SR/007/2023

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF THE BRITISH BOXING BOARD OF CONTROL

Before:

Jeremy Summers (Chair)
Professor Kitrina Douglas
Blondel Thompson

BETWEEN:

UK Anti-Doping

Anti-Doping Organisation

and

Emir Ahmatovic

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

Introduction

1. This is the unanimous decision of an Anti-Doping Tribunal (the "Tribunal") convened under Article 5.1 of the 2021 Rules of the National Anti-Doping Panel (the "Procedural Rules") and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2021 (the "ADR") to determine an Anti-Doping Rule Violation ("ADRV**"**) alleged against Mr Emir Ahmatovic (the 'Athlete').

2. The alleged ADRV was a violation of ADR Article 2.1 (presence of a Prohibited Substance in the Athlete's Sample) and ADR Article 2.2 (Use or attempted Use of a Prohibited Substance).

3. The Athlete was charged by letter issued by UK Anti-Doping ("UKAD") dated 1 November 2023. The Tribunal was appointed by Kate Gallafent KC, President of the National Anti-Doping Panel (the "NADP").

4. On 17 January 2024, I was appointed Chair of the present Panel. Professor Kitrina Douglas and Blondel Thompson were appointed to the Panel on 26 July 2024.

5. The Athlete attended in person at a remote hearing, convened on 13 September 2024, and was represented pro bono by Mr Yasin Patel of counsel. UKAD was represented by Mr Tom Middleton. The Tribunal records its gratitude to both advocates for their assistance in this matter.

6. Additionally, present at the hearing on 13 September 2024 were:

UKAD

James Laing, Lawyer (Observer).

Joseph Wightman, Legal Officer (Observer).

The Respondent

Emir Ahmatovic, Athlete.

Yasin Patel, Counsel.

Caitlin Haberlin-Chambers, assisting Mr Patel.

Kabala Mbaluku, Translator.

Other

Eleanor Stocker, Case Manager, NADP Secretariat

James Paton, Trainee Solicitor, Osborne Clarke LLP.

7. This is the reasoned decision of the Tribunal. Each member contributed to it, and it represents our conclusions. It is necessarily a summary. It is reached after appropriate consideration of all the evidence, submissions and other material placed before us. Nothing is to be read into the absence of specific reference to any aspect of the material or submissions before us. We considered and gave appropriate weight to it all.

8. Words and expressions defined in the ADR, unless the context otherwise requires, have the same meaning in this decision.

Jurisdiction

9. The British Boxing Board of Control ("BBBoC") is the national governing body for the sport of professional boxing in the United Kingdom ("UK"). It sanctions bouts across various weight classes ranging from flyweight to heavyweight, and provides licences to domestic and international boxers, which permits them to participate in these bouts in the UK.

10. The BBBoC has adopted the ADR, and all boxers who are licensed by and/or participate in Competitions and other activities that the BBBoC organises, convenes, authorises and/or recognises are subject to and required to comply with the ADR.

11. The Athlete was granted a Foreign Boxer licence to compete in a bout on 9 June 2023. In granting a Foreign Boxer licence to the Athlete, the BBBoC was provided with confirmation that the Athlete was a licensed boxer of the German Boxing Association.

12. ADR Article 1.2.1 provides that:

> *"1.2.1 These Rules shall apply to:*
>
> *[(a)]*
>
> *(b) all Athletes (including International-Level Athletes) and Athlete Support Personnel who are members of the NGB and/or of the NGB's members or affiliate organisations or*

licensees (including any clubs, teams, associations or leagues) or otherwise under the jurisdiction of the NGB (including Recreational Athletes);

(c) all Athletes (including International-Level Athletes) and Athlete Support Personnel participating in such capacity in Events, Competitions, and other activities organised, convened, authorised or recognised by the NGB or any of its members or affiliate organisations or licensees (including any clubs, teams, associations or leagues), wherever held;

[(d)(e)]"

13. The Athlete was at all material times therefore, subject to the jurisdiction of the BBBoC and so required to comply with the ADR. Jurisdiction was not in any event challenged.

Procedural History

14. The matter was subject to an unfortunately long procedural history prior to its hearing.

15. On 29 January 2024, the Chair convened a directions hearing by way of a video conference call. The Athlete was, at that time, represented by Mr Kabala Mbaluku, a German qualified lawyer. With the agreement of the parties, directions were issued leading to a hearing being scheduled for a date, to be confirmed, in May 2024.

16. Certain directions ordered were not complied with and a further video conference call to address the position was convened on 28 March 2024. At the suggestion of the Chair, one of the matters canvassed at that time was the possibility that the Athlete and Mr Mbaluku might benefit from the appointment of UK based pro bono counsel. In any event, revised directions were issued with the hearing date being pushed back to June 2024.

17. Subsequent to that further directions hearing, Mr Patel was instructed on behalf of the Athlete pro bono, and it was at that time anticipated that the revised directions issued on 28 March 2024 would be followed with the assistance of Mr Patel.

18. Regrettably, this was not possible and in light of further non-compliance, with relevant

directions a third directions hearing was convened, again by video conference, on 21 June 2024. The directions were then further revised, with the agreement of all parties. This included the hearing being put back to 13 September 2024.

