

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

Before:

Raj Parker (Chair)

BETWEEN:

International Association of Athletics Federations (IAAF)

Anti-Doping Organisation

-and-

Violah Jepchumba

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

INTRODUCTION

1. The International Association of Athletics Federations ("IAAF"), the International Federation governing the sport of athletics worldwide, acting by its Athletics Integrity Unit ("AIU") has charged Ms Violah Jepchumba ("the Athlete"), a 27-year-old Kenyan

born female long-distance athlete with committing the following IAAF Anti-Doping Rules (“ADR’s”) violations:

-Presence of a Prohibited Substance, namely recombinant-erythropoietin EPO (“r-EPO”), or its metabolites or markers in an athlete’s sample, pursuant to Article 2.1 ADR, by virtue of the presence of r-EPO in a urine sample provided on 28 August 2017 numbered A3097283; and use of a Prohibited Substance, namely r-EPO pursuant to Article 2.2 ADR.

FACTUAL BACKGROUND

2. On 27 August 2017, the Athlete provided a urine sample, Out-of-Competition in Mosoriot, Kenya, which was sealed at 21:27. This Sample, when measured for specific gravity, gave a value of 1.002, which is below the requirements of the International Standard for Testing and Investigations (“ISTI”).

3. The Athlete was therefore required to provide further samples until the requirements of the ISTI for specific gravity were met.

4. On 28 August 2017, the Athlete provided a further urine sample Out-of-Competition in Mosoriot, Kenya which met such requirements and which was sealed at 00:49 and allocated number 3097283 (“the Sample”).

5. The Sample was analysed by the World Anti-Doping Agency (“WADA”) accredited laboratory in Lausanne, Switzerland (“the laboratory”) and the analytical result, reported on 22 September 2017, revealed the Presence of r-EPO.

6. Erythropoietin’s such as r-EPO are Prohibited Substances under S.2 Peptide Hormones, Growth Factors, Related Substances, and Mimetics of the WADA 2017 *Prohibited List*.

7. On 30 September 2017 the AIU (on behalf of the IAAF) notified the Athlete of the Presence of r-EPO in the Sample in person in Cardiff, Wales. The Athlete was provided with a letter dated 29 September 2017 which explained that the AIU had been set up by the IAAF to protect the integrity of the sport of athletics. It also explained the basis of the Adverse Analytical Finding (“AAF”) and the evidence in support of it. It set out the

alleged Anti-Doping Rule Violations (“ADRVs”) and the AIU’s interpretation of the relevant rules. It also informed her of her right to request that the B sample be analysed and asked her to provide a written explanation for the AAF by no later than 06 October 2017. She was provisionally suspended from all competitions and activities in athletics pending resolution of her case.

8. On 06 October 2017, the Bahrain Athletics Association (“the Bahrain Federation”) requested analysis of the B Sample on behalf of the Athlete. By further email dated 18 October 2017, the Bahrain Federation confirmed that it had met with the Athlete on 06 October 2017, and that she maintained the request for the B Sample analysis. The Bahrain Federation confirmed that it agreed to the proposed date and time of the analysis and for the opening to be witnessed by an independent observer appointed by the laboratory.

9. On 24 October 2017, the sample was opened and analysed by the laboratory. The analysis confirmed the finding of r-EPO in the A Sample.

10. On 27 October 2017, the AIU advised the Athlete that the analysis of the B Sample had confirmed the Presence of r-EPO in the A Sample. The Athlete was invited to provide her explanation by no later than 02 November 2017.

11. On 01 November 2017 the Athlete met with AIU representative, Mr Kyle Barber, in Kenya. The Athlete was accompanied to that meeting by her husband and during the course of the meeting was asked to provide an explanation for the Presence of r-EPO in the Sample. The Athlete maintained that she was unable to provide any explanation.

12. The Athlete then failed to provide an explanation, or to confirm that she was unable to explain the Presence of r-EPO in the Sample in writing, by the deadline of 02 November 2017.

