

UCI Anti-Doping Tribunal

Judgment

case ADT 04.2019

UCI v. Mr. Roberto Pinheiro

Single Judge:

Ms. Helle Qvortrup Bachmann (Denmark)

Aigle, 3 February 2020

I. INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as “the Tribunal”) in application of the UCI Anti-Doping Tribunal Procedural Rules (hereinafter referred to as “the ADT Rules”) in order to decide whether a violation of the UCI Anti-Doping Rules (hereinafter referred to as “the ADR”) was committed by Mr. Roberto Da Silva Pinheiro (hereinafter referred to as “the Rider”) as alleged by the Union Cycliste Internationale (hereinafter referred to as the “UCI” and, together with the Rider, “the Parties”).

II. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, established based on the submissions of the UCI and not contested by the Rider, who did not participate in the proceedings before the Tribunal. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence filed on the case, the Judgment refers only to the necessary submissions and evidence to explain her reasoning.

1. The Parties

The UCI

3. The UCI is the association of national cycling federations and is a non-governmental international association with a non-profit-making purpose of international interest, having legal personality pursuant to Articles 60 ff. of the Swiss Civil Code according to Articles 1.1 and 1.2 of the UCI Constitution.

The Rider

4. At the time of the asserted Anti-Doping Rule Violation, the Rider was a professional road cyclist affiliated to the Brazilian Cycling Federation (BCF) and was a Licence Holder within the meaning of the ADR. The Rider started his professional cycling career in 2010 when he joined the UCI Continental team Funvic-Pindamonhangaba. The Rider rode for that team until the end of the 2017 season. The team competed as a Professional Continental Team in 2016 and 2017 (the 2016 team name was Funvic Soul Cycles – Carrefour, and the 2017 team name was Soul Brasil Pro Cycling Team).

2. The ABP

5. The Rider was part of the UCI’s Athlete Biological Passport Programme (hereinafter the “ABP”). The APB is based on longitudinal monitoring of the athlete and is designed to be an “indirect” method of doping detection. It focuses on the effect of prohibited substances and methods on the athlete’s haematological values rather than the identification of a specific substance or method in the athlete’s specimen.
6. The Adaptive Model is a statistic tool which was developed to identify atypical values or profiles that warrant further investigation. It predicts - for the individual athlete - an expected range within which the athlete’s biological markers will fall assuming a normal physiological condition.
7. Haematological data is considered atypical if 1) a haemoglobin (HGB) and/or OFF-score (OFFS) marker value falls outside the expected intra-individual ranges, with outliers corresponding to

values out of the 99%-range (0,5 – 99,5 percentiles) (1:100 chance or less that this result is due to normal physiological variation), or 2) when HGB and/or OFFS *sequence deviations* (a longitudinal profile of marker values) are present at specificity of 99,9% (1:1000 chance or less that this is due to normal physiological variation).

8. The OFF-score value is a haematological marker which is a combination of HGB and the percentage of reticulocytes (RET%).

3. The alleged anti-doping rule violation

9. The UCI alleges that the Rider committed a violation of Article 2.2 ADR based on abnormalities detected in the haematological values contained in the Rider’s ABP.
10. The following table summarizes the key parameters reported in the Rider’s ABP:

No.	Sample code	Date of test	Test type	HCT%	HGB (g/dL)	OFF-score	RET# 10 ⁶ /uL	RET %	RBC 10 ⁶ /uL
1	108299	29.09.2015	OOC	50.7	16.7	132	0.0199	0.34	5.85
2	176819	24.01.2016	OOC	43	14.4	66.7	0.0817	1.66	4.92
3	108281	02.02.2016	OOC	42.2	14	54.1	0.0968	2.05	4.72
4	108256	24.02.2016	OOC	43.4	14.6	81.9	0.0552	1.14	4.84
5	182266	02.03.2016	OOC	48.6	15.8	92	0.0646	1.21	5.34
6	108226	17.03.2016	OOC	45.6	15	99.4	0.0357	0.71	5.03
7	182449	31.03.2016	OOC	46	15.2	98	0.042	0.81	5.18
8	108203	14.04.2016	OOC	47.5	15.7	91.3	0.064	1.2	5.33
9	108314	01.06.2016	OOC	47.3	15.8	90.1	0.0703	1.28	5.49
10	108320	23.06.2016	OOC	49.8	16.9	115	0.0459	0.81	5.67

11. In the present case, the following samples of the Rider’s ABP were flagged by the Adaptive Model for abnormalities at 99% specificity:
 - Sample 1 collected on 29.09.2015 (lower limit for RET% and upper limit for OFF-score);
 - Sample 2 collected on 24.01.2016 (lower limit for OFF-score and upper limit for RET%);
 - Sample 3 collected on 2.02.2016 (lower limit for OFF-score and upper limit for RET%);
 - Sample 10 collected on 23.06.2016 (upper limit for HGB and upper limit for OFF-score).
12. The ABP sequence for reticulocytes and OFF score were also abnormal at >99,9% specificity.
13. Following the initial expert review, the Athlete’s Passport Management Unit submitted the Rider’s ABP to an expert panel consisting of three experienced anti-doping specialists (Giuseppe d’Onofrio, Michel Audran and Yorck Olaf Schumacher; hereinafter: the Expert Panel) for independent evaluation.
14. The Expert Panel conducted a review of the Rider’s ABP and the Rider’s competition schedule, and in a joint expert opinion dated 13 July 2017 (Expert Opinion #1) set forth their unanimous opinion on the Rider’s haematological profile as follows:

“[...] Hematological evaluation

In addition to the multiple flags triggered by the profile in the adaptive model software, the hematological assessment of the blood parameters discloses in this passport some highly

abnormal samples with different aberrant patterns, characteristic of blood manipulation. The most severe abnormalities are seen in samples 1 and 10.

[...]

Sample 1, in particular, displays a set of hematological abnormalities typical of the so-called OFF-phase of hematological doping, characterized by erythropoietic suppression (low reticulocytes) consequent to increased circulating red cell mass (high hemoglobin). This pattern is observed in athletes who have stimulated the production of red blood cells with injections of an erythropoietic stimulating agent (ESA) and then have suspended them a few weeks before an important competition, when they expect to be tested [1-3]. The OFF score is calculated from hemoglobin and reticulocytes [HB (g/l)-60\reticulocytes (%)] and has been specifically identified by researches aimed at discovering the condition of suppressed erythropoiesis with increased red cell mass typically produced during the wash-out period which follows ESA doping [2]. The likelihood of an analytical issue as a cause of this abnormality is extremely low, and there is no known pathological condition capable of causing a similar OFF condition, with the exception of very rare neoplastic or congenital form of erythrocytosis, which are not transitory. The probability to have an OFF score of 132, as in sample 1 of this Passport, in an undoped male athlete is very low [2]. Sample 1 was collected on 29-9-2015, one week before the Athlete's participation in the World Military Games (6-8 October 2015). This result was obtained a few days after a 16-day stay at an altitude of 1800 m. It is well-known from a large number of scientific studies that altitude has a moderate effect on hematological parameters. After return to sea level after a stay at around 2000 m, in particular, a mild increase of the OFF score has been described [4,5], by far lesser however than the value 132 observed in sample 1. Similar sojourns at the same height, on the other hand, have been reported by the Athlete for all the samples in this profile, and this definitely excludes that the peculiar findings in samples 1 and 10 were related to altitude.

Sample 10, collected on 23.6.2016, is also very abnormal, because of a marked increased value of hemoglobin (16.9 g/dl), with a high OFF score of 115: both results breach the statistically calculated upper intraindividual thresholds. The reticulocyte percentage (0.81%) is not as suppressed as in sample 1, indicating the OFF phase was not yet or no longer fully displayed. According to the competition schedule provided to us, sample 10 was collected the day before the 2016 National Championship.

In addition to such two severe abnormalities, markedly increased reticulocyte counts are observed in sample 2 and 3, in combination with the lowest values of hemoglobin of the profile, which are in the average range for the healthy male population. This finding raises the possibility of a further exogenous stimulation of red cell production, reflected in the fluctuations of hemoglobin values in the subsequent samples (such as the increase to 15.8 g/dl in sample 5, collected one month later).

Quality of hematological laboratory results

All samples were scrutinized for their analytical details outlined in LDPs or CA. In the available documentation, there is no indication that any analytical or pre-analytical issues might have influenced the results in a way that would explain the abnormalities in the profile or alter the analytical data to the disadvantage of the athlete. The observation and hematological assessment of instrument reports and quality control data confirms absence of pre-analytical interferences, good analytical performance and interlaboratory comparability of results.

Conclusion

We therefore conclude, considering the information within the Passport at this stage and in the absence of an appropriate explanation, that it is likely that a prohibited substance or

prohibited method has been used and that it is highly unlikely that the passport is the result of any other cause, such as environmental factors or a medical condition.”