19. The proceedings however continued to suffer from slippage to the agreed timetable, requiring directions to be further amended on 23 July 2024. Despite those amendments, the Athlete remained bound to serve all his evidence and submissions by 26 July 2024.

20. That deadline also passed, and the Chair accordingly requested an update from the Athlete.

21. On 29 July 2024, a response was received from Mr Patel as follows:

> *"I have been chasing Mr Ahmatovic in relation to his statement and late last week I received an updated version of his statement that I am currently formatting so that it is in a presentable form. I would hope to have that ready by tomorrow.*
>
> *I have been preparing submissions on behalf of Mr. Ahmatovic and they are ready to serve save any further arguments that arise from further statements.*
>
> *This evening I received a rough statement from the Trainer, Serdar Nergis. I am hoping to complete any/all corrections in relation to this statement and get it served as soon as possible: ideally tomorrow evening or Tuesday morning.*
>
> *Similarly, early this evening I received a statement from Dennis Lindner and this is in a rough form. I am currently in the process of putting this is statement form and getting errors corrected and agreed. This statement should be ready to be served by tomorrow.*
>
> *With regards to a statement from Kabala, he has been unwell and very sick since last Tuesday and therefore he has been unable to provide a statement. We hope to have a statement ready by tomorrow.*
>
> *I apologise again for the delay in providing evidence in support of Mr. Ahmatovic's case, but the reasons provided above are the honest truth."*

22. In light of that update from Mr Patel, on 30 July 2024 the Chair asked that a message was sent to the parties in the following terms:

"I am concerned that a number of directions and more recently commitments that you have made voluntarily have not been adhered to:

1. Absent the most compelling of reasons, I will not be willing to admit evidence on behalf of the Athlete that is served after 4 pm on Friday 2 August 2024.

2. UKAD is granted a further 7 days, after the date of service of any additional evidence on behalf of the Athlete, to serve its evidence in response.

3. Absent a request from UKAD, it is highly unlikely that I will be willing to further delay the hearing date listed for 13 September 2024."

23. A response was received on behalf of the Athlete on 2 August 2024:

"Can I thank the Chair, Panel and UKAD for their patience. Unfortunately, I have had to wait for other parties to provide me with the information which has been out of my hands.

We are still waiting for 1 statement: from Kabala. He has been very unwell and thus we have not been able to obtain the document, but as soon as it is available, I will provide it to the Panel.

So the panel are aware, and if it is any consolation, the delay has not been ideal for me as I am away on a break and instead of recharging the batteries I have been having to prepare submissions, statements and bundles."

24. On 6 August 2024, UKAD sent a message to the NADP Secretariat as follows:

"UKAD is grateful to the Chair for previously extending its deadline to file additional evidence in this matter. My understanding from the latest extension is that the Chair was prepared to afford UKAD a further seven days from the previous deadline, owing to the fact Mr Ahmatovic was going to be late in filing his additional evidence. It was therefore envisaged that UKAD would be required to file any additional evidence by 16 August (this being a further seven days from the previous deadline).

However, UKAD notes with disappointment from the correspondence received below that additional evidence remains outstanding from Mr Ahmatovic. Specifically, it is said that evidence remains outstanding from Mr Kabala Mbaluku despite multiple previous extensions. Further, Mr Ahmatovic is seeking to rely on four pages of medical reports (located at pages 3 – 6 of the 'Emir Ahmatovic Bundle') which have not previously been disclosed and have not

been provided in a legible format. Plainly, UKAD will not be able to assess whether it needs to file additional evidence until it has had sight of all the evidence on which Mr Ahmatovic intends to rely. It is of concern to UKAD that it is not able to consider the medical reports, as without sight of the contents, we do not know if we will need to seek any expert opinion as to what the medical reports purport to show.

With the above in mind, I would be grateful if the Chair could be asked to provide an indication of whether he is prepared to admit further evidence from Mr Ahmatovic at this stage (noting he previously directed he would not be prepared to admit evidence after 2 August "without the most compelling of reasons"). In the event the Chair is prepared to admit further evidence from Mr Ahmatovic, then UKAD would be grateful if a further deadline could be given for this so it can consider whether it needs to seek a further extension to the current timetable."

25. In response, the Chair asked that following message was conveyed to the parties on 6 August 2024:

"Please can the parties be advised as follows:

1. At the present time, I am not minded to admit any additional evidence on behalf of the Athlete but would be prepared to consider the position further if and when any application is received to serve such evidence out of time.

2. I am content for UKAD's evidence to be served not later than 16:00 (BST) on 16 August. 2024.

3. All other directions issued on 21 June 2024 remain as ordered. Without limitation, the hearing date remans as scheduled on 13 September 2024."

26. It should be noted that in his initial response to the Charge, the Athlete indicated that he wished to challenge the validity of the testing process. That position appeared to have been withdrawn by Mr Mbaluku during the directions hearing on 28 March 2024, when Mr Mbaluku was still representing the Athlete. However, having instructed Mr Patel, the Athlete again renewed his position that the Testing process had been flawed.