13. By letter dated 31 January 2018, the Athlete was issued with a Notice of Charge pursuant to Article 8.4.1 ADR for committing the ADRVs set out above. The letter made it clear that the charge may result in a ban from all sports for a significant period with certain further consequences and she was urged to give the letter urgent attention and strongly advised to seek legal advice. The evidence relied upon by the AIU in support of the charge was also provided.

14. The Athlete was invited to respond to the Notice of Charge by no later than 09 February 2018.

15. On 09 February 2018, the Athlete sent three emails to the AIU stating that she had experienced problems with her phone and requested that she be able to contact the Bahrain Federation about the matter. The Athlete was afforded until 13 February 2018 to confirm how the matter should proceed as set out in the Notice of Charge. The AIU took the view that given that the Athlete and her Federation had been aware of this matter for over four months and that they did not consider any further delays were acceptable.

16. On 11 February 2018, the Athlete sent a further email to the AIU containing the following:

"Hi I am sorry for the delay of email because I was getting email on Friday, I am still[in] shock with that results, its only that I change my training from low altitude to high also I change supplements and some food.Thank you."[sic]

17. By email on 21 February 2018, the AIU acknowledged receipt of this email and requested confirmation of how she wished to proceed as set out in the Notice of Charge by no later than 23 February 2018. That email was also copied to the Bahrain Federation. It asked for confirmation as to whether the Athlete admitted the ADRVs and accepted a four year period of Ineligibility or requested a hearing in which case the Athlete needed to set out to the best of her knowledge how the Prohibited Substance came to be present and why she wanted a hearing to take place.

18. Both the AIU and the Bahrain Federation sent further emails to the Athlete the following day, 22 February 2018, reminding her that she must confirm how the matter was to proceed by no later than 23 February 2018. Despite those reminders, the AIU received no response or confirmation from the Athlete by the deadline of 23 February 2018.

19. On 15 March 2018, the AIU contacted the Athlete by email. It repeated the response given by the Athlete to the Notice of Charge and indicated that the AIU understood that the response meant that the Athlete did not admit the ADRV and if that was the case the matter would be referred to the Disciplinary Tribunal to be determined at a hearing. The

AIU indicated that if its understanding was incorrect, that the Athlete must inform the AIU by 22 March 2018. The Athlete was warned in terms that if she did not respond by that date then the matter would proceed by being referred to the Disciplinary Tribunal for determination.

20. The Athlete was sent reminders to respond by 22 March 2018 by both the AIU and the Bahrain Federation in separate emails on 21 March 2018. Again, the AIU received no response from the Athlete by the deadline specified.

21. On 23 March 2018, the AIU wrote to the Athlete by email confirming that the matter would proceed before the Disciplinary Tribunal based on the understanding that the Athlete did not admit the ADRVs.

The Athlete responded by email to the AIU later the same day stating:

"Hi, sometimes not opening an email iam sorry for that.i have been out of competision for long time but upto now I dont know anything about this matter".[sic]

22. On 11 April 2017, the Tribunal Secretariat ("the Secretariat") confirmed that the Chair of the IAAF Disciplinary Tribunal, the Hon Michael Beloff QC, had appointed Mr Raj Parker to Chair the Disciplinary Tribunal to determine this case.

23. On 23 April 2018, a Preliminary Meeting was convened by telephone conference call in accordance with Article 8.7 ADR. Ms Laura Gallo from the AIU and Ms Alisha Ellis from Sport Resolutions also attended the conference call. The Athlete did not attend. In view of the Athlete's non-attendance I proceeded under Article 8.7.1 ADR on the basis that the Athlete had been given proper notice of the meeting and her non-attendance did not prevent me as the Chair of the Panel from proceeding with the meeting.

24. Procedural directions were issued to the parties by the Secretariat on 24 April 2018 ("the Directions"). Among other things the Athlete was directed to provide a full written explanation for the Presence of r-EPO in the Sample, (including any documents/evidence relied upon in support of that explanation), or alternatively that her position remained that she could not provide any explanation, by 04 May 2018.

