

UCI Anti-Doping Tribunal

Judgment

case ADT 05.2020

UCI v. Mr Román Villalobos Solís

Single Judge:

Mr Jordi López Batet (Spain)

Aigle, 21 October 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 Procedural Rules (hereinafter referred to as “the ADT Rules”) in order to decide upon violations of the UCI Anti-Doping Rules (hereinafter referred to as “the UCI ADR”) committed by Mr. Román Villalobos Solís (hereinafter referred to as “the Rider” or “Mr Villalobos”), as alleged by the UCI (hereinafter collectively referred to as “the Parties”).

II. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties. 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 submitted by the Parties in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain his reasoning.

A. The Rider

3. The Rider is a professional cyclist of Costa Rican nationality who in 2018, was affiliated to the Federación Costarricense de Ciclismo, was a License-Holder within the meaning of the UCI ADR and was part of the team Canels Specialized (hereinafter referred to as “the Team”).

B. The UCI

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

C. The alleged Anti-doping Rule Violation

5. On 21 December 2018, the Rider provided a urine sample after stage 6 of the “Vuelta Ciclista Internacional a Costa Rica” (hereinafter referred to as the “Urine Sample”). The Rider confirmed on the Doping Control Form that the sample was taken in accordance with the applicable regulations and declared that he had only taken multivitamins and Vitamin C over the seven days preceding the test.
6. On 24 December 2018, the Rider provided a blood sample after stage 9 of the “Vuelta Ciclista Internacional a Costa Rica” (hereinafter referred to as the “Blood Sample”). The Rider confirmed on the Doping Control Form that the sample was taken in accordance with the applicable regulations and declared that he had only taken multivitamins and Vitamin C over the seven days preceding the test.
7. The Urine Sample and the Blood Sample were analyzed in the WADA-accredited Laboratory of Montreal (hereinafter referred to as the “Laboratory”).
8. On 18 January 2019, the Laboratory reported that the Blood Sample returned an Adverse Analytical Finding (hereinafter, “AAF”) for the Prohibited Method of Blood Transfusion. Blood Transfusion is a Prohibited Method under Section M.1. “Manipulation of blood and blood components” of the 2018 WADA Prohibited List adopted by the UCI.

9. On 26 February 2019, the Laboratory reported that the Urine Sample returned an AAF for Metandienone metabolite 18-nor-17b-hydroxymethyl, 17a-methylandroster. Metandienone (and its metabolites) is a Prohibited Substance under Section S1.1A of the 2018 WADA Prohibited List adopted by the UCI.
10. On 2 April 2019, the Rider was notified of both AAFs and of the mandatory provisional suspension imposed on him according to Article 7.9.1 of the UCI ADR. In addition and *inter alia*, in the same letter the Rider was informed of his right to request the opening and analysis of the B samples and a copy of the A samples Laboratory Documentation Packages, was given 7 days to inform the UCI about his intentions with regard to the analyses of the two B Samples, and was invited to explain within the next 14 days how the potential ADRV occurred (this deadline to be suspended if the Rider wished to have the B samples analyzed). The UCI also contends having called the Rider to make sure that he had received such notification and that during such telephone conversation, the Rider was told that an Acceptance of Consequences (Article 8.4 of the UCI ADR) offer would be sent to him to potentially resolve his case without delay. The Federación Costarricense de Ciclismo, the National Anti-Doping Organization of Costa Rica, the Rider's Team and WADA were also notified of the AAFs.
11. On 4 April 2019, the UCI sent an email to the Rider with a proposal of Acceptance of Consequences in the following terms:
- *"8 years of ineligibility as per article 10.2.1 of the UCI ADR, starting on 21 December 2018 (date of the sample collection).*
 - *Disqualification of all results obtained during the competition Vuelta Ciclista Internacional a Costa Rica and all subsequent results obtained until I was provisionally suspended (i.e. 2 April 2019).*
 - *Payment of a fine [REDACTED] pursuant to article 10.10.1 of the UCI ADR."*
12. It shall be stressed that in 2013, the Rider was sanctioned by the National Doping Tribunal of Costa Rica with a period of ineligibility of 18 months as a result of an AAF for the Prohibited Substance Ostarine.
13. The Rider did not request that the B samples be analyzed.
14. On 17 April 2019, the UCI, in light of the fact that the Rider had not confirmed his intentions regarding the B samples within the deadline given, informed the Rider that it considered he had waived the right to request the analysis of such B samples, and asserted that he had committed an anti-doping rule violation (hereinafter referred to as "ADRV") for Presence and/or Use of Prohibited Substances and/or Methods. In addition, the UCI offered the possibility to the Rider to provide explanations about the presence of the prohibited substance and method found in his samples.
15. On 23 April 2019, the Rider sent an email to the UCI which in the pertinent part reads as follows:
- "I hereby inform you that I have serious doubts about the doping control made on December 24, 2019 (sic) in Llano Grande de Cartago by the CRC-NADO (CONAD), therefore, I request that you send me the Doping Control Form of the sample number 383349, because I don't have this form in my received e-mails.*
- Additionally, I request that you send me the documentation package of the Sample A-383349 and tell me the costs of opening the Sample B.*
- I write at this time, because we know in Costa Rica there was a trouble with the doping controls made on December 24, 2019 (sic) in Llano Grande de Cartago by the CRC-NADO (Eddier Godinez case).*