27. On this latter point, at a scheduled final pre-hearing conference call on 11 September 2024, Mr Patel indicated that following communication with Mr Lindner, the Athlete's manger, at 15:55 that day, he wished to serve evidence from a Mr Dalvinder Ghag, who he understood to be an independent "cutman" who had been in the Athlete's corner for

the fight to which these proceedings relate.

28. Mr Ghag would give evidence as to the state of the Athlete's changing room, which Mr Patel would wish to rely on to challenge the reliability of the Testing process. Mr Patel indicated that the Athlete would reluctantly be willing to agree an adjournment of the proceedings to enable UKAD to respond to the new evidence.

29. Given the unfortunate procedural history set out above, and noting point 1 of the (further) revised directions issued on 30 July 2024, the Chair expressed significant concern that the Athlete was seeking to adduce additional evidence at this very last stage.

30. However, given the fact that the Athlete was not in the UK and did not speak English fluently, to ensure fairness the Chair directed that, if any application to serve evidence was to be made out of time, a written statement was required to be provided from Mr Ghag by no later than 09:00 on 12 September 2024. He further directed that the statement, or an email from Mr Ghag should confirm that this was the totality of the evidence that he wished to give, confirm its accuracy and be accompanied by a statement of truth.

31. At 08:33 on 12 September 2024 the NADP Secretariat was sent (it is assumed by Mr Patel) a pdf document entitled "Dalvinder Ghag statement". The document was not, however, a statement, but an unsigned letter bearing a date of 9 June 2023 (being the date of the relevant fight and subsequent Sample collection) purportedly sent by Mr Ghag to an unspecified recipient(s) at the BBBoC. The purpose of the letter was unclear, although it seemed principally to complain about the conditions that the Athlete was subjected to prior to the fight.

32. Given that the document was dated 9 June 2023, it was not immediately clear why it was not produced until 11 September 2024. Given also the importance that Mr Patel submitted should be attached to the evidence, it was further a matter of some regret that Mr Ghag's letter was only provided in response to a direction from the Chair. It would have been preferable had the position been flagged in correspondence in advance of the conference call on 11 September 2024.

33. Having carefully considered the position, the Athlete's application seeking permission to

adduce Mr Ghag's evidence was refused for the following reasons:

i. No compelling reason for the service of late evidence as required by the direction of 30 July 2024 was put forward. Mr Lindner had submitted a statement dated 27 July 2024 and so had been in contact with Mr Patel since that date at the latest.

ii. Mr Ghag's letter was not a statement as had been clearly required by the Chair.

iii. The letter was unsigned and in pdf form, and its veracity could not therefore be confirmed.

iv. The letter could not have been prepared in relation to the ADRV, it having been prepared (on 9 June 2023) before the Adverse Analytical Finding ("AAF") had been established from the analysis of the Athlete's Sample, which was still to be conducted. The purpose of the letter was therefore unclear.

v. Mr Ghag had not confirmed that he still considered the statement remained accurate. In this respect, it was further unclear whether he had been referred to the UKAD evidence on the probity of the Testing process.

vi. It was not now possible for UKAD to obtain evidence with which to directly challenge Mr Ghag's purported evidence.

vii. Given the lengthy delay in the proceedings to date, a further delay to enable UKAD to serve indirect evidence in response to Mr Ghag's purported evidence was not reasonable or proportionate.

viii. Mr Patel remained able to challenge the UKAD witnesses in cross-examination as to the reliability and/or efficacy of the Testing process.

34. It should also be noted that there had been correspondence passing between the Chair and the parties in which the Chair had repeatedly made it clear that the hearing would proceed on 13 September 2024. It was accordingly of some regret that a position was advanced on behalf of the Athlete as late as 11 September 2024 that would likely have led to the hearing being further adjourned.

35. The Procedural Rules provide that proceedings are conducted in English and, at the

current time, if an athlete requires a translator that must be paid for at his or her expense. The Tribunal suggest that this provision might benefit from further consideration when the Procedural Rules are next updated. In any event, the Athlete was unable to retain a translator, and with the consent of UKAD, Mr Mbaluku kindly functioned as an informal translator. The Tribunal records its thanks for his time in doing so.

36. Mr Mbaluku was in Dubai at the time of the hearing, and so was not with the Athlete. The Chair therefore outlined a procedure to enable the translation to proceed as efficiently as possible, which the parties agreed with. Unfortunately, Mr Mbaluku became unwell during the hearing and was not able to participate after the lunch adjournment. Both the Athlete and Mr Patel confirmed that they were happy to continue in the absence of Mr Mbaluku, and helpfully the Athlete had been able to complete his oral testimony before Mr Mbaluku was forced to withdraw.

37. The hearing proceeded more slowly than had been anticipated by the parties and the oral evidence was not completed until 17:00. Following discussion between the parties, it was suggested that closing arguments should be dealt with by way of written submissions, and the Tribunal directed that these should be lodged with the NADP Secretariat by 16:00 on Friday 20 September 2024.

Background

38. On 9 June 2023, UKAD Doping Control Personnel ("DCP") collected a urine Sample from the Athlete following a heavyweight bout at York Hall, London.

39. As required, the Athlete split his urine Sample into two separate bottles which were given the reference numbers:

- A1182501 (the "A Sample"); and
- B1182501 (the "B Sample").