25. On 3 May 2018, the AIU received an email from the Athlete which stated as follows:

"Hi laura, according to previous email I didnt raise hearing.also about this matter still innocent because I have not yet take and epo ."[sic]

26. By email dated 08 May 2018, I confirmed, having considered the email, that the matter would proceed to a hearing and that the Athlete would be informed that the deadline for her to provide her written response to the Directions had passed.

27. On 30 May 2018, I was informed by the Secretariat that the Athlete had informed her that she was available for a hearing on Tuesday, 26 June 2018 but as her understanding of spoken English was not very good it would be easier for her if questions were written and sent to her in advance and then she would give a "true reply".

28. On the same day I informed the Secretariat that I would be happy to accept written submissions and/or evidence on any matter relevant to the Athlete's case which the Athlete chose to submit. The Athlete also had the right to be represented by legal counsel of her own choosing (at her own expense) and that if she required a translator, the AIU should arrange for one to be present at the hearing. I set out a list of five questions to which the Athlete would be invited to respond.

They were as follows:

"1-Do you dispute any of the factual background contained in the AIU's written submissions dated 17 May 2018 at section B? If so please specify which factual matters you dispute, on what basis, and please specify the facts and matters you will rely upon in support of your case.

2-Do you dispute jurisdiction or the applicable Rules in this matter as set out at section C of the written submissions? If so please specify on what basis you do so.

3-Do you dispute the anti-doping rule violations set out at section D of the written submissions? If you do please specify on what basis you do so.

4-Do you dispute the consequences for the anti-doping rule violations set out at section E of the written submissions? If so please specify on what basis you do so.

5-Do you dispute any of the requests for relief set out at section F of the written submissions? If so please specify on what basis you do so and specify all your arguments in support of your case."

29. On 10 June 2018, the Athlete sent an email in response to the questions:

"Hi ,1. Yes I dispute the findings that I doped and I think it's not fair to punish me for the findings I don't understand.

I have been denied my right to run for a year now and this stressed me and my family and I just don't know what to do. I am waiting for an okay from you.Thank you."

30. Despite having been asked by the Secretariat for further answers to the five questions, no further response from the Athlete was received.

31. On 14 June 2018, counsel for the AIU informed the Secretariat that notwithstanding that the Athlete had indicated her availability for a hearing (by videoconference) to take place on 26 June 2018 and details had been requested of the Athlete to be provided by 08 June 2018 so that arrangements for a translator could be put in place for the hearing, no details had been given by the Athlete of her native language (including dialect).

32. Counsel for the AIU indicated to the Secretariat that its position was that an oral hearing was not necessary and that the matter could be determined on the papers because the Athlete had failed to file an answer to the IAAF written submissions, and had failed to respond to the Chair's questions as directed. The AIU would be prepared to attend a hearing if I as the Chair considered it necessary or if the Athlete insisted upon a hearing as long as it had enough time to make arrangements for the specialist translator and for that, an answer from the Athlete as to her native language and dialect needed to be provided.

33. In the light of that communication I decided that the Athlete should be asked whether she still required an oral hearing and if she did what her native language and dialect were and that if she failed to answer by 18 June 2018 the matter would be determined on the papers.

34. On 19 June 2018, the Secretariat informed me that no response had been received from the Athlete and I confirmed that the case would now be determined on the papers.

35. On 20 June 2018 the Athlete sent an email to the AIU which said:

"I have not understand the question clearly.thank you."

36. On 21 June 2018, the AIU confirmed to the Athlete that her case would be determined without a hearing because she did not confirm that she wanted a hearing to take place.

JURISDICTION AND APPLICABLE RULES

Jurisdiction

37. Article 1.2 ADR entered into force on 03 April 2017 and states as follows:

"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, Sanctions 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)."

38. The application of the ADR to athletes, athlete support personnel and other persons is set out in Article 1.7 ADR:

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

(a) all Athletes, Athlete Support Personnel and other Persons who are members of a National Federation or of any 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 the purposes of anti-doping."

39. The applicable rules are the ADR, which apply to all athletes who are members of a National Federation and to all athletes participating in competitions organised, convened, authorised or recognised by the IAAF.

