

UCI Anti-Doping Tribunal

Judgment

case ADT 06.2019

UCI v. Ms. Clemilda Fernandes

Single Judge:

Ms. Emily Wisnosky (United States)

Aigle, 20 December 2020

INTRODUCTION

1. The UCI Anti-Doping Tribunal (“the Tribunal”) issues the present Judgment in application of the Tribunal Procedural Rules (the “ADT Rules”) in order to decide upon a violation of the UCI Anti-Doping Rules (the “ADR”) committed by Ms. Clemilda Fernandes (the “Rider”) as asserted by the UCI (collectively, the “Parties”).

I. FACTUAL BACKGROUND

2. This section provides an overview of the facts as alleged by both parties in their submissions, including the accompanying exhibits (as indicated throughout). For each of the Sample Collection attempts described below, the emphasis lies on those aspects where the Rider contested the UCI’s allegations. It should also be noted that since this matter comes down largely to a factual dispute, care was taken to set out a detailed account of the key and relevant facts presented by the parties, as well as an indication of any evidence presented in support of the factual allegations. That said, while all evidence submitted by the parties was carefully considered, the below includes only the aspects needed to explain the reasoning of the Tribunal.

A. The Parties

3. 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 arts 60 ff. of the Swiss Civil Code according to arts 1.1 and 1.2 UCI Constitution.
4. At the time of the alleged anti-doping rule violation, the Rider was a Brazilian professional cyclist, affiliated to the Brazilian Cycling Federation (“BCF”), a License-Holder within the meaning of the ADR, and a member of the Conceria Zabri – Fanini Women’s World Tour Team. In 2019, she was contracted to the Eurotarget – Bianchi – Vittoria Women’s World Tour Team.

B. Facts prior to the alleged anti-doping rule violation

5. In 2009, the Rider was suspended for two years for an anti-doping rule violation, following an Adverse Analytical Finding for the following Prohibited Substances: Amphetamine, Hydrochlorotiazide, Fenproporex, and 4-oh-amphetamine.
6. The Rider’s cousin and sister have both been sanctioned for the presence of Erythropoetin (“EPO”) in their Samples.

C. The alleged anti-doping rule violation

7. The UCI’s allegations center on the Rider’s conduct during four different Sample collections that took place between July and September 2018.
8. At the outset, it should be mentioned that in the Initial Explanations, the Rider made a blanket denial that much of the alleged conduct underlying the asserted violation occurred, as follows:

“The athlete never refused or made it difficult to provide material for doping control tests. The Doping Control Officer’s information that the athlete “acted in a manner that caused the failure” of attempts to collect blood for a doping control examination is utterly unfounded. In fact, what happens is that the athlete has serious problems of access to their veins, fact that makes difficult

the collection of blood. This difficulty was reported by physicians, according to attached documents.

According to the medical reports in the appendix, the blood collection in the athlete Clemilda Fernandes, for the accomplishment of examinations, must be done by a qualified professional and with experience, under penalty of not being able to collect the material, as it happened in the mentioned cases". (Emphasis added)

1. Sample Collection #1

a) The key facts presented by the UCI

9. On 5 July 2018, the Rider was selected to provide a blood Sample during an In-Competition Doping Control at the Giro d'Italia Internazionale Femminile ("Sample Collection #1") According to a supplemental report made by the BCO on the same day as the Sample collection:
- The Rider's behavior during the control was *"very strange"* and characterized it *"like a refus[al]"*;
 - For the first attempt, the Rider refused to allow the BCO to take blood from what the BCO considered as the *"best ve[i]n"* on the back of her underarm and so the BCO instead attempted to take blood from a different vein. Then, according to the BCO, *"the moment the needle was inside that ve[i]n she turns her arm more than one time away. The needle went out of the ve[i]n"*;
 - For the second attempt, the BCO asked her which vein she preferred and she answered *"no, no, it hurts"*. The BCO explained that if she did not want to give blood, this would be considered a refusal. Her coach also told her to do the test. According to the BCO, *"the second time she took her arm away once the needle was in the ve[i]n"* even though the BCO *"took her arm strong with help from the DCO. she turns and turns and took her arm away"*. The second attempt was also a failure; and
 - For the third attempt, using the vein on her underarm, the BCO reported that the Rider *"turns away, took her arm away"* but nevertheless successfully drew blood.
10. According to the UCI, the results of this analysis were flagged as an Atypical Passport Finding by the adaptive model and the Athlete Passport Management Unit requested to continue to collect more ABP blood samples from the Rider.
11. In addition, the UCI submitted an additional statement by the BCO in which she stated that she was a nurse since 1993 and a nurse practitioner since 2011, working for 12 years as a nurse in an emergency room and currently as a nurse practitioner in a rehab center.

b) The key facts presented by the Rider

12. In her supplemental report dated the same day as the Sample Collection #1, the Rider pointed to her difficult veins and lamented the treatment during the collection, especially that she had to be pierced multiple times. She did not mention moving her arm.
13. In her Answer, the Rider did not specifically contest the version of the facts presented by the UCI (above) with respect to Sample Collection #1. Instead, her Answer focused on whether the alleged facts could amount to an anti-doping rule violation.

