

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

Before:

William Norris KC (Chair)

Dr Tanja Haug

Dr Tom Murray

BETWEEN:

WORLD ATHLETICS

Anti-Doping Organisation

- and -

Tsehay GEMECHU BEYAN

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

A. Introduction and Summary

1. This Panel of the Disciplinary Tribunal (hereinafter the “**Panel**”) has been established by World Athletics to determine alleged Anti-Doping Rule Violations (“**ADRVs**”) by athletes who are subject to its jurisdiction.
2. The Claimant, World Athletics, is the International Federation which governs the sport of Athletics worldwide and has its registered seat in Monaco. In these proceedings World Athletics is represented by the Athletics Integrity Unit (hereinafter the “**AIU**”) pursuant to Rule 1.2 of the Anti-Doping Rules effective as of 31 March 2023 (“**2023 ADR**”).

3. The Respondent, Tsehay Gemechu Beyan (hereinafter the “**Athlete**”), is an International-Level Athlete, as defined in Rule 1.4.4 of the World Athletics Anti-Doping Rules (“**ADR**”)¹.
4. The Athlete, who is now aged 25² is a successful long-distance runner from Ethiopia. Amongst her successes have been the Delhi Half-Marathon, which she won in 2018 and 2019, and a second place in the Great Ethiopian Run in 2018. She finished fourth in the 5,000-metre event at the 2019 IAAF World Athletics Championships and won the 10,000-metre event at the 2019 African Games. She competed in the 10,000-metre event at the 2020 Tokyo Olympic Games, held in 2021 (but was disqualified) and, thereafter, won the half-marathons in Copenhagen and Lisbon later in that same year. More recently, she has had success in half-marathons and marathons. During 2022, she finished second in the Tokyo Marathon in March 2023, that being her debut in a World Marathon Major.
5. In these proceedings, the Athlete is represented by Mr Michiel van Dijk and Ms Amajanti van de Beek of the law firm Holla legal and tax and formerly of CMS.
6. The AIU and the Athlete are hereinafter referred to as the “**Parties**”.
7. As an International-Level Athlete, she is subject to the Doping Control programme established by World Athletics and, in particular, is subject to the blood testing programme and the concept of the Athlete Biological Passport (“**ABP**”), which was developed and refined by the World Anti-Doping Agency (“**WADA**”) and formally introduced by World Athletics in 2009.
8. As is well known, the purpose of the blood testing programme was to establish a further means of detecting doping beyond that which might be established by testing In- or Out-of-Competition. The essence of the programme is to identify abnormalities in an athlete’s haematological profile which may appear in their ABP.
9. In the instant case, multiple abnormalities were detected in blood Samples collected from the Athlete between 24 October 2018 and 20 May 2023. These were considered by three

¹ This definition is taken from the ADR effective 1 January 2021 (“**2021 ADR**”). The various iterations of the ADR covering the Samples that led to the current charges span the period from March 2020 to May 2022. Although the formatting differs between the 2021 ADR and the 2023 ADR, the criteria for being classified as an International-Level Athlete remain consistent. In the 2019 ADR, these criteria are set out in Rule 1.8, instead of Rule 1.4.4.

² Date of birth is 12 December 1998.

(3) independent experts who reviewed the results of those tests and concluded that three (3) of them – Sample 11 given on 22 March 2020 and Samples 34 and 35, given on 19 April 2022 and 7 May 2022 respectively, were indicative of blood manipulation³.

10. Notwithstanding the Athlete's denial of any involvement in doping, she was charged on 30 November 2023 with an Anti-Doping Rule Violation ("**ADRV**"). That Notice of Charge imposed a Provisional Suspension, and the hearing of those charges took place by video conference on 7 October 2024.

11. After hearing all the evidence and consideration of the submissions and arguments that were put forward by the Parties, the Panel concludes as follows:

(i) We find that the Athlete has committed an ADRV pursuant to Rule 2.2 of the World Athletics Anti-Doping Rules⁴.

(ii) We impose a period of Ineligibility of four (4) years upon the Athlete for the ADRV, commencing on the date of the Panel's award.

(iii) We give credit for the period of Provisional Suspension imposed on the Athlete from 30 November 2023 until the date of the Panel's award against the total period of Ineligibility.

(iv) We order the Disqualification of any results obtained by the Athlete between 22 March 2020 and 30 November 2023 with all resulting Consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Rule 10.10 of the 2023 World Athletics Anti-Doping Rules.

B. Rules and Jurisdiction

12. No issue is taken on behalf of the Athlete as to any question of jurisdiction. It is common ground that World Athletics is responsible for investigating and prosecuting alleged ADRVs. It is also accepted that World Athletics is represented in this process by the AIU

³ The full list of Samples taken is in the ABP Documentation Package as well as summarised in World Athletics' brief.

⁴ Pursuant to the 2019 World Athletics Anti-Doping Rules and the 2021 World Athletics Anti-Doping Rules.

which has delegated authority for Results Management and Hearings on behalf of World Athletics.

13. As we have already noted, the various blood Samples taken from the Athlete cover a period of just over four (4) and a half years, and therefore different iterations of the ADR would apply. It is common ground that on substantive matters, we need only concern ourselves with the 2019 ADR and the 2021 ADR respectively, since they were the rules in force at the time of the alleged blood doping⁵. However, since the Athlete was charged on 30 November 2023, this matter has been dealt with procedurally pursuant to the 2023 ADR and the World Athletics' Disciplinary and Appeals Tribunal Rules.

14. It follows that we should focus on Rule 2 of the 2021 ADR which specifies what constitutes an ADRV⁶. Particularly, Rule 2.2 provides as follows:

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

2.2.1 It is the Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

[Comment to Rule 2.2]: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Rule 3.2, unlike the proof required to establish an anti-doping rule violation under Rule 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling including data collected as part of the Athlete Biological Passport, or other analytical information that does not otherwise satisfy all the requirements to establish the presence of a Prohibited Substance under Rule 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation

⁵ That is, Sample 11 taken in March 2020, and Samples 34-35 taken in April and May 2022.

⁶ There are no material differences with the 2019 ADR in relation to the referenced rules.

from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organisation provides a satisfactory explanation for the lack of confirmation in the other Sample.]

2.2.2 The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.”

15. On the basis of those provisions, it is every athlete’s personal duty to make sure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Put another way, an athlete is strictly responsible for whatever is found in their body, and it is not necessary to demonstrate an athlete’s intent, Fault, Negligence or knowing Use for an ADRV to be established.
16. To the contrary, establishing an ADRV (and the burden of doing so is upon the relevant authority, in this case World Athletics) may be done by “*any reliable means, including [...] conclusions drawn from the profile of a series of the Athlete’s blood or urine Samples, such as data from an Athlete’s Biological Passport*”⁷.

C. World Athletics’ Case

17. In a nutshell, World Athletics submits that the Athlete’s ABP profile (to which we shall turn to in due course) provides clear evidence that she has committed an ADRV in breach of Rule 2.2 ADR, as demonstrated by the abnormalities in Samples 11, 34 and 35.
18. Supported by the opinion of three independent experts, World Athletics rejects the evidence and arguments offered on behalf of the Athlete which attempt to explain the alleged abnormalities by reference to her level of training and/or variations between her

⁷ See Rule 3.2 ADR and the Comment to Article 3.2 of the 2021 World Anti-Doping Code. There is a very considerable body of jurisprudence confirming the reliability of evidence from the ABP as the basis for establishing an ADRV. We set out those citations later in this Decision.

location at altitude or at sea level, and/or pregnancy, and/or illness⁸, and/or other natural variations, and/or inaccuracy of measurement.

19. In summary, World Athletics, based on the opinion of the independent experts who have considered the relevant profiles, submit in relation to the haematological abnormalities in the Athlete's ABP, that

"[...] Sample 11 had a pattern characteristic of artificial erythropoietic stimulation (high off-score), and the results of the sequence of samples 34 and 35 were suggestive of the use and discontinuation of ESA."⁹

20. The conclusion of the independent experts in the Second Joint Opinion is as follows:

"In our view, none of the arguments provided by the athlete has offered any credible alternative explanation for the abnormalities observed in the profile. We, therefore, confirm the opinion expressed in our Joint Expert Opinion that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."