15. On 4 December 2017, upon invitation and after all relevant documentation had been sent to the Rider, the Rider’s lawyer sent the following to the UCI:
- The Rider’s explanation;
 - Medical reports;
 - Hospital records;
 - A scientific case report on Rhabdomyolysis and Myoglobinuria (*Arq. Neuro-Psiquiatria (Sao Paulo), Vol 41, No 3, September 1983*); and
 - Results of laboratory investigations.
16. On 22 December 2017, upon request from the UCI, the Rider provided translation of the documents that were only provided in Portuguese on 4 December 2017.
17. In the Rider’s explanation the Rider first submitted that he has *“never ingested any substances or prohibited method according to the Doping Test Rules”*.
18. The Rider submitted that he suffered from the medical condition rhabdomyolysis in June 2015. The Rider argued, that rhabdomyolysis *“justified [the] changes”* in the Riders ABP. The Rider explained that after an exhaustive training of more than 70 kilometres in a location with high temperatures and possibly low hydration in the beginning of June 2015, he had to be hospitalized for treatment of rhabdomyolysis. Furthermore the Rider submitted the following:

“The documentation issued by Brazil’s Aeronautics, linked to the Brazilian Defense Ministry, proves that the athlete was hospitalized for the treatment of rhabdomyolysis at the Aeronautics’ Hospital in an urgent way due to the severity of the disease, even requiring accompaniment.

The athlete’s case was of high gravity, so much that he was interned for the term of 1 week for treatment.

It is important to accentuate that examinations done weeks later proves variation in blood levels due to the illness pointed out, as the hemograms made in 06/08/2015, 06/15/2015, 06/18/2015 and 06/25/2015 comprove.

<i>EXAMINATION DATE</i>	<i>HEMATOCRITS (HCT)</i>
<i>06/08/2015</i>	<i>58,5%</i>
<i>[06]/15/[2015]</i>	<i>60,8%</i>
<i>06/18/[2015]</i>	<i>53,2%</i>
<i>06/25/2015</i>	<i>58,4%</i>

Such numbers of the chart above shows that the hematocrits level increased and decreased without control, precisely because it is a sign and symptom of the disease.

It is also important to emphasize that, in this period, the athlete did not participate of competitions and even train, just because of the sickness that fragilized his health and made impossible to carry out the activity.

The first quoted examination that points changes, made in September 2015, evidently derives from the pathology of the athlete, because occurred some weeks after the hospitalization of a serious case.

To evidence the allegations of justified changes of the athlete's examinations, there are scientific studies that point out high shifts in blood exams due to rhabdomyolysis.

Eventually, the athlete's disease it's clearly proven through the medical report, drawn up by the doctor [...], who accompanied the athlete during treatment. In the report, the doctor points the gravity of the disease, including hospitalization for 7 days and an expressive increase of CPK, which stayed above than 7000, in reason of the rhabdomyolysis, what proves the alteration justified on the athlete's exams.

3. ELIMINATION OF THE PERIOD OF INELIGIBILITY WHERE THERE IS NO FAULT OR NEGLIGENCE

As provided in ANTI-DOPING RULES, there is no infringement to the rules, as the alterations on the athlete's examinations did not occur to lack or negligence, because it is due a sickness clearly proved in documents.

[...]

Therefore, there were no violation of the anti-doping rules due to lack or negligence of the athlete, but clearly due to a serious pathology suffered by him, what caused the justified changes on the examinations.

Still, in case of eventual punishment of the athlete, requires that the suspension occurs in the terms of the article 10.11.1, so that the beginning of the suspension can occurs from the date of the first sample, that is, 09/27/2015:

[...]

Therefore, the pathology that caused the hospitalization and proving the gravity of the case, also shows the reason in the exams changes, but, the exam of the date 06/23/2016, made by Brazilian Doping Control Laboratory, can not even be considered valid, as will be demonstrated in the next topic. This way, requires the absolution of the athlete, by absence of lack or guilt on the exam's alterations.

4. OF THE WITHDRAWAL OF ACCREDITATION OF THE BRAZILIAN DOPING CONTROL LABORATORY (LBCD)

According to the linked news on official website of WADA, the Brazilian Doping Control Laboratory (LBCD) had its accreditation suspended in reason of irregularities shown on the doping control procedures, because the laboratory did not comply with the International Standard for Laboratories (ISL)

[...]

The LBCD was responsible for collecting and performing examinations and, according with the WADA's regulations, it is responsible by the fulfillment of the international rules and management of results.

Due to the disregard of the international standards, it had its accreditation suspended by WADA and, from suspension, could not accomplish the mentioned exams during this period.

In addition, due the noncompliance of the international standards in the procedures of doping control, it is clear the possibility of equivocation on the pointed exams and the possibility of failure on the process, what could change que results of the exams.

5. REQUESTS

After all, it requires:

- a) the receipt and analysis of the medical documents attached;
- b) the receipt of the shown allegations, with absolution of the athlete."

19. On 25 January 2018, the Expert Panel issued a follow up Report (Expert Opinion #2) in which it evaluated the Rider's explanations and the following documents:

- Blood tests dated 2.6.2015, 3.6.2015, 8.6.2015, 15.6.2015, 18.6.2015, and 25.6.2015;
- Hospital records for the period from 3.6.2015 to 9.6.2015 including patient medication charts and notes on the follow up appointment on 15.6.2015;
- Various other medical documents; and
- A scientific article "*Rhabdomyolysis and Myoglobinuria - report of acute case with good evolution*" (Arq. Neuro-Psiquiatria (Sao Paulo), Vol 41, No 3, September 1983).

In addition to the documents provided by the Rider, the Expert Panel received correspondence from the Cycling Anti-Doping Foundation regarding the analysis of blood samples and the revocation of WADA-accreditation of the Rio de Janeiro Anti-Doping laboratory (e-mail from WADA to UCI, dated 3. February 2018). In the e-mail, WADA's Senior Manager of Laboratory accreditation stated that "[...] WADA instructions to the Laboratory were that blood samples collected for the Athlete Biological Passport (ABP) and received prior to the suspension/revocation date (or Samples that could not be transferred to another WADA accredited Laboratory within the analysis timeline of the TD BAR) had to be analyzed by the suspended Laboratory since shipping to another WADA accredited laboratory was not a viable option." and "[...] In this regard, WADA can confirm that the non compliance(s) leading to the suspension of the Rio Laboratory's accreditation on 22 June 2016 was not related to the analysis of ABP blood samples".

20. It follows from Expert Opinion #2 that the Expert Panel's evaluation of the Rider's arguments was as follows:

"[...] We refer to our joint expert opinion dated 13.7.2017 for the abnormalities observed in the profile. In brief, these were:

- *OFF patterns in samples 1 and 10, obtained in vicinity of major events, indicating supraphysiologically increased red cell mass at the time of these tests.*
- *Increased reticulocytes in samples 2 and 3, suggesting an erythropoietic stimulation at the time of the sampling.*

To explain these abnormalities, the athlete makes the following claims:

- *He suffered from Rhabdomyolysis in June 2015, which has caused the fluctuations in his blood markers.*
- *There are shortcomings in the sample analysis, as the accreditation of the Rio de Janeiro Laboratory was suspended in 2016.*

In the following, we will evaluate these points in view of the data of the profile and the scientific evidence.

1- Rhabdomyolysis

The athlete attributes the changes observed in his profile to an episode of rhabdomyolysis which he was hospitalised for from 3.6.2015 to 9.6.2015. He supports his argumentation with several blood tests and hospital records.

Rhabdomyolysis is a condition where skeletal muscle tissue is damaged and leads to progressive muscle cell death with release of the muscle cell content into the blood stream. Rhabdomyolysis can occur for various reasons, ranging from infections to intoxications. Rhabdomyolysis can also occur after muscular exercise or other forms of heavy muscle contractions such as muscle cramping after seizures or the “crush injury” observed when the body has been compressed (f.ex. in collapsed buildings). The main complication of rhabdomyolysis is the impairment that the circulating remnants from the muscle cell can cause to the kidney.

Typically, creatine kinase (CK), an enzyme present in abundance in the muscle and released in the circulation in case of muscle damage of any sort, is used to assess the extent of rhabdomyolysis. There is a wide variation in CK levels after various forms of muscle damage. Physical exercise can cause CK levels of more than 10000 I/U without any clinical symptoms other than muscle soreness (1–3). Seizures also frequently cause CK level increases up to 50-fold from baseline due to the often associated tonic-clonic muscle cramping (4).

Therapy of rhabdomyolysis is symptomatic, i.e. mainly consists of hydration (oral or intravenous) to assure good kidney perfusion and filtration pressure to support the elimination of the muscle waste through the urine. Under adequate therapy, even very high levels of CK (> 50000 I/U) usually resolve within a few days (5,6).

There are no known long time sequelae for rhabdomyolysis other than kidney damage, which, as described above, is rare if the patient does not have any co-morbidities and is well hydrated (6,7).