40. Both Samples were transported to the World Anti-Doping Agency ("WADA") accredited laboratory, the Drug Control Centre, King's College London. The A Sample was

analysed in accordance with WADA's International Standard for Laboratories. Analysis of the A Sample returned an AAF for 17β-hydroxymethyl,17α-methyl-18-norandrost-1,4,13-trien-3-one, a Metabolite of metandienone at an estimated concentration of 2.2 ng/mL.

41. Metandienone is listed under section 1.1 of the WADA 2023 Prohibited List as an Anabolic Androgenic Steroid. It is a non-Specified Substance that is prohibited at all times.

42. The Athlete did not have a Therapeutic Use Exemption for metandienone.

43. On 9 August 2023, UKAD sent a letter (the "Notice Letter") to the Athlete formally notifying him that he may have committed:

    1. An ADRV pursuant to ADR Article 2.1, in that a Metabolite of the Prohibited Substance metandienone, namely 17β-hydroxymethyl,17α-methyl-18-norandrost-1,4,13-trien-3-one was present in a urine Sample numbered A1182501 provided by the Athlete on 9 June 2023; and/or

    2. An ADRV pursuant to ADR Article 2.2 in that the Athlete used a Prohibited Substance, namely metandienone, on or before 9 June 2023.

44. The Notice Letter also provisionally suspended the Athlete from all sport with immediate effect from 9 August 2023, and provided a deadline of 21 August 2023 to submit a response to the Notice Letter.

45. On 10 August 2023, the Athlete responded to the Notice Letter stating that his English was not very good and he had not fully understood the information sent to him.

46. On 16 August 2023, UKAD wrote to the Athlete in German stating that it needed to discuss the Athlete's test results with him as his Sample had tested positive for a Prohibited Substance. The Athlete was asked whether there was someone who speaks English that could help him.

47. On 18 August 2023, the Athlete responded to UKAD's email expressing shock at the positive test and stating that he could not explain it at all. He requested that UKAD

contact his manager, Denis Lindner, as he needed assistance in understanding the process.

48. On 22 August 2023, UKAD sent Mr Lindner a copy of the Notice Letter and extended the deadline for providing a response to 29 August 2023. UKAD also extended the deadline for requesting analysis of the Athlete's B Sample to 29 August 2023.

49. On 23 August 2023, Mr Lindner replied to UKAD's email stating that the Athlete was not aware of any guilt. Mr Lindner also asked whether the values given were tight limits and how the values could be explained.

50. On 25 August 2023, UKAD responded to Mr Lindner's queries indicating that the substance found in the Athlete's Sample was a non-threshold Prohibited Substance, meaning that any amount of the substance in his Sample was enough to trigger an AAF. UKAD also asked the Athlete to respond to the Notice Letter explaining how metandienone had come to be in his Sample and whether he wanted his B Sample analysed.

51. On 29 August 2023, Mr Lindner responded to UKAD's email listing a number of supplements that the Athlete had been taking. Mr Lindner stated that the last supplement listed, Zinc + Tribulus from the manufacturer Iron Maxx, was *"probably the problem"* and that *"Mr Ahmatovic had nothing more to blame himself for".*

The Charge

52. As above, the Athlete was charged by letter dated 1 November 2023, which stated:

> *"Therefore, UKAD formally charges you with the commission of:*
>
> 1. *An ADRV pursuant to ADR Article 2.1, in that a Metabolite of the Prohibited Substance metandienone, 17β-hydroxymethyl,17α-methyl-18-norandrost-1,4,13-trien-3-one was present in a urine Sample numbered A1182501 provided by you on 9 June 2023;*
>
> *and/or*

2. *An ADRV pursuant to ADR Article 2.2, in that you Used a Prohibited Substance, namely metandienone, on or before 9 June 2023.*

Relevant Regulations

53. ADRs 2.1 and 2.2 provide as follows:

> ***"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4***
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in their Sample. Accordingly, it is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed.*
>
> *2.1.2 Proof of any of the following to the standard required by Article 8.4.1 is sufficient to establish an Article 2.1 Anti-Doping Rule Violation:*
>
> *(a) An Adverse Analytical Finding of the presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete's A Sample, where the Athlete waives analysis of the B Sample and so the B Sample is not analysed.*
>
> *(b) An Adverse Analytical Finding of the presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete's A Sample, where 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.*
>
> *(c) Where the Athlete's Sample has been split into two parts, and there has been an Adverse Analytical Finding of the presence of a Prohibited Substance or any of its Metabolites or Markers in the first part of the split Sample, and the Athlete waives analysis of the confirmation part of the split Sample, or else analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample.*

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an Article 2.1 Anti-Doping Rule Violation.

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List, other International Standards, and/or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances.

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, unless the Athlete establishes that the Use or Attempted Use is consistent with a TUE granted in accordance with Article 4

2.2.1 It is each 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; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.2 Anti-Doping Rule Violation of Use has been committed.

2.2.2 It is necessary to demonstrate intent on the Athlete's part to establish an Article 2.2 Anti-Doping Rule Violation of Attempted Use.

2.2.3 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. For an Article 2.2 Anti-Doping Rule Violation to be committed, it is sufficient that the Athlete Used or Attempted to Use a Prohibited Substance or Prohibited Method.