D. The Athlete's ABP and Blood Doping Background to the ADRV Charge

21. It is well known that there are three (3) substances or methods that are typically encountered in blood doping cases. Those are
- (i) First: administering recombinant human erythropoietin ("**rEPO**") (i.e. administered by injection to trigger erythropoiesis, the stimulation of the production of red blood cells);
 - (ii) Second: synthetic oxygen carriers (i.e. infusing blood substitutes such as a haemoglobin-based oxygen carrier ("**HBOC**") or perfluorocarbons ("**PFC**") to increase haemoglobin well above normal levels); and

⁸ The Athlete disclosed that she has Hepatitis.

⁹ See the Second Joint Opinion dated 29 November 2023.

(iii) Third: blood transfusions (i.e. infusing a matching donor's or the athlete's own (previously extracted) red blood cells to increase the haemoglobin value well above normal).

22. It was the understanding of such abuse that led to the formal introduction of the ABP into the blood testing programme in 2009. It is now well settled in jurisprudence originating from the Court of Arbitration for Sport (the "**CAS**") that the information which is recorded in an athlete's ABP is a reliable means of establishing whether or not an athlete has been doping¹⁰.

23. In its 'Brief' dated 29 February 2024, World Athletics has set out what we regard as a helpful (and accurate) summary of the background and proper approach to consideration of an athlete's ABP. Rather than paraphrase that summary, we shall quote (and adopt) the relevant sections. These appear at paragraphs 7 to 18 of that Brief.¹¹

*"7. There are three widely known substances or methods used for blood doping, namely: (i) administering recombinant human erythropoietin ("**rEPO**") (administered by injection to trigger erythropoiesis, the stimulation of the production of red blood cells); (ii) synthetic oxygen carriers (i.e. infusing blood substitutes such as haemoglobin-based oxygen carrier ("**HBOC**") or perfluorocarbons ("**PFC**") to increase haemoglobin well above normal levels); and (iii) blood transfusions (i.e. infusing a matching donor's or the athlete's own (previous extracted) red blood cells to increase the haemoglobin value well above normal).*

8. rEPO is a Prohibited Substance, which is included in class "S2. Hormones and related substances" of the World Anti-Doping Code Prohibited List. Synthetic oxygen carriers and blood transfusions are Prohibited Methods under class "M1. Enhancement of oxygen transfer" of the World Anti-Doping Code Prohibited List.^[12]

¹⁰ See, for example, the various CAS decisions. "An ADRV under Rule 2.2 of the 2021 ADR may, according to Rule 3.2 ADR, be established by 'any reliable means [...]'. According to the comment of Article 3.2 of the 2015 Code, this includes 'conclusions drawn from the profile of a series of the Athlete's blood or urine Samples, such as data from the Athlete Biological Passport'. Furthermore, as discussed above, it is well established that the ABP model is a 'reliable means' of establishing ADRVs."

¹¹ The footnotes in these paragraphs 7 – 18 of the Brief are those in the original document and quoted *verbatim*.

¹² See WADA Prohibited Lists from 2020 until 2022; **Exhibit 17**.

9. *The World Anti-Doping Agency (“**WADA**”) developed and refined the concept of the ABP^[13], which World Athletics formally introduced into its blood testing programme in 2009.*
10. *The ABP consists of an electronic record that compiles and collates a specific athlete’s test results and other data over time and is unique to that particular athlete. The haematological module of the ABP records the values, in an athlete’s blood samples, of haematological parameters that are known to be sensitive to changes in red blood cell production.*
11. *The values collected and recorded include haemoglobin concentration (“**HGB**” or “**HB**”)^[14] and the percentage of immature red blood cells viz. reticulocytes (“**RET%**”). The ratio of the HGB and the RET% values is also used to calculate a further value, known as the “OFF-score”, which is sensitive to changes in erythropoiesis.*
12. *The marker values from the blood samples collected in the ABP programme are inputted into a statistical model, known as the “Adaptive Model”. The Adaptive Model uses an algorithm that takes into account both (i) the variability of such values within the population generally (i.e. blood values reported in a large population of non-doping athletes) and (ii) factors affecting the variability of the athlete’s individual values (including gender, ethnic origin, age, type of sport, and instrument-related technology).^[15]*
13. *The selected biological markers are monitored over a period of time and a longitudinal profile is created that establishes an athlete’s upper and lower limits within which the athlete’s values would be expected to be found,*

¹³ WADA describes the “fundamental principle” of the ABP as being “to monitor selected variables (‘biomarkers of doping’) over time that indirectly reveal the effect of doping, as opposed to the traditional direct detection of doping by analytical doping controls”. See WADA Questions & Answers on the Athlete Biological passport at **Exhibit 14**.

¹⁴ Haemoglobin is a molecular carrier in red blood cells transporting oxygen from the lungs to body tissue. As noted in paragraph 9.8 of the Arbitral Award in CAS 2010/A/2174 *Francesco de Bonis v CONI & UCI* (“*de Bonis*”): “The haemoglobin value shows the athlete’s capacity to produce red blood cells and thus, his capacity concerning oxygen transfer. This value is – in the absence of specific pathological conductions – a very stable one and only subject to very minor changes.”

¹⁵ See paragraph 85 of the Arbitral Award in CAS 2010/A/2235 *UCI v Tadej Valjavec & Olympic Committee of Slovenia* (“*Valjavec*”): “This formula itself allows for variations which result either from ordinary biological variability or from imprecisions in sample analysis and provides a protection barrier of some fortitude against unwarranted investigation.”

assuming normal physiological conditions (i.e. the athlete is healthy and has not been doping).

14. *The upper and lower limits have been calculated (as per the WADA ABP Operating Guidelines (the “**Guidelines**”))^[16] with a “specificity” of 99%. The Adaptive Model also calculates the probability of abnormality of the sequence of values in the ABP profile.*
15. *The athlete becomes their own point of reference and each time a blood sample is collected from the athlete and recorded in their ABP, the Adaptive Model calculates where the reported HGB, RET% and OFF-score values fall by reference to the athlete’s expected distribution or ‘corridor’. After each new test, a new range of expected results for the athlete is determined.^[17]*
16. *Doping control and analysis documentation for each of the twenty-eight (28) valid samples in the Athlete’s ABP profile are enclosed as **Exhibit 2** and **Exhibit 3** respectively.*
17. *It is now well settled in CAS jurisprudence that the ABP model is a reliable means of establishing blood doping, i.e. the ABP model is reliable evidence of the athlete’s use of a Prohibited Substance or Prohibited Method.^[18]*

¹⁶ **Exhibit 13.**

¹⁷ See paragraph 9.8 of *De Bonis*: “The basic values for the calculation are based on the average values of the population which are part of the specifically designed software. With the first ABP values entered in the software this corridor basically reflects the individual specificities of the person being tested.”

¹⁸ See for example paragraph 13 of *CAS 2012/A/2773 IAAF v SEGAS & Irimi Kokkinariou*: “Systems which make use of these longitudinal profiles have evolved to become widespread and highly effective means of detecting EPO doping.” Furthermore, in the case of *CAS 2014/A/3614 & 3561 IAAF & WADA v RFEA & Ms Marta Dominguez* (“*Dominguez*”), the Panel stated that it was “convinced that the ABP Model is a reliable and a valid mean of establishing an ADRV”. The Panel also noted that “numerous peer-reviewed applications have confirmed the ABP’s reliability” (see paras. 278 and 279).

Even more recently, the reliability of the ABP has been confirmed by the CAS in the following cases *inter alia*: *CAS 2016/O/4464 IAAF v ARAF & Sharmina*; *CAS 2016/O/4463 IAAF v ARAF & Ugarova*; *CAS 2016/O/4469 IAAF v ARAF & Chernova*; *CAS 2016/O/4481 IAAF v ARAF & Savinova-Farnosova*; *CAS 2017/O/5398 IAAF v RUSAF & Kirdyapkina* and *CAS 2020/A/7377 El Mahjoub Dazza v World Athletics*. See also *CAS 2018/O/5822 IAAF v. RUSAF & Mariya Ponomareva*, paragraph 86 “In a preliminary finding, the Sole Arbitrator accepts that the ABP is a reliable and accepted means of evidence to assist in establishing an antidoping rule violation and feels comforted in this conclusion by CAS jurisprudence (see *CAS 2010/A/2174*, para. 9.8).