Relating these facts to the explanations of the athlete, there are certain points which are not clear: According to the medical records, the patient also suffered from a seizure (see page 2 of the hospital records). As described above, seizures can cause increases in CK through the associated muscle cramping. It therefore remains to be determined whether the rhabdomyolysis of the patient occurred secondary to the seizure, as a consequence of exercise or for other reasons.

It is also unclear why the patient remained in the hospital for a prolonged period of time with relatively low CK levels. Levels such as observed in the athlete do not require hospital treatment in most clinical settings, let alone any applied intravenous high volume infusion strategy, as described for the present case. In fact, such levels can occasionally be observed after heavy training in any athlete (1,5).

When scrutinizing the defence argumentation on this point in view of the profile, there is no indication in the literature that rhabdomyolysis of whichever origin will cause increases in haemoglobin concentration or a suppression of reticulocytes, such as observed in the samples 1 and 10, or erythropoietic stimulation, such as seen in samples 2 and 3.

Haemoglobin is a concentration based measure, thus in addition to changes in red cell mass, alterations in plasma volume (the liquid part of the blood) can cause changes in haemoglobin concentration. Lower plasma volume will lead to higher haemoglobin concentration, higher plasma volume to lower haemoglobin concentration assuming constant total red cell mass.

In the present case however, such cause (higher or lower haemoglobin concentration due to lower or higher plasma volume) is highly unlikely: During his hospital stay, the athlete received several litres of intravenous fluid per day (4-4.5l per 24h from 3.6.2015 to 8.6.2015, see medical documentation), which would, in any normal case, increase plasma volume and thereby lead to a significant dilution of the blood and thus lower haemoglobin readings. The contrary is seen in the profile for samples 1 and 10, where the haemoglobin readings are high. This is confirmed by the records of the hospital, reported by the athlete himself in his defence document.

Furthermore, reticulocytes (young red blood cells) are not affected by changes in plasma volume, given that they are measured as a percentage of mature cells and not related to any volume changes. Reticulocytes are virtually suppressed in samples 1 and 10 and high in samples 2 and 3, patterns, which remain unexplained by the present argumentation.

In light of the above, the timeframe of the changes is also worth mentioning. The hospital stay with the alleged rhabdomyolysis was in June 2015. In a follow-up blood test on 11.6.2015, the CK had dropped to 123 I/U, on 25.6.2015 it was 149 I/U. Both readings are within the normal reference range for a physically active healthy person. The abnormalities in the profile were observed in September 2015, January/ February and June 2016, thus several months after the pathology. It is therefore unlikely that the pathology had any impact on the abnormalities of the blood profile of the athlete.

To support his claim, the athlete submitted an article (Arq. Neuro-Psiquiatria (Sao Paulo), Vol 41, No 3, September 1983) which, according to the defence "points out high shifts in blood exams due to rhabdomyolysis".

When examining the article in detail, it appears that the study is a case report about a patient (16 year old farmer) with a myopathy of possibly allergic or toxic origin, which caused myoglobinuria. The reported CK of the patient was between 237 and 433 I/U and his haemoglobin was 11.8g/dl. The patient was discharged after 14 days.

While it is not clear how the situation of the patient in the case report relates to the one of the athlete in question here, we also fail to find any element in the article that would explain the high haemoglobin and the altered reticulocytes observed in the profile of the athlete. There is no mention of shifts in the variables in question (haemoglobin concentration or reticulocytes) in the article. Thus, the publication cited by the athlete's defence is irrelevant for the case.

2- Withdrawal of accreditation, Rio de Janeiro Anti-Doping Laboratory

The athlete's defence highlights the suspension of the Rio de Janeiro Anti-Doping Laboratory in June 2016. It is speculated that the suspension has impacted the results of the abnormal samples highlighted in our report to the disadvantage of the athlete. Realigning the facts in view of this statement, the following appears: The Rio de Janeiro Anti-Doping laboratory was indeed suspended effective 22.6.2016 [...] While this suspension obviously does not concern samples 1, 2 and 3, all obtained in 2015 or at the beginning of 2016 (and thus outside the suspension period), the suspension potentially concerned the analysis of sample 10, which was taken on 24.6.2016.

However, an email by WADA's Senior Manager of Laboratory [...] dated 3.2.2018 states that "...WADA instructions to the Laboratory were that blood samples collected for the Athlete Biological Passport (ABP) and received prior to the suspension/revocation date (or Samples that could not be transferred to another WADA accredited Laboratory within the analysis timeline of the TD BAR) had to be analyzed by the suspended Laboratory since shipping to another WADA 30 accredited laboratory was not a viable option." and "...In this regard, WADA can confirm that the non compliance(s) leading to the suspension of the Rio Laboratory's accreditation on 22 June 2016 was not related to the analysis of ABP blood samples".

Thus, sample 10 can be considered as valid and the suspension of the laboratory highlighted by the athlete is irrelevant to the case. However, even if sample 10 is invalidated, the remaining abnormal features of the profile remain unexplained by this argument

In summary, we unanimously confirm our previous opinion that based on the information in the passport and the data provided by the athlete to date, it is likely that the athlete used a prohibited substance or prohibited Method, and that it is highly unlikely to find the Passport abnormal assuming any other cause."

21. On 4 April 2018, the Rider was informed of the Expert Panel's conclusion and was provided with the relevant documentation. In the same communication the Rider was notified by the UCI that an anti-doping rule violation of Article 2.2 ADR was asserted against him and that he was therefore provisionally suspended. The Rider was also offered an Acceptance of Consequences pursuant to Article 8.4 ADR.
22. The Rider did not accept the Acceptance of Consequences offered by the UCI.
23. On 11 September 2019, the UCI referred the case to the Tribunal. In its referral to the Tribunal, the UCI requested the Tribunal to issue an award:
 - *Declaring that the Rider has committed an Anti-Doping Rule Violation;*
 - *Imposing on the Rider a Period of Ineligibility of 4 years starting on the date of notification of the Tribunal's decision;*
 - *Holding that the period of provisional suspension served by the Rider since 4 April 2018 shall be credited against the period of ineligibility imposed by the Tribunal;*
 - *Disqualifying all the results obtained by the Rider from 29 September 2015 until 26 June 2016;*
 - *Ordering the Rider to pay a fine of [REDACTED]; and*
 - *Ordering the Rider to pay the costs of results management by the UCI (CHF 2'500.-), and the costs incurred for the documentation packages of the blood samples analysed for the Biological Passport (USD 1'144.-).*

III. PROCEDURE BEFORE THE TRIBUNAL

24. In accordance with Article 13.1 ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of a petition to the Secretariat on 11 September 2019. Before referring the case to the Tribunal, the UCI tried to settle the dispute by offering the Rider an Acceptance of Consequences within the meaning of Article 8.4 ADR and Article 2 ADT Rules. The Rider did not accept the Acceptance of Consequences.
25. On 13 September 2019, the Secretariat of the Tribunal appointed Ms. Helle Qvortrup Bachmann to act as Single Judge in the present proceedings in application of Article 14.1 ADT Rules.
26. In application of Article 14.4 ADT Rules, the Rider was informed on 17 September 2019 that disciplinary proceedings had been initiated against him before the Tribunal. Furthermore, the Rider was informed that any challenge to the appointment of the Single Judge and any objection

to the jurisdiction of the Tribunal should be brought to the Secretariat within 7 days of the receipt of the correspondence, and that he was granted a deadline of 7 October 2019 to submit his answer in conformity with Articles 16.1 and 18 ADT Rules. In the same communication, the Rider's attention was drawn to Article 16.2 ADT Rules which states that *"if the Defendant fails to submit its answer within the set deadline, the Single Judge may nevertheless proceed with the case and render his Judgement"*.

27. The Rider did not submit an Answer to the Petition within the stated deadline, nor respond in any way to the Tribunal's communication of 17 September 2019.
28. On 8 October 2019, in light of the Rider's failure to submit an Answer, the Single Judge exceptionally granted the Rider additional time to submit an Answer by setting a new deadline on 21 October 2019 for the Rider to submit his Answer. In the same communication, the Rider was informed that if the Rider should fail to submit his Answer, the Single Judge would render her Judgment based on the documents on file.
29. The Rider, again, did not submit an Answer, nor respond to the communication.
30. On 23 October 2019, the Single Judge declared the proceedings closed and confirmed that she would render her Judgment based on the documents on file in accordance with Article 16.2 ADT Rules.

IV. JURISDICTION OF THE TRIBUNAL

31. The jurisdiction of the Tribunal follows from Article 8.2 ADR and Article 3.1 ADT Rules according to which *"the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 ADR"*.
32. Article 3.2 ADT Rules provides that *"Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction"*.
33. In this case, the UCI asserted the anti-doping rule violation following a results management/investigation process under Article 7 ADR; the Rider is a license-holder within the meaning of the ADR and is bound by the ADR; and neither of the Parties raised any objection to the jurisdiction of the Tribunal within said deadline.
34. Therefore it follows that the Tribunal has jurisdiction to decide on this matter.