I wish UCI checks all the procedure with the laboratory about the sample A-383349, because I want to open the sample B, but if there is something wrong before, I don't want to go to Canada to open the B Sample."

16. On 26 April 2019 the UCI provided to the Rider by email a new copy of the Doping Control Form of the Blood Sample, and reminded him that an ADRV had also been asserted for the presence of Metandienone in his Urine Sample, so the UCI would maintain its assertion that the Rider had committed an ADRV even if the B Blood Sample did not confirm the results of the A sample. The UCI also granted the Rider until 1 May 2019 to inform if he wanted to resolve his case via an agreement with the UCI.
17. No answer was received from the Rider to the UCI's email, despite having sought the assistance of the FCC to try to get such an answer from the Rider between May and December 2019, as contended by the UCI.
18. The Rider remained silent until 17 December 2019, when he sent an email to the UCI in the following terms:

"First of all, I would like to let you know that when I received the notification of the Adverse Analytical Results against me I suffered a great emotional affectation, which I have not been able to overcome to date.

I strongly deny the charges of which I am accused.

I need you to send me the complete analysis package of Sample A, which was performed by the designated laboratory. And what parameters they used so that, according to the ICU (sic), I will be accused of a blood transfusion; prohibited method in which I have not incurred.

I also want to know the protocol followed in taking these samples.

With a slightly clearer and more certain mind that I did not incur in the use of prohibited methods or substances, I want to clarify this issue and exercise my right to obtain all the information that exists in relation to this case.

I await the requested information".

19. On 18 December 2019, the UCI sent the A sample Laboratory Documentation Package of the Blood Sample to the Rider, who was granted a new deadline until 6 January 2020 to clarify if he would like to submit additional explanations before his case was submitted to the Tribunal.
20. On 27 January 2020, the UCI sent the A sample Laboratory Documentation Package of the Urine Sample to the Rider, who was granted a deadline until 3 February 2020 to confirm if he still wished to have his case referred to the Tribunal.
21. The Rider did not respond to the UCI's aforementioned letters of 18 December 2019 and 27 January 2020.
22. On 21 August 2020 the UCI referred the case to the Tribunal, requesting in its petition (herein after, the "Petition") an award be issued in the following terms:
 - *Declaring that Mr. Roman Villalobos Solis has committed a second Anti-Doping Rule Violation.*
 - *Imposing on Mr. Roman Villalobos Solis a Period of Ineligibility of 8 years, commencing on the date of the Tribunal's decision.*
 - *Holding that the period of provisional suspension served by Mr. Roman Villalobos Solis since 2 April 2019 shall be deducted from the Period of Ineligibility imposed by the Tribunal.*
 - *Disqualifying all results obtained by Mr. Roman Villalobos Solis at the 2018 Vuelta Ciclista Internacional a Costa Rica and any other result obtained between 21 December 2018 and 2 April 2019.*

- *Condemning Mr. Roman Villalobos Solis to pay a fine of [REDACTED].*
- *Condemning Mr. Roman Villalobos Solis to pay the costs of the results management by the UCI (CHF 2.500.-) and the costs of the Laboratory Documentation Package (USD 700.-).*

23. In its Petition, the UCI reserved its right to amend its prayers for relief depending on the evolution of the proceedings and the procedural conduct of the Rider.