2. Sample Collection #2

a) The key facts presented by the UCI

14. On 21 July 2018, the Rider was selected for an Out-of-Competition Doping Control, but the collection was cancelled after three unsuccessful attempts to draw blood (Sample Collection #2):
- The Rider reported at the beginning that her veins are *“very bad and that BCOs usually struggle to take blood”*. The DCO agreed that *“[t]he v[e]ins did look very bad and barely seen;”*
 - For the first attempt, the BCO tried to collect blood from her left arm, however, *“as he approached to insert the needle she was starting to say she is in pain and making grimaces as well as moaning in pain, she also moved her arm a lot”*
 - For the second attempt, the Rider insisted that her arms were *“no good”* and that they needed to take blood from the top of her hand. However, *“the same happened she kept moving her hand in discomfort. She immediately pulled away (her hand).”*
 - For the third attempt, the BCO *“almost placed the needle in her v[e]in”* but she *“again moved her hand backwards and said it hurt”*.
 - The BCO and DCO then asked if she would like to lay down to be more comfortable and try again, but she did not want to try again.

b) The key facts presented by the Rider

15. In her Answer, the Rider emphasized that the DCO report did not attribute the responsibility for the failed test to the Rider and disputed that the doping report mentioned her pulling away her hand or refusing to give her right arm.

3. Sample Collection #3 (28 September 2019)

a) The key facts presented by the UCI

16. On 28 September 2018, the Rider was again selected to provide a blood sample during the UCI Road Cycling World Championships in Innsbruck, Austria, however this collection attempt was again cancelled due to the maximum number of attempts (i.e. three) being expended (Sample Collection #3).
17. The DCO’s report, dated 29 September 2018, provided as follows:
- The Rider complained of being tested too often in the preceding months and asked to do a urine test instead, noting that her veins were very thin;
 - For the DCO, the Rider’s veins were difficult to see or feel. He also noted *“a big bandage on her right arm at her elbow, so the only available arm was the left one. She said she had crashed at the Giro de la Toscana and had hurt her elbow”*;
 - For the first attempt, the DCO observed that *“the athlete was very nervous and kept moving all time, that in addition to her difficult veins made the task very hard”*;
 - For the second (failed) attempt, the Rider did not let the BCO open her bandage and the Rider complained of pain and discomfort;

- For the third (also failed) attempt the BCO noted that it was difficult to get the needle into the vein, but *“he finally managed to draw some blood. As soon as the athlete saw that blood was flowing she moved her arm and the needle popped out and off of the vein”*.

18. The UCI alleges that the bandage was *“yet another way to avoid access to the most suitable veins”*, an allegation it supported both through the report of the DCO and through pictures posted on social media taken after the Giro de Toscana (which took place on the 7 to 9 September 2018) and prior to Sample Collection #3 (i.e. from 10 September through 23 September). In photos and videos from the posts submitted, the Rider’s right arm is free from bandages.
19. The UCI submitted a statement made by the DCO in which he stated that he was a certified phlebotomist by the UK National Health Service, collecting an estimated average of 10 blood samples a week since May 2012.

b) The key facts presented by the Rider

20. On 28 September 2018, the Rider also filed a supplemental report for this cancelled blood collection attempt, in which she acknowledged the cancelled attempt, but did not provide an explanation.
21. In her Initial Explanations, the Rider added that the BCOs bruised her arms.
22. In her Supplemental Explanations, the only reason that the Rider provided for the failed attempt was *“the difficulty of accessing my vein”*. In addition, she stated *“I reaffirm that I never took my arm off to prevent blood collection and did not refuse to supply biological material for doping control examination”*.
23. In her Answer, the Rider acknowledged that the needle did pop out of the vein during this Sample Collection #3, but said that this was due to an involuntary movement of her arm and emphasized that the DCO did not mention that the Rider intentionally interfered with the doping control, nor did the report mention the Rider engaging in *“misleading or obstructing”* conduct.
24. As to the bandage on her right arm, the Rider explained that she was *“terrified to be hurt on her right arm, injured in a recent bike accident, and that she would have preferred not to have needles in that arm”*. According to the Rider, this concern was justified since a doctor certified in September that the Rider suffered of *“a venous diltation [sic.] caused by inappropriate punctures”*. She did not mention the date of the *“recent”* bike accident.
25. As to the UCI’s allegation that the bandage was merely placed on her arm to avoid offering her most suitable veins for blood collection, the Rider countered in her answer that the pictures from social media had been taken before the accident. She submitted a blurry photo of an arm dated 29 September 2019 that shows small purple blotches that appear similar to bruising, but it is difficult to confirm whether the arm belongs to the Rider and the type of injury.

