SR/389/2024

BEFORE THE NATIONAL ANTI-DOPING PANEL APPEAL TRIBUNAL
IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF THE BRITISH BOXING BOARD OF CONTROL

Before:

Christopher Quinlan KC
Moe Sbihi
Professor Dorian Haskard

BETWEEN:

EMIR AHMATOVIC

Appellant

- and -

UK ANTI-DOPING

Respondent

DECISION OF THE NATIONAL ANTI-DOPING APPEAL TRIBUNAL

A. INTRODUCTION

1. This is the unanimous decision of the National Anti-Doping Appeal Tribunal (the "**Appeal Tribunal**") convened under Articles 7.9 and 13.6.2 of the 2021 Rules of the National Anti-Doping Panel "**(the Procedural Rules**") to determine this appeal brought by Emir Ahmatovic ("**the Appellant"**) against a decision of the National Anti-Doping Panel Tribunal ("**the Tribunal"**) dated 18 October 2024 ("**the Decision**"). It records our unanimous conclusions and 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.

2. By the Decision the Tribunal found, *inter alia*, that the Anti-Doping Rule Violations (**"ADRVs"**) were established and imposed a four-year period of Ineligibility.

3. The Appellant appeals by way of a Notice and Grounds of Appeal dated 7 November 2024 ("**the Notice of Appeal**").

4. The Chair was appointed by Kate Gallafent KC, President of the NADP on 27 November 2024, while Moe Sbihi and Professor Dorian Haskard were appointed on 3 March 2025.

5. The Athlete attended in person and was represented by Yasin Patel of counsel, who appeared *pro bono*. UKAD was represented by Paul Renteurs. We record our gratitude to both advocates for their assistance. Additionally, present at the hearing on 12 March 2025 were:

Appellant

Emir Ahmatovic, Athlete

Caitlin Haberlin-Chambers, Paralegal

UKAD – The Respondent

James Laing, Lawyer

Other

Eleanor Stocker, Case Manager, NADP Secretariat

Eva-Maria Lohwasser, Interpreter

Özlem Sansarci-Ali, Interpreter

B. FACTS

6. The Appellant is a German national and licensed boxer with the Bund Deutscher Berufsboxer ("**BDB**") – the national governing body for the sport of professional boxing in Germany. He subsequently applied for, and was granted, a Foreign Boxer licence by the British Boxing Board of Control ("**BBBoC")** – the national governing body for the sport of professional boxing in the UK – to take part in a WBO European Heavyweight Championship fight against David Adeleye at York Hall in London on 9 June 2023.

7. On 9 June 2023, UKAD Doping Control Personnel ("**DCP**") attended York Hall in order to carry out In-Competition Testing on a number of Athletes. After the Appellant completed his fight, the DCP attempted to collect a urine Sample from him. The first and second urine samples collected from the Appellant were not of 'Suitable Volume of Urine for Analysis', which is a minimum of 90mL, as defined in the World Anti-Doping Code International Standard for Testing and Investigations ("**ISTI**"). The DCP therefore collected a third urine Sample from the Appellant, which combined with the first and second urine samples (in accordance with Annex E of the ISTI) produced a Suitable Volume of Urine for Analysis, at 110mL.

8. With the assistance of Lesley Richardson – the Lead Doping Control Officer ("**DCO**") – the Appellant divided his urine Sample into two separate bottles, which were given the reference numbers A1182501 ('the A Sample') and B1182501 ('the B Sample'), respectively.

9. Both samples were stored and later transported to the Laboratory. Analysis of the A Sample returned an Adverse Analytical Finding (**"AAF"**) for 17β-hydroxymethyl,17α-methyl-18-norandrost-1,4,13trien-3-one, a Metabolite of metandienone, at an estimated concentration of 2.2ng/mL. The B Sample was not tested.

10. Metandienone is an anabolic androgenic steroid and is listed under section S1.1 of the 2023 World Anti-Doping Agency ("**WADA**") Prohibited List. It is a non-Specified Substance that is prohibited at all times.

11. On his Doping Control form ("**DCF**") the Appellant completed the declaration of medication section by entering the following words:

> "*vitamine C, B1, B6, B12, Acetylsalicylic, Diclofenac, Creatine, Orthomol-sport, EAA*"

12. In the section available for an Athlete's comments, the Appellant wrote: "*all good.*"

13. On 9 August 2023, UKAD wrote to the Appellant, notifying him of an AAF found in respect of his A Sample, and that he may have committed an ADRV contrary Article 2.1 and Article 2.2 of the UK Anti-Doping Rules ("**the ADR**"). The Appellant was also informed that he was provisionally suspended from all sport with immediate effect and told he must respond by 21 August 2023.

