substances were allegedly administered by the Athlete. It is not known who allegedly administered the substances. And it is not known whether the Athlete was aware of the alleged doping, or even of the existence of a general doping scheme.

91. The Athlete denies any such knowledge. However, the Sole Arbitrator notes that it is each athlete's personal duty to ensure that no prohibited substance enters his or her body (Rule Rule 2.1.1 of the 2021 WA ADR). Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated in order to establish an ADRV for use of a prohibited substance. In addition, the success or failure of the use or attempted use of a prohibited substance is not material: it is sufficient that the prohibited substance was used or attempted to be used for an ADRV to be committed (Rule 2.1.2 of the 2021 WA ADR).

92. In support of the alleged use of prohibited substances by the Athlete, WA relies on the following analytical and contextual evidence, to be assessed by the Sole Arbitrator separately and together (see also CAS 2019/A/6168, para. 212):

- the 2015 LIMS, which identifies
  - the 21/6/2012 Sample as positive for boldenone, oxandrolone, metenolone and mesterolone, and
  - the 17/7/2012 Sample as positive for boldenone, oxandrolone, and 1-testosterone;
- a London Washout Schedule, which recorded the 17/7/2012 Sample as positive for boldenone, oxandrolone, and 1-testosterone (the same substances recorded for that sample in the 2015 LIMS);
- the re-analysis of the 21/6/2012 by the Swiss Laboratory for Doping Analyses in Lausanne in July 2013, which found boldenone, DHCMT, metenolone, oxandrolone and 1-testosterone in that sample;
- the expert opinion of Prof. Ayotte, who considered the available data relating to the samples;
- the WADA Statement (including the underlying analytical data), which analyses the history, presentation and reliability of the 2015 LIMS data as well as the evidence against the Athlete.

(i) The 21/6/2012 Sample

93. The Athlete does not dispute the collection of the 21/6/2012 Sample. This sample was recorded in the 2015 LIMS and identified as positive for four different anabolic steroids, all of which are non-Specified Substances prohibited under the WADA Prohibited List.

94. Prof. Ayotte, who has analyzed the underlying analytical PDF and raw data for the 21/6/2012 Sample, confirmed that they matched the 2015 LIMS entries. Specifically, she confirmed the results of the initial testing procedure and opined that the intensity of the signals is a good indicator that a confirmation procedure would have been successful. She specifically mentioned the rather intense signals for oxandrolone, indicating a recent administration. Prof. Ayotte confirmed the contents of her expert report orally during the hearing. The Second Respondent chose not to cross-examine Prof. Ayotte.

95. The analytical conclusions drawn by Prof. Ayotte are further confirmed by the results of the re-testing of the 21/6/2012 Sample by a WADA accredited laboratory in 2013. Although the re-testing could not be used to establish a "presence" case, due to damage to the B-bottle, the Sole Arbitrator, taking a holistic approach and putting the results of the re-testing into the context of the other available evidence, notes that the re-analysis confirmed, *inter alia*, the presence of boldenone, metenolone and oxandrolone, *i.e.* three substances also recorded in the 2015 LIMS. The Athlete has not proffered any explanation to discredit the conformity of three different pieces of evidence (the 2015 LIMS, Prof. Ayotte's expert testimony, and the results of the re-testing). The fact that different pieces of evidence confirmed the same result independent from one another is in fact overwhelming.

96. Based on the evidence of the 2015 LIMS, Prof. Ayotte's unchallenged expert report, and the results of the re-testing of the 21/6/2012 Sample in 2013, the Sole Arbitrator is comfortably satisfied that the 21/6/2012 Sample is evidence of the Athlete's use of Prohibited Substances. Hence, the Sole Arbitrator is comfortably satisfied that the Athlete committed an ADRV under Rule 2.2 of the 2021 WA ADR.

(ii) <u>The 17/7/2012 Sample</u>

97. The Athlete does not dispute the collection of the 17/7/2012 Sample. This sample was recorded in the 2015 LIMS and identified as positive for three different anabolic steroids, all of which are non-Specified Substances prohibited under the WADA Prohibited List.