4. Sample Collection #4

a) The key facts presented by the UCI

26. On 29 September 2018, the Rider was again selected for doping control during the UCI Road Cycling World Championships, which was attended by a DCO, two BCOs and the CADF's testing manager. Again, the blood collection attempt failed (Sample Collection #4).-
27. According to a supplemental report filed by the BCO Mrs. Peadeau, on 29 September 2018:
- One BCO tried (and failed) to take blood twice from the Rider's left arm;
 - The BCO acknowledged that she did have a superficial (old) wound on her shoulder and a wound on her elbow covered with a small bandage, neither of which prevented the blood collection – the BCO confirmed that in her view there was no objective medical reason for the Rider to refuse blood collection;
 - *"I was able to see a 'good' vein, on the inner side of her right arm (where I would have attempted to take blood). However, at that moment, the Rider quickly covered that area with her sleeve and forbade me to touch that area (her right arm). Then the Rider said it is ok to take the blood from the small vein on her right hand, above her thumb. When I introduced the needle into that vein, the Rider did not have any reaction. I put the tubes and when she saw that the blood started to flow, she suddenly tried to pull back the arm, but could not entirely do it because her arm was held by DCO Bart Books (due to the experience from the first two attempts). The Rider then started to cry and to complain that we did not respect her as an athlete. Therefore, I was not able to take a full tube of blood, but less than 1 ml."*
28. Also, on 29 September 2018, the other BCO involved also filed a supplementary report that provided the following relevant information:
- The Rider got *"suddenly upset"* when she learned that she would have to do a blood test, and became *"nervous, suddenly very cold, began to shiver"*, after which they offered her warm clothes;
 - When things became quieter, the BCOs searched for an appropriate vein, noting that on her left arm, her veins were very thin and difficult from which to draw blood;
 - After one failed attempt, the BCOs asked the Rider to show her right arm, *"but she refused and began to become nervous again. She started screaming and complaining in her language. She wanted to leave. After the second failed attempt in her left hand, we asked if we could look at her right arm for a moment. After much complaining and shouting, the rider showed her right arm for about 3 seconds and covered that arm again. I saw in a flash that the right arm had a very good vein. But she always refused to offer it. At the third and final attempt in her hand, the first tube began to fill with blood. At that moment, the rider looked at the tube and pulled her hand very hard. She became really aggressive and started to cry. The blood test was stopped in consultation with the DCO"*.
29. Also, on 29 September 2018, DCO Lorenzana filed a supplemental report. This report corroborated Mrs. Peadeau's report in that:
- There were three (failed) attempts to draw blood, with the last attempt yielding about 1 mL;

- The veins on her right arm were easier for blood drawing, but nevertheless the Rider refused to allow collection on her right arm;
- The Rider told them that she could not give her right arm due to an accident she had with a van and her veins in her right arm were not in good shape for giving blood.

The report did not mention the Rider pulling her arm as soon as the blood started flowing. It did mention that the DCO warned the Rider that failure to give her right arm may result in an anti-doping rule violation.

30. The UCI submitted a statement from the BCOs as to their qualifications:
- Mr. Boons graduated in hospital nursing in 1998 and since then, has worked at a care centre for the elderly, taking blood samples on a daily basis from older people with small veins (an average of 8 to 10 per day). He stated that in his entire career, the Sample Collection #4 is the only one that has ever failed;
 - Mrs. Peaudeau holds a diploma from 1993, and regularly draws blood from patients with small veins (including babies and children). She has been an agent for the AFLD (French NADO) since 2008 and has never had other failures of drawing blood.
31. The UCI submitted additional statements from the DCO and two BCOs confirming key aspects of the above. In Mrs. Peaudeau's additional statement, she emphasized that the Rider did not exhibit a pain reflex, but a will to cause a failure of the doping control process.

b) The key facts presented by the Rider

32. On 29 September 2019 the Rider also submitted a supplementary report in which she complained of being tortured during the Sample collection and mentioned retiring from cycling as a result.
33. In her Supplemental Explanations, the Rider expanded upon this mistreatment (for example, by not being allowed to search for her ID or warm clothes) and that she suffered trauma from so many blood collection attempts leading to *"serious neurological problems"*.
34. Besides this, her main explanation for the failed attempts specifically was that the BCO was *"not a blood collection specialist"* and since her veins are difficult to access, the collection failed. She emphasized *"at no point did I take off my arm to stop the collection of blood"*.
35. She also submitted a statement from a person accompanying her, which described her arm as *"slaughtered by probably blood collection attempts"*.
36. In her Answer, the Rider again emphasized that the DCO did have difficulties in finding the Athlete's veins. The Answer explained that *"once again, the Athlete got nervous and scared"*, complaining that she was a victim of the system. The Rider admitted that she may not have reacted appropriately and used unsuitable and impolite wording. She again emphasized that she never intentionally refused to undergo blood control. Instead, she admitted that she was *"disinclined to give the right arm for fear to be harmed: she complained and made a big story, but she never expressly refused to have the blood control."* It is her position that her reactions were justified by her fear of being hurt.
37. Moreover, the Rider alleged that the control was "stopped and cancelled because one of the DCOs got irritated for the Rider's attitude, who, under a nervous crisis, was moving her hand while the blood

was flowing.” The Rider also stated that she suffers from a “dynastic cervical tremor...a disease that implies [] arms and hands tremor in stressful condition”. The Rider again emphasized that she “might have been appeared as unpleasant and troublesome, and she might have irritated the DCO with her complains and her whimpering she might have overreacted, but **she has never intentionally obstructed the doping control.**”

38. In support of this, the Rider stated that even the CADF sent its apologies for DCO malpractice in an email dated 6 August 2018, which the Rider submitted as evidence. The email explained that an incident was investigated by the DCO (but not which incident), and acknowledged that several attempts “*were made due to the difficulty to get a suitable sample*” and stated “*Please let us apologize for the discomfort caused*”.

