

UCI Anti-Doping Tribunal

Judgment

case ADT 01.2021

UCI v. Mr Edgar Miguel Lemos Pinto

Single Judge:

Mr Jordi López Batet (Spain)

Aigle, 13 July 2022

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 “UCI ADR”) committed by Mr Edgar Miguel Lemos Pinto (hereinafter referred to as “the Rider” or “Mr. Lemos Pinto”), 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 Portuguese nationality who at the time of the alleged anti-doping rule violation (hereinafter referred to as “the ADRV”), was affiliated to the Federação Portuguesa de Ciclismo (hereinafter referred to as “the FPC”) and was hence a Licence-Holder within the meaning of the UCI ADR.

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 ABP

5. The Rider was part of the UCI’s Athlete Biological Passport (hereinafter referred to as the “ABP”) Program. The ABP Program is based on the longitudinal monitoring of an athlete’s haematological values and is designed to be an “indirect” method of doping detection. It focuses on the effect of prohibited substances and methods on the athlete’s blood values rather than on the identification of a specific substance or method in an athlete’s specimen. The ABP Program is administered and managed by an Athlete Passport Management Unit (hereinafter referred to as the “APMU”).
6. An ABP is monitored by the Adaptive Model. The Adaptive Model is a mathematical model designed to identify unusual longitudinal results in an ABP or profiles that warrant further investigation. It predicts for an individual an expected range within which a series of marker values falls assuming a normal physiological condition.
7. The Adaptive Model flags haematological data as atypical if (i) a haemoglobin (hereinafter referred to as “HGB”) and/or OFF-score marker value falls outside the expected intra-individual ranges, with outliers corresponding to values out of the 99%-range (0,5 – 99,5 percentiles) or (ii) when sequence deviations (a longitudinal profile of marker values) are present at specificity of

99,9%. The OFF-score value is a haematological marker which is a combination of HGB and the percentage of reticulocytes (hereinafter referred to as “RET%”).

D. The alleged ADRV

8. The UCI alleges that the Rider committed a violation of Article 2.2 UCI ADR based on abnormalities detected in the haematological values contained in the Rider’s ABP.
9. The samples considered in the Rider’s ABP are the following:

		Collection					Analysis		
#	CODE	DATE	TIME	TYPE	ALT	LAB	DATE	TIME	
1	199174	14.02.2017	21:19	OUT		Barcelona- ESP	17.02.2017	11:39	
2	363302	28.02.2018	12:10	OUT		Cologne-GER	01.03.2018	13:02	
3	362631	25.03.2018	20:40	OUT		Lausanne-SUI	27.03.2018	16:40	
4	399392	31.07.2018	18:39	OUT	1600	Cologne-GER	02.08.2018	12:48	
5	260297	04.08.2018	21:50	IN		Madrid-ESP	05.08.2018	11:24	
6	260164	05.08.2018	21:00	IN	1600	Madrid-ESP	06.08.2018	11:57	
7	239272	11.08.2018	21:00	IN		Madrid-ESP	12.08.2018	14:03	
8	399311	27.08.2018	06:49	OUT		Cologne-GER	28.08.2018	15:48	
9	624625	08.04.2019	08:42	OUT	1950	Cologne-GER	11.04.2019	14:49	
10	625602	27.06.2019	10:05	OUT	1800	Madrid-ESP	27.06.2019	13:28	
11	260094	07.08.2019	21:15	IN		Madrid-ESP	09.08.2019	14:03	
12	649933	21.08.2019	08:24	IN		Cologne-GER	22.08.2019	09:43	
13	624926	03.09.2019	20:20	OUT		Cologne-GER	10.09.2019	15:46	
14	682126	22.09.2019	21:47	OUT		Paris-FR	24.09.2019	11:31	
15	682856	07.10.2019	22:00	OUT		Paris-FR	09.10.2019	12:22	
16	663912	12.11.2019	09:28	OUT		Madrid-ESP	13.11.2019	08:24	

10. The haematological results of these samples are the following:

Sample	CODE	HGB	RET%	OFF-score	HCT	RET#
1	199174	Invalid				
2	363302	14	1,51	66,27	42,9	0,0735