The Tribunal has also consistently upheld the principle that the ABP is reliable. See notably: *IAAF v/ Sergey Bakulin*, decision dated 14 August 2019; *IAAF v/ Sarah Chepchirchir*, decision dated 28 November 2019; *World Athletics v/ Hassan Chani*, decision dated 10 September 2020; *World Athletics v/ Daniel Kinyua Wanjiru*, decision dated 8 October 2020.

18. *World Athletics implements the ABP in accordance with the International Standard for Results Management (the “ISRM”)¹⁹ through a procedure that is designed to afford the athlete due process in establishing whether an ADRV has been committed. The procedural steps, which were followed in this case, are set out in ISRM section C.1.3:*

- ‘a). The review begins with the application of the Adaptive Model.*
- b) In case of an Atypical Passport Finding or when the Athlete Passport Management Unit considers that a review is otherwise justified, an Expert conducts an initial review and returns an evaluation based on the information available at that time.*
- c) In case of a “Likely doping” initial review, the Passport is then subjected to a review by three (3) Experts including the Expert who conducted the initial review.*
- d) In case of a “Likely doping” consensus of the three (3) Experts, the process continues with the creation of an Athlete Biological Passport Documentation Package.*
- e) An Adverse Passport Finding is reported by the Athlete Passport Management Unit to the Passport Custodian if the Experts’ opinion is maintained after review of all information available at that stage, including the Athlete Biological Passport Documentation Package.*
- f) The Athlete is notified of the Adverse Passport Finding and offered the opportunity to provide explanations.*
- g) If after review of the explanations provided by the Athlete, the Experts maintain their unanimous conclusion that it is highly likely that the Athlete Used a Prohibited Substance or a Prohibited Method, an anti-doping rule violation is asserted against the Athlete by the Passport Custodian.”*

¹⁹ See Annex C ISRM; **Exhibit 16**.

24. Between 24 October 2018 and 20 May 2023, a total of 50 blood Samples were provided by the Athlete²⁰.
25. 31 of those 50 blood Samples were considered valid for analysis and each was analysed by a WADA accredited laboratory and logged in the Anti-Doping Administration and Management System (“**ADAMS**”) using the Adaptive Model to constitute the Athlete’s longitudinal profile of haematological values with BPID R5FNZVLE (the “**Passport**”). We shall say more about the analyses later in this Decision.
26. The results were referred by World Athletics to three independent experts, Dr Yorck Olaf Schumacher, Dr Paulo Paixao and Professor Michel Audran (hereinafter, the “**Expert Panel**”). They provided their First Joint Opinion on 14 August 2023. They considered the 31 Samples separately, that is, independently of each other, before combining to issue their First Joint Opinion²¹.
27. The Athlete provided an explanation in a Response which was dated 11 October 2023 (submitted on her behalf by her lawyers, based in Amsterdam, The Netherlands). That Response annexed the Opinion of Dr Neil Heron, dated 9 October 2023. We shall return to the details of Dr Heron’s Opinion later in this Decision, but the essence of the Response provided by Mr van Dijk included the assertion that “*the ABP abnormalities are not a result of the use of Prohibited Substances and/or Prohibited Method and that she should be acquitted*”.
28. The evidential support for that contention came from Dr Heron, who said:

[...] this Athlete does not have high Hb values and reticulocyte % and ranges on her ABP. The variation seen in these markers within the ABP is physiological for a high-altitude resident, endurance athlete and there are plausible explanations for this, other

²⁰ These are listed in the ABP Documentation Package.

²¹ We were told in the course of the evidence that Dr Paixao looked at the first Sample (11) in April 2020 and thought it was ‘suspicious’. When he saw Samples 34 and 35 in 2022, he changed his opinion to ‘likely doping’. Professor Audran first reviewed the Samples on 3 May 2022 and Dr Schumacher did so on 8 June 2022, both considered the Sample as ‘suspicious’. After a further review in February 2023, they all reached the same conclusion ‘likely doping’. The Athlete’s Counsel criticised that it was not explained why it was necessary to review the Samples again in February 2023, even though “*there were no new ‘suspicious’ Samples*”. However, we do not consider it necessary to explore this in more detail, as the timing of analyses and conclusions drawn therefrom (or any comment thereon) would not be material to our decision, as the Experts ultimately came to the unanimous opinion of ‘likely doping’ as clearly demonstrated in their Joint Expert Opinions.

than blood manipulation and ESA use, which the expert panel have not taken into consideration.”

29. Following receipt of that explanation and supporting material, the Expert Panel considered matters again and issued a Second Joint Opinion on 29 November 2023 following which the AIU issued a Notice of Charge on 30 November 2023.
30. There was further correspondence between the Parties before a Formal Response to the Notice of Charge was received on behalf of the Athlete, dated 12 January 2024, including a further report from Dr Heron.

E. Procedural Matters

31. The present Panel Chair, having been appointed without objection by the Parties, issued Directions on 1 February 2024. Further Directions were issued on 24 April 2024.
32. There are two (2) procedural matters that we should mention before we turn to the hearing which took place on 7 October 2024.
33. The first was a request which was repeated during the present hearing, but which had previously been canvassed on behalf of the Athlete in earlier submissions. That request was that the Panel should direct that a further, independent, expert be instructed to consider and report on the issues we have to consider.
34. The Panel rejected that request. As we have already explained, it is in the very nature of the processes that the AIU administers, that the experts it consults (and which, as here, are then provided in their ‘Joint Opinions’) are themselves independent, both AIU/ World Athletics and, indeed, of each other.
35. Similarly, Dr Neil Heron, instructed on behalf of the Athlete, is himself an independent expert, giving his own honest opinion.
36. Whilst it would be within our powers to commission the opinion of a further Panel-appointed expert, we saw absolutely no reason to exercise such a power in the instant

case (nor is there any precedent for us doing so, none having been drawn to our attention²²).

37. Perhaps more to the point, we considered that we had sufficient help from all four (4) experts, both in their written evidence and in their attendance to give oral evidence at the hearing. All of them can fairly be considered to be ‘independent’. The fact that all of them were present during the hearing, and the examination of their evidence in, what is known colloquially as, a ‘hot-tubbing’ session, enabled us to have a good grasp of the scientific issues and of the merits or demerits of the competing scientific opinions that were expressed.
38. The second procedural issue that arose in advance of and at the hearing concerned a request on behalf of the Athlete first communicated, at least in a detailed form²³, by email on 1 October 2024, that is within a week of the hearing. This request, made ‘urgently’ to the Panel in an email timed at 18:48 (BST) on 1 October 2024, was that World Athletics should provide, “*a copy of the original notes from the Expert in ADAMS after the Initial Expert Review of the Atypical Passport Findings after they were first flagged [...] we request to receive the respective individual opinions from the three experts after these samples were first flagged.*”
39. In support of that request, Ms Van de Beek (author of the email) said as follows:
- “I respectfully point out that in the case of Ms Halep against the International Tennis Integrity Agency these individual comments in ADAMS were shared and were even cited in the decision [...] so apparently such information from ADAMS can be shared in a ABP case and therefore we have requested World Athletics repeatedly to send us this information, but we understand they do not want to send it to us.”*
40. World Athletics responded by saying that this request was made very late and pointing out that the Athlete’s Answer Brief, dated 16 May 2024, made no reference to any need for further document production. World Athletics further pointed out that any issue of

²² In that context, it is submitted on behalf of World Athletics that it would be an “*unprecedented*” step in the sense that “*World Athletics is not aware of a single instance of a Panel-appointed expert in an ABP case, for the obvious reason that the Tribunal is more than capable of assessing expert evidence and the proceedings are adversarial.*”

²³ Although a similar request had been made in the Answer Brief submitted on behalf of the Athlete on 28 March 2023 which the AIU had rejected.

documents should have been dealt with during the Preliminary Meeting held on 1 February 2024²⁴. Their response also indicated that the kind of reviews that might be recorded in ADAMS are *“informal communications between anti-doping experts and the Athlete Passport Management Unit (“APMU”) [which] typically include confidential and sensitive information [...]”*.