V. APPLICABLE RULES

35. Article 25 ADT Rules provides that *"the Single Judge shall apply the [UCI] ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law"*.
36. The relevant samples of the Rider's ABP were collected between 29 September 2015 and 23 June 2016.

37. Article 25.1 ADR provides that the effective date of the 2015 edition of the ADR is 1 January 2015. Since the relevant doping controls were carried out after this date, the Single Judge shall apply the 2015 edition of the ADR.
38. As to the other “standards referenced therein” the Tribunal notes that part E of the introduction of the ADR provides as follows:

“Under the World Anti-Doping Program, WADA may release various types of documents, including (a) International Standards and related Technical Documents, and (b) Guidelines and Models of Best Practices.

The UCI may, consistent with its responsibilities under the Code, choose to (a) directly incorporate some of these documents by reference into these Anti-Doping Rules, and/or (b) adopt Regulations implementing all or certain aspects of these documents for the sport of cycling.

Compliance with an International Standard incorporated in these Anti-Doping Rules or with UCI Regulations (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard or UCI Regulations were performed properly.

All documents binding upon Riders or other Persons subject to these Anti-Doping Rules are made available on the UCI Website, in their version effective and as amended from time to time.”

39. The Tribunal also notes that Article 7.5 ADR provides as follows:

“Review of Atypical Passport Findings and Adverse Passport Findings shall take place as provided in the UCI Testing & Investigations Regulations, the International Standard for Laboratories, WADA Athlete Biological Passport Operating Guidelines and respectively related Technical Documents. [...]”

40. Accordingly, in addition to the ADR, the Single Judge will take into consideration the UCI Testing & Investigations Regulations, the International Standard for Laboratories, the WADA Athlete Biological Passport Operating Guidelines (“WADA ABP Guidelines”), and the related Technical Documents to the extent relevant or necessary.

Anti-doping rule violation

41. Article 2.2. ADR defines the relevant anti-doping rule violation as follows:

“2.2 Use or Attempted Use by a Rider of a Prohibited Substance or Prohibited Method

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

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

[Comment to Article 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 Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other

reliable means such as admissions by the Rider, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Rider Biological Passport, or other analytical which does not otherwise satisfy all the requirements to establish 'Presence' of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.] [...]"

Burdens and Standards of proof

42. As to the burden and standard of proof, Article 3.1 ADR reads as follows:

"The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.[...]"

43. As to the methods of establishing facts and presumptions, Article 3.2 ADR provides:

"Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

[Comment to Article 3.2: For example, the UCI may establish an anti-doping rule violation under Article 2.2 based on the Rider's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete Biological Passport.]]

[...]

- 3.2.2 *WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*

If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

[Comment to Article 3.2.2: The burden is on the Rider or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. If the Rider or other Person does so, the burden shifts to the UCI to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]

Sanctions and Consequences

44. As for the standard period of Ineligibility Article 10.2 ADR provides 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 Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

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

10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.*

10.2.1.2 *The anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was intentional.*

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

10.2.3 *As used in Articles 10.2 and 10.3, the term ‘intentional’ is meant to identify those Riders who cheat. The term therefore requires that the Rider or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”*

45. As for the possibilities to reduce the aforementioned periods of Ineligibility based on fault, Articles 10.4 and 10.5 of the ADR state as follows:

“10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

*If a Rider or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.
[...]*

**10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence
[...]**

10.5.2 *Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1*

If a Rider or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Rider or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years. [...]”

46. In relation to the commencement of the period of Ineligibility Article 10.11 ADR provides as follows:

“Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed. [...]

10.11.3.1 If a Provisional Suspension is imposed and respected by the Rider or other Person, then the Rider or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Rider or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal. [...]”

47. In relation to the Disqualification of results in competitions subsequent to sample collection or commission of an anti-doping rule violation Article 10.8 ADR provides as follows:

“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.[...]”

Mandatory fine and costs

48. In relation to the Financial Consequences, Article 10.10.1 ADR provides as follows:

“In addition to the Consequences provided for in Article 10.1-10.9, violation under these Anti-Doping Rules shall be sanctioned with a fine as follows.

10.10.1.1 A fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3.

[Comments: 1. A member of a Team registered with the UCI shall be considered as exercising a professional activity in cycling. 2: Suspension of part of a period of Ineligibility has no influence on the application of this Article].

The amount of the fine shall be equal to the net annual income from cycling that the Rider or other Person was entitled to for the whole year in which the anti-doping violation occurred. In the Event that the anti-doping violation relates to more than one year, the amount of the fine shall be equal to the average of the net annual income from cycling that the Rider or other Person was entitled to during each year covered by the anti-doping rule violation.

[Comment: Income from cycling includes the earnings from all the contracts with the Team and the income from image rights, amongst others.]

The net income shall be deemed to be 70 (seventy) % of the corresponding gross income. The Rider or other Person shall have the burden of proof to establish that the applicable national income tax legislation provides otherwise. Bearing in mind the seriousness of the offence, the quantum of the fine may be reduced where the circumstances so justify, including:

- 1. Nature of anti-doping rule violation and circumstances giving rise to it;*
- 2. Timing of the commission of the anti-doping rule violation;*
- 3. Rider or other Person’s financial situation;*

4. *Cost of living in the Rider or other Person's place of residence;*
5. *Rider or other Person's Cooperation during the proceedings and/or Substantial Assistance as per article 10.6.1.*

In all cases, no fine may exceed CHF 1,500,000.

For the purpose of this article, the UCI shall have the right to receive a copy of the full contracts and other related documents from the Rider or other Person, the auditor or relevant National Federation.

[Comment: No fine may be considered a basis for reducing the period of Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules]."

49. As for the liability for costs of the procedures, Article 10.10.2 ADR provides as follows:

"If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Tribunal determines otherwise:

1. *The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
2. *The cost of the result management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
3. *The cost of the B Sample analysis, where applicable.*
4. *The cost incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
5. *The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*
6. *The cost for the documentation package of Samples analyzed for the Biological Passport, where applicable. [...]"*

50. As for the liability for costs of the proceedings, Article 28 ADT Rules provides as follows:

1. *The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.10.2 para. 1 ADR.*
2. *As a matter of principle the Judgment is rendered without costs.*
3. *Notwithstanding para. 1 above, the Tribunal may order the Defendant to pay a contribution toward the costs of the Tribunal. Whenever the hearing is held by videoconference, the maximum participation is CHF 7'500.*
4. *The Tribunal may also order the unsuccessful Party to pay a contribution toward the prevailing Party's costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts. If the prevailing Party was represented by a legal representative the contribution shall also cover legal costs."*

VI. THE FINDINGS OF THE TRIBUNAL

51. The case at hand presents the following main issues:

- 1) Does the Rider's non-participation in these proceedings pose a problem?
- 2) Has the UCI successfully established that the Rider committed a violation of Article 2.2 ADR?
- 3) If so, what are the consequences of such anti-doping rule violation?

1. Does the Rider's non-participation in these proceedings pose a problem?

52. The Rider did not respond, communicate directly, nor make any submissions to the Tribunal during the current proceedings. It follows from the Petition that the Rider was represented by legal representative during the results management process. On 1 March 2019, the Rider's legal representative informed the UCI that he had not been able to get an answer from the Rider as regards the Acceptance of Consequences offered by the UCI, and that the legal representative was no longer representing the Rider.
53. The ADT Rules do not require a response from a Rider in order to issue a decision. According to Article 16.2 ADT Rules, the Tribunal may proceed with the case and render a Judgment if a Defendant fails to submit an Answer. Thus, the Rider's failure to participate in the proceedings before the Tribunal does not prevent the Single Judge from resolving this case, so long as the proceedings were conducted in a way which ensures due process, and in particular the Rider's right to be heard (Article 10.1 ADT Rules).
54. The ADR also do not require a response from the Rider in order to pursue an anti-doping rule violation. Instead, it provides specific rules to ensure proper notification. According to Article 14.1.1 ADR, the UCI may provide notice *inter alia* to the Rider by "*registered or ordinary mail by post*" or by "*electronic mail*". In addition, Article 6.3 ADT Rules provides that "*notifications and communications shall be sent to the email address indicated by the Parties*" and Article 9.4 ADT Rules further provides that "*Notice shall be deemed to have occurred when sent by email to the addressee. The burden of proof that the addressee was, without his fault, not in a position to have knowledge of such notice shall be on the addressee.*" The Tribunal respected these specific rules throughout the course of the proceedings by sending the communication to the Rider by both electronic and registered mail.
55. While proper notification need not necessarily comprise actual knowledge¹ the Rider did have actual knowledge of the proceedings regarding the Adverse Passport Findings. Indeed, the Rider through his legal representative submitted explanations to the UCI during the results management process on two different occasions, i.e. on 4 December 2017, and on 22 December 2017. Moreover, between April 2018 and March 2019, extensive discussions took place between the Rider's legal representative and the UCI regarding the proposed Acceptance of Consequences. Furthermore, the Rider himself communicated with the UCI on 20 June 2019 regarding the present matter.
56. After the UCI filed its Petition to the Tribunal, the Rider however ceased all communication.
57. During the hearing phase, the Tribunal also granted the Rider additional time to submit his Answer.
58. Thus, in view of the above and the evidence before her, the Single Judge concludes that the Rider's procedural rights were not breached, including the right to be heard. The Rider had knowledge of the proceedings before the Tribunal and submitted his explanation and medical reports, hospital records, a scientific case report on rhabdomyolysis and the results of laboratory investigations before the filing of the Petition with the Tribunal. He has been enabled by both the UCI and the

¹ Article 14.1.1 ADR, see also for a confirmation of this a recent CAS award, CAS 2017/A/4996, IAAF v. Guerfi, Award of 20 October 2017, para. 14, which (like the ADR) considered that notification is properly given once it enters the "sphere of control" of the recipient, giving the recipient possibility to become aware of the contents of the notice.