14. On 18 August 2023, the Appellant responded to UKAD's notice via email, expressing (in German) his shock at the AAF and stating that he could not explain the presence of a metabolite of metandienone in the A Sample. The Appellant suggested that UKAD liaise with his manager – Dennis Lindner – as he needed assistance in understanding the process. As a result, UKAD extended the deadline for a formal response to 29 August 2023.

15. On 23 August 2023, Mr Lindner sent a response to UKAD via email, stating that the Appellant was not aware of any guilt, and asked:

> *"Are the values tight limits? How can you explain the values?"*

16. On 25 August 2023, UKAD responded to Mr Lindner's queries, explaining that metandienone is a Non-Threshold Substance, and that therefore any concentration of it (or its Metabolites) in an Athlete's system can result in an AAF. UKAD also reaffirmed its request for the Appellant to offer an explanation as to how the metabolite of metandienone came to be in his system, and to confirm whether he wanted to have the B Sample analysed.

17. On 29 August 2023, Mr Linder responded to UKAD via email ("**the 29 August email**"). In that email Mr Lindner provided a long list of supplements that the Appellant had been taking. He stated that the last supplement on the list – 'Zinc+Tribulus' from the

manufacturer 'IronMaxx' – was "*probably the problem*" and suggested that "[the Appellant*] has nothing more to blame himself for*." He did not ask for the B Sample to be tested.

18. On 1 November 2023, UKAD issued the Appellant with a Charge Letter, formally charging him with the commission of ADRVs contrary to ADR Article 2.1 and Article 2.2.

19. On 21 November 2023, Kabala Mbaluku – who UKAD were informed had been instructed to act as the legal representative of the Appellant – wrote to UKAD setting out the Appellant's response to the charges. In that response, the Appellant denied any ADRV:

> "*It is disputed that in my client's urine […] a Metabolite of metandienone at an estimated concentration of 2.2ng/mL was found*."

20. It was further suggested that because the Appellant suffered from a number of illnesses, taking dianabol (a common brand name for metandienone) would be life-threatening, and the Appellant therefore would not have done so. It was also submitted, in the alternative, that any Prohibited Substance present in the Appellant's system could only have got there via "*contaminated legal food/food supplements*."

21. On 9 January 2024, UKAD requested that an NADP Tribunal be convened to determine the charges brought against the Appellant. On 17 January 2024, Jeremy Summers was appointed as Chair of the NADP Tribunal.

22. Mr Patel was instructed as counsel to represent the Appellant *pro bono*. Proceedings before the Tribunal became protracted by the Appellant's repeated non-compliance with procedural directions. For reasons fully explained in the Decision the Chair refused to admit evidence from Dalvinder Ghag.

23. The Tribunal heard the case on 13 September 2024.

C. THE DECISION

24. Given the approach we adopted in respect of the appeal, we need deal with this only briefly.

25. The Tribunal accepted the evidence led by UKAD. It found the DCO Derek Taylor to be a "*credible and compelling witness*"[1]. It accepted the evidence of Emma Price, UKAD Head of Testing that all the requisite Testing provisions had been complied with. It rejected the following[2]:

    a. The Appellant's evidence that Lesley Richardson, the DCO, had not worn gloves.

    b. The floor of the Appellant's toilet was "*swimming in urine*".

    c. The Appellant'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.

26. It therefore rejected the Appellant's case that the Sample collection process had been defective[3]. In light of its findings, the Tribunal held that the alleged ADRVs had been established, and that the Appellant 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.

27. Further, it concluded that the Appellant was unable to establish, to the standard required, the source of the Metabolite of metandienone and so had failed to establish, on the balance of probabilities, that his ADRVs were not intentional as defined by the ADR Article 10.2.3. Therefore, the appropriate sanction was a four (4) year period of Ineligibility in accordance with ADR Article 10.2.1(a), from 9 August 2023, the date of the Athlete's Provisional Suspension. Further, the result of the Athlete's fight on 9 June 2023 was automatically Disqualified, in accordance with ADR Article 9.1.

D. GROUNDS OF APPEAL

28. In his Notice of Appeal, the Appellant pleaded five Grounds:

[1] Decision, §117.
[2] Ibid, §124-128
[3] Ibid, §128.

a. Ground 1: Admissibility of evidence – the Tribunal wrongly refused to admit evidence from Dalvinder Ghag.

b. Ground 2: Neither the documentation nor proceedings were *"in a language* the Appellant] *understands"*.

c. Ground 3: Flaws in Testing Procedure – The Sample was not taken or stored in conditions that were required to maintain the integrity of the Sample.

d. Ground 4: "*Financial inaccessibility – The Appellant had no access to financial support of any kind."*

e. Ground 5: No Intention to Cheat.

E. UKAD's RESPONSE

29. By its document entitled *"Submissions of UK Anti-Doping in reply to the Notice of Appeal and the Appellant's Submissions*" dated 31 January 2025 ("**the Response**") UKAD resisted the appeal.

