SR/NADP/481/2015

NATIONAL ANTI-DOPING PANEL

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF CYCLING TIME TRIALS

Before:

Christopher Quinlan QC (Chairman)
Dr Barry O'Driscoll
Dr Kitrina Douglas

B E T W E E N:

UK ANTI-DOPING

Anti-Doping Organisation

-and-

ROBIN TOWNSEND

Respondent

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

A. INTRODUCTION

1. This is the final decision of the Anti-Doping Tribunal ('the Tribunal') convened pursuant to Article 5.1 of the National Anti-Doping Panel Procedural Rules to hear and determine a charge brought against Robin Townsend ('the Respondent') for a violation of Rule 2.1 of the Cycling Time Trial Anti-Doping Rules ('ADR').

2. Robin Townsend was born on 20 October 1969 and is 46 years of age. Cycling Time Trials ('CTT') is the National Governing Body for cycling time trials in England and Wales. The Respondent is licensed by CTT as a time trial cyclist and by virtue of Article 1.2.1 ADR bound thereby. By virtue of the ADRs UKAD has responsibility for results management of Cycling Time Trial anti-doping rule violations.

3. The Tribunal held a hearing on 1 December 2015. The hearing was attended by:

   - The Respondent
   - Alan Darfi, Respondent's solicitor
   - Denise Bayliss, witness
   - Mike Williams, witness
   - Stacey Cross, presenting case for UKAD
   - Graham Arthur, Legal Director, UKAD
   - Nicholas Sharpe, Cycling Time Trials, observing and witness

4. This document constitutes our final reasoned decision, reached after due consideration of the evidence, submissions and Arbitral Awards placed before us.

B. ANTI-DOPING RULE VIOLATION

5. Article 2.1 of the ADR makes it a doping offence to provide a sample that shows "the presence of a Prohibited Substance or its Metabolites or Markers" unless the athlete establishes that the presence is consistent with a Therapeutic Use Exemption ('TUE').

6. On 5 September 2015, a UKAD Doping Control Officer ('DC0') collected an In-Competition urine sample from the Respondent at the Burton & District Cycling Alliance 100 miles event ('the Event'). The Respondent competed for Team Swift and finished ninth, with a time of 03:40:23. The sample was taken from him at 17.26 at Etwall, Derbyshire. The sample was spilt into two separate bottles, reference numbers A/B1114697 respectively.

7. The A Sample returned an Adverse Analytical Finding ('AAF') for modafinil and modafinil acid, a metabolite of modafinil. Modafinil is classified as a Non-Specified Stimulant under s6.a of the 2015 WADA Prohibited List and is prohibited only In-Competition.

8. The Respondent was charged with an anti-doping rule violation ('ADRV') offence by letter dated 8 October 2015. The letter set out the details of the alleged doping offence with which he is charged (contrary to ADR Article 2.1) and a summary of the facts and the evidence relied upon by UKAD. The letter also imposed a provisional suspension with immediate effect.

9. The letter further informed the Respondent that he should reply to the letter indicating whether he wished to admit or deny the offence; whether he wished the B Sample to be analysed; to apply to have the provisional suspension lifted; and to make submissions in relation to sanction.

10. In a written response to the charge the Respondent accepted the results of the laboratory analysis of his sample and accepted the ADRV. He denied ingesting intentionally the Prohibited Substance and stated that its presence in his sample was the result of fault or negligence on his part. The "*only possible explanation*" he could provide was that his sample was "*spiked at the event*".

11. On 3 November 2015 the Tribunal Chairman, Christopher Quinlan QC, issued written procedural directions.

12. The Respondent does not have a TUE (see statement Paul Ouseley, para 12).

13. Given the admission by the Respondent of the ADRV the only issue to be resolved by the Tribunal is the sanction to be applied in respect thereof.

C. SANCTION

(1) The Respondent's Case

14. The Respondent's case was that he did not knowingly ingest the Prohibited Substance. The *"only explanation [he could] provide"*[1] for the AAF was that it must have been caused by the 'spiking' of the drink in the bottle on his bicycle when he started the Event. He believed the person responsible was a man whom he named. He told us, and we accept, that he was and remains in fear of that man. Accordingly our published decision has been redacted so as not to reveal his identity. That man, [redacted] was competing at the Event.