40. The Athlete provided a Sample on 28 August 2017 Out -of- Competition and on this date, the Athlete was a member of the Bahrain Federation. The Athlete is therefore subject to the ADR pursuant to Article 1.7(a) ADR.

41. Additionally the Athlete participated in three competitions which were sanctioned by the IAAF in 2017, each being classified as an IAAF Gold Label Road race:

-1 April 2017 -Praha Half Marathon

-9 September 2017 -Birell Prague Grand Prix

-16 September 2017 -Mattoni Usti nad Labem Half Marathon

The Athlete is therefore subject to the ADR pursuant to Article 1.7 (b).

The AIU

42. Article 7.2 ADR confers jurisdiction for results management 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:

7.2.1 For potential violations arising in connection with any Testing conducted under these Anti-Doping Rules by the Integrity Unit, including investigations conducted by the Integrity Unit against Athlete Support Personnel or other Persons potentially involved in such violations."

The Sample was collected pursuant to Testing undertaken by the AIU on behalf of the IAAF. The AIU therefore has jurisdiction for results management in this matter.

The Tribunal

43. The IAAF has established the Tribunal in accordance with Article 1.5 ADR, which provides that the Tribunal shall determine ADRVs committed under the ADR.

44. Article 8.2 (a) ADR 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."

45. Article 1.9 ADR specifies those athletes that are classified as International-Level Athletes for the purpose of the ADR as follows:

"1.9 Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, each of the following Athletes shall be considered to be an International- Level Athlete ("International- Level Athlete") for the purposes of these Anti-Doping Rules and therefore the specific provisions in these Anti-Doping Rules applicable to International- Level Athletes shall apply to such athletes:

- (a) An Athlete who is in the International Registered Testing Pool;*
- (b) An Athlete who is entered for or is competing in any of the following International Competitions:*

[...]

(vi) IAAF Label Road Races; "

46. The Athlete participated in IAAF Gold Label Road races in 2017. Furthermore on 27 and 28 August 2017 the Athlete was a member of the IAAF Registered Testing Pool. That is a pool of highest priority Athletes established separately by the Integrity Unit at the International Level and by National Anti-Doping Organisations at the national level, who are subject to focused In-Competition and Out- of -Competition Testing as part of the IAAF's or National Anti-Doping Organisation's respective test distribution plans and who are required to provide whereabouts information for that purpose.

47. It follows therefore that the Athlete is an International Level Athlete pursuant to Article 1.9 (a) and Article 1.9 (b)(vi) ADR.

48. Furthermore as an International Level Athlete the Tribunal has the requisite jurisdiction to hear and determine ADRVs against the Athlete pursuant to Article 8.2 (a) ADR.

Applicable Rules

49. Article 2 ADR specifies the circumstances and conduct that constitutes ADRVs.

Article 2.1 provides:

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athletes 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."

50. Article 2.2 ADR also states that the use of a Prohibited Substance or Prohibited Method constitutes an ADRV:

"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."

51. Article 2.1.1 and Article 2.2.1 ADR in summary provide that it is each athlete's personal duty to ensure no Prohibited Substance enters his or her body and that no Prohibited Substance or Prohibited Method is used. Athletes are therefore strictly responsible for any Prohibited Substance or its Metabolites or Markers found in the Sample.

52. Both provisions contain the following:

"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[...]"

53. With regard to the Presence of a Prohibited Substance or its Metabolites or Markers in an Athletes Sample Article 2.1.2 ADR states:

"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 Athletes 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 in the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle."

54. In relation to an Athlete Use of a Prohibited Substance or Prohibited Method, Article 2.2.2 ADR provides:

"2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an Anti-Doping Rule Violation to be committed."

55. 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 ADRV

pursuant to Article 2.1 ADR. Additionally, the Use of a Prohibited Substance or a Prohibitive Method is sufficient for an ADRV to be committed under Article 2.2 ADR.

56. Article 3.1 ADR provides the IAAF shall have the burden of establishing that an ADRV has occurred to the comfortable satisfaction of the Tribunal:

“3.1 The IAAF or other Anti-Doping Organisation shall have the burden of establishing 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. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.”