2.2.4 Out-of-Competition Use of a substance that is only prohibited In-Competition is not an Article 2.2 Anti-Doping Rule Violation. If, however, an Adverse Analytical Finding is reported for the presence of such substance or any of its Metabolites or Markers in a Sample collected In-Competition, that may amount to an Article 2.1 Anti-Doping Rule Violation."

54. It was common ground that this was the Athlete's first ADRV. As such ADR 10.2 applied:

"10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 Save where Article 10.2.4(a) applies, the period of Ineligibility shall be four (4) 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 UKAD can establish that the Anti-Doping Rule Violation was intentional.

10.2.2 If Article 10.2.1 does not apply, then (subject to Article 10.2.4(a)) the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they know constitutes an Anti-Doping Rule Violation or they know that there is a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and they manifestly disregard that risk.

(a) An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for Prohibited Substance or a Prohibited Method which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the Prohibited Substance is a Specified Substance or the Prohibited Method is a Specified Method and the Athlete can establish that the Prohibited Substance or Prohibited Method was Used Out-of-Competition.

(b) An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a Prohibited Substance or a Prohibited Method which is only prohibited In-Competition shall not be considered "intentional" if the Prohibited Substance is not a Specified Substance or the Prohibited Method is not a Specified Method and the Athlete can establish that the Prohibited Substance or Prohibited Method was Used Out-of-Competition in a context unrelated to sport performance.

10.2.4 Notwithstanding any other provision in Article 10.2, where the Anti-Doping Rule Violation involves a Substance of Abuse:

(a) If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and

was unrelated to sport performance, the period of Ineligibility shall be three (3) months; provided that it may be further reduced to one (1) month if the Athlete satisfactorily completes a Substance of Abuse treatment program approved by UKAD. The period of Ineligibility established in this Article 10.2.4(a) is not subject to any reduction pursuant to Article 10.6.

(b) If the ingestion, Use or Possession occurred In-Competition, and the Athlete can establish that the context of the ingestion, Use or Possession was unrelated to sport performance, the ingestion, Use or Possession shall not be considered intentional for purposes of Article 10.2.1 and shall not provide a basis for a finding of Aggravating Circumstances under Article 10.4."

55. The substance found in the Athlete's AAF was not a specified substance for the purposes of the ADR. Accordingly, the burden rested on the Athlete to establish, on the balance of probabilities, that the ADRV was not intentional pursuant to ADR 10.2.1(a) above. For the purposes of meeting that test, "intentional" being defined as in ADR 10.2.3 above.

56. An athlete may seek to place reliance on ADR 10.5 and/or ADR 10.6, to eliminate or reduce any period of Ineligibility:

"10.5 Elimination of the period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that they bear No Fault or Negligence for the Anti-Doping Rule Violation, the otherwise applicable period of Ineligibility shall be eliminated.

10.6 Reduction of the period of Ineligibility based on No Significant Fault or Negligence

10.6.1 Reduction of Sanctions in particular circumstances for Anti-Doping Rule Violations under Article 2.1, 2.2 or 2.6:

All reductions under Article 10.6.1 are mutually exclusive and not cumulative.

[(a) Specified Substances or Specified Methods]

(b) Contaminated Products

In cases involving a Prohibited Substance that is not a Substance of Abuse, where the Athlete or other Person can establish both that they bear No Significant Fault or Negligence for the violation and that the Prohibited Substance came from a Contaminated Product, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

[(c) Protected Persons or Recreational Athletes]"

The Evidence

57. The Athlete appeared by video link and gave oral testimony.

58. He confirmed that he wished to adopt his written statement dated 27 July 2024[1] and, somewhat unusually, was then questioned about a number of points that were not addressed in that statement during evidence-in-chief.

59. He had arrived at his allocated changing room at about 19:00 in advance of his fight at 21:00. Other fighters had previously used the room, and he had found it in a dirty state. The room had a small toilet which he described as the dirtiest toilet he had encountered in his career off 155 fights. There was water on the floor and bacteria everywhere.

60. With regard to the collection of his Sample, he had not been able to provide the prescribed volume at first and the process had required three attempts over a two-hour period.

61. On each occasion he has taken the Sample container into the toilet and had to place the lid on top of the toilet cistern whilst he passed water. Because the toilet was so dirty there was nowhere to place the lid that was clean.

62. He asserted that when he had provided each of his three samples to the lead Doping Control officer ("DCO"), at no time had she been wearing gloves or any other safety clothing to avoid the risk of contamination.

[1] Pages 137-145 Joint Evidence Bundle ("**JEB**")

63. There had been at least ten other people in the changing room after the fight, although it was unclear from his evidence whether this included people beyond the DCOs and his own entourage.

64. He stated that normally he would be required to go into a separate Testing area and that this would avoid the risk of contamination.

65. He had provided a list of restaurants at which he had eaten, and thought it was possible they could have been supplied with contaminated meat. He had made inquiries of the restaurants but because he had been notified of the AAF two months after the fight, none had been able to assist him with details of what meat had been offered at the material time.

66. He had also provided pictures of his gym in Germany to show how difficult it would have been to control things in terms of other athletes possibly using his mixer.