30. In summary UKAD submitted that the Sample collection process, as well as the transportation of the Appellant's urine samples to the Laboratory, were carried out in complete conformity with both the letter and the spirit of the ISTI and UKAD's Doping Control Handbook. The AAF that resulted is therefore reliable and establishes the ADRVs in this case[4].

31. Further, UKAD submitted in the Response that the Appellant was unable to establish, on the balance of probability, that those ADRVs were not intentional, and that as such, the applicable period of Ineligibility is four (4) years[5].

[4] Response, §96.
[5] Ibid, §97.

F. PROCEDURE

32. The Appeal Tribunal Chair conducted directions hearings on 9 December 2024 and 24 February 2025 during which he made directions for the preparation and management of the appeal pursuant to Articles 7.9 and 13.6.2 of the Procedural Rules. Article 13.6.3 of the Procedural Rules provides:

> *"Appeals should be conducted expeditiously. Save where all parties agree, or fairness requires otherwise, the appeal hearing shall take place no later than forty (40) days after the NADP Secretariat receives the Notice of Appeal."*

33. The parties expressly invited the Appeal Tribunal Chair to fix this appeal during the week commencing 3 March 2025. He therefore fixed the appeal for an in-person hearing in London commencing at 10.30 on Monday 3 March 2025. It was subsequently moved to 12 March 2025 to accommodate the Appellant's Counsel.

34. Article 13.4.1. of the Procedural Rules states:

> *"The scope of review on appeal includes all issues relevant to the matter and is not limited to the issues raised before the first instance Tribunal. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing."*

35. In light of Article 13.4.1 of the Procedural Rules and the issues raised by the Notice of Appeal, in the Response UKAD submitted:

> "*As such, and particularly in light of the Appellant's submissions, this Appeal should be considered as a de novo rehearing of the case, including the calling of live evidence from witnesses*."[6]

36. We adopted that approach. We heard evidence from the following live witnesses:

[6] Response, §4.

a. The Appellant

b. Dalvinder Ghag

c. Irma Ahmatovic

d. Ernesto Plantera

e. Lesley Richardson

f. Derek Taylor

37. At and after the directions hearing in December 2024 the Appeal Tribunal Chair explored with the parties the provision of interpreter for the Appellant to ensure he could follow the evidence and the appeal hearing. Article 8.5 of the Procedural Rules provides:

> *"The hearing shall be conducted in English. The Respondent shall be entitled to use an interpreter provided by the NADP at the Respondent's own cost. Any party wishing to rely upon documents written in a language other than English shall produce official English translations of such documents at his/its own cost."*

38. So far as the procedure on appeal is concerned Article 13.6.2 of the Procedural Rules provides:

> *"Articles 5, 7, 8, 9, 10 and 11 shall apply mutatis mutandis (i.e. with any amendments deemed to have been made that are necessary to take account of the different context) to proceedings before the Appeal Tribunal."*

39. The Appeal Tribunal Chair was told that Mr Mbaluku, who translated for the Appellant for part of the hearing before the Tribunal, was not available for the appeal. Mr Patel informed the Appeal Tribunal Chair that while the Appellant needed the help of an interpreter, he (1) could not afford to engage such a person for the hearing and (2) there was no one who was able and prepared to assist in this regard. He assured the Appeal Tribunal Chair that he had been assisted in this respect when taking instructions for his client and was fully instructed.

40. UKAD did not challenge the Appellant's need for translation but relied upon Article 8.5 of the Procedural Rules. Notwithstanding Grounds 2 and 4 and the Appellant's claimed impecuniosity, UKAD offered no alternative solution.

41. Whatever the reason/s for Article 8.5 of the Procedural Rules, it is not difficult to see the potential, in its present mandatory terms, for unfairness. It is a matter of basic fairness that an athlete must be able to understand the evidence and case against them and to participate fully in their proceedings. In its present form Article 8.5 has the potential to cause real unfairness to an athlete who needs but cannot fund or otherwise find an interpreter.

42. In the event, following discussions with the Appeal Tribunal Chair, the NADP Secretariat found a solution to this vexing issue. We repeat our gratitude to the NADP Secretariat, more particularly Ms Stocker, whose ingenuity secured the services of two interpreters.

43. We also repeat our thanks for the considerable assistance of the interpreters, who provided simultaneous and excellent translation of the proceedings (English/German) for the Appellant and for witnesses as required.

G. APPEAL DECISION

(1) Grounds 1, 2 and 4

44. We heard the appeal *de novo.* We admitted the evidence of Mr Dalvinder Ghag. At the start of the hearing Mr Patel assured us (in answer to direct questions for the Appeal Tribunal Chair) that the Appellant understood the evidence and the case against him. He had the assistance of an interpreter throughout the appeal proceedings. Accordingly, Grounds 1 and 2 fall away.