3	362631	15,3	0,92	95,5	46,9	0,0489
4	399392	15,9	1,43	87,25	47,3	0,0749
5	260297	15,4	0,81	100	45,9	0,041
6	260164	15	0,71	99,4	44,1	0,0343
7	239272	15,3	0,47	111,9	45,3	0,0234
8	399311	16,2	1,15	97,66	49,3	0,0628
9	624625	Invalid				
10	625602	14,9	1,73	70,1	45,7	0,0853
11	260094	Invalid				
12	649933	18	1,29	111,85	56,3	0,0774
13	624926	Invalid				
14	682126	14,3	2,49	48,3	43,1	0,1205
15	682856	15	1,73	71,1	44,4	0,0879
16	663912	14,6	1,39	75,3	45,4	0,071

Sample	CODE	RDW-SD	MCV	IRF	MCH	MCHC	RBC	PLT	WBC
1	199174	Invalid							
2	363302	44	88,1	10,3	28,7	32,6	4,87		
3	362631	44,6	88,3	10,8	28,8	32,6	5,31		
4	399392	46,7	90,3	8,6	30,3	33,6	5,24	198	5,76
5	260297	46,4	90,7	0	30,4	33,6	5,06	184	8,3
6	260164	46,4	91,3	1,2	31,1	34	4,83	185	12,5
7	239272	46,1	91	1,8	30,7	33,8	4,98	154	11,5
8	399311	45,1	90,3	8,3	29,7	32,9	5,46	183	7,54
9	624625	Invalid							
10	625602	46,5	92,7	8,2	30,2	32,6	4,93	222	6,25
11	260094	Invalid							
12	649933	45,6	93,8	6,3	30	32	6	209	8,87

13	624926	Invalid							
14	682126	40,9	89	12,8	29,5	33,2	4,84	159	4,79
15	682856	38,6	87,4	8,6	29,5	33,8	5,08	210	5,21
16	663912	38,4	88,8	7	28,6	32,2	5,11	175	3,04

11. In the case at stake, the Rider's ABP was flagged with sequence abnormalities at a specificity of 99,9% for HGB and OFF-score as well as RET%.
12. Additionally, some samples of the Rider's ABP (numbers 7, 12 and 14) were flagged by the Adaptive Model at 99% specificity as follows:
 1. Sample 7: flagged for upper limit OFF-score and lower limit RET%
 2. Sample 12: flagged for upper limit HGB and OFF-score
 3. Sample 14: flagged for lower limit OFF-score and upper limit RET%
13. The APMU submitted this Rider's profile to an expert for initial review. In the opinion of this expert, the Rider's ABP was the result of the use of a Prohibited Substance or Prohibited Method, being it highly unlikely that it was the result of a normal physiological or pathological condition. As regards of it, the profile was submitted to 2 other experts for evaluation.
14. On 6 March 2020, these 2 experts together with the first one, who all together constituted the Expert Panel (as defined in the WADA ABP Operating Guidelines), concluded that the Rider's profile contained several abnormalities, found it highly likely that a Prohibited Substance or Prohibited Method had been used and considered it unlikely that the ABP was the result of any other cause (hereinafter referred to as the "Initial Opinion"). This Initial Opinion, in the pertinent part, reads as follows:

We refer to your request to give a joint expert statement on a haematological profile obtained from a male cyclist in the context of the "Athlete's Biological Passport" (ABP). Each of us had previously evaluated the profile individually and delivered an independent initial review. This report constitutes the joint evaluation of the Expert Panel in accordance with the WADA Athlete Biological Passport Operating Guidelines v 7.0.

*Access to the profile coded **S185E2** was granted in ADAMS and documents summarising the data in tables and graphs were available in pdf format. The profile consists of 16 samples, of which Sample 1 and 13 were deemed invalid and hence excluded from the evaluation. The documentation packages/ certificates of analysis for the 14 samples of the profile were evaluated. The samples were obtained between 2017 and 2019. With the profile, we received a summary of the per-analytical/ analytical information contained in the documentation packages (ABP documentation package). In addition to the blood data, the competition schedule and altitude calendar of the athlete from 2017 to 2019 were reviewed.*

Sample Quality

Samples 1 and 13 were invalidated upon our initial review. For both samples the Blood Stability Score (BSS) was beyond the limit of what is recommended (1). All remaining samples were scrutinized for their analytical details outlined in the documentation packages (samples: 4-7, 11, 12, and 14) and certificates of analysis (samples: 2, 3, 8-10, 15 and 16).