5. Other key evidence presented by the parties

39. According to the UCI, Since 13 September 2017, the status of the Rider’s Athlete Biological Passport (“ABP”) has been “*suspicious, further data required*” and in 2018, the Cycling Anti-Doping Foundation (“CADF”) was targeting the Rider to collect further Samples. As to her passport, the Rider submitted a statement by a doctor that stated “*I further declare that, analyzing your biological passport, I did not notice any change in the results of your tests, which are perfectly normal*”.
40. The Rider also submitted photographs that show the (according to the Rider, permanent) condition of her right arm and vein system, which shows a dark purple spot similar in appearance to bruising on the inside of her right arm.
41. As emphasized in her Answer, the Rider describes this case is one of a medical inadequacy, in that she has a “*venal insufficiency*” that she has informed the UCI about and for which “*no measures has ever been adopted*”. For the Rider, it was “*neurological disturb[ances] clinically prove[n], that led to the absences of total intentionality of the Athlete in pulling their hand away from the control.*”

II. PROCEDURE BEFORE THE TRIBUNAL

42. In compliance with art. 13.1 ADT Rules the UCI initiated proceedings before the Tribunal through the filing of a petition to the Secretariat of the Tribunal on 2 October 2019.
43. In the UCI Petition, the UCI requested the following relief:
- “*Declaring that Ms. Clemilda Fernandes has committed an Anti-Doping Rule Violation.*
 - *Imposing on Ms. Clemilda Fernandes a period of Ineligibility of eight years starting on the date of notification of the Tribunal’s decision.*
 - *Holding that the period of provisional suspension served by Ms. Clemilda Fernandes since 9 September 2019 shall be deducted from the period of ineligibility imposed by the Tribunal.*
 - *Disqualifying all results obtained by Ms. Clemilda Fernandes at the Giro d’Italia Internazionale Femminile 2018 and until the date she was provisionally suspended (9 September 2019).*
 - *Condemning Ms. Clemilda Fernandes to pay: the costs of the results management by the UCI (CHF 2,500).”*
44. In the Rider’s statement of defense, she requested the following relief:

- *“On a preliminary basis to **establish** that no ADRV has been committed by Ms Fernandes, and as a consequence to **dismiss** the for all the reasons above exposed the request of ineligibility of 8 years, starting from September 6th, 2019;*
- *In the alternative, find that the Athlete bears no fault of negligence and is immediately eligible to compete;*
- *In the further alternative, **reduce** her period of ineligibility, based on **No Significant Fault or Negligence** to a warning or a reprimand and no period of Disqualification;*
- *In extreme alternative way, **reduce her period of ineligibility** to four years or any other period such Panel should consider appropriate also holding into account the applicable mitigating circumstances,*
- *In any case, to condemn the UCI to bear all cost of the proceeding including a contribution toward Ms Fernandes’s legal costs.”*

45. The following provides an overview of the key events leading up to the filing of this petition.
46. On 20 November 2018, the UCI notified the Rider that it had opened an investigation into a potential ADRV for Tampering and Attempted Tampering and for Refusing to submit to Sample collection, as per arts. 2.3 and 2.5 ADR.
47. On 3 December 2018, the Rider submitted an initial set of explanations through her first counsel, which was signed by the Rider (the Rider's "Initial Explanations") and directed at Sample Collections #3 & #4 (i.e. the focus of the UCI's initial investigation).
48. On 26 March 2019, the Rider submitted a second set of "supplementary" explanations, through the same counsel (the Rider's "Supplementary Explanations").
49. On 6 September, the UCI asserted the anti-doping rule violation at stake.
50. Before referring the case to the Tribunal, the UCI offered the Rider an acceptance of Consequences within the meaning of art. 8.4 ADR and art. 2 ADT Rules by letter dated 6 September 2019.
51. On 12 September 2019, the Rider submitted a request to lift her Provisional Suspension before the UCI Disciplinary Commission (the Rider's "Request to Lift the PS").
52. On 17 September 2019, the Rider, acting through her counsel, rejected the offered acceptance of Consequences.
53. On 2 October 2019, the UCI Legal Anti-Doping Services filed its petition before the Tribunal.
54. On 8 October 2019, the Secretariat of the Tribunal appointed Ms. Emily Wisnosky to act as Single Judge in the present proceedings in application of art. 14.1 ADT Rules.
55. On 8 October 2018, in application of art. 14.4 ADT Rules, the Rider was informed that disciplinary proceedings had been initiated against her before the Tribunal.
56. On 14 October 2019, the President of the UCI Disciplinary Commission rendered is decision and dismissed the Rider’s request to lift her Provisional Suspension.