67. He had not opted to have his B Sample analysed because of the cost involved and following legal advice.

68. He was clear he did not believe that he had taken any Prohibited Substance and stated he would not have jeopardised his career or his family by doing so. He was also an experienced boxer, and it would have been stupid to take something (performance enhancing) before a title fight.

69. In cross-examination, the Athlete confirmed that most of his professional fights had taken place in Germany and that this had been only his second fight in the UK. He had not previously dealt with UKAD.

70. Prior to these proceedings he had not been aware that methandienone was a steroid that could improve boxing performance by increasing strength and power.

71. With reference to paragraph 47 of his statement dealing with contamination, he had written this down in German and it had then been machine translated into English before he signed the statement.

72. The Athlete was next referred to the Doping Control form[2] ("DCF") and, in particular, boxes 27 and 33 of that form which he had completed. He stated that he had not understood the form because he did not speak English. He had lost the fight, was tired and just wanted to go home. He had therefore done what he had been told to do but did not really understand what he was being asked.

73. Due to his lack of English, he had not spoken to the DCOs about the state of the toilet, but he knew that it had been dirty.

74. He had been accompanied to the fight by one of his two coaches Ernesto Plantelra. He is an Italian who speaks German but not English. The Athlete had spoken to him about the toilet.

75. He was unsure now whether the writing in Box 26 which listed the prescription drugs/supplements that he had taken before the fight was his but thought that it could have been. He stated that he had not fully understood what he was being asked.

76. The Athlete was asked why there was no statement from his coach (Ernesto) to support him and replied that he had not thought this was necessary and that the coach was very busy in Germany so would not have had time unless it had been urgent.

77. The Athlete was next referred to an email sent to UKAD by his manager Mr Lindner dated 29 August 2023[3], which listed some 30 supplements taken by the Athlete and suggested that a substance called *Zinc +Tribulus/ Iron Maxx* was "*probably the problem*".

78. The Athlete accepted that Mr Lindner's email had not recorded any concerns about the changing room or the Testing process but did not accept that this was because there had been no concerns and that this position had only been advanced later as a means of defending the proceedings. He was being truthful. He had not thought the issue was a "big deal" at the time because he had never tested positive before and had no experience of the process.

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[2] Page 5 JEB
[3] Page 63 JEB

79. The Athlete could not say that he had taken all the supplements on Mr Lindner's list, but these were the supplements he usually took. He did not know why Iron Maxx had been highlighted by Mr Lindner. He could not provide any evidence to prove that he had taken a contaminated substance but was certain he had never taken anything illegal. He had just therefore been searching for a reason why his test had failed.

80. He accepted that Mr Lindner's list was longer than the list he had included on the DCF but he had had more time and had wanted to include every possibility. He had not provided any receipts for these supplements nor any evidence of when they had been taken or in what quantity.

81. He thought he had given as complete a list of the restaurants he had eaten at as was possible. He confirmed he had contacted them by email to research the possibility of contaminated meat.

82. He had included pictures from his gym which showed a t-shirt with his name on it. There were also many different supplements in the shot and he could not be sure if they were all ones that he had taken. He is a big figure at the gym, and the gym uses him for marketing purposes.

83. The Tribunal next heard evidence from Mr Lindner. He confirmed his witness statement dated 29 July 2024[4].

84. He had been the Athlete's manager for 12 years encompassing both his amateur and professional careers. The Athlete had been tested many times and had never failed a doping test.

85. He had been surprised by the AAF and could not see any reason why the Athlete would take a banned substance in the last two years of his career.

86. He helped the Athlete research his supplements and again, had been surprised by the AAF because the Athlete had not changed his regime in 20 years.

87. In cross-examination, he confirmed that he was not sure if the Athlete had taken all the

[4] Pages 166-167 JEB.

supplements listed in his email dated 29 August 2023. He had highlighted the Iron Maxx supplement because he had read UK articles concerning Conor Benn, where this supplement had seemed to have been the problem. However, in saying that the Iron Maxx supplement had probably been the problem for the Athlete, this was just his opinion.

88. He had been at the fight and seen the Athlete's dressing room which he described as being very dirty and the worst he had seen in 25 years. He had asked the event manager if they could change rooms, but this had not been possible. He had not mentioned this in his witness statement because he had not been asked about it.

89. In response to a question from the Tribunal, Mr Lindner indicated that prior to being notified about the failed test, the Athlete had not spoken to him in relation to any concerns about the way his anti-doping test had been conducted.

90. Evidence was next received from Ms Lesley Richardson,[5] the Lead DCO on the night of the fight. She confirmed and adopted her written statement dated 19 July 2024.

91. She was taken to the DCF and stated that she had assisted the Athlete to complete this. With reference to Box 26, her evidence was that she simply told athletes to put any comments they had in the box and if they had none, to say so.

92. Cross-examined by Mr Patel, her position was that the test facilities for the Athlete were adequate but that there were other areas at the venue, which were inadequate. The DCO Report Form related to all fights that night, and not just the Athlete's fight. She thought Mr Patel had not understood that the form just referred to the main fight in the Mission Number, which was the Athlete's fight. The form had however been completed in respect of all fights that night included within the Mission.