III. PROCEDURE BEFORE THE TRIBUNAL

24. As mentioned above, in accordance with Article 13.1 of the ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of the Petition to the Secretariat on 21 August 2020. Before referring the case to the Tribunal and as explained above, the UCI had proposed to put an end to the proceedings by offering the Rider an Acceptance of Consequences within the meaning of Article 8.4 of the UCI ADR and Article 2 of the ADT Rules. This offer was not accepted by the Rider.

25. The Secretariat of the Tribunal appointed Mr. Jordi López Batet to act as Single Judge in the proceedings in application of Article 14.1 of the ADT Rules.

26. On 24 August 2020, the Rider was informed that disciplinary proceedings had been initiated against him before the Tribunal and invited him to file his answer to the Petition until 8 September 2020. In this letter, the Rider was expressly warned that if he failed to submit his answer within the set deadline, the Single Judge may nevertheless proceed with the case and render his Judgment.

27. On 22 September 2020, in light of the fact that the Rider failed to file his response within the deadline given, the Tribunal, as an exceptional measure, granted the Rider a final deadline to submit his answer until 2 October 2020.

28. The Rider also failed to submit his answer within the final deadline granted. Hence, according to Article 16 para. 2 of the ADT Rules, the Single Judge has proceeded with the case and hereby renders his Judgement.

IV. JURISDICTION

29. The jurisdiction of the Tribunal follows from Article 8.2 of the UCI ADR and Article 3.1 of the 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 of the UCI ADR”*.

30. Furthermore, Article 3.2 of the 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.”*

31. In light of the provisions set out above and of the fact that none of the parties have objected the jurisdiction of the Tribunal, the latter has jurisdiction to decide on the Petition.

V. APPLICABLE RULES

32. In accordance with Article 25 of the ADT Rules, in rendering this Judgment, the Single Judge will apply the UCI ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law.

VI. THE FINDINGS OF THE SINGLE JUDGE

33. Considering the submissions filed by the UCI in these proceedings, which have not been contested by the Rider, the main issues to be addressed and resolved by the Single Judge are the following:

- (1) whether the Rider committed an ADRV within the meaning of Articles 2.1 and/or 2.2 of the UCI ADR or not; and if so,
- (2) the consequences of such an ADRV.

A. The ADRV

1. The relevant legal framework

34. The relevant legal provisions with respect to the establishment of an ADRV read as follows:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample

2.1.1 It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. 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 under Article 2.1.

[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to a Rider’s Fault. This rule has been referred to in various CAS decisions as “Strict Liability”. A Rider’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider’s A Sample; or, where the Rider’s B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

[Comment to Article 2.1.2: The Anti-Doping Organization with results management responsibility may, at its discretion, choose to have the B Sample analyzed even if the Rider does not request the analysis of the B Sample.]

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample shall constitute an anti-doping rule violation.

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List or other International Standards or UCI Regulations incorporated in these Anti-Doping Rules may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.

2.2 Use or Attempted Use by a Rider of a Prohibited Substance or a 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.]

[Comment to Article 2.2.2: Demonstrating the 'Attempted Use' of a Prohibited Substance or a Prohibited Method requires proof of intent on the Rider's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Article 2.1 and violations of Article 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. A Rider's 'Use' of a Prohibited Substance constitutes an anti-doping rule violation unless such substance is not prohibited Out-of-Competition and the Rider's Use takes place Out-of-Competition. (However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition is a violation of Article 2.1 regardless of when that substance might have been administered)]".

35. As to the burden and standard of proof, Article 3.1 of the UCI 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. ...".

36. As to the methods of establishing facts and presumptions, Article 3.2 of the UCI 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.]

- 3.2.1 *Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed*

to be scientifically valid. Any Rider or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge.

CAS on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear amicus curiae, or otherwise provide evidence in such proceeding.

- 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.]