Tribunal to defend himself and his legal interests, including the chance to express his views on all relevant facts, to submit further written explanations to the Tribunal and to present his own evidence. Instead, the Single Judge considers that the Rider voluntarily waived his right to present his position regarding the alleged anti-doping rule violations and its consequences.

59. The Single Judge remains obliged to ensure that the Judgment is both factually and legally well-founded. In doing so, the Single Judge will limit herself to the case file, having in mind that she is not in any case bound by the Parties' prayers for relief (Article 26 ADT Rules).

2. Did the Rider commit an anti-doping rule violation?

60. The UCI submits that the Rider committed an anti-doping rule violation within the meaning of Article 2.2. ADR, which conclusion the UCI derives from the analytical data in the Rider's ABP as well as the interpretation of said data by the Expert Panel.
61. During the results management process, the Rider objected to this conclusion and submitted an alternative scenario to explain the abnormalities in his profile.
62. During the hearing procedure before the Tribunal, as stated above, the Rider did not submit an Answer or respond in any way to the UCI's Petition.
63. It follows from Article 3.1 ADR that the UCI bears the burden of proof to establish that the Rider committed a violation of Article 2.2 ADR. The standard of proof is *"comfortable satisfaction, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt"*.

a) The ABP as reliable evidence

64. It is not in dispute that the ABP is a reliable means for the purpose of establishing the use of a prohibited substance or prohibited method within the meaning of Article 2.2 ADR. That the ABP constitutes a reliable means of evidence has been confirmed by numerous CAS decisions² and by this Tribunal,³ and it also follows from the comment to Article 3.2 ADR that *"the UCI may establish an anti-doping rule violation under Article 2.2 based on the conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete Biological Passport"*.

b) Should the data of sample number 10 be included in the Rider's ABP?

65. The UCI bases its allegation of an anti-doping rule violation on the haematological profile and analytical results of the Rider's blood samples number 1, 2, 3 and 10, collected on 29 September 2015, 24 January 2016, 2 February 2016 and 23 June 2016.

i) The Rider's challenge of the reliability of the analytical results

66. The Rider claims that the analytical results in his ABP regarding sample 10 shall be discarded because the WADA-accreditation of the Rio de Janeiro WADA-accredited Laboratory was suspended by WADA on 22 June 2016 until 20 July 2016. The Rider argues that because of the

² See e.g. CAS 2015/A/4006, para. 103; CAS 2016/O/4481, para. 133; CAS 2016/O/4464, para 148; CAS 2010/A/2174, para 9.8; CAS 2010/A/2176; CAS 2010/A/2235.

³ UCI ADT 03.2017, *UCI v. Isabella Moreira Lacerda*, para 60, UCI ADT 06.2017, *UCI v. Alex Correia Diniz*, para 54, UCI ADT 02.2018, *UCI v. Jaime Roson Garcia*, para 55, and UCI ADT 03.2018, *UCI v. Juan José Cobo Acebo*, para 78.

suspension of the WADA-accreditation, the Rio de Janeiro Laboratory could not accomplish the relevant analysis during the suspension period.

ii) Position of the UCI

67. The UCI submits that since the Laboratory was suspended from 22 June 2016 until 20 July 2016, only sample 10 was analysed by the Laboratory while the WADA-accreditation was suspended. The UCI submits, that all other samples, and in particular the highly abnormal sample 1 of 29 September 2015, were analysed when the Laboratory was fully accredited.
68. The UCI submits that Article 6.1 of the ADR provides explicitly that WADA may approve laboratories, which are not WADA-accredited to perform particular analyses, including, for example, blood analysis. Before approving any such laboratory, WADA will ensure it meets the high analytical and custodial standards required by WADA. In this case, WADA confirmed that it had approved the Laboratory's analysis of sample 10 in accordance with Article 6.1 of the WADA Code and point 3.2.1 of the ABP Operating Guidelines. On 2 February 2018, WADA also clarified that the reason for the suspension of the accreditation of the Laboratory was unrelated to the analysis of blood samples for the purposes of the ABP.
69. The UCI submits, that it follows from the above that the Laboratory benefits from the presumption of Article 3.2.2 of the ADR, according to which WADA-accredited laboratories and other laboratories approved by WADA are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. In the event that the Rider wished to rebut this presumption, he would have had to establish that a departure from the International Standard for Laboratories occurred and that such departure could reasonably have caused the abnormalities. The UCI submits that no such departure has been alleged or established by the Rider in his explanation.
70. The UCI furthermore submits, that the Expert Panel expressly confirmed that it had scrutinized all haematological results in the ABP prior to issuing its opinions:

"[...] All samples were scrutinized for their analytical details outlined in LDPs or CA. In the available documentation, there is no indication that any analytical or pre-analytical issues might have influenced the results in a way that would explain the abnormalities in the profile or alter the analytical data to the disadvantage of the athlete. The observation and hematological assessment of instrument reports and quality control data confirms absence of pre-analytical interferences, good analytical performance and interlaboratory comparability of results."

71. The UCI also emphasized that in the event that sample 10 would be considered invalid by the Single Judge, it must be noted that the Expert Panel clarified that the other abnormalities (in particular sample 1) remained unexplained:

"[...] Even if sample 10 is invalidated, the remaining abnormal features of the profile remain unexplained by this argument."

iii) Position of the Single Judge

72. It follows from Article 3.2.2 ADR that *"WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories."*

73. Since WADA has confirmed that it had approved the Rio de Janeiro Laboratory's analysis of sample 10 in accordance with Article 6.1 of the WADA Code and point 3.2.1. of the ABP Operating Guidelines the presumption in Article 3.2.2 ADR applies.
74. Article 3.2.2 ADR provides explicit guidance on how a Rider may rebut a presumption of procedural validity and thereby (potentially) invalidate the results of the analysis of a WADA-approved Laboratory based on a procedural error (or departure) from the International Standard for Laboratories: The Rider must establish by a balance of probability i) that a departure from the International Standard for Laboratories occurred, and ii) that this departure could reasonably have caused the Adverse Analytical Finding. If the Rider establishes this, the burden shifts to the UCI to prove that the departure did not cause the Adverse Analytical Finding.
75. The Rider argued that sample 10 is not valid because of the suspension of the WADA-accreditation of the Rio de Janeiro Laboratory.
76. The Rider has the burden to establish, on the balance of probabilities, that there is a specific, and not hypothetical, departure from the International Standard for Laboratories; and that such departure could have reasonably, and thus credibly, caused a misreading of the analysis.
77. Based on the submissions, documentation and evidence before her, the Single Judge concludes that the Rider did not establish a departure from the International Standard for Laboratories, let alone a departure that could reasonably have caused a misreading of the analysis.
78. The Rider's arguments are hereby dismissed, and the analytical data of sample 10 in the Rider's ABP must stand.

c) Requirements of the ABP data

79. As set forth by the UCI in the Petition, the fundamental requirement of establishing an anti-doping rule violation on the basis of a longitudinal profile is that:

"[...] all experts – independent from each other – come to the conclusion that doping is a plausible and likely explanation for the abnormal variation and that there is no other plausible cause ascertained with a significant degree of probability".⁴

80. As previously emphasised by this Tribunal⁵ in quoting CAS:⁶

"a pitfall to be avoided [in the context of the ABP] is the fallacy that if the probability of observing values that assume a normal or pathological condition is low, then the probability of doping is automatically high". Concretely this has been said in legal literature to mean that "if the ADO is not able to produce a 'doping scenario' with a minimum degree of credibility ('density'), the abnormality is simply unexplained, the burden of proof enters into play and the ADO's case must be dismissed since there is no evidence pleading in favour of the hypothesis of 'doping' any more than for another cause."⁷

81. It has further been stated by this Tribunal, that since the mere fact that the Rider's haematological values are abnormal is no proof of doping, the UCI must both demonstrate that doping is a

⁴ CAS 2010/A/2174, *Francesco De Bonis v. CONI & UCI*, para 4.4.2 (b).