93. There was an accessible toilet at the venue that had been unsuitable to use due to urine being on the floor. This was separate from the Athlete's room which had its own toilet, in respect of which she had no concerns. She did not accept that the Athlete's dressing room had been unsuitable for Doping Control Testing purposes.

[5] Pages 95-109 JEB

94. She had not spoken about her evidence to Mr Taylor who had also been a DCO on the night of the fight, and thought it was a coincidence that both their statements were dated 19 July 2024. It might have been that UKAD had emailed them both with their statements that day.

95. Ms Richardson did not accept that her statement was very different from the DCO Report Form. She disagreed that several other fighters had used the changing room before the Athlete and reiterated that she felt the toilet in the room was suitable. Had it not been, she would have made other arrangements.

96. Ms Richardson did not accept that she had not been wearing gloves when this was put to her by Mr Patel. She confirmed that she had spoken to the Athlete in English and that nothing had been translated.

97. She did not accept that there were no clean seating areas, and that the toilet basin had been dirty.

98. In relation to the storage of the Sample, Ms Richardson agreed that it had been at her house from early on Saturday morning until Monday morning when she had taken it to a UPS depot, and that it had not been refrigerated.

99. DCO Derek Taylor also gave evidence adopting and confirming his written statement dated 19 July 2024.[6] He had acted as the chaperone to the Athlete and explained what that involved.

100. He did not speak much to the Athlete but had satisfied himself that he had sufficient command of English and did not require a translator.

101. He had spoken to Ms Richardson in the Athlete's changing room who had commented that it was a lot better and cleaner than others.

102. Mr Taylor stated that the toilet was not dirty and there was no liquid on the floor. There was specifically no urine visible on the floor and had that been the case, Mr Taylor would have found another toilet or required it to be cleaned to an acceptable standard. He also

[6] Pages 85-94 JEB.

disputed the suggestion that the tap and basin in the toilet were dirty.

103. Mr Taylor described the process by which the Athlete had provided his Sample, including the fact that this had been done in three stages.

104. He had been made aware of the AAF in or around October 2023 and had liaised with the UKAD legal team in producing his statement. His statement had been given totally independent of Ms Richardson and the fact that they were dated on the same day was a coincidence.

105. It was put to him by Mr Patel that the Athlete's Sample had been taken in unsuitable conditions, due to the fact that there was dirt and filth everywhere. This was rejected by Mr Taylor who said that he had been pleasantly surprised to find the room as clean as it was.

106. The Tribunal finally heard from Ms Emma Price, the Head of Testing at UKAD who confirmed her statement dated 16 August 2024.[7]

107. Ms Price confirmed the DCO had to ensure the minimum Testing requirements set out in the relevant regulations were complied with. If there was no departure from the regulations this did not have to be reported.

108. There was no requirement for samples to be refrigerated as part of UKAD's Testing processes.

109. She was asked a number of questions by Mr Patel that were not within her area, and she responded accordingly.

110. The Tribunal also considered and gave appropriate weight to the following written statements:

<u>Athlete:</u>

• Mr Sedar Negaris dated 29 July 2024.

[7] Pages 116 -136 JEB,

• Mr Kabala Mbaluku dated 7 August 2024.

• Dr Petra Lenzen dated 19 August 2024.

UKAD

• Mr Nick Wojeck dated 15 February 2024.

• Mr Brent Gregory dated 15 August 2024.

Submissions

111. For the reasons given above, the Tribunal was assisted in advance by the provision of detailed closing arguments provided by way of written submissions from both parties. With no discourtesy to either advocate, these are not rehearsed below but all points raised were considered by the Tribunal.

112. In summary the position advanced by UKAD was as follows:

a) It had provided sufficient evidence to establish that the Athlete had committed the ADRV.

b) The Athlete had failed to establish that there had been a departure from the International Standard for Testing and Investigations ("ISTI") in respect of the Sample collection process and that such a departure could reasonably have caused his AAF.

c) The Athlete had failed to establish that his ADRVs were not intentional within the meaning of ADR.

113. In contrast, on behalf of the Athlete it was submitted:

a) There had been a failure to comply with the ISTI such that the AAF could not be relied upon for the purposes of establishing the ADRVs.

b) The Athlete had not acted intentionally as defined in the ADR.

c) The imposition of a four year period of Ineligibility would be disproportionate in all the

circumstances and any sanction should not exceed 12 months (which had already been served).

Decision

114. The Tribunal reminded itself that the burden, in the first instance, rested on UKAD to establish to the comfortable satisfaction of the Tribunal that the ADRVs had been established.

115. The central point in issue was plainly the manner in which the Athlete's Sample had been collected and whether it had been in compliance with the prescribed procedures and standards.

116. There was a conflict between the evidence of the witnesses called by the parties as to the state of the facilities in which the Athlete had provided his Sample, and having carefully reviewed and considered all the oral and written evidence, the Tribunal had no hesitation in preferring the evidence led by UKAD.

117. Mr Taylor in particular was a credible and compelling witness, and the Tribunal found:

    i. The Athlete, whilst not a native English speaker, had sufficient ability to comprehend the process.

    ii. That had Mr Taylor had any doubt as to this, he would have arranged for the Athlete to have been provided with assistance.

    iii. In contrast to other rooms at York Hall, the Athlete's room, and in particular the toilet was suitable for Sample collection purposes.

    iv. Had Mr Taylor, or Ms Richardson, had concerns as to the suitability of the area where the Sample was collected from the Athlete, alternative arrangements would have been made.