15. The Respondent gave evidence at the hearing. He expanded upon his long and detailed witness statement. He is an experienced and successful amateur cyclist. At the relevant time he was competing for Team Swift. A fortnight before the Event he was crowned national champion. He said he was competing at the Event for the benefit of his team for he had nothing to gain (personally) from doing so.

16. Central to his case was a longstanding dispute with a man named [redacted]. Dispute may be unfair for on the unchallenged evidence before us the hostility was in one direction: from [redacted] to the Respondent and to his partner Denise Bayliss ('DB'). They believed it derived from DB's involvement in a Facebook group called "Women's Cycling Sheffield" in 2012. It had continued ever since.

17. Two particular examples of the hostility stand out. On 30 September 2014 [redacted] sent DB a deeply unpleasant and threatening text message which read:

> *"you ignorant bastard.* [redacted] *That little c***[2] is only 2 minutes behind me now. I'm going to tear you and him apart. F***ing[3] lock your doors as I am going to come and rip you to shreds if you ever cross me again it will be the end of everything you know".*

[1] Respondent's statement, §36
[2] We have removed the last three letters; the sender did not
[3] Again we have edited the word

18. Difficult though it is to follow, they believed "c***" to be a reference to [redacted]. They did not report it to the police but did inform CTT.

19. Further, at an evening event in January 2015 [redacted] tried to provoke the Respondent to fight him. He declined to join him in the car park. The Respondent thought Team Swift refusing [redacted] a ride was behind that particular episode. He saw him at a race in July 2015.

20. The opportunity for 'spiking' was narrow. The Respondent saw [redacted] at the Event, where he too was competing. It arose when he left his bicycle unattended for no more than 20 minutes while he was registering inside the Event headquarters. The Respondent said that in reality he thought it must have been done by his 'clean' bottle being replaced with a 'dirty' one. The 'dirty' bottle must have contained a drink identical (to the eye) to his but having been 'spiked' with the Prohibited Substance. [redacted] would know what bottles and drinks he used as the Respondent [redacted]

21. Leaving a bicycle unattended is normal practice at amateur events and it is "common place" for riders to work on other riders' bicycles; the inference being that none would (particularly) notice [redacted] (or another) interfering with his bicycle.

22. When registering he said he saw signs informing the reader that anti-doping testers were operating at the Event. Once he had completed that task he returned to his bicycle and to his vehicle where DB had remained, preparing for the race. She was the only person (in addition to him) who had access to his race bottles, which were in the vehicle, having been prepared in advance. She handed him the bottles during the race so the only one that could have been 'spiked' or swapped was the one left on the bicycle while he was registering.

23. He said he did not ride "*fantastically well*" and finished ninth. He made an "*error*" in not declaring on the doping control form any of the supplements or products he was using. It was the first time he had ever been tested and had received no anti-doping education. He said his supplements were "*big brands*" none of which he had had tested following notification of the AAF.

24. He insisted he had no reason to dope and everything to lose. In advance of the hearing he told UKAD that he did not want it to investigate [redacted]. He said he was afraid of him and in any event did not believe such investigation would bear fruit. [redacted] was a *"dangerous man"* who hated him. He believed it was either [redacted] himself who swapped the bottles or someone on his behalf.

25. In support of his case he pointed to his long and successful amateur career. He said he was competing at the Event for the benefit of his team. He had no need to post a fast time; he had only to finish. Having just been crowned champion, he had nothing to prove and everything to lose if he doped. He added, *inter alia*, that he knew that anti-doping testing would take place and believed that he, as national champion, would be targeted for testing.

26. Denise Bayliss gave evidence. She confirmed the truth and accuracy of her witness statement, which we considered as well as the exhibits DB1: 1-18. She confirmed the truth and accuracy of her witness statement and said she had received a lot of *"abuse and inappropriate conduct"*. She agreed with the narrative of their treatment and experiences as set out in the Respondent's witness statement.

27. Mike Williams is the Co-Manager and Secretary of the Yorkshire District of CTT. We considered the content of his letter and evidence before us. He has known the Respondent a long time and opined that he is an outstanding athlete who had nothing to gain from taking the Prohibited Substance.