45. In respect of Ground 4, a financial disparity between an individual athlete and an anti-doping organisation is not uncommon. There are occasions when the financial disparity is to the advantage of the athlete. Very wealthy and high-profile athletes, such as some boxers or tennis players, can be in a much better financial position than a state-funded anti-doping organisation. Sometimes they secure outcomes in anti-doping proceedings

which arouse comment as to the inequality of their treatment, to their benefit. Financial inequality is frequently a feature of litigation and indeed of life.

46. One may have personal sympathy for an athlete seeking, for example, to prove the source of Prohibited Substance which they have not intentionally ingested. However, necessarily the rules mandate that a tribunal acts only on the evidence placed before it by the parties. A tribunal cannot speculate as to what additional evidence, for example scientific, might have shown if it had been obtained. Therefore, there is nothing in Ground 4.

(2) <u>Anti-Doping Rule Violation</u>

(a) <u>Relevant Rules</u>

47. ADR Articles 2.1 and 2.2 provide:

> *"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"*

> "*2.2 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".*

48. The Appellant did and does not possess a Therapeutic Use Exception ("**TUE**").

49. The burden rests upon UKAD to establish to the comfortable satisfaction of the Tribunal that the ADRVs had been established (ADR Article 8.4.1). However, where an Athlete alleges that shortcomings in the Sample collection procedure invalidate an AAF, ADR Article 8.4.6 provides:

> *"8.4.6 Departures from any other International Standard or other anti-doping rule or policy set forth in these Rules or the Code shall not invalidate analytical results or other evidence of an Anti-Doping Rule Violation, and shall not constitute a defence to an assertion of an Anti-Doping Rule Violation, subject <u>only</u> to the following potential exceptions. If the Athlete or other Person establishes a departure from one of the specific*

International Standard provisions listed below, and further establishes that that departure could reasonably have caused an Anti-Doping Rule Violation based on an Adverse Analytical Finding [...] UKAD shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding [...]:

(a) a departure from the ISTI provisions relating to Sample collection or Sample handling which could reasonably have caused the Adverse Analytical Finding based on which the Anti-Doping Rule Violation is asserted, in which case UKAD shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;"

(b) Evidence adduced on appeal

50. We record hereafter a summary of the evidence from witnesses we heard from during the appeal.

51. **The Appellant** adopted his written statement dated 27 July 2024. Therein he set out his background, growing up in Serbia (country of his birth) and then Germany. He started boxing aged 16 years and turned professional in 2017. He denied ever taking any Prohibited Substance and said he had been subjected to "*regular testing*"[7]. He took supplements and clean sport was very important to him.

52. As an explanation for the AAF, in his statement he raised the possibility of his unintentional consumption of contaminated food[8] or contaminated supplements[9]. He listed restaurants and eateries at and from which he had purchased and eaten food. He raised the possibility of contamination in a general way, without being able to identify any particular product which was the source of the Metabolite of metandienone. By way of example, he said this:

"The extensive list of different restaurants, food trucks, and Imbisses where I have eaten demonstrates the wide range of potential sources of contamination. It is important to consider that these environments are less regulated and more prone to contamination compared to the controlled

[7] Statement, §29.
[8] Ibid, §34 §43.
[9] Ibid, §34, §36.

food sources available to top-tier athletes. I have contacted all the restaurants provided above in an attempt to find out the source of the meat. Of the limited responses I received, the research I conducted did not show any signs of cross contamination but this did not eradicate the possibility of it.

Given the circumstances and the high likelihood of contamination from such a diverse and uncontrolled range of food sources, it is plausible that my positive test result could be attributed to this factor."[10]

53. He said:

> "*…it is evident that the test conditions were far from ideal. The integrity of the testing process was compromised, making it almost inevitable that the sample could be contaminated. Consequently, the results of this test cannot be considered accurate or reliable. It is crucial that tests of this nature be conducted under strict, controlled conditions to ensure their validity and uphold the fairness and integrity of the sport. Unfortunately, my experience did not comply with the standards set out by WADA*."[11]

54. He said that he could not afford to fund his own testing or to secure expert help. He pointed to the financial imbalance or disparity between him and UKAD.

55. He was asked questions by Mr Renteurs. He said clean sport was important to him and he was very health conscious. He denied intentionally doping and said he had been tested with no adverse result many times. He was taken to the **DCF** and agree that he wrote "*all good*" in box 27 "ATHLETE COMMENTS". He was asked how that sat with his evidence now about the state of the room, including puddles of urine. He said he had just finished a fight, was bleeding and tired, felt unwell and just wanted to get home. He denied that those two words reflected his true and accurate state of mind at the time because the room was not as he described it.