⁵ UCI ADT 03.2017, *UCI v. Isabella Moreira Lacerde*, para 64 and UCI ADT 06.2017, *UCI v. Alex Correia Diniz*, para 82.

⁶ CAS 2016/O/4464, *IAAF v. ARAF & Ekaterina Sharmina*, para 150.

⁷ Id. quoting Marjolaine Viret (2016), *Evidence in Anti-Doping in the Intersection of Science and Law*, T.M.C Asser Press, The Hague, p. 774.

plausible source for the abnormal ABP values, as well as “establish – in principle – that all other alternative explanations for these values can be excluded. This puts the UCI in a difficult evidentiary position”.⁸ As previously emphasized by this Tribunal,⁹ this position has been described, and solved, by a CAS Panel as follows (CAS 2011/A/2384 & 2386, UCI & WADA v. Alberto Contador Velasco & RFEC, para. 252 et seq.):

“The exceptions concern cases in which a party is faced with a serious difficulty in discharging its burden of proof (“état de nécessité en matière de preuve”, “Beweisnotstand”). A cause for the latter may be that the relevant information is in the hands or under the control of the contesting party and is not accessible to the party bearing the burden of proof (cf. ATF 117 Ib 197, 208 et seq.). Another reason may be that, by its nature, the alleged fact cannot be proven by direct means. This is the case whenever a party needs to prove ‘negative facts’. According to the Swiss Federal Tribunal, in such cases of “Beweisnotstand”, principles of procedural fairness demand that the contesting party must substantiate and explain in detail why it deems the facts submitted by the other party to be wrong (ATF 106 II 29, 31 E. 2; 95 II 231, 234; 81 II 50, 54 E 3; FT 5P.1/2007 E. 3.1; KuKo-ZGB/Marro, 2012, Art. 8, no 14; CPC-Haldy, 2011, Art. 55, no 6). The Swiss Federal Tribunal has described in the following manner (ATF 119 II 305, 306 E 1b) this obligation of the (contesting) party to cooperate in elucidating the facts of the case:

“Dans une jurisprudence constante, le Tribunal fédéral a précisé que la règle de l’art. 8 CC s’applique en principe également lorsque la preuve porte sur des faits négatifs. Cette exigence est toutefois tempérée par les règles de la bonne foi qui obligent le défendeur à coopérer à la procédure probatoire, notamment en offrant la preuve du contraire (ATF 106 II 31, consid. 2 et les arrêts cités). L’obligation, faite à la partie adverse, de collaborer à l’administration de la preuve, même si elle découle du principe général de la bonne foi (art. 2 CC), est de nature procédurale et est donc exorbitante du droit fédéral – singulièrement de l’art. 8 CC –, car elle ne touche pas au fardeau de la preuve et n’implique nullement un renversement de celui-ci. C’est dans le cadre de l’appréciation des preuves que le juge se prononcera sur le résultat de la collaboration de la partie adverse ou qu’il tirera les conséquences d’un refus de collaborer à l’administration de la preuve.”

82. As previously stated by this Tribunal “it follows from the above that difficulties in proving “negative facts” result in a duty for the party not bearing the onus of proof to cooperate in establishing the facts. That party – i.e. the Rider – must cooperate in the investigation and clarification of the facts of the case. It is up to him to submit and substantiate other plausible sources for the abnormal values. It will then be up to the UCI to contest those other alternatives and, ultimately, for the Single Judge to evaluate the evidence before him in relation to the various scenarios. Nonetheless, the burden of proof, i.e. the risk that a certain scenario cannot be established or discarded, remains with the UCI.”¹⁰ This means, as stated in the Diniz-case cited above, that the standard of proof on the Rider’s part is that the Rider shall “submit and substantiate other plausible sources for the abnormal values”. Then, “It will be up to the UCI to contest those other alternatives and, ultimately, for the Single Judge to evaluate the evidence before him in relation to the various scenarios.”¹¹ At the end of the day, it is for the Single Judge to decide, if the UCI has fulfilled its burden of proving, to the comfortable satisfaction of the Single Judge, that the Rider has committed a violation of the anti-doping rules.

⁸ UCI ADT 06.2017, UCI v. Alex Correia Diniz, para 68.

⁹ *Ibid.*

¹⁰ *Ibid.*, para 68-69.

¹¹ *Ibid.*, para 69.

d) Were the abnormalities in the Rider's ABP established?

83. The ABP in the case at hand is based on the Expert Panel's evaluation of 10 valid samples, the documentation of which was included as evidence in the UCI's submissions. As reported by the Expert Panel, the main important abnormalities in the Rider's ABP are sample 1: low RET% (0.34%) paired with high haemoglobin concentration (16.7 g/dl), leading to an increased OFF-score (132); sample 10: increased haemoglobin (16.9 g/dl), suppressed RET% (0.81%), high OFF-score (115); and sample 2 and 3: markedly increased reticulocyte counts in combination with the lowest values of haemoglobin of the profile; this finding *"raises the possibility of a further exogenous stimulation of red cell production, reflected in the fluctuations of hemoglobin values in the subsequent samples (such as the increase to 15.8 g/dl in sample 5, collected one month later)."*
84. The Rider's ABP was flagged for abnormalities at 99% specificity for the following samples:
- Sample 1 (lower limit RET% and upper limit OFF-score);
 - Sample 2 (lower limit OFF-score and upper limit RET%);
 - Sample 3 (lower limit OFF-score and upper limit RET%);
 - Sample 10 (upper limit HGB and upper limit OFF-score).
85. The ABP sequences for RET% and OFF-score were also abnormal at >99,9% specificity.
86. The Expert Panel in Expert Opinion #1 also stated that: *"In addition to the multiple flags triggered by the profile in the adaptive model software, the hematological assessment of the blood parameters discloses in this passport some highly abnormal samples with different aberrant patterns, characteristic of blood manipulation. The most severe abnormalities are seen in samples 1 and 10 [...]. We therefore conclude [...] that it is likely that a prohibited substance or prohibited method has been used and that it is highly unlikely that the passport is the result of any other cause [...]."*
87. The Rider did not challenge the Expert Panel's conclusion as to the presence of the abnormalities in the Rider's profile.
88. In light of the above, and after examining the documentation in the case at hand, the Single Judge finds the Expert Panel's opinion to be well-founded, logical and compelling, thus the Single Judge concludes that important abnormalities did exist in the Rider's haematological profile.

e) Were the abnormalities in the Rider's ABP caused by the Use of a Prohibited Substance or Prohibited Method?

89. As stated above, it is not enough to establish that abnormalities exist in the Rider's haematological profile. The UCI must also establish that the abnormalities were caused by the Use of a Prohibited Substance or Prohibited Method, and not by any other cause.
90. The UCI has submitted (based on the Expert Panel's opinions) that the abnormal values in the Rider's haematological profile can be explained with the use of a prohibited substance or prohibited method.
91. The Rider did not submit an Answer to the Petition. The Rider submitted to the UCI during the results management process an explanation supported by medical reports, hospital records, a

scientific case report on Rhabdomyolysis and Myoglobinuria (*Arq. Neuro-Psiquiatria (Sao Paulo), Vol 41, No 3, September 1983*) and results of laboratory investigations. In the Rider's explanation he provided an alternative scenario for his abnormal values by alleging that the values in his ABP can be explained by the medical condition rhabdomyolysis.

Rhabdomyolysis and Altitude Stays

i) Position of the Rider

92. As previously exposed, the Rider submitted to the UCI during the results management process, that he suffered from the medical condition rhabdomyolysis in June 2015, and argued that the abnormal values in the Rider's ABP were caused by rhabdomyolysis. The Rider furthermore argued, that there are *"scientific studies that point out high shifts in blood exams due to rhabdomyolysis"*.

ii) Position of the UCI

93. The UCI argued that the Rider's explanation does not explain the abnormal values in the Rider's ABP.
94. The UCI referred to the Rider's submission that the values in his ABP could be explained by an episode of rhabdomyolysis for which he was hospitalised from 3 to 9 June 2015, and which the Rider supported with several blood tests, hospital records and a scientific study.
95. The UCI referred to the Expert Panel's evaluation of the Rider's explanation and scientific study, and to the fact, that the Expert Panel concluded that the episode of rhabdomyolysis was unlikely to have had any impact on the Rider's ABP values, and that the Expert Panel in Expert Opinion #2 maintained its previous opinion that it is likely that the Rider used a prohibited substance or prohibited method, and that it is highly unlikely to find the passport abnormal assuming any other cause.
96. The UCI submitted, that according to the Expert Panel, the Rider's ABP, shows *"some highly abnormal samples with different aberrant patterns, characteristic of blood manipulation."*