28. In his letter dated 7 November 2015 Neil Allonby states that he has known the Respondent *"as a good friend and...a competitive cyclist'* for over 35 years. He expressed himself to be *"utterly confident of* [his] *integrity"*. He was *"incredulous to be have been advised"* of the AAF and could not *"envisage a circumstance in which* [the Respondent] *would take a performance enhancing drug"*.

29. In an email dated 11 November 2015 (19.28) Sharon Clifford observes that the CTT do not *"routinely drug test"* at many events but do so randomly at prestigious meetings or races such as the Event. She comments that the testers do not hide and their presence is obvious to competitors.

30. In addition the Respondent relied upon the following material:

30.1. Character testimonial from Graham Barker (12 November 2015).

30.2. Photographs of Products, including supplements.

30.3. Letter from Dr Andrew Marshall dated 21 October 2015 stating that the Respondent has never been prescribed modafinil.

30.4. Email exchange with Selina Hines of LGC Group in which Ms Hines advised that testing the Respondent's hair would not be appropriate *"as it is unlikely that the length of hair available would cover the time period in question"*.

30.5. Extract from 'Time Trialling Forum' dated July 2010.

30.6. Extract from 'Time Trialling Forum' dated July 2012.

30.7. Facebook thread dated February to March.

30.8. Private Facebook messages dated October 2014.

30.9. Extract from article interview with Michael Broadwith.

30.10. Three photographs from amateur cycling events demonstrating bottles being left unattended on bikes.

30.11. Photograph of the Respondent riding, showing drinks bottle.

31. In addition to the evidence, the written and oral submissions, the Respondent relied upon the following Arbitral Awards, each of which we had regard to:

- *ITF & WADA v Gasquet*, CAS 2009/A/1926, CAS 2009/A/1930 (especially §5.9)
- *UCI & WADA v Contador & RFEC*, CAS 2011/A/2384 & 2386 (particularly §§259-263)
- *Charlene Van Snick c. Fédération Internationale de Judo (FIJ)*, CAS 2014/A/3475

32. *Charlene Van Snick* is a sabotage case. Mr Darfi placed particular reliance upon that case in inviting us to the view that the Respondent discharged the burden upon him if he satisfied the Tribunal (on the balance of probabilities) that the 'spiking' case more

likely than not was the only alternative of deliberate doping. He submitted that on the evidence those were the only two explanations for the AAF. He submitted that based on *inter alia* the evidence, what he described as the "*implausibility*" of the Respondent doping in the Event and the character evidence he had discharged that burden.

33. Alternatively, he sought to rely upon ADR Articles 10.4 and 10.5.2.

34. We invited Mr Darfi to deal with the photographs of products, including supplements. Until that point the Respondent had been silent on them and we were concerned to understand (1) what he had taken (2) when and (3) whether one or more might be an alternative explanation for the AAF. Ultimately, the Chairman took the Respondent through each photograph. He had last used creatine monohydrate in 2014. He had not used HMB, beta-alanine or taurine this year. His drinks at the Event were made from a supplement (4:1 carbohydrate whey protein isolate). He used energy gel during the Event and a Zero sports drink tablet on the morning of the Event. Between his last race and the Event he used 90+ Protein as part of his "*recovery*"(after training) and High5 Energy Source sports drink when training. The last time he used the concentrated beetroot juice was when he competed in the 12-hour race. He said he had not used the other products this year. He said he checked the ingredients of each against the Prohibited List on the UKAD website.

(2) UKAD's Response

35. UKAD did not accept that the Respondent's 'spiking' explanation was "*sufficient*" to discharge his burden of proof. It argued that his 'spiking' "*theory*" (as it characterised his case) was unsupported by evidence and so he had failed to discharge his burden to show that he did not act intentionally pursuant to ADR Article 10.2.