118. The Tribunal found it to be of note that the assertion, that the Sample collection process had been defective, had not been made until July 2024. The Athlete, nor his Manager,

had complained at the time of the fight, and indeed the Athlete has endorsed the DCF as "all good".

119. Having been notified of the AAF, again no complaint was made by the Athlete.

120. The Athlete instructed both Mr Mbaluku and his Manager Mr Lindner to liaise with UKAD in relation to the AAF and Notice Letter in 2023. Neither raised any complaint about the Sample collection process when seeking to explain the AAF.

121. Allowing for the fact that the Athlete does not speak English, they found his evidence to be in part somewhat contradictory.

122. Further, Mr Lindner did not include that complaint in his statement dated 27 July 2024.

123. The evidence of Ms Price clearly indicated that all the requisite Testing provisions had been complied with, and her evidence was not challenged with any evidence in cross examination.

124. The Tribunal rejected the Athlete's evidence that Ms Richardson had not worn gloves, finding that to have been a highly unlikely eventuality when taking possession of the Athlete's Sample pot.

125. To the extent that the Athlete contended there had been a breach of Article 5.3 of the World Anti-Doping Code (“the Code”), in that the Sample had been collected in the hallway, this was similarly rejected. Article 5.3 of the Code does not provide any detailed provision as to Testing, which is set out in Annex C. Annex C requires that the Sample must be provided by an athlete in private which it was. The Sample was then processed by Ms Richardson on a bench in the Athlete’s dressing room, which is not prohibited.

126. It was not accepted that the floor of the Athlete's toilet was swimming in urine, and Ms Richardson was clear that this referred to a facility being used by another boxer elsewhere in York Hall.

127. The Athlete's complaint that the Sample had not been refrigerated was dismissed, there being no requirement upon a DCO to refrigerate a Sample prior to it being sent to the WADA approved laboratory.

128. The Tribunal accordingly did not accept the Athlete's case that the Sample collection process had been defective.

129. The Tribunal formed the view that the arguments advanced on behalf of the Athlete amounted to no more than an assertion that it was possible that the process could have been flawed, and fell well short of providing any evidence to establish that it had been flawed, much less than defects, which were not in any event found to have caused the AAF.

130. It follows that, in light of its findings, the Tribunal was unable to be satisfied that the Athlete had established, to the standard required, the source of the substance he had ingested.

131. Turning to sanction and the question of intentionality, there is a long and well-established line of authority making it clear save in "*inevitably extremely rare cases*[8]", an athlete must establish the source of the ingested substance to satisfy the burden of proof prescribed as being necessary to rebut the presumption of intentionality.

132. This position was further confirmed in UKAD v *Buttifant*[9] *and UKAD v Songhurst*[10].

133. It was, in terms, accepted by the Athlete that he had been unable to establish the source of his ingestion, and indeed on his own case he advanced three possible sources. In each case however, there was no material evidence to establish the position, even on the balance of probabilities and as such each advanced source amounted to no more than conjecture.

134. In the circumstances, he was unable to proceed to consider whether the ingestion of the Prohibited Substance had been other than intentional as defined in the ADR.

135. To the extent that that Athlete sought to argue proportionality in terms of a four-year sanction, there is no provision on the ADR enabling a tribunal to take account of that factor.

136. The Athlete also argued that he had been very careful over the course of his career to

[8] Villanueva v FINA, CAS 2016/A/4534 para 37,
[9] SR/NADP/508/22016 (Appeal
[10] SR/0000120248 2015

ensure that he was a clean Athlete, but in places the Tribunal found his evidence to be somewhat contradictory on this point.

Conclusion

137. In light of its findings, The Tribunal held that:

i. the alleged ADRVs had been established;

ii. the Athlete had failed to establish that there was a departure from the ISTI in respect of the Sample collection process and that departure could reasonably have caused the AAF;

iii. the Athlete had failed to establish, on the balance of probabilities, that his ADRVs were not intentional as defined by the ADR Article 10.2.3;

iv. the Athlete should accordingly be subject to a four (4) year period of Ineligibility in accordance with ADR Article 10.2.1(a);

v. the period of Ineligibility should run from 9 August 2023, being the date of the Athlete's Provisional Suspension, in accordance with ADR Article 10.13.2, and shall end at 23:59 on 8 August 2027; and

vi. the result of the Athlete's fight on 9 June 2023 is automatically Disqualified, in accordance with ADR Article 9.1.

Right of Appeal

138. In accordance with Article 13.5 of the Procedural Rules, any party who wishes to appeal must lodge a Notice of Appeal with the NADP within 21 days of receipt of this decision.

139. Pursuant to Article 13.4.2 (b) of the Procedural Rules the Appeal should be filed to the national Anti-Doping Panel located at Sport Resolutions, 1 Paternoster Lane, London

EC4M 7BQ (resolve@sportresolutions.com).

Jeremy Summers
Chair, on behalf of the Panel
London, UK
18 October 2024