For sample 9 and 11 there were issues with the transportation. Sample 9 was transported at an average temperature of 6.4°C, with a collection to analysis time of 82 hours resulting in a BSS of 104.2, thus beyond the limit of what is recommended (1). Therefore, we recommend invalidating the sample. With regards to sample 11, the temperature logger was not working upon sample reception at the analysing laboratory. The transportation time from collection to arrival at the laboratory was 39 hours, with an additional time of 3 hours at the laboratory before analysis. The temperature measured by the laboratory upon arrival was recorded to be 19.2°C. Additionally, the analysis showed elevated mean corpuscular volume (MCV) which indicates of sub-optimal storage. Therefore, we also recommend invalidating this sample. In this joint expert report samples 1, 9, 11 and 13 have therefore been excluded from our evaluation.

In the available documentation for the remaining samples, there is no indication that any analytical or pre-analytical issues might have influenced the results in a way that would explain the abnormalities in the profile or influence the analytical result to the disadvantage of the athlete.

Quantitative analysis

The passport was flagged with sequence abnormalities at the 99.9% specificity level for haemoglobin concentration (Hb), OFFscore and percentage of reticulocytes (%ret). Furthermore, the calculated individual limit at 99% specificity was exceeded for Hb in samples 12 (upper), for OFFscore in samples 7 (upper), 12 (upper), 14 (lower) and for %ret in samples 7 (lower) and 14 (upper).

Qualitative analysis

There are several abnormalities in the profile. The first is the pattern observed in Samples 4-8. Sample 4 collected on the 31st of July 2018 just before the beginning of the stage race 'Volta a Portugal em Bicicleta Santander' shows an elevated Hb compared to previous values and a slightly increased %ret. This is considered abnormal because the athlete declared sejour to altitude (1600 meters above sea level) in combination with the use of hypoxic tent (3500 meters above sea level) during the period 22nd of June till 17th of July 2018. In general, if the altitude has been of a sufficient dosage (duration x height) it may induce hematological changes (2). The normal hematological response in the weeks following altitude exposure is a reduction in %ret (2,3). Samples 5-7 are collected during the stage race and within a period of 8 days. From sample 4 to 7 there is a continuous and considerable decrease in the %ret value and only a modest decrease in Hb resulting in a significant increase in OFFscore. This is highly abnormal indicating that the elevated Hb in sample 4 reflects an increased hemoglobin mass which results in a downregulation of the production of red blood cells in the following period being most evident in Sample 7 collected 11 days later. This pattern is pathognomic of a discontinued use of an erythropoiesis-stimulating agent (ESA) (4).

Furthermore, sample 12 shows a highly elevated Hb exceeding the upper 99.99% specificity level. The sample is collected at the first day of the Tour of Denmark and during a period with several races. High Hb values are usually observed in cycling during OFF season periods and reflect a decreased plasma volume (5). It is highly abnormal to observe such high values in the general population but especially in this athlete considering the athlete's other values and the time of the year where the sample was collected. While tapering before a competition can lead to reductions in plasma volume and thus hemoconcentration with higher Hb values, the level seen in sample 12 is beyond such changes. In contrast, high Hbs can be achieved through different types of blood doping such as ESA administration or blood transfusions (6,7).

Finally, Sample 14 has an abnormal %ret value exceeding the upper 99.99% specificity level and indicates bone marrow stimulation. In addition, the Hb is low considering the other samples in the profile (1 g/dL lower than the average) even though it is collected after the last competition of the year. Low Hb in tandem with increased %ret is typically observed after accidental blood loss or the withdrawal of blood for subsequent reinfusion, such as performed during an autologous blood transfusion regimen (8).

Conclusion

In summary, the profile bears features of blood manipulation on several occasions, coinciding with the Volta a Portugal in 2018 and the Tour of Denmark in 2019 as well as during the off season period. We therefore conclude that it is highly likely that a prohibited substance and/or prohibited method has been used and that it is unlikely that the passport is the result of any other cause.