36. UKAD relied upon an unchallenged statement from Professor David Cowan, Director of the Drug Control Centre. King's College, London. He said modafinil is poorly soluble in water which makes it difficult but not impossible to dissolve in a drink. UKAD pointed to this and to the Respondent's failure to mention in his written (or oral) evidence the presence of a bitter taste in his drink, which Professor Cowan said many reported when taking modafinil

37. UKAD also relied upon the unchallenged written evidence of Nick Wojek, UKAD Head of Science and Medicine. He said that modafinil is a prescription only medicine, which will increase alertness and concentration. He opined that it would benefit performance in an endurance race such as the Event. Therefore it may have had a performance enhancing effect for the Respondent.

38. UKAD did not challenge the Respondent's evidence that he and Ms Bayliss were threatened. However, it observed that the dispute had been ongoing for some time and there was no explanation for why [redacted], or anyone else, would seek to sabotage the Respondent's career and reputation now.

39. UKAD called Nicholas Sharpe, CTT National Secretary. DB forwarded to him the text referred to above and he knew something of the reported history between [redacted] and the Respondent and DB. He said no action was taken against [redacted] (about the text) as there had been no "formal complaint" (as he put it). Asked by the Panel, he said the Respondent had not been target tested at the Event (as a result of a tip-off or otherwise). He explained that the Respondent was one of five riders selected at random from a pool comprising 10 seeded riders. The Respondent was and was always going to be one of the top ten seeded riders.

(3) Determination

(a) Discussion

40. This is the Respondent's first ADRV.

41. ADR Article 10.2 provides:

> *10.2 The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2, or 2.6 is that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6.'*

10.2.1 The period of Ineligibility shall be four years where:

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

b. The Anti-Doping Rule Violation involves a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.

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

42. Modafinil is a non-Specified Stimulant under S6.a of the Prohibited List. It is prohibited 'In-Competition". The burden is upon the athlete to establish (on the balance of probabilities) that the ADRV was not intentional in order to reduce to two years the otherwise applicable period of Ineligibility, namely four years.

43. "Intentional" is defined in ADR Article 10.2.3 thus:

As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.'

44. The Respondent did not seek to rely upon the second of the two specific instances in Article 10.2.3, namely that the use of modafinil "*was used Out-of-Competition in a context unrelated to sport performance".*

45. The Respondent has the burden of establishing (on the balance of probabilities) that the ADRV was not intentional. When deciding that issue it is necessary to apply the definition of "intentional" as adumbrated in the first two sentences of Article 10.2.3. They provide that "intentional" as used in Article 10.2 means those Athletes or other Persons who cheat. For an Athlete who commits an ADRV, including pursuant to Article 2.1 ADR (presence), the sanction is four years unless he can show that he did not act intentionally as defined.

46. The consequence of the definition of "intentional" in Article 10.2.3 of ADRV is that the Respondent in seeking to reduce the otherwise mandatory period of Ineligibility from four to two years in reliance on Article 10.2.1(a) must establish on the balance of probabilities that he is not an Athlete who has cheated. To do so he must establish that (i) he did not engage in conduct which he knew constituted an ADRV; or (ii) he did not know there was a significant risk that his conduct might constitute an ADRV but nonetheless manifestly disregard that risk".

47. This case raised questions as to the practical effect of Article 10.2.3 where an athlete asserts (as here) (1) he did not intentionally ingest a Prohibited Substance and (2) asserts he is the victim of 'spiking' (or some other unknown occurrence that caused the AAF).

48. UKAD submitted that the Respondent must explain the conduct that led to the ADRV, which includes providing an explanation as to the circumstances surrounding ingestion, including the means and timing thereof. In so arguing it relied, *inter alia,* upon the NADP decision *UK Anti-Doping v Lewis Graham* (27 August 2015, SR/0000120259). At §38 that Panel observed:

> *"...where the ADRV arises under Article 2.1 without establishing the likely method of ingestion of the Prohibited Substance it is difficult to see how this Tribunal could properly and fairly consider the question of intent in relation to the conduct which led to that ingestion."*

49. That Tribunal concluded (at §46):

> *"For the reasons set out above, we consider that it is incumbent upon an Athlete who wishes to establish that the ADRV was not intentional to satisfy the Tribunal*

on a balance of probabilities as to (a) the nature of the conduct which led to the ADRV, which in the case of an AAF will be how the Prohibited Substance came to be found in his body and (b) he did not know that such conduct constituted an ADRV or knowing that there was a significant risk that such conduct might constitute or result in an ADRV, he did not manifestly disregard that risk."