98. The entries in the 2015 LIMS are corroborated by a London Washout Schedule, in which the 17/7/2012 Sample is listed as containing the very same three substances (boldenone, oxandroline, 1-testestorone). The reliability of the London Washout Schedule (which was titled "*Athletics, Kislovodsk Training Camp*", while the 2015 LIMS states that the 17/7/2012 Sample was collected in Kislovodsk) was confirmed by the WADA Statement, as well as by Mr. Walker at the hearing, through his oral testimony.

99. However, Prof. Ayotte, in her expert report, concluded that the underlying analytical PDF and raw data do not confirm the entries in the 2015 LIMS, made by senior analyst Tim Sobolevsky. WA asserts that this is due to a manipulation of the analytical PDF and raw data made after the recording of the sample in the 2015 LIMS.

100. In the WADA Statement, it is explained that the 17/7/2012 Sample was one of 245 samples where discrepancies existed between the 2015 and the 2019 LIMS Copies. In the 2019 LIMS, important analytical data could no longer be found (i.e. was deleted), including the findings of prohibited substances in the 17/7/2012 Sample. In this context, WADA I&I demonstrated that in 2016 and in 2018 (i.e. between the creation of the 2015 and the 2019 LIMS Copies, and shortly after the announcement that an investigation would be started), the 17/7/2012 Sample was repeatedly and inexplicably searched by staff from the Moscow Laboratory. WADA I&I further explained that, in light of the chronology of events, it was likely that the identified searches in 2016 and 2018 were part of a coordinated process in which data (including LIMS, PDF and raw data) related to the 17/7/2012 Sample was manipulated or deleted in view of Prof. McLaren's investigations.

WADA I&I also explained how such manipulations of raw data occurred. This evidence was not substantively challenged by the Athlete.

101. The investigations of WADA I&I demonstrate that the mere fact that the raw data for the 17/7/2012 Sample does not match the 2015 LIMS is in itself not sufficient to dilute the evidentiary value of the 2015 LIMS and the London Washout Schedule (which record the identical prohibited substances for the Athlete's Sample).

102. In fact, the Sole Arbitrator is comfortably satisfied that the 2015 LIMS, together with the London Washout Schedule, and considered against the background that manipulations have been made in favor of the Athlete with respect to the 17/7/2012 Sample as of 2016, is sufficient evidence that the Athlete committed an ADRV under Rule 2.2 of the 2021 WA ADR.

103. As a result, the Sole Arbitrator finds that WA has established that the Athlete committed an ADRV.

B. What is the Athlete's sanction?

104. Having found that the Athlete committed an ADRV, the Sole Arbitrator moves to examining the consequences that must be drawn from such finding.

1. The duration of the Period of Ineligibility

105. Rule 10.2 of the 2021 WA ADR provides that the sanction to be imposed for an anti-doping rule violation under Rule 2.2 of the 2021 WA ADR is as follows:

> *"The period of Ineligibility for a violation of [...] Rule 2.2 [...] will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*
>
> *10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:*
>
> *(a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, 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 or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional.*
>
> *10.2.2 If Rule 10.2.1 does not apply, then (subject to Rule 10.2.4(a)) the period of Ineligibility will be two years."*

106. Pursuant to Rule 10.2.1 (a) of the 2021 WA ADR, the minimum period of ineligibility for the Athlete is four years, absent any demonstration by the Athlete that the ADRV was not intentional.

107. Rule 10.4 of the 2021 WA ADR, which addresses aggravating circumstances, sets forth:

> *"If the Integrity Unit or other prosecuting authority establishes in an individual case involving an anti-doping rule violation other than violations under Rule 2.7 (Trafficking or Attempted Trafficking), Rule 2.8 (Administration or Attempted Administration), Rule 2.9 (Complicity or Attempted Complicity) or Rule 2.11 (Acts by an Athlete or other Person to discourage or retaliate against reporting) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable will be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that they did not knowingly commit the anti-doping rule violation."*

108. Appendix 1 to the 2021 WA ADR provides the following examples of aggravating circumstances:

> *"**Aggravating Circumstances:** Circumstances involving, or actions by, an Athlete or other Person that may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility."*

109. For the sake of clarity and for the avoidance of doubt, the Sole Arbitrator wishes to underline that while in the present proceedings, the Athlete has been found to have committed two ADRVs on two different occasions, it follows from Rule 10.9.3(a) of the 2021 WA ADR that the two samples at issue here constitute only one anti-doping rule violation. The occurrence of multiple violations may, however, be considered as a factor in determining aggravating circumstances under Rule 10.4 of the 2021 WA ADR. To that extent, the Sole Arbitrator concurs with WA's view that the Athlete's proven administration of multiple prohibited substances on multiple occasion constitutes aggravating circumstances.