15. On 4 May 2020, the Rider was informed of the potential commission of an ADRV. A copy of the Initial Opinion and of the relevant documentation (Documentation Package of samples 4 to 7, 11, 12 and 14 of his ABP, the Doping Control Form of samples 1 and 13, a Certificate of Analysis for the other valid samples of his ABP, the APMU Documentation Package, the Rider's competition schedule and the Adverse Passport Finding (hereinafter, "APF") issued by the APMU) was provided to the Rider. The UCI further invited the Rider to provide an explanation for the abnormalities identified in his ABP.
16. On 29 May 2020, the Rider sent his explanation to the UCI, supported with an expert report issued by Prof. Alfredo Córdova Martínez. In this explanation, apart from contesting the UCI's jurisdiction, the Rider (i) claimed that no Prohibited Substance had been detected in his samples, (ii) alleged several departures from the WADA International Standards (in particular from the WADA International Standard for Testing and Investigations -hereinafter referred to as "ISTI"-) and (iii) questioned the scientific reliability of the ABP.
17. On 25 August 2020, the Expert Panel, after having reviewed the Rider's explanation of 29 May 2020, issued a new report (hereinafter referred to as the "Second Opinion"), in which it concluded that none of the arguments of the Rider's expert offered any credible alternative explanation for the abnormalities observed in the Rider's profile and confirmed the views of the Initial Opinion.
18. On 16 October 2020, the Rider was provided a copy of the Second Opinion and was notified of his provisional suspension. Additionally, he was offered an Acceptance of Consequences according to Article 8.4 UCI ADR.
19. On 26 October 2020, the Rider rejected the Acceptance of Consequences and requested the case be transferred to the Tribunal for resolution.
20. On 7 January 2021, the Rider filed a request to lift his provisional suspension before the UCI Disciplinary Commission, to which the UCI opposed.
21. On 3 February 2021 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. Edgar Miguel Lemos Pinto has committed an Anti-Doping Rule Violation.*
 - *Imposing a period of ineligibility of 4 years on Mr. Edgar Miguel Lemos Pinto, starting on the date of notification of the Tribunal's decision.*
 - *Holding that the period of provisional suspension served by Mr. Edgar Miguel Lemos Pinto since 16 October 2020 shall be credited against the period of ineligibility imposed by the Tribunal.*
 - *Disqualifying all the results obtained by Mr. Edgar Miguel Lemos Pinto from the date of collection of Sample 4 (i.e. on 31 July 2018) until the day he was provisionally suspended (i.e. 16 October 2020).*
 - *Ordering Mr. Lemos Pinto to pay a Fine of [REDACTED]*
 - *Ordering Mr. Edgar Miguel Lemos Pinto to pay the costs of results management by the UCI (CHF 2'500.-) and the costs incurred for the documentation packages of the blood samples analysed for the Biological Passport (EUR 2'477.-).*

- *Ordering Mr. Edgar Miguel Lemos Pinto to pay a contribution to the UCI's costs, in an amount to be determined at the end of the proceedings.*

III. PROCEDURE BEFORE THE TRIBUNAL

22. As mentioned above, in accordance with article 13.1 ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of the Petition to the Secretariat on 3rd February 2021. Before referring the case to the Tribunal and as explained above, the UCI proposed to put an end to the proceedings by offering the Rider an Acceptance of Consequences within the meaning of article 8.4 UCI ADR and article 2 ADT Rules. This offer was not accepted by the Rider.
23. The President of the Tribunal appointed Mr. Jordi López Batet to act as Single Judge in the proceedings in application of article 14.1 ADT Rules.
24. On 18 February 2021 the Rider was informed that disciplinary proceedings had been initiated against him before the Tribunal and was invited to file his answer to the Petition.
25. On 26 February 2021, the Rider filed submissions contesting i) the Tribunal's jurisdiction, ii) the correct constitution of the Panel, iii) the compliance by the appointed Single Judge with the legal requirements to serve as such as well as his independence and impartiality.
26. On 3 March 2021, the Tribunal invited the UCI to comment on the issues raised by the Rider in his submissions of 26 February 2021.
27. On 15 March 2021, the UCI requested all the objections raised by the Rider in his submissions of 26 February be dismissed.
28. On 18 March 2021, the Tribunal communicated to the Parties that (i) even if the Rider's claims of 26 February 2021 were belatedly submitted in accordance with article 3.3 of the ADT Rules, on an exceptional basis and given the specific circumstances and issues raised, such claims should be admissible and examined, (ii) the Single Judge took note of the Rider's jurisdictional objections and of the UCI's comments on them and communicated to the parties that he would rule on his own jurisdiction in its Judgment in accordance with article 3.3. ADT Rules, (iii) the allegation of the Tribunal incompetence on the ground that it was not properly constituted was dismissed, (iv) the procedure foreseen in article 15.4 of the UCI ADT Rules would be conducted to decide on the Single Judge's challenge filed by the Rider and the relevant decision on this challenge would be communicated in due time and (v) the alleged lack of independence of the Tribunal would be addressed in its Judgment.
29. On 14 May 2021, the Tribunal informed the Parties that the challenge filed by the Rider on the Single Judge's appointment had been rejected by the other members of the Tribunal. In the same correspondence the Tribunal granted a new deadline to the Rider to file his answer to the UCI Petition, what the Rider did on 31 May 2021 (hereinafter referred to as "the Answer").
30. In his Answer, the Rider requested the Single Judge to declare that Mr. Lemos Pinto did not commit an ADRV and that a hearing be held by videoconference in these proceedings.
31. On 4 June 2021, the Single Judge granted a second round of submissions to the parties.
32. On 24 June 2021, the UCI provided its comments on the Answer and its exhibits (hereinafter referred to as the "Reply"). The UCI enclosed to its Reply a new report issued by the Expert Panel addressing some issues contained in the reports of Prof. Alfredo Córdova Martínez and Dr. Daniela Pereira filed by the Rider with his Answer (the "Third Opinion").