(iii) Position of the Single Judge

The Single Judge's position on the rhabdomyolysis and altitude scenarios

97. The Single Judge finds that the Expert Panel's opinion on the rhabdomyolysis scenario is well-founded, logical and compelling.
98. When taking the above mentioned into consideration, and on account of:
- the highly abnormal ABP values of sample 1 (OFF-score 132; RET%: 0.34%; and HGB increased to 16.7 g/dl) and sample 10 (HGB: 16.9 g/dl; OFF-score: 115; and RET%: 0.81); those values indicating supraphysiologically increased red blood cell mass;
 - the fact that sample 1 was collected one week before the Rider's participation in the World Military Games; and the fact that sample 10 was collected three days before the Rider's participation in the Brazilian National Road Cycling Championships;
 - the abnormal blood values of sample 2 and sample 3; displaying OFF-score values under the ABP lower limit (sample 2: 66.7 and sample 3: 54.1) and RET% values above the upper

limit (sample 2: 1.66% and sample 3: 2.05%) in combination with the lowest values of HGB of the Rider's ABP profile (sample 2: 14.4 g/dl and sample 3: 14 g/dl);

- the abnormality of the ABP sequences for RET% and OFF-score being abnormal at above 99.9% specificity;
- the Expert Panel's evaluation on the impact of the Rider's altitude training on the haematological parameters, the Expert Panel concluding that the peculiar findings in samples 1 and 10 were definitely not related to altitude;
- the Expert Panel's evaluation of the Rider's explanation (Expert Opinion #2) being that:

"[...] there is no indication in the literature that rhabdomyolysis of whichever origin will cause increases in haemoglobin concentration or a suppression of reticulocytes, such as observed in the samples 1 and 10, or erythropoietic stimulation, such as seen in samples 2 and 3.

Haemoglobin is a concentration based measure, thus in addition to changes in red cell mass, alterations in plasma volume (the liquid part of the blood) can cause changes in haemoglobin concentration. Lower plasma volume will lead to higher haemoglobin concentration, higher plasma volume to lower haemoglobin concentration assuming constant total red cell mass.

In the present case however, such cause (higher or lower haemoglobin concentration due to lower or higher plasma volume) is highly unlikely: During his hospital stay, the athlete received several litres of intravenous fluid per day (4-4.5l per 24h from 3.6.2015 to 8.6.2015, see medical documentation), which would, in any normal case, increase plasma volume and thereby lead to a significant dilution of the blood and thus lower haemoglobin readings. The contrary is seen in the profile for samples 1 and 10, where the haemoglobin readings are high. This is confirmed by the records of the hospital, reported by the athlete himself in his defence document.

Furthermore, reticulocytes (young red blood cells) are not affected by changes in plasma volume, given that they are measured as a percentage of mature cells and not related to any volume changes. Reticulocytes are virtually suppressed in samples 1 and 10 and high in samples 2 and 3, patterns, which remain unexplained by the present argumentation.

In light of the above, the timeframe of the changes is also worth mentioning. The hospital stay with the alleged rhabdomyolysis was in June 2015. In a follow-up blood test on 11.6.2015, the CK had dropped to 123 I/U, on 25.6.2015 it was 149 I/U. Both readings are within the normal reference range for a physically active healthy person. The abnormalities in the profile were observed in September 2015, January/ February and June 2016, thus several months after the pathology. It is therefore unlikely that the pathology had any impact on the abnormalities of the blood profile of the athlete.";

and

- the Expert Panel's conclusion after evaluating the Rider's submissions regarding the rhabdomyolysis scenario and the suspension of the WADA-accreditation of the Rio de Janeiro Laboratory (Expert Opinion #2) that the Expert Panel *"unanimously confirm our previous opinion that based on the information in the passport and the data provided by the athlete to date, it is likely that the athlete used a prohibited substance or prohibited Method, and that it is highly unlikely to find the Passport abnormal assuming any other cause.";*

the Single Judge concludes that it is very unlikely that the abnormalities in the Rider's ABP were caused by the medical condition rhabdomyolysis. The Single Judge also concludes that it is very unlikely that the abnormalities in the Rider's ABP were caused by training at an altitude of 1800 m.

Doping scenario

99. The Single Judge finds the Expert Panel's opinion on the matter is well-founded, logical and compelling.
100. The Single Judge takes note of Expert Opinion #1 where the Expert Panel stated on the pattern observed in the Rider's ABP:

"[...] the hematological assessment of the blood parameters discloses in this passport some highly abnormal samples with different aberrant patterns, characteristic of blood manipulation. The most severe abnormalities are seen in samples 1 and 10 [...].

Sample 1, in particular, displays a set of hematological abnormalities typical of the so-called OFF-phase of hematological doping, characterized by erythropoietic suppression (low reticulocytes) consequent to increased circulating red cell mass (high hemoglobin). This pattern is observed in athletes who have stimulated the production of red blood cells with injections of an erythropoietic stimulating agent (ESA) and then have suspended them a few weeks before an important competition, when they expect to be tested [...]. The likelihood of an analytical issue as a cause of this abnormality is extremely low [...]. The probability to have an OFF score of 132, as in sample 1 of this Passport, in an undoped male athlete is very low [...]. This result [of sample 1] was obtained a few days after a 16-day stay at an altitude of 1800 m. It is well-known from a large number of scientific studies that altitude has a moderate effect on hematological parameters. After return to sea level after a stay at around 2000 m, in particular, a mild increase of the OFF score has been described [4,5], by far lesser however than the value 132 observed in sample 1. Similar sojourns at the same height, on the other hand, have been reported by the Athlete for all the samples in this profile, and this definitely excludes that the peculiar findings in samples 1 and 10 were related to altitude.

Sample 10 [...] is also very abnormal, because of a marked increased value of hemoglobin (16.9 g/dl), with a high OFF score of 115: both results breach the statistically calculated upper intraindividual thresholds. The reticulocyte percentage (0.81%) is not as suppressed as in sample 1, indicating the OFF phase was not yet or no longer fully displayed. [...]

We therefore conclude [...] that it is likely that a prohibited substance or prohibited method has been used and that it is highly unlikely that the passport is the result of any other cause [...]."

101. The Single Judge takes note of the Expert Panel's evaluation of the athlete's arguments (Expert Opinion #2), where the Expert Panel concluded that:

"we unanimously confirm our previous opinion that based on the information in the passport and the data provided by the athlete to date, it is likely that the athlete used a prohibited substance or prohibited Method, and that it is highly unlikely to find the Passport abnormal assuming any other cause."

102. In light of Expert Opinion #1 and #2; in light of all of the above mentioned and everything that has been put in front of her; in light of the fact that a doping scenario is consistent with the Rider's competition schedule, from which it follows that sample 1 was collected on 29 September 2015, one week before the Rider's participation in the World Military Games on 6-8 October 2015, and that sample 10 was collected three days before the Rider's participation in the 2016 Brazilian

National Road Championship; the Single Judge concludes, that the circumstances do allow to establish a doping scenario in the case at hand.

103. The Single Judge concludes that there is no evidence in the case at hand that renders the doping scenario implausible.

f) Has the UCI proven to the comfortable satisfaction of the Single Judge that the Rider committed an anti-doping rule violation?

104. The final question to resolve is, if the UCI has proven to the comfortable satisfaction of the Single Judge that the Rider engaged in doping within the meaning of Article 2.2 ADR.

105. In evaluating all the submissions, arguments and evidence before her, and applying the standard of proof in the context of the assessment of evidence before her, the Single Judge is comfortably satisfied that the Rider committed an anti-doping rule violation of Article 2.2 ADR in the form of Use of a Prohibited Substance or Prohibited Method.

3. Consequences of the anti-doping rule violation

106. Given that the Tribunal is comfortably satisfied that the Rider committed an anti-doping rule violation, the Tribunal must decide upon the consequences of the violation.

a) Period of Ineligibility

107. The UCI submitted that the Tribunal must impose a four-year period of Ineligibility on the Rider.

108. For first time violations of Article 2.2 ADR, the starting point in determining the sanction is Article 10.2 ADR. According to Article 10.2.1.1 ADR, the period of Ineligibility to be imposed shall be four years where the anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.

109. Since blood manipulation by Use of a Prohibited Substance or Prohibited Method is not a Specified Substance according to Article 4.2.2 ADR, Article 10.2.1.1 applies. Article 10.2.1.1 ADR provides that the four-year period of Ineligibility may be reduced only if the Rider is able to establish that the anti-doping rule violation was not intentional. The standard of proof placed on the Rider in this regard is a balance of probability (Article 3.1 ADR).

110. The Rider submitted during the results management process that the abnormalities in his haematological profile were caused by the medical condition rhabdomyolysis. As concluded above, the Single Judge is comfortably satisfied that the abnormalities in the Rider's haematological profile resulted from the Use of a prohibited Substance or Prohibited Method.

111. Since the Rider did not submit an Answer in these proceedings, the Single Judge has taken into consideration the Rider's submissions from the results management process. The Single Judge finds, that the circumstances in the case at hand do not provide that any of the Fault-related reductions in Articles 10.4 or 10.5 ADR should apply to the case at hand, or that any other reductions or suspensions of the period of Ineligibility for reasons other than Fault as set forth in Article 10.6 ADR, are available in the case at hand.