57. On 24 October 2019, the Rider submitted her answer through counsel (her “Answer”).
58. On 13 November, the Rider, again through counsel, submitted additional evidence in the form of photographs of the Rider’s arms, which was admitted to the case file.
59. On 15 November 2019, the UCI submitted its comments to the additional evidence.
60. On 20 November 2018, the Single Judge declared the proceedings closed and confirmed that she would render her Judgment based on the documents on file.

III. JURISDICTION OF THE TRIBUNAL

61. Art. 3.2 ADT Rules provides the following: “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”.
62. Neither party objected to the jurisdiction of the Tribunal, thus the Single Judge holds that the Tribunal has jurisdiction to hear this matter. For the sake of completeness, the Single Judge notes that she is satisfied that the Tribunal’s jurisdiction complies with the applicable provisions of the ADR.
63. Part C of the Introduction of the ADR addresses its scope of application, as follows:

“These Anti-Doping Rules shall apply to the UCI and to each of its National Federations. They shall also apply to the following Riders, Rider Support Personnel and other Persons: a) any License-Holder, ...”.

64. The Rider was therefore bound by the ADR. She was a License-Holder within the meaning of the ADR since she was affiliated to the Confederacao Brasileira de Ciclismo and held a license in 2018, i.e. at the time of the events described in section II, above.
65. Art. 8.2 ADR provides in relevant part as follows:

“The UCI Anti-Doping 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”.*

66. In this case, the UCI asserted the anti-doping rule violation following a results management process under art. 7 ADR, and thus it follows that the Tribunal has jurisdiction in this matter.

IV. RULES OF LAW APPLICABLE TO THE MERITS

67. The ADT Rules provide that “the Single Judge shall apply the ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law” (art. 25 ADR). The alleged anti-doping rule violations took place in 2018. Thus, the 2015 edition of the ADR applies to the current matter.
68. Art. 2.5 ADR sets forth the violation for Tampering, as follows:

“2.5 Tampering or Attempted Tampering with any part of Doping Control

Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness.

[Comment to Article 2.5: For example, this Article would prohibit altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis, or altering a Sample by the addition of a foreign substance. Offensive conduct towards a Doping Control official or other Person involved in Doping Control which does not otherwise constitute Tampering shall be addressed in the disciplinary rules of sport organizations.]”

69. The definition of the term Tampering provides as follows:

“Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring. Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method”

70. The definition of the term Doping Control process provides as follows:

“All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings.”

71. As for the standard period of Ineligibility art. 10.3 ADR provides as follows:

“10.3 Ineligibility for Other Anti-Doping Rule Violations

The period of Ineligibility for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Articles 10.5 or 10.6 are applicable:

10.3.1 For violations of Article 2.3 or Article 2.5, the period of Ineligibility shall be four years unless, in the case of failing to submit to Sample collection, the Rider can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years. 10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

72. As for the possibilities to reduce the aforementioned periods of Ineligibility based on Fault, 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".

[Comment to Article 10.5.2: Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Rider or other Person's degree of Fault.]

73. As for the Disqualification of results in the Event during which an anti-doping rule violation occurred, art. 10.1 ADR provides as follows:

"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 10.1.1.

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.

[Comment to Article 10.1: Whereas Article 9 Disqualifies the result in a single Competition in which the Rider tested positive (e.g., individual pursuit), this Article may lead to Disqualification of all results in all races during the Event (e.g., the UCI Track World Championships).]"

74. As for the Disqualification of results in Competitions following the Sample collection, art. 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".

75. In relation to the commencement of the period of Ineligibility art. 10.11 ADR provides (in relevant part) 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. ...

10.11.1 Delays Not Attributable to the Rider or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person, the UCI may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

...

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”.

76. As for the liability for costs of the procedures, art. 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 results 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.*

...

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

V. THE MERITS

77. A violation of Tampering occurs when a Rider engages in conduct that “*subverts the Doping Control process*”, including (*inter alia*) intentionally interfering or attempting to interfere with a Doping Control official. The two main ways in which the UCI allege that the Rider interfered with the Doping Control process are (i) by voluntarily moving her arm while the blood collection took place; and (ii) by purposefully offering the Sample collection personnel “bad” veins that were more difficult for drawing blood than other available veins, either by simply requesting the Sample collection personnel or by feigning injury, knowing that the Doping Control process for blood collection must be cancelled after three failed attempts. In the Single Judge’s view, either could (if established) potentially serve as the basis of a violation of Tampering.
78. Thus, the first task of the Single Judge is to establish the facts underlying the alleged anti-doping rule violation (A.), before deciding whether the Rider committed an anti-doping rule violation (B.) and any relevant Consequences (C.).

A. Assessment of the evidence

1. What evidence may be considered?

79. The Rider submitted that the UCI's evidence with respect to her own past anti-doping violation, her sister's previous anti-doping violation cannot be taken into account as evidence. Moreover, that her passport was "suspicious" cannot be taken into account "*as a necessary precondition*" of an anti-doping rule violation. The Single Judge disagrees to the extent that this position implies that the evidence submitted by the parties to this proceeding would be inadmissible. She agrees that none of this constitutes a "*necessary precondition*" for the alleged violation at hand.
80. Instead, the Single Judge holds that all evidence submitted is admissible (including the witness statements submitted by the Rider), but it is for the Single Judge to determine the weight of this evidence.