33. On 28 June 2021, the Tribunal invited the Rider to provide his final written comments on the UCI' submissions (which he did on 9 July 2021).
34. On 23 July 2021, the Tribunal invited the Parties to inform about their availability for a videoconference hearing for this case on 16 September 2021.
35. On 29 July 2021, the UCI confirmed its availability to attend the hearing on the date proposed but the Rider informed the Tribunal that his lawyer was not available for a hearing on the date proposed as he already had another hearing scheduled on the same date before an Ordinary Court in Spain.
36. After consulting the Parties, the hearing was rescheduled for 23 November 2021.
37. On 22 November 2021, the Rider communicated to the Tribunal that one of his experts would not be available for the hearing of 23 November 2021 for medical reasons and requested the hearing to be postponed.
38. On 22 November 2021, the UCI communicated to the Tribunal that it did not object to the postponement of the hearing.
39. On 22 November 2021, the Tribunal informed the Parties that the hearing scheduled for 23 November 2021 was cancelled and that it would be postponed to a later date.
40. After consulting the Parties, the hearing was scheduled for 28 January 2022.
41. A hearing by videoconference was held on 28 January 2022. The Parties were represented at the hearing by their respective counsels (Ms. Charlotte Frey on behalf of the UCI, and Mr. Ignacio Arroyo Martínez on behalf of the Rider). The hearing started with the parties' opening statements, after which the experts Dr. Pereira, Dr. Schumacher and Dr. Mørkeberg were heard. The Rider waived the declaration of the expert Dr. Córdova that he had initially proposed. After the examination of the experts, the parties made their final pleadings. Before ending the hearing and in accordance with article 22.19 ADT Rules, the Rider, who was present at the hearing, was given the final opportunity to speak. At the end of the hearing, both Parties expressly confirmed that they did not have any objection as to how the proceedings were conducted.
42. On 8 February 2022, following the Rider's request, the Tribunal sent a copy of the hearing recording to the Parties.

IV. JURISDICTION

43. Article 8.2 UCI ADR and article 3.1 ADT Rules provide that *"the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 ADR"*.
44. 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."*
45. The Rider filed an objection to the Tribunal's jurisdiction based on the following arguments:
 - The Rider is a Portuguese athlete with a Portuguese national license and as such, is subject to the Portuguese legal system and specifically, to Law 38/2012 on "Antidopagem no

Desporto”. This Law stipulates that the Autoridade Antidopagem de Portugal (hereinafter referred to as “ADoP”) is the competent authority for the doping control procedure. Consequently, ADoP has disciplinary authority over athletes with Portuguese licence, and not the Tribunal.

- In Portugal, ADoP is the administrator of the Anti-Doping Administration and Management System (ADAMS) and has been implementing the biological passport for years. The UCI should have asked ADoP to initiate disciplinary proceedings against him based on the ABP. After evaluating the Rider’s ABP, ADoP should have decided whether or not initiating and conducting disciplinary proceedings. Such decisions would have been subject to control, firstly, by the Tribunal Arbitral do Desporto and subsequently, by the Portuguese Courts
- It is not mandatory for the Rider to accept the jurisdiction of the Tribunal and subsequently, of the Court of Arbitration for Sport (CAS) as (i) the disciplinary power delegated to ADoP is of public order nature, (ii) the submission to the Tribunal and CAS is not exclusive, (iii) the Rider has not freely consented to it, (v) the appeal against awards is “*limited to purely external control*” and (v) the Court of Appeal of Brussels has ruled in its judgement of 29 August 2018 that arbitration clauses contained in the statutes of FIFA and UEFA are illegal.