110. In view of the severity and multiplicity of these aggravating circumstances, the Sole Arbitrator finds it appropriate to increase the Period of Ineligibility for the assumed first violation by 18 months, to five years and six months.

111. The ADRV in the present case is the Athlete's second ADRV. In fact, the Athlete was previously sanctioned by the CAS in the case CAS 2008/A/1718-1724 with a Period of Ineligibility of two years and nine months, commencing on 20 October 2008, for an anti-doping rule violation relating to urine substitution.

112. Therefore, the multiple violations sanctioning regime applies. Pursuant to Rule 10.9 of the 2021 WA ADR (which foresees sanctions that are lighter than those foreseen in Rule 40(7)(a) of the 2012-2013 IAAF Competition Rules applicable at the time, see above at para. 68), the Period of Ineligibility applicable to multiple violations is calculated has follows:

> *"10.9.1 Second or third anti-doping rule violation:*
>
> *(a) For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility will be the greater of:*
>
> *(i) a six month period of Ineligibility; or*
>
> *(ii) a period of Ineligibility in the range between:*
>
> *(aa) the sum of the period of Ineligibility imposed for the first anti-doping rule violation plus the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation; and*
>
> *(bb) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.*
>
> *The period of Ineligibility within this range will be determined based on the entirety of the circumstances and the Athlete or other Person's degree of Fault with respect to the second violation."*

113. In accordance with Rule 10.9.1(b)(ii) of the 2021 WA ADR, the applicable range for the Athlete's sanction is the following:

- Lower end: the sum of the period of Ineligibility imposed for the first anti-doping rule violation (two years and nine months) plus the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation (five years and six months), i.e. eight years and three months;

- Upper end: twice the period of Ineligibility applicable to the second anti-doping rule violation treated as if it were a first violation, i.e. 2 times five years and six months, which is 11 years.

114. In view of the seriousness of both ADRVs, the Sole Arbitrator finds that, under the circumstances of the present case, within the applicable range provided by Rule 10.9.1(b)(ii) of the 2021 WA ADR, a Period of Ineligibility of ten (10) years is justified

and shall be imposed on the Athlete.

1. Commencement of the Ineligibility Period

115. In relevant part, Rule 10.13 of the 2021 WA ADR regarding the commencement of the Ineligibility Period stipulates as follows:

> *"[T]he period of Ineligibility will start on the date of the decision of the hearing panel providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed."*

116. In accordance with this rule, the Athlete's period of Ineligibility shall start on the date of the present Award. Since the Athlete has not been provisionally suspended, no credit is to be applied to the Period of Ineligibility imposed herein.

2. Disqualification of Results

117. Moreover, the Sole Arbitrator notes that Rule 10.10 of the 2021 WA ADR regarding the disqualification of results states as follows:

> *"In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes."*

118. WA submits that the Athlete's results as of 21 June 2012 (the date when the Athlete provided the 21/6/2012 Sample) shall be disqualified. If the Sole Arbitrator were to follow WA's request, the Athlete would be treated as if she had been continuously doped for more than 12 years since the collection of the 2012 Samples.

119. Hence, the Sole Arbitrator finds that the established facts of the present case call for the application of the fairness exception enshrined in Rule 10.10 of the 2021 WA ADR. While retroactive disqualification of competitive results is a "*vital part of a credible anti-doping regime for various reasons*", including its "*deterrent effect on doping*" (*Manninen/Nowicki*, "Unless Fairness Requires Otherwise" – A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses", CAS Bulletin 2017/2, p. 8 et seq.), CAS panels have frequently found that the general principle of fairness must prevail in order to avoid disproportionate sanctions (see, e.g., CAS 2016/O/4481, para. 195; CAS 2018/O/5713, para. 71; CAS 2019/A/6167 para. 243 et seq.).