56. He was asked about an email he sent on 10 August 2023 to UKAD[12] upon being notified of the AAF in which he made no reference to the untidy state of the changing room. He

[10] Ibid, §44-§45.
[11] Ibid, §50.
[12] Evidence Bundle, p233.

explained that he drafted that in advice from his manager, Dennis Lindner. He was asked why Mr Lindner in the 29 August 2023 email also made no reference to the state of the changing room. He could not explain that but said he discussed that with Mr Lindner before the email was sent.

57. We heard next from **Dalvinder Ghag**. He adopted his written statement which is dated 11 (at the top) and 12 September 2024 (at the bottom). He is a cutman and was in the Appellant's corner for his fight on 9 June 2023. He is freelance and it was the first time he had met the Appellant. Mr Ghag does not speak German. He said the room used pre-fight was disgusting, with blood soaked bandages, dirty towels and a "*urine splattered toilet*"[13]. While he was wrapping hands members of the opposition team handled his kit, which distressed him.

58. He was asked questions by Mr Renteurs. It was, he said, the second hottest day of the year and there was no window in the changing room. He was insistent, and at times vehement, that the changing room used pre-fight was disgusting. It was the worst he had ever been in. He was taken to the DCF which shows the Appellant was notified of the test at 23.04 and that he signed it once the process was completed at 01.11. Mr Ghag said he left the venue after the last fight (the Appellant's) and he had been paid. He could not say what time that was and did not know if it was before 23.04 or after 01.11. He said he raised the state of the changing room with the venue. He said he did see the DCOs in the room, but did not watch them perform the test.

59. **Irma Ahmatovic** is the Appellant's wife. She gave evidence remotely from Germany with the assistance of an interpreter. She was present at the fight and in her statement (dated 12 December 2024) described the changing room thus: "*dirty floor, used towels, empty false cables lying around, clothes and bags".* The fight did not last long and was stopped because of a cut to her husband. She went to the changing room after the fight, saw the DCO and she said:

[13] Statement, §6.

> *"The changing room was a state of emergency, everything was dirty, filthy, no place to sit, no paper, no water, the people at the control room weren't wearing gloves, just absolutely no hygiene."*[14]

60. She said the Appellant had to drink a lot of water to provide a urine Sample. She said this about her husband:

> *"I cannot explain how such substances could have gotten into his body, my husband is by far an exemplary athlete who trains children and teaches them to stay away from such substances. He himself has an extreme aversion to this topic and, in my opinion and for health reasons, would never risk getting heart problems or blood pressure in a fight, in preparation or as an expectant father. He would never tarnish his previously clean record or risk his career."*[15]

61. Questioned by Mr Renteurs, she said she was present when the samples were collected. She said she did ask if it was normal to take samples in room like that. She did not take any photographs and denied she was lying to support her husband.

62. **Ernesto Plantera** is one of the Appellant's two trainers and he also gave evidence remotely from Germany with the assistance of an interpreter. In his statement dated 12 December 2024 he gave character evidence about the Appellant including this:

> *"Due to his sports education, Emir Ahmatovic has a strong body awareness and is actually not suitable for boxing due to his sensitivity to his health. I am 100% sure that he would not take any prohibited aids to increase his performance. That goes against his whole nature."*[16]

63. He said this in his witness statement about the changing room on the night of the fight:

> *"In the 6 m² dirty changing room in the venue in London, including shower and toilet, in which other boxers had previously warmed up, showered and changed, it was not possible to open a window despite the thick, damp, smelly air.*

[14] Statement, §8.
[15] Ibid, §10.
[16] Statement, §7.

The changing room and toilets were full of blood-stained paper towels and it stank accordingly due to the puddles of urine.

The door had to be left open, so strangers, including members of the opponent's team, came into the changing room all the time.

Shortly before the fight, there were heated discussions in our changing room with several members of the opponent's team and the supervisor of the event about the bandages.

After the fight, of course, there were a lot of people in the locker room until the doping control officials - I remember three people waiting in the locker room - arrived and had to testify that the place was anything but clean and certainly not sterile."[17]

64. Questioned by Mr Renteurs, he said he did not raise any concerns on the night as he had no concerns about the Appellant "*doping*". He did not take any photographs and denied he had exaggerated or fabricated the state of the changing room.

65. Turning to UKAD's case, we heard first from **Lesley Richardson**, the lead DCO. She adopted her statement dated 19 February 2024. She has worked for UKAD for over 22 years and has been a DCO for over 12 years

66. She was taken by Mr Patel to the DCO Report Form. She agreed that she has ticked the form indicating the sampling facilities were not adequate but that was as expressly explained in the form. She read out "*Section F*" in the form and was asked about that manuscript entry which she wrote. It was an entry for the whole mission, she said. She recorded therein the floor of a toilet which was "*swimming in urine*" toilet as that was not a suitable place to test. She denied that was the state of the toilet in the room where the Appellant's sampling took place.