112. In conclusion, the Single Judge finds that a period of Ineligibility of four years shall be imposed on the Rider.

b) Commencement of the period of Ineligibility

113. A period of Ineligibility of four years is imposed on the Rider. The Tribunal has to determine the commencement of the period of Ineligibility.
114. Article 10.11 ADR provides that the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility and that if a Provisional Suspension has been imposed and respected by the Rider, then the Rider shall receive a credit for such period of Provisional Suspension.
115. There is no information in the case at hand indicating that the Rider did not respect the Provisional Suspension. Therefore the Rider shall receive a credit for the period of the Provisional Suspension pursuant to Article 10.11.3.1 ADR.
116. Therefore, the period of Ineligibility shall commence on the date of the decision, i.e. 3 February 2020. The Provisional Suspension already served by the Rider, starting from 4 April 2018 until the date of the present Judgment, shall be credited against the four-year period of Ineligibility.

c) Disqualification

117. The UCI in its Petition requests the Tribunal to disqualify all the results obtained by the Rider from 29 September 2015 until 26 June 2016. The Single Judge takes note of these requests, but also acknowledges that according to Article 26.2 ADT Rules “[t]he Single Judge is not bound by the Parties’ prayers for relief”.
118. As regards determining the date from when the Rider’s results shall be Disqualified, the Single Judge concurs with the view expressed by this Tribunal, according to which:

“... art. 10(8) ADR provides an unfortunate lack of clarity in the situation involving a violation based on an ABP. The Single Judge has been unable to find a definition of a “positive Sample” in the ADR; the term appears to be used exclusively in connection with art. 10(8) ADR. The Single Judge sees fit to understand the reference to a “positive Sample” in the phrase “the date a positive Sample was collected” (as opposed to a more precise defined term such as “Adverse Analytical Finding”) here as a means to create a rule that distinguishes between violations based on collected Samples from other types of violations, such as art. 2(4) ADR (Whereabouts Failure) or art. 2(10) ADR (Prohibited Association), or even violations of art. 2(2) ADR that are based on non-analytical evidence. As a consequence, for violations that arise based on collected Samples, such as those based on an ABP, the Disqualification period would start on the date of Sample collection. The Single Judge feels comforted in this view by the consistent line of CAS case law that, in the context of the Disqualification for ABP violations, links the timing of the violation to the timing of the relevant Sample collection.”¹²

119. Accordingly, the Disqualification shall start on the date a positive sample was collected. The Single Judge finds this date to be the date of the collection of sample 1 since this was the first sample in the Rider’s ABP that the Expert Panel found to be highly abnormal.
120. Since the sample in question was collected on 29 September 2015, the period of Disqualification shall start as from this date.

¹² See e.g. CAS 2010/A/2235, *UCI v. Valjavec*, para. 117; CAS 2014/A/3469, *IAAF v. Alhamdah*, para. 44; CAS 2014/A/3614, *IAAF v. Dominguez*, para. 404; CAS 2016/O/4463, *IAAF v. Ugarova*, para. 133; UCI ADT 03.2017, *UCI v. Isabella Moreira Lacerde*, para 132 and UCI ADT 06.2017, *UCI v. Alex Correia Diniz*, para 104.

121. Article 10.8 ADR requires Disqualification of all results following this date up to the date the Provisional Suspension was imposed, unless “fairness requires otherwise”.
122. The Single Judge takes into account the UCI ADT Judgment in case 06.2017, *UCI v. Mr. Alex Correia Diniz*, para 108, where the Single Judge in that case and in line with CAS case law (CAS 2015/A/4006, *IAAF v. ARAF, Yuliya Zaripova & RUSADA*) conducted an overall evaluation of the elements in the case at hand in determining if “fairness require[d] otherwise” than disqualifying all results in the period between the sample collection and the Provisional Suspension.
123. In CAS 2015/A/4006, *IAAF v. ARAF, Yuliya Zaripova & RUSADA*, para 102 the Panel held:
- “As a preliminary matter, the Panel notes that ‘fairness’ is a broad concept (CAS 2013/A/3274, para. 85), covering a number of elements that the deciding body can take into account in its decision not to disqualify some results. The CAS precedents (in general terms, inter alia, CAS 2007/A/1283, para. 53; CAS 2013/A/3274, para. 85-88) took into account a number of factors, such as the nature and severity of the infringement (CAS 2010/A/2083, para. 81), the length of time between the anti-doping rule violation, the result to be disqualified and the disciplinary decision, the presence of negative tests between the anti-doping rule violation and the competition at which the result to be disqualified was achieved, and the effect of the infringement on the result at stake (CAS 2008/A/1744, para. 76; CAS 2007/A/1362&1393, para 7.22). The Panel underlines that no single element is decisive alone: an overall evaluation of them is necessary.”*
124. The Single Judge takes into account that blood manipulation is not committed inadvertently, but intentionally and purposefully in order to enhance sports performance.
125. The Single Judge takes note of the fact that sample 10 was highly abnormal displaying an increased value of haemoglobin (16.9 g/dl) with a high OFF-score at 115; both values breaching the upper limits in the Rider’s ABP, and the fact that sample 10 was collected on 23 June 2016, which was 3 days before the Brazilian National Road Cycling Championships. The Single Judge finds that the haematological effect of the use of prohibited substance or prohibited method was still present at the day of the Brazilian National Road Cycling Championships, and therefore concludes, that the Result/Results obtained at the Brazilian National Road Cycling Championships on 26 June 2016 shall be disqualified.
126. Thus the Single Judge, in exercising her discretion, finds that all competitive results obtained by the Rider in the period from 29 September 2015 until - and including - 26 June 2016 shall be disqualified.

d) Mandatory Fine and Costs

i) Application of the mandatory fine

127. According to Article 10.10.1.1 ADR, a fine shall be imposed in case a Rider exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3. This prerequisite is fulfilled in the case at hand.
128. With respect to the calculation of the fine, the UCI submits that the Rider was entitled to an average annual gross income from cycling of [REDACTED] in 2015 and 2016. Therefore, according to the UCI, a mandatory fine of [REDACTED] should be imposed unless the Rider can establish that a reduction of the fine would be justified in application of the criteria set out in Article 10.10.1.1 ADR.

129. The Rider, by not submitting an Answer in these proceedings, has not contested the above figures and not put forward any arguments for reduction of the fine.
130. The Single Judge therefore confirms that a monetary fine in the amount of [REDACTED] shall be payable by the Rider to the UCI.

ii) Liability for Costs of the Procedures

131. In application of Article 10.10.2 ADR, the Single Judge holds that the Rider shall reimburse to the UCI the following amounts:
- CHF 2'500 for the costs of the results management by the UCI (Article 10.10.2.2 ADR); and
 - USD 1'440 for costs of the documentation packages of the blood samples analysed for the ABP (Article 10.10.2.6 ADR).

VII. COSTS OF THE PROCEEDINGS

132. In application of Article 28.2 ADT Rules, the Single Judge decides that the present Judgment is rendered without costs.
133. Notwithstanding the above, the Tribunal may order the unsuccessful Party to pay a contribution toward the prevailing Party's costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts (Article 28.4 ADT Rules). The provision states that if the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.
134. The Single Judge notes that the Rider did not submit an Answer to the Petition and furthermore no hearing was held in this case.
135. In light of the circumstances of this case, the Single Judge finds it appropriate to not order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

Anti-Doping Tribunal

VIII. RULING

136. In light of the above, the Tribunal decides as follows:

1. Mr. Roberto Pinheiro has committed an Anti-Doping Rule Violation (Article 2.2 ADR).
2. Mr. Roberto Pinheiro is suspended for a period of ineligibility of 4 (four) years. The period of ineligibility shall commence on the date of this decision, i.e. 3 February 2020. However, considering the credit for the period of the Provisional Suspension already served by Mr. Roberto Pinheiro since 4 April 2018, Mr Roberto Pinheiro's period of ineligibility effectively began on 4 April 2018, and shall end four years from this date, i.e. 3 April 2022.
3. The results obtained by Mr. Roberto Pinheiro between 29 September 2015 until – and including - 26 June 2016, are disqualified.
4. Mr. Roberto Pinheiro is ordered to pay to the UCI the amount of [REDACTED] as monetary fine.
5. Mr. Roberto Pinheiro is ordered to pay to the UCI:
 - a) the amount of CHF 2'500 for the costs of the results management; and
 - b) the amount of USD 1'440 for costs of the documentation packages of the blood samples analysed for the Biological Passport.
6. This Judgment is final and will be notified to:
 - a) Mr. Roberto Pinheiro;
 - b) the *Autoridade Brasileira de Controle de Dopagem* (Brazilian NADO)
 - c) UCI; and
 - d) WADA.
7. All other and/or further reaching requests are dismissed.

137. This Judgment may be appealed before the CAS pursuant to Article 30.2 ADT Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 ADR.

Helle Qvortrup Bachmann
Single Judge