120. Several factors may be taken into consideration by CAS panels when assessing the principle of fairness. The decision is not to rest on any particular factor, but an overall

evaluation of the evidence in support of fairness, including delays in results management, the athlete's degree of fault, sporting results unaffected by the administration of the prohibited substance, significant (financial or sporting) consequences, or – in the case of ADRVs based on non-analytical evidence –a long period of time between the commission of the ADRV and the athlete's suspension (see *Manninen/Nowicki*, *supra*, p. 8, 11 et seq.). As a matter of principle, CAS panels enjoy broad discretion in adjusting the disqualification period to the circumstances of the case.

121. In the present case, more than nine years passed between the Athlete's established ADRVs (on 21 June 2012 and 17 July 2012) and the WA's notification of a potential ADRV (in December 2021). This long time is not WA's fault, since it is the result of the unprecedented sophistication of the Russian cover-up doping scheme that was not (and probably could not be) detected until late in 2014. At the same time, and as explained above, there is no proof that the Athlete personally knew of the existence of that doping scheme. Yet, because the fairness exception shall be primarily assessed from the point of view of the athlete (*Manninen/Nowicki*, *supra*, p. 10), the extensive time required for uncovering, investigating and prosecuting anti-doping rule violations that were part of the Russian doping scheme cannot go to the Athlete's detriment when deciding on retroactive disqualification. Furthermore, at least for the time period after the collapse of the Russian doping system, the Panel appreciates that the Athlete never again tested positive.

122. Taking all of these factors into account, and exercising her broad discretion, the Sole Arbitrator finds it fair and appropriate to disqualify the Athlete's results from the date of the 21 June 2012 Sample and until 3 January 2015. This period accounts for the fact that around the end date, the Russian doping scheme was uncovered and potentially ceased to exist. Hence, the Athlete's results between 21 June 2012 and 3 January 2015 shall be disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

IX. COSTS

123. Article R64.4 of the CAS Code provides the following:

> *"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
>
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*
> - *the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by*

the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

124. Article R64.5 of the CAS Code reads as follows:

> *"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."*

125. The Sole Arbitrator decides on the issue of costs *ex officio* and is not bound by the requests of the Parties. In accordance with Article R64.5 of the CAS Code, the Sole Arbitrator has broad discretion in respect of the making of any costs award, which shall be exercised by reference to all the circumstances of the case including the complexity and outcome of the proceedings and the conduct and financial resources of the parties.

126. The Sole Arbitrator notes that the Claimant lost a (albeit small) part of its claim due to an excessive request in terms of the disqualification of results. As a result, in light of her determination, the Sole Arbitrator exercises her broad discretion in respect of costs so as to order that the arbitration costs shall be borne in the proportions 90% (ninety percent) jointly by the Respondents and 10% (ten percent) by the Claimant.

127. Furthermore, pursuant to Article R64.5 of the CAS Code, the Respondents shall jointly pay an amount of CHF 4,000 (four thousand Swiss Francs) to the Claimant as a contribution to its legal costs and other expenses incurred in the present proceedings. Apart from that, each Party shall bear its own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed on 16 March 2023 by World Athletics against the Russian Athletics Federation and Ms. Tatyana Tomashova is partially upheld.

2. Ms. Tatyana Tomashova is found guilty of an anti-doping rule violation under Rule 2.2 of the 2021 WA ADR.

3. Ms. Tatyana Tomashova is sanctioned with a Period of Ineligibility of ten (10) years starting from the date of this Award.

4. All the competitive results obtained by Ms. Tatyana Tomashova from 21 June 2012 until 3 January 2015 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

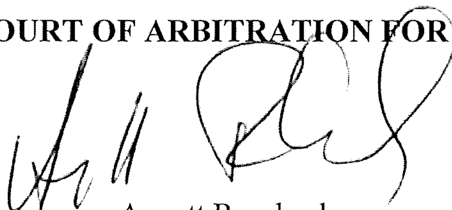
5. The costs of the arbitration, to be determined and served separately to the Parties by the CAS Court Office, shall be borne 90% jointly by the Russian Athletics Federation and Ms. Tatyana Tomashova and 10% by World Athletics.

6. The Russian Athletics Federation and Ms. Tatyana Tomashova shall jointly pay an amount of CHF 4,000 (four thousand Swiss Francs) to World Athletics as contribution to its legal costs and other expenses incurred in the present proceedings.

7. All other and further requests of reliefs are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 3 September 2024

THE COURT OF ARBITRATION FOR SPORT



Annett Rombach
Sole Arbitrator