67. She said she did not see urine on the floor where the Appellant was sampled, or blood or bloodied towels. She put down a folder and mat and conducted her work on top thereof.

[17] Ibid, §13 - 17

She agreed partial samples were taken from him but could not recall the Appellant drinking.

68. She said the Sample was kept in a cool hallway at her home, until it was taken to the laboratory on 12 June 2023. She said she spoke very little German, and matters were not explained to him in that language. However, she said she was happy at the time that he understood their words and actions.

69. She agreed she had not noted that facilities were satisfactory for sampling but there was no need for her to do so, she explained. She was asked about his sentence in the DCO Report Form:

> "*The integrity of the collection process was maintained but could have been comprised".*

70. She said that she was not thereby casting doubt on the integrity of the process. Had the process been compromised, she would have been required to complete a further form which she did not do.

71. In answer to questions from the Appeal Tribunal Chair, she said the process was not compromised. She said she saw nothing get into the Sample bottles nor was spilt onto or into them. They were sealed at the scene. He also asked her again about that sentence. She explained that what it meant was that the facilities which she described earlier in that entry had the potential to compromise the integrity of the collection process but had not done so. What she said she was not doing by that entry was casting doubt on the actual integrity of the samples taken from the Appellant.

72. Finally, we heard from DCO **Derek Taylor** who also gave evidence and adopted his written statement dated 19 February 2024. Therein he said he accompanied the Appellant back to his changing room after his fight. He said the Appellant and his coach were the only non-UKAD people in the changing room at that time[18].

73. He said the toilet within the changing room was used for Sample collection it was clean and tidy, as was the rest of the changing room[19]. He said he had no concerns about its

[18] Statement §4.
[19] Ibid, §5.

suitability for the Testing process. The Appellant had some difficulty producing the Sample but did not raise any concerns[20]. He said:

> "*…there is no way his Sample was contaminated during the process. Mr Ahmatovic was the only individual who had contact with the Sample collection vessel and was responsible for sealing the vessel once the patrial Sample had been provided."*[21]

74. He then explained the procedure when the Appellant twice provided further urine for the Sample. Once more he was always under Mr Taylor's supervision. The Appellant was "*compliant at all times and did not raise any objections or issues with how the test was conducted"*[22]*.* He concluded his statement with this observation:

> "*Throughout the process of Sample collection, I saw no chance of contamination of the Sample occurring. The Sample collection vessels were handled only by Mr Ahmatovic up until the point they were sealed, and the only liquid within the dressing room was water that Mr Ahmatovic used to hydrate himself. I have no concerns that there is any risk the Sample collection process could have been compromised.*"[23]

75. We also considered the written witness statements from the following:

    a. Sedar Nergis

    b. Dennis Linder

    c. Kabala Mbakulu

    d. Dr Petra Lenzen

    e. Nick Wojek

    f. Brent Gregory

[20] Ibid, §6.
[21] Ibid, §7.
[22] Ibid, §11.
[23] Ibid, §12.

g. Emma Price

76. In her statement dated 16 August 2024 Ms Emma Price, the Head of Testing at UKAD addressed several important procedural matters. She was not required by the Appellant to attend the hearing and so her evidence was not challenged. She said the ISTI establishes mandatory standards for Testing and includes specific provisions for:

a. Preparing for the Sample collection session;

b. Conducting the Sample collection session;

c. Security/post-test administration of samples; and

d. Transporting samples to a laboratory.

77. She said that Lead DCOs are instructed that the minimum requirements for a Doping Control Station (**"DCS"**) include (a) a toilet, (b) a flat surface for Sample processing, (c) a seating area for waiting, and (d) the facilities being clean and well-lit[24]. Lead DCOs are advised that if the initial facility offered is not suitable for use as a DCS, they should request to see alternative locations within the venue, and that this should be recorded in a Supplementary Report Form[25]. If the Lead DCO is unable to locate suitable facilities, then the test should be aborted and UKAD notified immediately. She said that the location for storage of urine samples by DCOs prior to collection by a courier should be one that protects the integrity, identity, and security of the samples. The location should be cool, to minimize the potential for Sample degradation in extreme weather conditions. UKAD DCOs are not supplied with nor are they required (under the ISTI or DCP Handbook) to refrigerate urine samples in their possession prior to collection by a courier[26].

(c) Decision

78. We repeat to emphasise that we had regard and gave appropriate weight to all the evidence, materials and submissions placed before and made to us.

[24] Statement, §9.
[25] Ibid, §10.
[26] Ibid, §12.