41. World Athletics’ response concluded by saying that it strongly objected to the belated document production request, observing that there is *“no requirement under the Code or the ISRM to provide these documents and in any event World Athletics submits that such documents are not reasonably and proportionately needed for a fair determination of the issues in this case”*.
42. We declined this request on the basis that it was, first, late and, second, because we did not consider it could result in the generation of evidential material that could be of sufficient importance to justify a potential delay of the proceedings. In the event, we consider that our expectations in that regard were justified because we allowed the Athlete’s representatives to ask questions of each of the three experts called on behalf of World Athletics as to whether (and, if so, why) they had changed or varied the opinions they had held.

F. The Hearing

43. As we have noted, the hearing was held remotely, by video conference and proceeded satisfactorily, notwithstanding that members of the Panel, witnesses and legal representatives were in different countries and different time zones.
44. World Athletics were represented by Louise Reilly of Counsel, assisted by Nicolas Zbinden, Counsel. They called the three (3) expert witnesses already identified who, as we have said, gave evidence orally and were examined and cross-examined in the course of what we considered a constructive ‘hot-tubbing’ session.

²⁴ Pursuant to Article 8.10.2 of the 2023 ADR.

45. The Athlete was represented by Mr van Dijk and Ms Van de Beek, both of Counsel, and they called the Athlete herself to give short oral evidence²⁵ and Dr Neil Heron.
46. At the beginning of the hearing, we established that neither party had any objection to the constitution of the Panel.
47. We wish to record our gratitude to all the advocates for the clarity of their submissions and for their helpful and constructive approach to the hearing of this case. We pay particular tribute to Mr van Dijk and Ms Van de Beek for conducting examination, cross-examination and submissions in what may not be their first language, but where their command of English was nevertheless exceptional²⁶.
48. We also record our gratitude to the four independent expert witnesses who provided considerable assistance to the Panel.

G. World Athletics' Case; the Evidence relied on as demonstrating ADRVs

49. As we have already noted, 31 valid samples were collected, covering the period 24 October 2018 until 20 May 2023. Each of those Samples was analysed by a WADA-accredited laboratory and logged in ADAMS using the Adaptive Model to constitute the Athlete's longitudinal profile of haematological values with the Passport.
50. In this Decision, it is probably sufficient for us to include the tabulation of the haematological results included in the ABP Documentation Package²⁷.

²⁵ Since English is not the Athlete's first language, interpretation services were helpfully provided by Mr Alexander Molla.

²⁶ We pay a similar compliment to the three independent experts called by World Athletics for whom English is not their first language either.

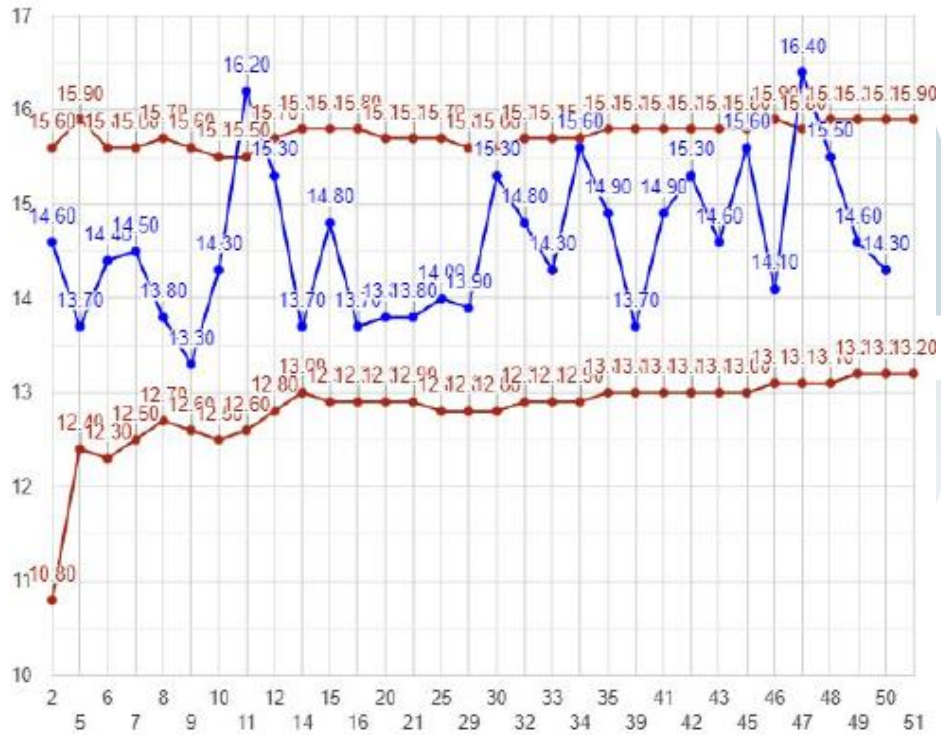
²⁷ These are also helpfully included in the Brief of World Athletics dated 29 February 2024. There was no issue taken as to the accuracy of this table.

#	Sample code	Collection date	HGB	RET%	OFF-score	HCT	RET#	IRF	
1	624062	24.10.2018	Invalid						
2	605020	11.11.2018	14.6	0.9	89.08	41.5	0.0438	2.5	
3	604939	06.02.2019	Invalid						
4	604859	25.03.2019	Invalid						
5	453490	28.03.2019	13.7	1.02	76.4	40	0.046	6.5	
6	663420	16.07.2019	14.4	1.47	71.25	43.4	0.0701	4.9	
7	691595	19.09.2019	14.5	0.96	86.2	42.7	0.0453	4.5	
8	688206	30.09.2019	13.8	1.09	75.36	40.2	0.0487	3	
9	664364	19.10.2019	13.3	1.06	71.23	39.5	0.0458	5.1	
10	471709	24.02.2020	14.3	1.25	75.9	42.7	0.0584	4.4	
11	672053	22.03.2020	16.2	0.65	113.6	47.3	0.0344	2.4	
12	638891	28.04.2020	15.3	1.18	87.8	45.1	0.0589	4.9	
13	466414	24.05.2020	Invalid						
14	466072	07.09.2020	13.7	0.97	77.91	40.8	0.0438	2.7	
15	688450	24.09.2020	14.8	0.82	93.67	42.5	0.0393	2.7	
16	479778	28.11.2020	13.7	0.97	77.9	41.9	0.0437	4.6	
17	473925	08.12.2020	Invalid						
18	474204	21.12.2020	Invalid						
19	702257	24.01.2021	Invalid						
20	477803	27.03.2021	13.8	0.96	79.21	41.5	0.0436	3.8	
21	691493	22.04.2021	13.8	1.07	75.9	40.4	0.0486	5.6	
22	721207	26.04.2021	Invalid						
23	692735	15.06.2021	Invalid						
24	691530	22.06.2021	Invalid						
25	468514	07.07.2021	14	1.26	72.7	42.1	0.059	8.2	
26	0029767	11.07.2021	Invalid						
27	468540	22.07.2021	Invalid						
28	932709	18.09.2021	Invalid						
29	0054556	20.11.2021	13.9	1.11	75.8	40.8	0.0493	5.1	
30	905566	08.12.2021	15.3	0.91	95.8	42.2	0.0439	4.9	
31	0054482	06.02.2022	Invalid						
32	0054480	07.02.2022	14.8	1.42	76.5	42.8	0.0679	12.5	
33	932374	25.03.2022	14.3	1.05	81.52	42	0.0484	4.9	
34	905601	19.04.2022	15.6	2.18	67.4	46	0.111	8	
35	490805	07.05.2022	14.9	0.68	99.5	44.8	0.0335	2	
36	1026578	10.05.2022	Invalid						
37	0054516	22.05.2022	Invalid						
38	0029779	22.05.2022	Invalid						
39	1060080	04.06.2022	13.7	1.35	67.3	39.3	0.0598	6.4	
40	1026588	05.10.2022	Invalid						
41	953880	14.10.2022	14.9	1.74	69.9	43.2	0.0826	6.2	
42	905144	24.10.2022	15.3	1.23	86.5	43.5	0.061	3.6	
43	1120041	18.12.2022	14.6	1.44	74	42.2	0.0668	5.3	
44	1119820	29.12.2022	Invalid						
45	1120061	05.02.2023	15.6	1.60	80.1	45.4	0.0797	7.9	
46	962571	02.03.2023	14.1	1.18	75.8	40.7	0.0535	5	
47	1162895	26.03.2023	16.4	1.12	100.5	47	0.0594	2.8	
48	1162903	04.04.2023	15.5	1.58	79.6	44.3	0.0792	8.7	
49	971217	10.05.2023	14.6	1.81	65.3	42.9	0.0849	9.7	
50	970698	20.05.2023	14.3	1.44	71	41.7	0.066	6.8	