2. Factual allegations of the parties

81. It is accepted by both parties that the Rider moved her arm during Sample collection in a way that affected the Doping Control. Indeed, it is the position of the Rider in her Answer that it was "*neurological disturb[ances] clinically prove[n], that led to the absences of total intentionality of the Athlete in pulling their hand away from the control*". Thus, the key question here comes down to whether this movement was voluntary, as the parties disagree on this point.
82. As to whether the arm movement was voluntary, the Single Judge takes good note of the following key facts alleged by the UCI that were corroborated by contemporaneous statements made by six of the Sample collection personnel involved with the four Sample collection attempts at issue in this case:
- Five of the Sample collection personnel involved in all four different Sample Collection attempts independently confirmed that the Rider either twisted, turned, moved her arm or pulled her hand during the course of attempted blood draws;
 - In each of the four Sample collections at stake, at least one Sample collection personnel confirmed that the Rider moved her arm once the needle was already in her arm;
 - In three of the four Sample Collections, the Sample collection personnel reported the Rider either behaving strangely or being nervous, with the BCO involved in Sample Collection #1, going so far to say that the Rider's behavior was "*very strange and for me it was like a refus[al]*." Even the Rider herself admitted that in Sample Collection #4, she may not have reacted appropriately and used unsuitable and impolite wording;
 - As to the suspicious passport, the Single Judge accepts that it was "suspicious", despite the Rider's submitted statement from a physician stating her results were "*perfectly normal*"; and
 - The BCOs submitted (uncontested) statements that they were experienced in blood collection.
83. The Single Judge also makes the following observations with respect to the Rider's statements:
- The Rider insisted consistently in her submissions that she did not intentionally interfere with the Doping Control process;
 - None of her statements made contemporaneously with the Sample collections make any mention of arm movement as an underlying reason for the failure of the blood collection

attempts, instead the Rider mainly attributed the failed attempts due to her venal inadequacies, in conjunction with the lack of experience of the Sample collection personnel;

- In the Rider's Initial Explanations, she expressly denies ever "*making it difficult*" for BCOs to collect blood, whereas in her Answer she admits that in the case of Sample Collection #4, it was "*stopped and cancelled because one of the DCOs got irritated for the Rider's attitude, who, under a nervous crisis, was moving her hand while the blood was flowing*", which in the view of the Single Judge is not consistent with her earlier statement and does not reflect favorably on the overall credibility of her statements;

84. Narrowing in on the question of whether the movement was voluntary, we turn now to the Rider's explanations.
85. First, the Rider suggests that the failed attempts are somehow attributed to her venal insufficiencies. The Single Judge accepts, based on evidence submitted by both the Rider and the UCI, that the Riders' veins (at least on her left arm) are not easy from which to draw blood. This, of course, is not connected at all to the question of whether the Rider voluntarily moved her arm, especially once the needle was already in her arm, as was alleged by the UCI.
86. Second, the Rider also describes being in a "nervous crisis" during Sample collection #4, describing what she describes as a justified fear of blood sample collections. Based on the evidence presented, the Single Judge does not accept that this fear or pain rendered the arm movements at stake involuntary. Rather, the Rider is a very experienced professional Rider who understands well her anti-doping obligations. Moreover, if the Rider was scared of being injured during Sample collection, it seems like the logical reaction would be to move less, not more – especially once the needle was already in place.
87. Third, she also mentions that he suffers from a "dynastic cervical tremor". Even accepting this as true, the Single Judge has been presented with no evidence that such a tremor could explain the various arm movements at stake. Therefore, it cannot be accepted that a tremor is what caused the Rider to move her arm during the various Sample collections.
88. Finally, the Rider alludes to mistreatment by the various blood collection officers, i.e. that she was "tortured" or "slaughtered" during the Doping Control process. She submitted pictures to support her allegations and an email from the CADF. Unfortunately, on the evidence provided the Single Judge cannot draw the conclusion that any injury shown is the result of mistreatment during the Sample collection at the fault of the Sample collection officers, especially when the Rider admits that she moved her arm while the blood was flowing in Sample Collection #4. To the extent that this is presented as a justification or in support of the "involuntary" nature of her actions, again, this cannot be accepted. The Single Judge is further comforted by (i) the fact that the Sample Collection personnel involved were highly experienced and (ii) the evidence relating to the multiple incidents.
89. In light of the above, the Single Judge takes the view that the Rider voluntarily moved her arm during the Doping Control process.
90. The next question is whether the Rider's arm movement disrupted or interfered with the Doping Control process. It seems fairly obvious that once one accepts that the Rider did voluntarily move her arm in four separate sample collections, three of which eventually failed, this did interfere with the Sample collection process. Even the Rider herself in her Answer admitted that the Sample collection

personnel in Sample Collection #4 was *“stopped and cancelled because one of the DCOs got irritated for the Rider’s attitude, who, under a nervous crisis, was moving her hand while the blood was flowing”*.