79. It is accepted by the Appellant that his A Sample contained a Metabolite of metandienone, which is an anabolic androgenic steroid and is listed under section S1.1 of the 2023 WADA Prohibited List.

80. The Appellant's case, and Ground 3, is that the conditions of the Sample collection and the means by which his urine samples were stored, in breach of the ISTI invalidated the AAF. Therefore, and in accordance with ADR Article 8.4.6, it is for the Appellant to establish on the balance of probabilities:

    a. A departure from the ISTI; and

    b. That such a departure could reasonably have caused the AAF.

81. We start where most of the evidence we heard concentrated: the state of the changing room during the sampling process. We accept on the balance of probabilities the evidence from Ms Richardson and Mr Taylor that the changing room was appropriate for the sampling process and the integrity thereof and of the Sample, were not compromised. We do so for these reasons:

    a. Neither has any reason to undertake the sampling process in unsatisfactory conditions and we are satisfied that they would not have done so. Both are experienced DCOs who understand their role and the importance of ensuring compliance with the ISTI.

    b. Ms Richardson noted in the DCO Report Form conditions which were not satisfactory for Testing. We are satisfied she would not have done that and then conducted the sampling process in such conditions. To have done so would have been illogical.

    c. Their evidence is supported by the contemporaneous documentation.

    d. Their evidence was consistent, internally and with each other.

82. We are satisfied by Ms Richardson's evidence that properly understood what she meant by the sentence – "*The integrity of the collection process was maintained but could have been comprised*" - there was the potential for the sampling process to be comprised but that did not happen. That is also the sensible reading of that sentence.

83. We therefore prefer their evidence to the Appellant's and the evidence called on his behalf. If the Appellant, his wife and Mr Plantera had genuine concerns about the state of the changing room at the time of the sampling, then we would expect them to have raised them at the time. Further, they might have been expected to take photographs, but they did not. They also did not raise any such concerns in the email correspondence after the Appellant had been told of the AAF. If it was a genuine concern, it could, and in our view would, have been raised on one or more of those opportunities.

84. The Appellant's contemporaneous observation "*all good*" is telling. He has been tested before and is experienced in that respect, he would, we are satisfied, have raised any such concerns. He told us he knew the meaning of the English words "all good". We reject his explanation to that he was not thinking correctly due to his post-fight condition. Even tired, cut and bloodied, if he was able to express his satisfaction, he could have expressed any discontent.

85. Mr Ghag was insistent about the condition of the changing room. However, we note that he was speaking largely about events pre-fight. Further, his evidence was undermined by his failure and that of others to raise any issue or concerns at the time.

86. We note Mrs Ahmatovic's testimonial about her husband and the other evidence of that nature. However, character evidence of that kind, while relevant, does not provide a defence. Further, they would not be first close relative or friend to be surprised by the commission of an ADRV by someone hitherto trusted.

87. Further, even if we were to accept the Appellant's evidence and that called on his behalf about the condition of the changing room, that would be only stage 1. He would still have to establish to the requisite standard that such departure from the ISTI could reasonably have caused the AAF. In that respect there is simply no evidence. It amounts to no more or less than speculation. Therefore, the Appellant failed also in this respect.

88. Since it was raised as an issue, we address the fact that the sampling process was conducted in English. We accept the evidence of the DCOs that the Appellant understood the process. Ms Richardson told us that she made herself understood to the Appellant by her words and actions. She was satisfied at the time that he understood. Mr Patel described that as her assumption. It was not; it was an inference she was reasonably

entitled to draw from what he did and said, including his obvious compliance. That is especially so in the context of his experience and knowledge of the Testing process. He also expressed his contentment in English: "*all good*".

89. We turned to the storage of the Sample in the hallway. Ms Price's evidence was the location for storage of urine samples should be one that protects the integrity, identity, and security of the samples. The ISTI do not require samples to be refrigerated. The location should be cool, to minimize the potential for Sample degradation in extreme weather conditions. That is consistent with Ms Richardson's evidence.

90. Mr Patel complained that the Appellant cannot challenge what she said about the conditions in her hallway. There is nothing to undermine it. There is no proper basis for us not to accept it. Further, there is no evidential basis for us to find that such storage may have affected the integrity of the Sample and led to possible degradation thereof. To do so would be to guess and once more we reject the invitation to do so.

91. It follows that we dismiss Ground 3. There were no significant or any flaws in the sampling procedure, nor was there a failure to comply with the ISTI.

92. The Appellant also contended the source of the Metabolite of metandienone in his Sample must be a contaminant from the changing room or his unintentional ingestion of a contaminated food product, drink (including water in the changing room) and/or a supplement. There is simply no evidence that he did so. In his statement the Appellant characterised such as a possibility. At its highest that is all it is. That does not get close to discharging the evidential burden upon him.