51. The Expert Panel also referred to the following graphs which provide profiles both for HGB, the Athlete's OFF scores (otherwise known as an 'off phase' pattern) and the RET% scores. We reproduce those here:

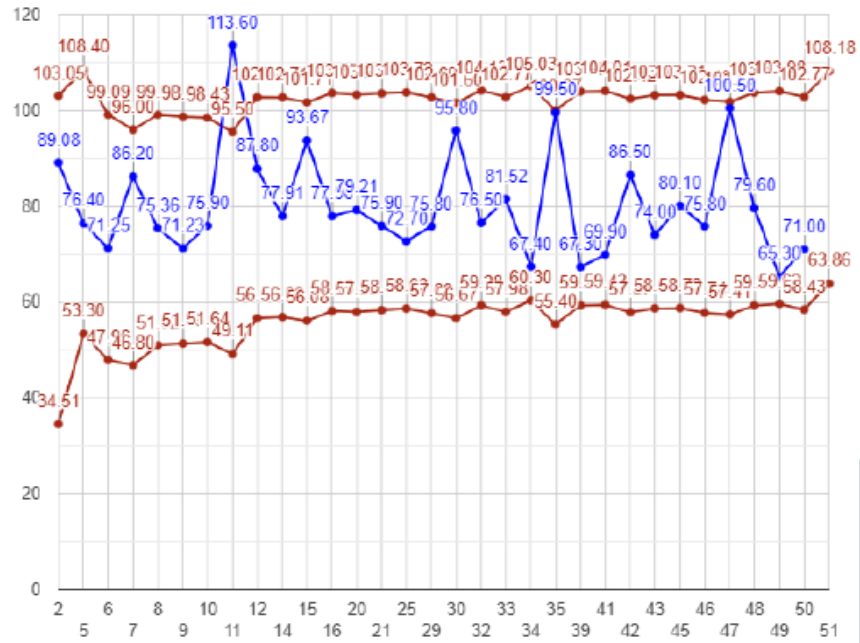
3.1.2 Full profile for haemoglobin (HGB)

HGB



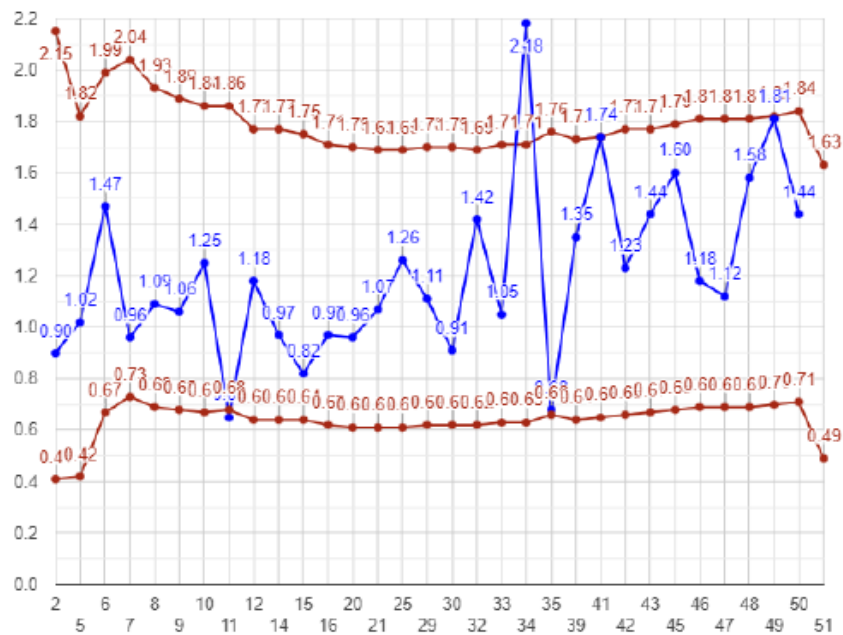
3.1.3 Full profile for OFF-score

Off-score



3.1.4 Full profile for reticulocytes (RET%)

RET%



52. After these details of the Athlete's ABP had been received by the APMU, they were submitted in turn to the Expert Panel to whom we have already referred. Those experts conducted a review in accordance with Articles C.3 and C.4 of the ISRM and unanimously concluded that this was a case of "*likely doping*"²⁸.
53. In their first Opinion, the Expert Panel summarised its 'Hematological evaluation'²⁹ by noting that the "*automated analysis by the Adaptive Model, at the 99.0% specificity level, the intra-individual upper or lower limits of the profile are flagged with abnormalities*" for Samples 11³⁰, 34, 35³¹ and 47 (albeit the high haemoglobin result of Sample 47 was deemed non-suspicious of blood manipulation). The Expert Panel's conclusion on that occasion was that

"Based on these facts and the information available to date, it is our unanimous opinion that, in the absence of an appropriate explanation, the likelihood of the abnormalities described above in the profile R5FNZVLE being due to blood manipulation is very high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is low. We, therefore, conclude that it is highly likely that a prohibited substance and/or method has been used and that it is unlikely that the passport is the result of any other cause."

²⁸ Under Article C.2.2.5.1 of ISRM, to establish that there is a "*likely doping*" case, "*the Expert shall come to the conclusion that the likelihood that the Passport is the result of the Use of Prohibited Substance or Prohibited Method outweighs the likelihood that the Passport is the result of a normal physiological or pathological condition*".

²⁹ Hematology is the common spelling in the US. The British tend to spell it 'haematology'.

³⁰ The Panel's assessment of that Sample was that Sample 11 was "*flagged for high hemoglobin [sic] and high off-score. The hemoglobin in this sample is clearly above her upper individual reference range, and the combination with a low ret% and IRF% values is suspicious: such combination is typically observed when the red blood cell mass of the organism has been supra-physiologically increased and its own red blood cell production has consequently been reduced (as evidenced by low reticulocytes and IRF%) (1). This pattern is characteristic of using and discontinuing an erythropoietic stimulant or a recent application of a blood transfusion (2). Altitude is unlikely to be the only explanation for this pattern as the athlete declared to have been at altitude for 14 days immediately prior to this sample (sample taken on 22.03.2020, altitude declaration 2500m, from 07- 22.03.2020). A mild off-score increase is typically observed several days (weeks) after the return to sea level, but not immediately, such as observed in the current profile (3,4).*" See Hearing Bundle page 908.