50. In the relevant provisions of the 2009 WADC (and its derivatives) there was a specific requirement that the athlete must establish how the Prohibited Substance has entered his system. That requirement remains in the 2015 WADC in relation to No Fault or Negligence and No Significant Fault or Negligence. It is not repeated in the Article 10.2.3 definition of "Intentional". It follows that there is no such specific requirement in the definition of intention.

51. However, where the onus is on the Athlete to establish a lack of intent, he faces very significant hurdles in doing so where he cannot identify how the Prohibited Substance came to be in his system. We agree with the Tribunal's observations in *UKAD v Songhurst* (8 July 2015, SR/0000120248, §29):

> *"The scientific evidence of prohibited substance in the body is powerful evidence and requires explanation. It is easy for an athlete to deny knowledge and impossible for UKAD to counter that other than with reference to the scientific evidence. Hence the structure of the rule."*

52. In *Songhurst* the athlete submitted that if the Tribunal accepted his firm denial that he had ingested intentionally the Prohibited Substance, that was sufficient to discharge the burden upon him. The Tribunal rejected that submission concluding that he had failed to provide any "*real explanation* as *to how the substance came to be found in his body*". And so ailed to discharge the burden under Article 10.2 (§31).

53. For those reasons we also consider it will be a rare, possibly very rare, case where the athlete will be able to satisfy the burden of proof as to intent without establishing the likely means by which the Prohibited Substance entered his system.

54. In the current case the Respondent asserts that he did not deliberately ingest the Prohibited Substance. He attempted to establish that the commission of the ADRV by him was not intentional by pointing to alleged "conduct" on the part of another, namely the 'spiker'. That was the "likely" means by which the Prohibited Substance came to be in his system. It was therefore necessary for us to consider that explanation.

55. As for the correct approach to analysing such an explanation, three further NADP decisions merit mention. In the NADP case of *UK Anti-Doping v Anderson* (15 May 2013, SR/0000120082), a boxer alleged that amphetamine found in his post-fight urine sample had been put into his coffee by his estranged partner prior to the fight without his knowledge. That Tribunal noted that:

> *"In alleged spiking cases, particularly when the substance ingested has clear performance enhancing potential, the tribunal must be especially cautious before accepting an athlete's case because of the obvious potential for collusion, even where the alleged spiker is said to have admitted the spiking".*

56. It also observed that various aspects of the spiking claim were implausible, and noted the fact that there was no independent and objective corroboration of the spiker's confession. It ruled:

> *"We have come to the conclusion that the Athlete's evidence is not strong enough to prove on the balance of probabilities the case advanced by him, namely that amphetamine entered his system by drinking a cup of coffee deliberately laced with speed by Ms [X] at the Jury's Inn, Sheffield, during the afternoon or evening of 19 October 2012. We do not rule out the possibility that this may have happened, but we are clear that it is not proved by a balance of probability"*[4].

57. In *UK Anti-Doping v Jordan McMillan* (21 April 2015, SR/0000120235) the Tribunal observed (at §109):

> *"The Tribunal disagreed with Mr Arthur's submission that corroborating evidence is required to establish on the balance of probability how a Prohibited Substance entered the body/system of an Athlete for the purposes of ADR 10.5.1 or 10.5.2.*

[4] *Anderson,* paragraph 4.7

Evidence from one source would be sufficient provided it was considered reliable and credible."

58. The ADR do not expressly require corroboration, if corroboration means confirmatory evidence independent of the athlete. The correct approach, in our view, is that adumbrated in *UK Anti-Doping v Abdul Barry Awad* (11 May 2015, SR/0000120231, at §28:

"Corroborative evidence is of crucial importance in any 'spiking' case. A simple denial of deliberate ingestion and the advancing of a spiking theory will never be enough. In the CAS appeal proceedings in respect of the Gibbs case, CAS noted that 'to permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and the Rule'".

59. We do not read that as being inconsistent with *Gasquet*, *Contador* or (insofar as we can tell from the incomplete English version of the Award) *Charlene Van Snick*.