91. In light of the above, and assessing all of the evidence presented by the parties, the Single Judge holds that the UCI has discharged its burden of proof to establish to the standard of comfortable satisfaction that the Rider voluntarily moved her arm on multiple occasions (or attempted to move her arm) and that this movement interfered with the Doping Control process in that it prevented (or made it very difficult, in the case of Sample Collection #1) the collection of a blood sample from the Rider.
92. The Single Judge is comforted in this finding in light of the totality of the evidence submitted in this case, relating both to actions undertaken by the Rider to interfere with the Doping Control process by purposefully offering the Sample collection personnel "bad" veins that were more difficult for drawing blood than other available veins, either by simply requesting the Sample collection personnel to draw from certain veins or by feigning injury, as well as the past history of the Rider and her family with respect to doping.

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

93. The Tribunal holds that the Rider committed an anti-doping rule violation of Tampering (art. 2.5 ADR) for the reasons that follow.
94. As already mentioned, a violation of Tampering requires the Rider did engage or attempted to engage in conduct that “subverts” the Doping Control process. In particular, it includes *“intentionally interfering or attempting to interfere with a Doping Control official”* or more generally *“interfering improperly”* with a Doping Control process.
95. The Rider disputes that the arm movement was intentional, asserting that it was “neurological disturb[ances] clinically prove[n], that led to the absences of total intentionality of the Athlete in pulling their hand away from the control”. For the reasons set forth above, the Single Judge does not accept that the arm motions were made in the absence of intentionality on the part of the Rider. As set forth above, the Single Judge is comfortably satisfied that the Rider did in fact voluntarily move her arm (or attempt to move her arm) during the Doping Control process, i.e. during four separate Sample Collections. Moreover, it cannot be seriously suggested that the Rider did not know that voluntarily moving her arm would interfere with the Doping Control process. Moreover, as a professional rider knowledgeable in doping control procedures and by virtue of her own experience and admission, she was well aware that after three attempts, the Sample collection would be called to an end.
96. Thus, the Single Judge takes the view that this conduct does constitute *“intentionally interfering”* with the Doping Control process in the sense of art. 2.5 ADR and therefore constitutes an anti-doping rule violation for Tampering.
97. It is worth mentioning that it is irrelevant for the purposes of establishing a violation of Tampering that the Sample Collection was ultimately successful. The Rider in her Answer emphasized that for Sample Collection #1, *“the blood was collected, the doping control executed and the sample did not brought [sic] out any ADRV”*, and thus questioned how there could be an attempt to subvert the doping control process. The Single Judge wishes to emphasize that “attempted” Tampering also constitutes a violation of art. 2.5 ADR. In other words, if a Rider engages in activities aimed to subvert the Doping Control process, this may amount to Tampering, whether or not the process results in the successful collection

of a Sample. Nor is it consequential under the circumstances of this case that it may have been, as the Rider alleged, the Sample collection personnel who called Sample Collection #4 to a close.

98. Neither is it relevant that the Rider did not test positive for a Prohibited Substance as a result of the successful collection of blood during Sample Collection #1, nor is it relevant that she complied readily with the provision of Urine samples.

C. Consequences of the Rider's anti-doping rule violation

1. Period of Ineligibility

a) Initial starting point

99. A violation of Tampering brings with it a four-year period of Ineligibility.
100. In the event that the Single Judge considered that an anti-doping rule violation was established, the Rider asked the Single Judge to find that the Rider committed the violation bearing No Fault or Negligence or at least that it was not intentional.
101. For the reasons stated above, the Single Judge held that the violation was intentional.
102. Putting aside the question of whether it is even possible to at the same time consider the Rider committed the (intentional) violation of Tampering with No (Significant) Fault or Negligence, the Single Judge finds no basis in this case to consider the violation was committed with No (Significant) Fault or Negligence and hereby dismisses the Rider's request. The Single Judge sees no other applicable mitigating circumstances that may reduce her period of Ineligibility further in this case.
103. The Single Judge was not presented with any other basis upon which the Rider's period of Ineligibility may be reduced (e.g. for providing Substantial Assistance), thus holds that the starting point for the Rider's period of Ineligibility is four years.

b) Accounting for multiple violations

104. According to the UCI, since this is the Rider's second ADRV a period of Ineligibility of eight years must be imposed on the Rider in compliance with art. 10.7.c, which would require that a period of Ineligibility of *"twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation"*. The Rider asked that the Single Judge *"reduce her period of Ineligibility to four years or any other period such Panel should consider appropriate holding into account the applicable mitigating circumstances"*. In addition, she set forth that Ineligibility period requested by the UCI is high and prejudicial compared to the conduct. Further, the Rider explained that, while she is retiring soon, an eight-year ban would prevent her from collaborating with the Brazilian Cycling Federation to serve the youth in Brazil, for example by carrying on with her activities that focus on work with young children, pulling from the street and offering them a future through sport.
105. Even so, in consideration of the applicable rules and the evidence before her, the Single Judge holds that art. 10.7.c must apply, so that the period of Ineligibility is twice the initial starting point of four-years. In other words, an eight-year period of Ineligibility must be imposed.