³¹ "*Sequence 34-35: high ret% combined with high hemoglobin [sic] concentration on sample 34. The athlete had been at altitude prior to this sample and any increase in reticulocytes of the magnitude seen here is unlikely under these conditions (3,4). This is followed by a sharp drop in ret% in just 18 days (Samples 34 to 35: 2.18 to 0.68%, respectively). The athlete had left altitude only 2 days before the collection of sample 35, so this down-regulation is unlikely to be the consequence of the return from altitude (3,4). Sample 35 was collected on the eve of a competition (Lisbon), thus reinforcing the suspicion of blood manipulation. This sequence is suggestive of the use and discontinuation of ESA.*"

54. We consider it unnecessary in this Decision to set out all the details of the review conducted by the Expert Panel, all of which considered the explanations offered by the Athlete (and which we shall discuss in the next two (2) sections of this Decision).
55. Their conclusion, as summarised in the third of those Joint Opinions, was that “*none of the arguments provided by the athlete has offered any credible alternative explanation for the abnormalities observed in the profile. We therefore confirm the opinion expressed in our Joint Expert Opinion and our first reply to the athlete that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause.*”

H. The Athlete’s Case & Evidence

56. The Athlete gave evidence and, at the end of the hearing, offered a closing statement on her own account. She denied doping and expressed herself to be strongly opposed to the practice. She said she had only limited experience or understanding of what was involved in doping, or of the anti-doping regime generally, although it must be recognised that she is an experienced International-Level Athlete and, as we have already recorded, has provided a considerable number of blood Samples for the purposes of her ABP, as well as undergoing doping control tests (all of which have proved negative) on other occasions.
57. Aside from that denial, the main factual issue to which the Athlete’s evidence was directed was the matter canvassed by the independent experts on both sides, namely whether there was any plausible reason for her to have doped, particularly at the time of the first of the tests identified as suspicious, namely that referred to as Sample 11, which was collected on 22 March 2020. Her case is that at the time she was suffering from a knee injury and was, therefore, not only not competing but had had no expectation of doing so in the near future because she had been told by her doctors to take some months off from intensive training.

58. The Athlete told the Panel that she had competed – successfully – in January that year³², although she was experiencing pain at the time, but that it became worse towards the end of February, as a result of which she took medical advice.
59. In support of that contention, she adduced evidence of an MRI scan undertaken on 20 March 2020 at the AFEI Diagnosis Center. That MRI (of her left knee) demonstrated no apparent abnormality, and the recorded ‘impression’ was that she had a ‘Normal Knee MRI’. That does not, of course, mean that she was not suffering from pain in her left knee (or a soft-tissue or ligamentous injury, for example) as she claims. In any case, the Imaging Request Form dated 18 March 2020 was for investigation of ‘knee pain’.
60. Further support for her contention that she had knee pain comes from a handwritten note from her partner³³. That also noted that she was given a “*prescription for... Glucosamin [sic] supplement for 15 days.*”³⁴
61. Aside from her own evidence, the Athlete also relied on the Expert Opinion of Dr Heron, to whom we have referred previously. He provided four (4) reports: the first (sent with the Athlete’s original explanation) was dated 9 October 2023; the second was dated 10 January 2024; the third, 26 March 2024; and the final report was in May 2024.
62. Based on those reports, the Athlete’s Counsel have provided a useful summary, which we shall quote without comment, containing, as we think it does, a fair and reasonable summary of the Expert Opinion that Dr Heron has expressed.
63. In the written submission of 28 March 2024, the Athlete’s Counsel sets out matters as follows:

“4.12.1 There is no realistic doping scenario for Sample 11 as the athlete was not competing and did not compete until approximately 6 months after Sample 11 was taken. Indeed, the athlete was injured around Sample 11 and was not in active training when Sample 11 was taken. To reiterate, she was not

³² She told us she competed in a marathon and in a cross-country competition.

³³ Dated 14 December 2023.

³⁴ World Athletics commented that this is not actually a drug that needs to be ‘prescribed’ (that is, it can be bought over the counter) and that there is no mention of it on the Doping Control Form she completed on 22 March 2020.

training and competing due to injury, not primarily due to the impact of the COVID-19 pandemic on the athletic calendar.^[35]

- 4.12.2 *We have provided evidence of her being referred for a left knee MRI on 18/03/2020 (Appendix A report Dr Heron dated 26 March 2024), reduced training around the time of Sample 11 (Appendix E, report Dr Heron 26 March 2024) and the left knee MRI report done on 20/03/2020 (Appendix F, report Dr Heron dated 26 March 2024).*
- 4.12.3 *Thus, the Hb value seen in Sample 11 is reflective of TG being in a relatively resting state for her. The Hb values in the ABP show physiological variations in response to training load changes and these changes are well known to occur, even when altitude-trained athletes remain stable at a specific altitude (explaining the differences between samples 10 and 11).*
- 4.12.4 *The reticulocyte % value seen in Sample 11 is also reflective that she has been at a stable, high-altitude residence for the past 16 days (and not 8-10 days as the expert group thought) and she normally resides at this level of altitude, >2,500m above sea level.*
- 4.12.5 *For the sequence Sample 34 to 35, a drop in % reticulocytes can occur when altitude residents go to sea level for a period of time, even within a week of a change in altitude exposure. The magnitude of this fall in % reticulocytes is proportional to the preceding hypoxic dose and a large, quick decrease (including just over 52 hours and 40 minutes of stopping altitude) might be expected in a high-altitude-resident athlete. Thus, potentially explaining the % reticulocyte changes between samples 34 and 35.*
- 4.12.6 *Between samples 34 and 35, the athlete became pregnant and this could influence the reticulocyte count, causing a variation that is not accounted for within the ABP and which the expert group were not aware of.*
- 4.12.7 *Ms Gemechu has chronic Hepatitis B infection, diagnosed in April 2021 (see Appendix G, report Dr Heron dated 26 March 2024), with symptoms starting in 2020) and there is scientific evidence that this can influence markers of erythropoiesis, thus potentially influencing the athlete's ABP. This again,*

³⁵ See point 4.5-4.6.

introduces another variable into the athlete's ABP which has not been accounted for within the expert group.

4.12.8 *Indirect markers of ESA use within the ABP, namely MCV and haematocrit, are stable and do not indicate any ESA use.*

4.12.9 *The panel suggest the use of (autologous) blood transfusions in this athlete. However there are no changes in the reticulocyte % counts and the Hb concentration seen in the profile to reflect this.*

4.12.10 *The expert panel have dismissed the argument around sequence 34 to 35 being due to change in altitude, as they thought that Sample 35 was obtained within 24 hours of descending from altitude and not after 52 hours."*

64. In his oral evidence, Dr Heron maintained each of those opinions, although he was perhaps rather less confident in attaching any importance to the proposition that the Athlete's pregnancy might influence reticulocyte count as recorded in Samples 34 and 35. We say that because it was put to him that the paper by JW Choi and SH Pai, to which he had referred, did not in fact support the proposition that pregnancy at such an early stage could be a relevant consideration.
65. Although that paper was not included in the Hearing Bundle prior to the hearing, nor was it added to that bundle, it was nevertheless referred to in some detail in the course of the hearing. We can see for ourselves, having the benefit of now having seen the full copy of that paper, that it contains in its summary ('Abstract') the conclusion that there "*were no significant differences in the values of reticulocyte sub-populations, RMI³⁶ and sTIR³⁷ between first trimester and non-pregnant women*".
66. As well as repeating his opinions about what, if any, significance might be attached to the values seen in the three (3) Samples which were the focus of the case and as to how they might be explained, Dr Heron continued to attribute significance to the fact that 19 of the 50 Samples (38%), of which 15 out of 19 had come from the WADA ABP Laboratory in Nairobi, Kenya (the "**Nairobi Laboratory**"), were flagged by Quality Control as

³⁶ Reticulocyte Maturity Index.

³⁷ Serum Transferin Receptor levels.

unsatisfactory and therefore excluded from the analysis. This, Dr Heron said, gave cause to be suspicious about the validity of the rest of the analysis.

67. In summary, however, Dr Heron continued to assert that the changes in values could be attributable to lack of training and/or physiological conditions (including chronic Hepatitis B), and/or movement from high altitude to sea level, as well as contending that there was no plausible anti-doping scenario. In relation to one of those samples (Sample 11), he also commented that it had spent an unusually long time in the laboratory before analysis.

I. Discussion and Conclusions on Issues of Fact and Independent Expert Opinions

68. Although it may be a fair comment that the nature and extent of the Athlete's knee injury and consequential treatment in 2020 was not of the quality that one might expect in a case of this seriousness³⁸, we nevertheless accept that the Athlete suffered knee pain starting in January 2020, continuing at least through March of that year, which necessitated her taking some medical advice and, at the very least, inhibited her training and expectation of competing in the first few months of 2020.