(b) Article 10.2.1

60. We have reached our conclusion having considered all the evidence, submissions and Arbitral Awards with great care.

61. The Respondent's denial gets him only so far, no matter how vehement, how oft repeated and emotional. Of itself it does not and cannot discharge the evidential burden upon him to establish the ADRV was not intentional. He said the explanation was that the content of the bottle on his bicycle at that start of the Event must have been spiked.

62. We considered the 'spiking' explanation and evidence relating thereto critically and with care. Having done so we are not satisfied that it is a more likely explanation for the AAF than intentional doping. In particular:

62.1. There is no direct evidence of 'spiking'. His case is based upon (1) a denial of knowingly ingesting the Prohibited Substance; (2) what we shall call motive against a background of established hostility; (3) opportunity on the part of the 'accused'; and (4) an assertion that there is no other possible explanation.

62.2. We do not hold against the Respondent the fact that he did not want UKAD to investigate the man he said was behind the 'spiking'. We do not speculate as to what such an exercise might or might not have revealed.

62.3. Similarly, the hair test point is neutral.

62.4. Motive: for these purposes we accept the background of hostility, threats and other unsavoury conduct on the part of [redacted]. That is what we mean by motive: there is a person with an established animus towards this Respondent. That man has shown himself capable of threatening DB that he would "*rip you to shreds if you ever cross me again it will be the end of everything you know*".

62.5. However, it is still a distance to travel from there to carrying out a spiking operation of the kind alleged.

62.6. Further, the last incident between them was in January 2015 some eight months before the Event.

62.7. Further the opportunity for him (or someone acting on his behalf or instruction) to carrying out the 'spiking' was limited. In his witness statement the window was ten-fifteen minutes[5]; in evidence it was up to twenty minutes. One needs also to focus on what the 'enterprise' would have involved. The spiker would have to have a bottle identical to the Respondent's, made up with the same supplement-based drink he had prepared for himself, carrying it on the chance that he would leave his bicycle unattended. He would then have had to swap the bottle (if that is how it was done), without being spotted or challenged in any way. Further it was not guaranteed that the Respondent would in fact be tested. It would be an (1) involved enterprise to undertake, with (2) the attendant risk of discovery, with (3) no guarantee of 'success' (namely the Respondent being tested and returning an AAF).

62.8. We also note the fact the Respondent did not notice that the first bottle drink tasted in any way different from how it should.

[5] §25

62.9. Further, the Prohibited Substance was one which would have, or at least had the potential, to have a performance-enhancing benefit in the Event.

63. Finally, any other possible explanation. Mr Darfi explained that the Respondent's position was that there was no other possible explanation, including contaminated supplement/s. It was either knowing ingestion by the Respondent or he was the victim of 'spiking'. At the relevant time the Respondent was using supplements. A contaminated supplement/s is not uncommonly the cause of AAF's. None of his supplements had been analysed to exclude contamination by modafinil. In the absence of such evidence we cannot exclude it. We appreciate and recognise the financial and other limitations of an amateur athlete, which the Respondent pressed upon us. Like the Panel in *Lewis Graham*[6] we have some sympathy for that but it cannot alter our (proper) approach to Article 10.2. It has universal application and cannot depend upon the individual circumstances of the athlete.

64. Therefore, on the evidence before us we are bound to conclude that the Respondent has not discharged his burden to establish the ADRV was not intentional.

(b) Article 10.4 & 10.5.2

65. The Respondent also sought to rely upon ADR Article 10.4 or Article 10.5.2.

66. Article 10.4 provides:

> *If an Athlete or other Person establishing in an individual case that he/she bears no Fault or Negligence for the Anti-Doping Rule Violation charged, then the otherwise applicable period of Ineligibility shall be eliminated.*

67. Article 10.5.2 states:

Application of No Significant Fault or Negligence beyond the Application of 10.5.1

> *In an individual case where Article 10.5.1 is not applicable, if an Athlete or other Person establishes that he or she bears No Significant Fault or Negligence, then (subject to further reduction or elimination as provided in Article 10.6) the otherwise applicable period of Ineligibility may be reduced based on the Athlete's*

[6] §51

or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

68. The Respondent's reliance upon each Article fails. In respect of each Article it is a requisite that the athlete has established the ADRV was not intentional. In this respect the Respondent failed to establish on the balance of probabilities that the ADRV was not intentional.