- 3.2.3 *Departures from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Rider or other Person establishes a departure from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation".*

2. In casu

37. The Single Judge firstly notes that in the present case, the Laboratory reported (i) that the Rider's Blood Sample returned an AAF for Blood Transfusion and (ii) that the Rider's Urine Sample returned an AAF for Metandienone metabolite 18-nor-17b-hydroxymethyl, 17a-methylandroster.
38. The Single Judge also notes that it is the UCI's contention that the two AAF are to be considered as one single ADRV pursuant to Article 10.7.1. of the UCI ADR, and that even if the UCI sustains that the AAF arising out of the Blood Sample constitutes a legitimate basis for asserting an ADRV, for the sake of procedural efficiency it has only developed in its Petition its position with respect to the ADRV of presence of Metandienone in the Urine Sample and does not seek a specific finding on the blood transfusion ADRV.
39. Therefore, the Single Judge will only address in this section the ADRV related to the Urine Sample AAF.
40. In this respect, the Single Judge observes that the analysis of the Urine Sample revealed the presence of Metandienone's metabolite 18-nor-17b-hydroxymethyl, 17a-methylandroster, which

is a prohibited substance under Section S1.a “Anabolic Androgenic Steroids” of the 2018 WADA Prohibited List adopted by the UCI.

41. The Single Judge also notices that the Rider (i) did not challenge the analytical methods used by the Laboratory in this case, so these are presumed to be valid (Article 3.2.1. of the UCI ADR), (ii) failed to request the analysis of the B Urine Sample, so sufficient proof of the ADRV is to be established in accordance with Article 2.1.2 of the UCI ADR, and (iii) did not allege that a departure from the International Standard for Laboratories (or any other regulations) has taken place with regard to the Urine Sample, so it is presumed that the Urine Sample’s analysis was conducted in accordance with such standards as per Article 3.2.2. of the UCI ADR. Not only did the Rider fail to file any submissions in these proceedings to try to contest the existence or the due establishment of the ADRV by the UCI, but the correspondence exchanged between him and the UCI prior to the initiation of these proceedings does not contain any element which may substantiate any kind of valid defense of the Rider against the UCI’s allegations that he committed the ADRV mentioned above.
42. Taking the aforementioned circumstances and the provisions set out in Articles 2 and 3 of the UCI ADR into account, the Single Judge considers that the UCI has discharged its burden of proof to establish said ADRV and thus, that the Rider committed a violation of Article 2.1 of the UCI ADR (Presence of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample).
43. The Single Judge also notes that the UCI contends that an ADRV of Use under Article 2.2 of the UCI ADR is also established. However, in light of the fact that the Single Judge has already held that the Rider committed a violation of Article 2.1 of the UCI ADR, the question of whether the Rider also committed a violation of Article 2.2 of the UCI ADR is of no practical consequence, since both bear the same consequences. Thus, it is considered unnecessary to address the issue of whether the Rider also committed a violation of Article 2.2 of the UCI ADR.

B. The Consequences of the ADRV

44. The UCI ADR provide for different types of consequences in case of an ADRV.
45. The UCI is requesting the Tribunal to impose the sanctions of ineligibility, disqualification of results and monetary fine.

1. Period of Ineligibility

46. If the Rider’s ADRV constitutes a first violation, Article 10.2 of the UCI ADR, which reads as follows, applies:

“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. [...]

10.2.2 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. [...]”.

47. However, in case of a second ADRV, Article 10.7.1. of the UCI ADR provides as follows:

“10.7.1 For a Rider or other Person’s second anti-doping rule violation, the period of Ineligibility shall be the greater of:

a) six months;

b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Article 10.6; or

c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.”

48. It shall also be noticed that in accordance with Article 10.7.4.1. of the UCI ADR:

“For purposes of imposing sanctions under Article 10.7, an anti-doping rule violation will only be considered a second violation if the UCI can establish that the Rider or other Person committed the second anti-doping rule violation after the Rider or other Person received notice pursuant to Article 7, or after the UCI made reasonable efforts to give notice of the first anti-doping rule violation. If the UCI cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.”

49. This being said, pursuant to Article 10.2. of the UCI ADR, the standard period of ineligibility is 4 years, if the ADRV does not involve a Specified Substance and the Rider cannot establish that the ADRV was not intentional.