69. 2020 was, of course, the year of the COVID-19 pandemic when so many international competitions never took place. But that would not necessarily have been apparent to the Athlete early in the year and we do not consider it provides any basis for the submission made on behalf of the Athlete that there was no reason for her to have been doping in March 2020 – the suggested absence of a “*credible doping scenario*”. In fact, the Athlete had competed (successfully) in January 2020, notwithstanding her knee pain, and we know that the MRI demonstrated an absence of any serious injury, and that the medication that was, she says, “*prescribed*” was in fact something you could buy over the counter.³⁹

70. In short, even if she was not training, she may have hoped to return to competition before too long and, at and around the time Sample 11 was taken, she will not necessarily have

³⁸ World Athletics also pointed out that there was no reference to the Athlete having sustained a knee injury in her original explanation. The first such reference was only in the further material provided in January 2024.

³⁹ Which, as we said, was not recorded by her on her Doping Control Form provided on 22 March 2020.

expected that there would be no competitions proceeding during the remainder of the year.

71. A further point made by World Athletics is that the very fact that she was injured might of itself give a reason for the illegitimate taking of erythropoietin (“**EPO**”). The reason for that is that there is support in the medical literature⁴⁰ that there may be some benefit in taking EPO in order to recover from injury.
72. The remainder of the issues identified by the Athlete’s representative, all of which are based upon Dr Heron’s Opinion, are essentially ones where we have to decide between the unanimous views of the Expert Panel called by World Athletics and the opinion of Dr Heron.
73. All four (4) experts were carefully and thoroughly cross-examined, and we consider we are well placed to make an evaluation of their evidence. In short, and in summary, we have no hesitation in preferring the opinions of Dr Schumacher, Dr Paixao and Professor Audran to that of Dr Heron. Aside from the fact that (with due respect to Dr Heron) the Expert Panel have far more experience in this field than he does, we find their scientific analyses compelling. We accept their conclusion that the results we can see on the graphs, set out above, are overwhelming evidence of some form of deliberate blood manipulation.
74. More particularly, what follows is the Panel’s determinations on the various other issues in the order they were raised.
75. We accept the Expert Panel’s rejection of Dr Heron’s explanation of Sample 11, which (apart from what he said was the lack of any reason for the Athlete to have been doping) he sought to explain by reference to the Athlete’s inactivity due to injury. As the Expert Panel, called by World Athletics, explained, both Samples 10 and 12 (collected respectively on 24 February 2020 and 28 April 2020, during that same period of inactivity) do not show the abnormalities of high haemoglobin and low RET% observed in Sample 11.

⁴⁰ Summarised at paragraph 5 of World Athletics’ Reply.

76. We also accept their rejection of Dr Heron's Expert Opinion on the significance of altitude on the RET%. The Expert Panel agreed with Dr Heron's analysis of the reduction in RET% after day five of continuous exposure to a hypoxic environment and reducing EPO levels after a week from going to altitude. However, they noted that such analysis is in fact contrary to the Athlete's case. That is because the RET% score in Sample 11 is the lowest of the profile and clearly below the baseline of the Athlete, as can be seen in the RET% graph to which we referred earlier. In addition, as the Expert Panel point out, there were other Samples that were collected at a period of eight (8) to ten (10) days after the Athlete had been at altitude, and that reduction in the RET% is not similarly apparent⁴¹.
77. We also prefer the Joint Opinions of the Expert Panel called by World Athletics in contrast to Dr Heron's proposition that the high Hb value seen in Sample 11 is reflective of the Athlete being in a "*relatively resting state for her*". As the Expert Panel point out, Samples 10 and 12 collected in February and April 2020 respectively, and during the same period of inactivity, do not show the abnormalities observed in Sample 11.⁴²
78. We also prefer the Joint Opinions of the Expert Panel on the question of the significance to be attributed to the reticulocyte percent value seen in Sample 11. As the Expert Panel point out in their Third Joint Opinion, when addressing the proposition that "*the athlete in question does not exhibit abnormal Hb values or reticulocyte % within her Athlete Biological Passport (ABP). These fluctuations are consistent with the physiological responses of a high-altitude resident and endurance athlete, and plausible explanations exist beyond blood manipulation or ESA use*", the Expert Panel provided the following answer:

"This point was already addressed in both of our previous reports. We disagree that the athlete does not have high Hb values: sample 11 has high hemoglobin and low ret%, respectively above and below the expected range for the athlete. The fact that she resides at high altitude was also taken into consideration in our first report: 'Altitude is unlikely to be the only explanation for this pattern as the athlete declared to have been at altitude for 14 days immediately prior to this sample (sample taken on

⁴¹ Dr Paixao made the point in oral evidence that the abnormalities apparent in Sample 11 would correspond to an 'off-phase' which can be observed two (2) to four (4) weeks after stimulation. It is also to be noted that at the time of Sample 11 the Athlete had already been at altitude for 61 days.

⁴² It should be noted that Sample 11 followed six (6) previous valid tests.

22.03.2020, altitude declaration 2,500m, from 07-22.03.2020. A mild off-score increase is typically observed several days (weeks) after the return to sea level, but not immediately, such as observed in the current profile'."

79. Dr Heron's main contention in relation to Sample 34 to 35 is (we summarise) that this may be explicable by the Athlete descending from altitude to sea level⁴³.

80. Again, we prefer the contrary opinion of the Expert Panel. They explain that this drop in reticulocyte % cannot properly be attributed to changes in altitude exposure. In their Third Joint Opinion, they expressed the following (which we accept):

"Even considering the 52-hour difference between exposure to altitude and the collection of sample 35, the drop in the ret% is still an abnormal result. For example, sample 6, collected 3 days after descending from altitude, has normal results for the athlete, contrasting with the huge drop in the ret% in sample 35 (2.18 to 0.68%)."

81. The next contention, advanced by Dr Heron in relation to the Athlete's pregnancy between Samples 34 and 35, is one that we have already rejected. At the time Sample 35 was given, the Athlete had been pregnant for no more than ten (10) to 11 days and, as the Expert Panel say, there is no support in the paper by Choi and Pai (nor anywhere else in the literature) for any material distinction to be drawn between non-pregnant and first trimester pregnant women, particularly so early in their pregnancy. We accept that even if it were considered that pregnancy made any difference⁴⁴, it would at best be minimal and would not explain the results observed between Samples 34 and 35.

82. A further point, discussed only briefly in the oral evidence, is that the Athlete gave as many as 62 anti-doping urine tests, including two (2) at around the time that Sample 35 was taken, and none of them have shown any evidence of the presence of a Prohibited Substance. That is true, but it is also clear that negative urine tests do not rule out blood

⁴³ Dr Heron also suggested that the Expert Panel had mistakenly thought that Sample 35 was obtained within 24 hours of descending from altitude and not after 52 hours. However, there is no doubt that the Expert Panel were and are aware of the suggested timescale (48 to 52 hours, making some allowance for flight time). It is significant that the abnormalities seen in Sample 35, for example, are not seen in Sample 15, another useful comparison. As the Expert Panel called by World Athletics explained in evidence, support for their analysis is to be found in the literature, including the study by *Ashenden and others* to which they referred in their Third Joint Opinion at p.1669 of the Hearing Bundle. This demonstrates that it takes four (4) to five (5) days for the changes in values to become significant – rather than the timescale of +/- 48 hours in this case.

⁴⁴ We would not put it even as high as that. According to the Choi paper, any difference would be between 1.19% and 1.16% which is not considered meaningful.

manipulation and the timing of samples and the dosing regime undertaken by an athlete can impact the detection window⁴⁵.

83. We also find no support for the contention on behalf of the Athlete that her chronic Hepatitis B infection (diagnosed in April 2021) could be a material factor. In very short summary, we accept the opinion of the Expert Panel to the effect that such an underlying condition will not have any material impact upon the values discussed elsewhere in the evidence.⁴⁶
84. We also reject the suggestion that the fact that 19 Samples were removed is somehow significant. We think it is irrelevant and we accept that the removal of such a percentage of Samples is unexceptional.⁴⁷ Those other Samples could just as well have been helpful to the World Athletics' case as they might have been supportive of the Athlete's case.
85. The only real question, in our view, is whether the 31 Samples that have been analysed (and, the three (3) Samples which have been the real focus of this case) are of a sufficient number and quality in terms of time, place and circumstances of their collection, as required by the applicable International Standards for Results Management, to provide a reliable evidential basis for the analysis conducted by the Expert Panel.
86. In our view, the fact that some Samples were rejected as invalid is indicative of the fact that the collection system is carefully controlled. We see no basis for contending that the 31 Samples that were declared valid are not a sufficient number for the analysis that has been undertaken. Nor do we consider that there is any substance in any of the criticisms canvassed in relation to the collection and testing processes, including the comment made about the storage time for Sample 11.