106. The Single Judge does take note that the UCI ADR makes an exception to a period of Ineligibility for authorized anti-doping education and rehabilitation programs, which may allow the Rider to continue to contribute positively to cycling in some way.

2. Commencement of the period of Ineligibility

107. Art. 10.11 ADR provides as a general rule that the period of Ineligibility shall start on the date of the final hearing decision. The UCI sees no reason to depart from this general rule. The Rider did not make any submissions on this point. The Single Judge does note that the UCI Petition was submitted almost exactly a year after the events at stake took place. However, according to the evidence on record, the Single Judge has no basis upon which to determine that this constitutes a substantial delay not attributable to the Rider.
108. Thus, the period of Ineligibility shall commence on the date of the final hearing decision, which for the present purposes coincides with the date of this decision, i.e. 20 December 2019.

3. Credit for the Rider's Provisional Suspension

109. As per art. 10.11.3.1, the Rider shall receive credit for a Provisional Suspension against any period of Ineligibility imposed, so long as the Provisional Suspension was respected. According to the UCI, the Rider has apparently respected her Provisional Suspension, imposed on 6 September 2019, and ought to receive credit for this period. The Single Judge agrees.
110. The Rider shall receive credit against her period of Ineligibility for the duration of her Provisional Suspension. Concretely, this means that her eight-year period of Ineligibility effectively started on 6 September 2019 and will end eight-years from this date (i.e. 6 September 2027). In its request for relief, the UCI only asked that the Rider receive credit from the 9 September, however, the Single Judge takes good note that she is not bound by the parties' prayers for relief (art. 26 ADT), thus maintains that the 6 September is the relevant date.

4. Disqualification

111. Art. 10.8 of the UCI ADR requires that "all other competitive results of the Rider obtained from the date...[the] anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified". Neither party made any submissions that fairness would require otherwise in the circumstances of this case.
112. Taking into consideration all of the relevant circumstances, the Single Judge hereby Disqualifies all of the Rider's results starting from the Competition during which the first Sample collection that formed the basis of this anti-doping rule violation took place, i.e. the 2018 Giro d'Italia Internazionale Femminile, up through the Provisional Suspension, which began on 6 September 2019, with all resulting Consequences, including forfeiture of any medals, points and prizes.

5. Mandatory fine

113. In accordance with art. 10.10.1.1 ADR: "[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 [ADR]". Art. 10.10.1.1 of the UCI ADR provides that the

amount of this 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 rule violation occurred”.

114. The UCI submits that the Rider was not entitled to any salary for the year at stake (i.e. 2018), thus no fine ought to be imposed in this case. The Single Judge agrees.
115. Accordingly, the Rider shall not be subject to a mandatory fine.

6. Amount of the costs

116. In application of art. 28.1 ADT Rules, the Single Judge must determine the cost of the proceedings as provided under art. 10.10.2.1 ADR. Per art. 28.2 ADT Rules, as a matter of principle, the Judgment is rendered without costs.
117. Notwithstanding the above, the Single Judge 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 (art. 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.
118. In application of art. 10.10.2 ADR, and in light of all of the circumstances of this case, especially the fact that the prevailing party, i.e. the UCI was not represented by external counsel and that the UCI did not need to present expert evidence, the Single Judge finds it appropriate to refrain from ordering the Rider (as the unsuccessful party) to pay a contribution towards the UCI’s costs.
119. As a result of being found to have committed an anti-doping rule violation, the Rider shall, however, bear the cost of results management set at an amount of CHF 2’500 (art. 10.10.2.2 ADR).

VI. RULING

1. In light of the above, the Single Judge decides as follows:
 - **Ms. Fernandes has committed a violation of art. 2.5 ADR.**
 - **Ms. Fernandes is subject to a period of Ineligibility of eight years. The period of Ineligibility shall commence on the date of the decision, i.e. 20 December 2019. However, considering the credit for the period of the Provisional Suspension already served by Ms. Fernandes since 6 September 2019, Ms. Fernandes’ period of Ineligibility effectively began on 6 September 2019, and will end eight years from this date, i.e. 5 September 2027.**
 - **All results obtained by Ms. Fernandes at the 2018 Giro d’Italia Internazionale Femminile and in the period starting from this date through to the date the Provisional Suspension began (i.e. 6 September 2019) are Disqualified, including forfeiture of any medals, points and prizes.**
 - **Ms. Fernandes shall pay the costs of the results management by the UCI in the amount of CHF 2’500.**
2. All other and/or further reaching requests are dismissed.
3. This Judgment is final and will be notified to:

- Ms. Fernandes;
 - Autoridade Brasileira de Controle de Dopagem (the Brazilian National Anti-Doping Organization);
 - WADA; and
 - UCI.
4. This Judgment may be appealed before the CAS pursuant art. 30.2 ADT Rules and art. 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in art. 13.2.5 ADR.

Emily WISNOSKY

Single Judge