50. Furthermore, it shall also be noted that in accordance with the of the UCI ADR, a Rider may be entitled to the elimination or to the reduction of the period of ineligibility, if the prerequisites of Articles 10.4 (No Fault or Negligence) or 10.5 (No Significant Fault or Negligence) of the UCI ADR are met. For this elimination or reduction to apply, the Rider shall establish how the Prohibited Substance entered his system. Additionally, it shall be also taken into account that Article 10.6 of the UCI ADR sets out conditions under which a period of ineligibility may be eliminated, reduced or suspended for reasons other than fault.

51. Applying the aforementioned provisions to the case at hand, the Rider’s violation involves Metandienone, which is a Prohibited Substance and is not a Specified Substance. As a consequence, it is for the Rider to prove (by a balance of probability, as per Article 3.1. of the UCI ADR) that the violation was not intentional.

52. In this respect, the Single Judge notes that the Rider did not even attempt to prove that his ADRV was not intentional, let alone that there are no reasons to eliminate or reduce the period of ineligibility to be imposed on him.

53. Therefore, an ineligibility period of 4 years should be imposed on him if the ADRV was a first violation. However, this is the second ADRV for the Rider, as he was sanctioned in 2013 for an ADRV (Presence of the Prohibited Substance Ostarine) with an 18-month period of ineligibility.

54. In such circumstances, the period of ineligibility to be imposed on the Rider pursuant to Article 10.7.1. of the UCI ADR is the greater of (i) six months, (ii) one half of the period of ineligibility imposed for the first anti-doping rule violation, without taking into account any reduction

under Article 10.6 of the UCI ADR or (iii) twice the period of ineligibility otherwise applicable to the second anti-doping rule violation as if it were a first violation, without taking into account any reduction under Article 10.6 of the UCI ADR, which in the present case means a period of ineligibility of 8 years (twice the period of ineligibility of 4 years in accordance with lit. c) of Article 10.7.1 of the UCI ADR).

55. In relation to the commencement of the period of ineligibility, Article 10.11 of the UCI ADR stipulates in the pertinent part that:

“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. [...]”.

56. In accordance with this Article, the period of ineligibility shall start on the date of the final decision imposing such Ineligibility, with credit given for the period of any provisional suspension if and to the extent it was respected by the Rider.
57. In the case at stake, on 2 April 2019 the Rider was informed of a mandatory provisional suspension imposed on him. It is not disputed that the Rider observed the terms of such suspension and that, therefore, he must receive credit for the time so served.

2. Disqualification of results

58. The UCI requests in its Petition that all the results obtained by the Rider (i) in the 2018 Vuelta Ciclista Internacional a Costa Rica and (ii) from the date of his Urine Sample collection (21 December 2018) until the date of the provisional suspension (2 April 2019), be disqualified.

59. Article 9 of the UCI ADR reads as follows:

“An anti-doping rule violation in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.”

60. Competition is defined in Appendix 1 of the UCI ADR as a “single race organized separately (for example: each of the time trial and road race at the road World Championships; a stage in a stage race; a Cross-country Eliminator heat) or a series of races forming an organizational unit and producing a final winner and/or general classification (for example: a track sprint race tournament, a cyclo-ball tournament)”.

61. In accordance with Article 10.1. of the UCI ADR:

“An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Rider's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1¹.

¹ The Rider establishing that he or she bears No Fault or Negligence for the violation.

Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Rider's anti-doping rule violation and whether the Rider tested negative in the other Competitions."

62. Event is defined in Appendix 1 of the of the UCI ADR as a "single Competition organized separately (for example: a one day road race) or a series of Competitions conducted together as a single organization (for example: road World Championships; a road stage race, a track World Cup Event); a reference to Event includes reference to Competition, unless the context indicates otherwise"

63. Article 10.8 of the UCI 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."

64. In the present case, the ADRV took place in connection with an In-Competition test, which in accordance with Article 9 of the UCI ADR, leads to the automatic disqualification of the Rider's results obtained in stage 6 of the 2018 Vuelta Ciclista Internacional a Costa Rica. With regard to the results obtained by the Rider in 2018 Vuelta Ciclista Internacional a Costa Rica, the Single Judge considers that these shall also be disqualified given the seriousness of the violation committed by the Rider and the AAF arising out of the Rider's Blood Sample collected during the same Event. Finally, concerning other competitive results of the Rider obtained from the date of the positive Urine Sample's collection, the Single Judge does not see a reason that would justify the derogation from the principle set forth in Article 10.8 of the UCI ADR. Consequently, the Rider's results from 21 December 2018 (date of the Urine Sample's collection) until 2 April 2019 (date of the Rider's provisional suspension) shall also be disqualified.