(c) Commencement of suspension

69. The Respondent failed to establish grounds for eliminating or reducing the mandatory period of Ineligibility. Accordingly pursuant to Article 10.2.1(a) a period of Ineligibility of four years must be imposed.

70. The Respondent competed on 13 September 2015 but has not competed since being provisionally suspended. Accordingly, the period of Ineligibility shall start on 8 October, the date upon which he was provisionally suspended (ADR Article 10.11.3(a)).

71. The Respondent's status during the period of Ineligibility is as provided in ADR Article 10.12.

(d) Disqualification of results

72. By operation of ADR Article 9, the Respondent is automatically disqualified from the Event on 5 September with all resulting consequences, including forfeiture of points and prize and appearance money, if any.

D. SUMMARY

73. For the reasons set out above, the Tribunal finds:

(a) The anti-doping rule violation has been established.

(b) The period of ineligibility imposed is four years commencing on 8 October 2015.

(c) The Respondent is automatically disqualified from the Event on 5 September with all resulting consequences.

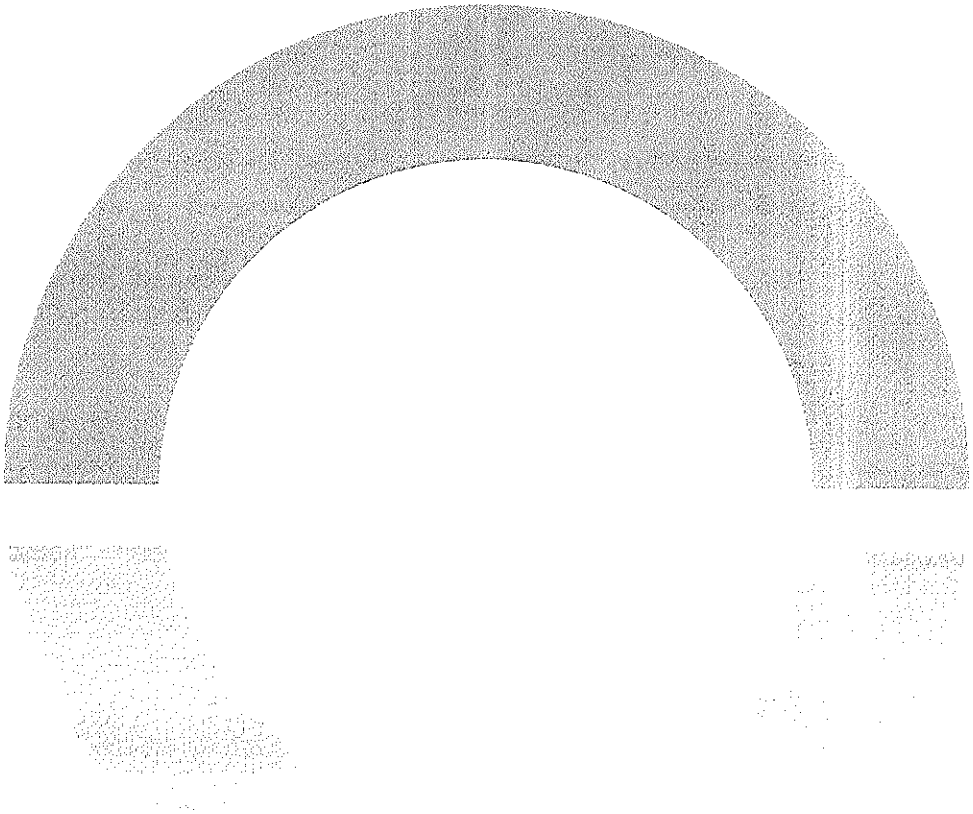
E. <u>RIGHT OF APPEAL</u>

74. In accordance with ADR Article 13 the parties may appeal against this decision by lodging a Notice of Appeal according to the applicable time limits.

Christopher Quinlan QC, Chairman

On behalf of the Tribunal

22 December 2015



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