57. Article 3.2 ADR states the facts relating to ADRVs may be established by any reliable means.

58. In that regard Article 3.2 ADR also states:

“3.2.2 Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly.

3.2.3 WADA -accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in compliance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding. In such an event, the IAAF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

3.2.4 Departures from any other International Standard, or other anti-doping policy set out in the Code or these Anti-Doping Rules that did not cause the facts alleged or evidence cited in support of a charge (e.g., an Adverse Analytical Finding) shall not invalidate such facts or evidence. If the Athlete or other Person establishes the occurrence of a departure from an International Standard or other anti-doping rule policy set out in the Code or these Anti-Doping Rules that could reasonably have caused the Adverse Analytical Finding or other facts alleged to constitute an Anti-Doping Rule Violation, then the IAAF or other Anti-Doping Organisation shall have the burden to establish that such departure did not cause such Adverse Analytical Finding for the factual basis for the Anti-Doping Rule Violation.”

Anti-Doping Rule Violations

59. In this case the analysis of the Sample collected from the Athlete on 28 August 2017 showed the presence of r-EPO. r-EPO is a Prohibited Substance according to S2 of the WADA 2017 *Prohibited List*.

60. The Presence of r-EPO in the Sample was confirmed by the B Sample analysis. The laboratory have conducted all analysis procedures in compliance with the International Standard for Laboratories ("ISL") pursuant to Article 3.2.3 ADR.

61. The AIU has reviewed the AAF for r-EPO reported by the laboratory in accordance with Article 7.3 ADR. The Athlete does not have a valid Therapeutic Use Exemption ("TUE") justifying the Presence or Use of r-EPO and no departures from the ISTI or ISL were identified.

The Athlete's Case

62. The Athlete has not been legally represented as far as I am aware in these proceedings. Moreover, she has made it clear that her knowledge of English is not good. I have therefore proceeded with caution ensuring that, in so far as possible, matters were brought to the Athlete's attention in a format which she could understand and respond to. At her request a list of questions were put to her in writing so that she could obtain the necessary translation and respond to the case against her accordingly. She did make a response but did not answer all of the questions.

63. It is fair to say, reviewing the correspondence, that the Athlete has repeatedly failed to comply with deadlines or engage with the AIU's case. She has failed to provide any explanation for the Presence of the Prohibited Substance found in her body.

64. It was only very late in the day that a hearing was dispensed with on the basis that she appeared to no longer require one, and had in any case failed to give details of her native language or dialect for a translator to be organised.

65. It has not been disputed by the Athlete that a Prohibited Substance was present and/or used by the Athlete and nothing has been put forward by the Athlete which would cast doubt on the testing of the Samples provided or the test results.

66. Her case is to be judged from a series of communications from her which are, it is fair to say, not comprehensive or clear, but I have made all necessary allowances in her favour as to points of contention or defence.

67. Her case is that she did not intentionally dope and that the Presence of the substance did not have an obvious or clear explanation as to origin or how it came to be found in her body. The most she says is that it could be due to a change in diet and/or supplements and/or the altitude at which she trained.

68. It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Substance is used. Accordingly, it is not necessary for the IAAF to demonstrate intent, Fault, negligence or knowing Use by the Athlete in order to establish that an ADRV has occurred. In other words, an athlete is strictly liable for the Presence and Use of any Prohibited Substances.

69. I find that the Athlete has committed an ADRV under Article 2.1 ADR to the comfortable satisfaction of the Tribunal under Articles 3.1 and 3.2 ADR.

CONSEQUENCES FOR THE ANTI-DOPING VIOLATIONS

Period of Ineligibility

Intentional Violation

70. Article 10.2 ADR provides the sanction to be imposed for ADRVs under Article 2.1 ADR (Presence) and Article 2.2 ADR (Use) is as follows:

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

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

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

10.2.1.1 The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional

71. r-EPO is not a Specified Substance. The period of Ineligibility shall therefore be four years pursuant to Article 10.2.1.1 ADR, unless the Athlete can establish that the ADRV was not intentional. The applicable case law establishes that this must be done on a balance of probability.