93. Therefore, we are comfortably satisfied that both ADRVs are proved against the Appellant.

(3) <u>Sanction</u>

94. This is the Appellant 's first ADRV. As such ADR Article 10.2 provides:

> *"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*."

95. Methandienone is not a Specified Substance for the purposes of the ADR. Accordingly, the burden rests upon the Appellant to establish, on the balance of probabilities, that the ADRVs were not intentional pursuant to ADR Article 10.2.1(a). 'Intentional' is defined in ADR Article 10.2.3. Consideration of this issue addresses Ground 5, namely that the Appellant denied an intention to cheat.

96. It is settled and well-established 'law' that, save in wholly exceptional and rare cases, in order to establish that an ADRV was not 'intentional' for the purposes of ADR Article 10.2.1(a), an Athlete must establish how the Prohibited Substance entered their system. The principle underlying that approach is sound: without proof of the means of ingestion,

it is impossible for a hearing panel properly to consider the circumstances of the ADRV and whether an Athlete's conduct was intentional or not.

97. The 'Comment to Article 10.2.1.1' in the 2021 WADA Code states:

> *"While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance."*

98. The Court of Arbitration for Sport (**"CAS"**) jurisprudence is also clear that, save in the most exceptional circumstances, an Athlete cannot rebut the ADR Article 10.2.1(a) presumption of 'intentional' Use unless they prove when and how the substance entered their system. Further, a simple denial of intentional misconduct without more is not sufficient to discharge the burden upon an Athlete. Similarly, simply to assert as an explanation for an AAF must be a Contaminated Product is inadequate to discharge that burden[27]. An Athlete must "*adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question*"[28].

99. As UKAD rightly acknowledged, the CAS has ruled that, in principle, it may be possible to establish that conduct as not 'intentional' Use where there is satisfactory objective evidence that the explanation for the AAF is contamination, even if the precise source of the contaminant cannot be established. Consistent with the need to secure the floodgates against unmeritorious cases, such cases will be exceptional and extremely rare. *In Villanueva v FINA*, the CAS Panel stated that:

> "[…] *proof of source would be "an important, even critica"' first step in any exculpation of intent. Where an athlete cannot prove source it leaves the*

[27] *WADA v Abdelrahman*, CAS 2017/A/5036 [125].
[28] *WADA v IWF & Caicedo*, CAS 2016/A/4377, [52]

narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him."[29]

100. The Appellant relies upon the CAS decision in *WADA v Shayna Jack*[30]. Like all such decisions it is not binding. It also predates the 2021 version of the Code. We note that CAS Panel endorsed the jurisprudence that *"Speculations, declarations of a clear conscience, and character references are not sufficient proof* [of source]"[31]. Indeed, it stated:

> "*Merely to invoke such possibilities* [as contamination] *cannot be a successful defence, but must be combined with a forcefully persuasive showing of unlikelihood of intent as defined in the rules*."[32]

101. The Appellant also relied upon *Goodfellow v Rugby Football Union*[33].. The appeal in that case was allowed because the factual findings of the first instance tribunal did not justify a finding that the appellant knew there was a significant risk that his conduct would constitute or result in an ADRV[34]. The decision is one reached on its own facts and it establishes no principle.

102. He also relied upon the decision of *UK Anti-Doping Limited v Khan*[35]. Once more that was a decision reached on its own facts, which establishes no principle and certainly none which undermines the 'law' as set out herein. Indeed, in that case there was objective scientific evidence which ruled out any deliberate or reckless conduct by the boxer[36].

103. In this case, the Appellant's case amounted to the raise of a number of speculative possibilities to explain the AAF, without any substantive supporting evidence and a robust insistence of innocence, supported by character evidence. That is not sufficient to

[29] 2016/A/4534 [37].
[30] 2020/A/7579.
[31] Ibid, [5]
[32] Ibid, [152].
[33] SR/063/2020
[34] Ibid, [25]
[35] SR/238/2022.
[36] Ibid, [32].

discharge the burden of establishing on the balance of probability that his ADRVs were not intentional within the meaning of ADR Article 10.2.3.

104. Therefore, the appropriate sanction is a four (4) year period of Ineligibility in accordance with ADR Article 10.2.1(a). That will start on 9 August 2023, the date he was provisionally suspended, in accordance with ADR Article 10.13.2. It will end at midnight on 8 August 2027.

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

H. SUMMARY

106. For the reasons set out the NADP Appeal Tribunal:
    a. Finds the ADRVs proved.
    b. Imposes a period of Ineligibility of four (4) years from 9 August 2023 to 8 August 2027 inclusive.
    c. The result of the Athlete's fight on 9 June 2023 is automatically Disqualified.

Christopher Quinlan KC
Chair, on behalf of the Appeal Panel
London, UK
1 April 2025