3. Mandatory Fine and Costs

65. Article 10.10 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]."

66. The Rider is a professional rider who committed an ADRV, which the Rider could not establish was unintentional, which leads the Single Judge to conclude that the prerequisites for a fine are, therefore, fulfilled and that such a fine shall be imposed.
67. With respect to the amount of the fine to be imposed, the UCI submits that the Rider was entitled to an annual gross income from cycling in 2018 of [REDACTED], as established in clause 8 of the Agreement between the Rider and his Team. Therefore, according to the UCI, a mandatory fine of [REDACTED], representing 70% of the Rider's annual gross income, should be imposed as per Article 10.10.1.1 of the UCI ADR.
68. In light of the seriousness of the ADRV, the experience of the Rider at the time of the doping control, the additional existence of an AAF also in the Blood sample and the absence of evidence on the occurrence of any of the circumstances enabling a reduction of the fine as per Article 10.10.1.1 of the UCI ADR, the Single Judge decides to impose on the Rider a fine of [REDACTED].
69. Finally, in relation to the Liability for Costs of the Procedures, Article 10.10.2 of the UCI ADR reads as follows:

"10.10.2 Liability for Costs of the Procedures

If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Anti-Doping 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 costs 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.*

The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI.

70. The UCI is requesting the Tribunal to condemn the Rider to pay the following amounts in this respect:
- CHF 2'500.- for costs of the results management;
 - USD 700.- (350 x 2) for the costs of the Laboratory Documentation Packages.
71. The costs for the results management claimed by the UCI are in line with those foreseen in Article 10.10.2 of the UCI ADR, and the UCI has provided the relevant invoices corresponding to the costs of the Laboratory Documentation Package (USD 700.-).
72. In light of the aforementioned the Single Judge considers that the Rider shall pay the amounts claimed by the UCI as listed in para. 70 above and condemns the Rider to pay them.

VII. COSTS OF THE PROCEEDINGS

73. Article 28 of the 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.*

74. In light of said provision, the UCI's position on the costs of the proceedings expressed in its Petition and the circumstances of this case, the Single Judge decides that the present Judgment is rendered without costs and that each party shall bear its own costs in these proceedings.

VIII. RULING

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

1. **Mr. Villalobos Solís has committed a second Anti-Doping Rule Violation (Article 2.1 of the UCI ADR).**
2. **Mr. Villalobos Solís is suspended for a period of Ineligibility of eight (8) years. The period of Ineligibility shall commence on the date of the decision, i.e. 21 October 2020. However, considering the credit for the period of the provisional suspension already served by Mr. Villalobos Solís since 2 April 2019, Mr. Villalobos Solís' period of Ineligibility effectively began on 2 April 2019, and shall end 8 years from this date, i.e. 1 April 2027.**

3. All the results obtained by Mr. Villalobos Solís at the 2018 Vuelta Ciclista Internacional a Costa Rica and any other results obtained by him between 21 December 2018 and 2 April 2019 are disqualified.
 4. Mr. Villalobos Solís is ordered to pay to the UCI the amount of [REDACTED] as monetary fine.
 5. Mr. Villalobos Solís is ordered to pay to the UCI:
 - a) The amount of CHF 2'500 for the costs of results management;
 - b) The amount of USD 700 for costs of the Laboratory Documentation Package.
 6. All other and/or further-reaching requests are dismissed.
 7. This judgment is final and will be notified to:
 - a) Mr. Villalobos Solís;
 - b) *Comisión Nacional Antidopaje en el Deporte* (NADO of Costa Rica);
 - c) UCI; and
 - d) WADA.
76. This Judgment may be appealed before the CAS pursuant Article 30.2 of the 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 of the UCI ADR.

Jordi López Batet
Single Judge