72. For unintentional doping to be proven a number of CAS cases have held that the Athlete must necessarily establish how the substance entered his/her body. Even in the CAS cases that have left open the theoretical possibility that an athlete might be able to rebut the presumption of intentionality without establishing the origin of the substance, it has been made abundantly clear that this will be the case only the most exceptional circumstances. I accept the CAS jurisprudence put forward in the AIU's written submissions. The circumstances of this case are far from exceptional.

73. In order to discharge her burden the Athlete needs to put forward sufficient credible evidence in light of all the facts established to show on the balance of probability that there is an explanation, more likely than not to be true, that the substance entered her body unintentionally. That burden comes nowhere close to being discharged on the facts of this case.

74. Even making allowances as I have for the Athlete so that no part of the AIU's case goes 'by default' the Athlete has provided no clear explanation for the Presence of r-EPO in the Sample. She has claimed that she did not take EPO (see email of 03 May 2018). However, the only additional information put forward in an attempt to explain the presence of r-EPO is that she altered her training from low altitude to high, and made some changes in her diet related to supplements and food. That is not sufficient evidence, let alone proof that the substance entered her body unintentionally given her basic personal duty to ensure that no such substance enters the body. It amounts to no more than speculation which is not enough to provide a defence.

75. The Athlete has failed to satisfy the burden placed upon her to demonstrate the ADRV was not intentional or otherwise to explain the Presence of r-EPO in her body.

Therefore, she must be subject to a period of Ineligibility of four years in accordance with Article 10.2.1(a) ADR.

DISQUALIFICATION OF RESULTS AND OTHER CONSEQUENCES

76. A period of Ineligibility of four years is therefore imposed on the Athlete commencing on the date of the Tribunal Award. The period of provisional suspension imposed on the Athlete from 30 September 2017 until the date of the Tribunal Award is credited against the total period of Ineligibility, provided it has been effectively served by the Athlete.

77. Pursuant to Article 10.1.1 ADR, the Athlete's results from the date of the ADRV viz. 28 August 2017 to the date of provisional suspension on 30 September 2017 shall be disqualified, with all resulting consequences, including the forfeiture of any medals, titles, awards, points, prizes and appearance money.

COSTS

78. The IAAF has asked for a contribution to its legal costs. In the result a hearing has not been necessary in this matter which I have determined upon the papers. In all the circumstances of the case and of the Athlete I decline to make any costs order against any party under Article 8.9.3 ADR.

DECISION AND ORDERS

- the Disciplinary Tribunal has jurisdiction to decide on the subject matter of this dispute.
- the Athlete has committed an ADRV under Articles 2.1 of the ADR.
- a period of Ineligibility of four years is imposed upon the Athlete commencing on the date of the Disciplinary Tribunal award. The period of provisional suspension imposed on the Athlete from 30 September 2017 until the date of the Tribunal Award shall be credited against the total period of Ineligibility.

-the Athlete's results from 28 August 2017 until the date of the provisional suspension on 30 September 2017 shall be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

-the Disciplinary Tribunal makes no order or award of costs.

THE RIGHT OF APPEAL

79. Article 8.9.2 of the ADR requires the Panel to set out and explain in its decision the rights of appeal applicable pursuant to Article 13 of the ADR.

80. As this proceeding involves an International Level Athlete, the decision may be appealed exclusively to CAS (see Article 13.2.2 of the ADR and Article 16.2 of the IAAF Disciplinary Tribunal Rules). The scope of review on appeal includes "all relevant issues to the matter and is expressly not limited to the issues or scope of review before the initial matter" (see Article 13.1.1 of the ADR). The deadline for filing an appeal to CAS is 21 days from the date of receipt of the decision by the appealing party (see Article 16.4 of the IAAF Disciplinary Tribunal Rules). In making its decision, CAS need not give deference to the discretion exercised by the Disciplinary Tribunal (see Article 13.1.2 of the ADR).



Raj Parker (Chair)

10 July 2018



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