⁴⁵ Particularly when micro-dosing, as identified in the paper by Martin et al. in 2016, as recorded in the Third Joint Opinion.

⁴⁶ See the point as it was addressed in the Experts' Second Joint Opinion.

⁴⁷ We were told by Dr Schumacher and it was later corroborated by Professor Audren and Dr Paixao that it is not unusual to consider as few as ten (10) samples where five (5) have been excluded as invalid, or to find five (5) out of 15 samples have been similarly rejected.

J. Conclusions on the ADRV

87. It was submitted in argument on behalf of the Athlete that even if we had a very small degree of doubt – the figure canvassed in argument was even less than 1% - we should allow the Athlete the benefit of that doubt.
88. With due respect, that is not an appropriate way in which a Panel such as the present must approach a case such as this. The appropriate test, as now very well established, is that we need to be ‘comfortably satisfied’ that an ADRV has been committed before we find against an Athlete.
89. If authority for that proposition were to be required, then it can be found in CAS 2020/A/7510 Wanjiru v. World Athletics. That authority also provides useful guidance as to how one should approach the evidence, including evidence that is given by experts⁴⁸.
90. The burden is not on the regulatory authority to establish exactly how or in what circumstances blood manipulation may have occurred, nor is the burden on the Athlete to prove or disprove anything. If the Athlete is able to put forward compelling arguments as to why they have not – and cannot have – doped, then those should be taken into serious consideration. As the Panel in CAS 2020/A/7510 stated:⁴⁹ *“the evidence required from the Athlete need only be enough to reduce the Panel’s confidence that there was an ADRV to a level below that of comfortable satisfaction. Athletes may achieve that, and therefore be acquitted, without showing that their alternative explanations are probable, if they are enough for the Panel not to be comfortably satisfied that a prohibited method was used.”*
91. That is exactly the approach we take. We certainly do not just ‘rubber stamp’ the opinions of the independent experts called by World Athletics: they should be and were subject to careful scrutiny.⁵⁰ But, in short, we accept the analysis of the Expert Panel to the effect that the only plausible explanation for the results they have considered is that the Athlete was engaged in some form of deliberate manipulation of her blood. It is not necessary for us to consider which Prohibited Substance or Prohibited Method may have been used, or

⁴⁸ See also CAS 2014/A/3625 Sivasspor Kulubu v UEFA.

⁴⁹ At paragraph 147 of CAS 2020/A/7510 Wanjiru v. World Athletics.

⁵⁰ The approach of the CAS in the case of Simona Halep - CAS 2023/A/10025 and CAS 2023/A/10027 – *Simona Halep v International Tennis Integrity Agency*.

why the Athlete may have acted in that way, or whether someone (and, if so, who) may have influenced her to do so.

92. We should not speculate as to whether the Athlete was taken advantage of by others or whether she misguidedly took substances because she thought it would help her to recover from injury. Indeed, it has been no part of her case to advance an alternative proposition that she acted unintentionally and/or without fault or negligence.
93. As we said at an earlier part of this Decision, the Athlete is strictly responsible for what is in her body and, in this case, we find that the abnormalities identified have no legitimate explanation. It follows that we find that the Athlete has committed an ADRV, pursuant to Rule 2.2 of the World Athletics Anti-Doping Rules.⁵¹

K. Consequences of the ADRV

94. Rule 10.2 of the 2023 ADR provides the Consequences to be imposed for an ADRV as follows:

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

The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:

10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility shall be four years where:

- (a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.”*

95. It follows that the period of Ineligibility that we must impose shall be four (4) years, since we must find that the ADRV is intentional (and it is her first violation). In so doing, we find

⁵¹ Pursuant to the 2019 World Athletics Anti-Doping Rules and the 2021 World Athletics Anti-Doping Rules.

that the Athlete has not established (and has not sought to establish) that her ADRV was unintentional, and she is therefore subject to the mandatory period of Ineligibility of four (4) years as per Rule 10.2.1(a) of the 2023 ADR.

96. The period of the Provisional Suspension, since 30 November 2023, will be credited, pursuant to Rule 10.13.2(a) of the 2023 ADR. That is an appropriate Order to make here, since there is no indication that the Athlete has done anything other than respect the Provisional Suspension imposed.
97. We also consider we have no alternative other than to order the Disqualification of any competitive results obtained by the Athlete from the date of her first ADRV and her Provisional Suspension. That follows from Rule 10.10 of the 2023 ADR so that any results that the Athlete obtained between 22 March 2020 and 30 November 2023 must be Disqualified with all resulting Consequences, including the forfeiture of any medals, titles, points, prize money, and prizes. The relevant provision is in mandatory terms, albeit with one qualification: these consequences “*will*” follow “*unless fairness requires otherwise*”.
98. Whilst we have sympathy for the Athlete at a personal and human level, and one might wonder whether she may have been the victim of manipulation by others, we do not see that as a sufficient reason to depart from the normal consequences of Disqualification of results and resulting Consequences. We certainly recognise the considerable financial difficulties in which she finds herself without the financial support she has derived from her sport, and the emotional toll that this investigation has taken on her. Nevertheless, we must also bear in mind that a sense of sympathy for one athlete could be considered as demonstrating a lack of sympathy for the other clean athletes with and against whom she has competed. Accordingly, we consider that our obligation to consider “*fairness*” does not mean that we should here make anything other than the usual order in relation to the Disqualification of results and other associated benefits from competing.

L. The Claim for a Contribution to World Athletics' Costs

99. The ADRs provide for a basis upon which World Athletics may seek reimbursement of some or all of its costs incurred in bringing the case. That provision⁵² obliges us to take into account “*the proportionality principle*”.
100. Given all her personal circumstances as they were explained to us, we do not consider it would be proportionate to order the Athlete to make any contribution to the costs incurred by World Athletics.

M. Award

101. In those circumstances, and as set out in paragraph 9 of this Decision, we rule as follows:
- (i) The Athlete has committed an ADRV pursuant to Rule 2.2 of World Athletics Anti-Doping Rules⁵³;
 - (ii) We impose a period of Ineligibility of four (4) years upon the Athlete for the ADRV, commencing on the date of the Panel's award;
 - (iii) The Athlete will be given credit for the period of Provisional Suspension imposed on the Athlete from 30 November 2023 until the date of the Panel's award against the total period of Ineligibility.
 - (iv) We order the Disqualification of any results obtained by the Athlete between 22 March 2020 and 30 November 2023 with all resulting Consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Rule 10.10 of the 2023 World Athletics Anti-Doping Rules; and
 - (v) We make no award of any contribution to costs.

⁵² At Rule 10.12 of the 2023 ADR.

⁵³ Pursuant to the 2019 World Athletics Anti-Doping Rules and the 2021 World Athletics Anti-Doping Rules.

N. Right of Appeal

102. This Decision may be appealed to the Court of Arbitration for Sport (“CAS”), located at Palais de Beaulieu, Avenue Bergieres 10, CH-1004, Lausanne, Switzerland (procedures@tascas.org), in accordance with Rule 13 of the 2023 ADR.

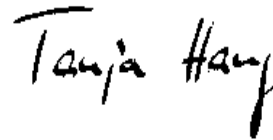
103. In accordance with Rule 13.6.1(a) of the 2023 ADR, the Parties shall have 30 days from receipt of this Decision to lodge an appeal with the CAS.



William Norris, KC



Dr Tom Murray



Dr Tanja Haug

On behalf of the Disciplinary Tribunal

London, UK
21 October 2024

1 Paternoster Lane, St Paul's London EC4M 7BQ resolve@sportresolutions.com 020 7036 1966

Company no: 03351039 Limited by guarantee in England and Wales
Sport Resolutions is the trading name of Sports Dispute Resolution Panel Limited

www.sportresolutions.com



ENABLING FAIR PLAY