46. The UCI opposed to this jurisdiction objection for the following reasons:

- The Rider neither contests that he is subject to the regulations of the UCI nor that these regulations provide for the jurisdiction of the Tribunal.
- Irrespective of what Portuguese Law may provide, the Tribunal’s jurisdiction arises out of the UCI regulations, to which the Rider is subjected. In particular, article 8.2 UCI ADR and article 3 of the ADT Rules provide that “[t]he 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”. In this case the ADRV was asserted by the UCI following a results management process in accordance with article 7.1.2.3 UCI ADR. According to this provision, “[r]esults management for Adverse Passport Findings or Atypical Passport Findings and related review shall be conducted by the UCI if the Rider’s Biological Passport is under UCI custody”. Hence, once the requirements of article 8.2 UCI ADR are met, the Tribunal’s jurisdiction is mandatory, and the UCI ADR do not contemplate the possibility of another forum.
- The Rider’s argument according to which he did not freely consent to arbitration is premature. The Tribunal is merely the UCI’s internal disciplinary body, which is called upon to adjudicate an internal dispute between the UCI and one of its indirect members (i.e., the Rider) who holds a license issued by one of the UCI’s members. Hence, given that the Tribunal does not, and does not need to, meet the conditions of an independent arbitral tribunal, the question of the Rider’s voluntary consent to arbitration is irrelevant at this stage. Should the Rider not be satisfied with the Tribunal’s judgment, he will have the right to bring the case *de novo* before the CAS, which has been recognised by the Swiss Federal Supreme Court to be a true arbitral tribunal.
- The judgment of the Court of Appeal of Brussels referred to by the Rider in his argumentation on lack of jurisdiction of the Tribunal and the interpretation that the Rider intends to extract from it are of no avail. Quite apart from the fact that this judgement is limited to a specific arbitration clause contained in the regulations of FIFA and its member associations (i.e., not to “the clauses contained in the statutes of the federations of all other sports”), the scope of this judgment does not extend to the very principle of the appeal to

the CAS, nor to the notion of forced arbitration. Indeed, the Court's analysis is limited to the question of the interpretation of the arbitral clause relied upon in that specific case, which the Court ultimately considered to be too broad (i.e., not sufficiently specific). Moreover, the Rider does not explain -let alone establish- how this jurisprudence issued by a foreign national court would be applicable to the present case.

- The Portuguese Law 38/2012, which the Rider himself relies upon, also expressly provides, under article 60, that decisions taken by the relevant disciplinary body may be appealed before the CAS.
 - The Rider, when he refused the UCI's Acceptance of Consequences proposal, expressly requested that "*the file be sent immediately and urgently to the UCI Anti-Doping Tribunal*", "*so that the procedure can begin*". In other words, by requesting his file to be transferred to the Tribunal, the Rider expressly accepted the jurisdiction of same and his current jurisdictional challenge is a textbook example of *venire contra factum proprium*.
47. Even if the jurisdiction's objection filed by the Rider was belated and could thus have been rejected outright for this reason, the Single Judge informed the Parties on 18 March 2021 that given the specific circumstances and issues raised in this case, it would exceptionally consider the Rider's objection.
48. After having examined the Parties' relevant submissions on this specific matter, the Single Judge decided to dismiss the Rider's objection to the Tribunal's jurisdiction based on the following grounds:
- It has been established (and has not been contested that the Rider) that in the period between 2017 and 2020, the Rider was a UCI License Holder within the meaning of the UCI ADR.
 - The ABP Documentation Package unequivocally identifies the UCI as the Rider's ABP custodian and the results management authority.
 - The aforementioned entails that (i) the Rider is bound by the UCI ADR and by the ADT Rules, which are mandatory for him, and (ii) the UCI asserted the ADRV following a results management/investigation process under Article 7 UCI ADR. Therefore, the prerequisites established in para.1 of article 8.2 UCI ADR and article 3.1 of the ADT Rules for the UCI to be competent ("*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 UCI ADR*") are met.
 - Furthermore and *ad abundantiam*:
 - o The Rider clearly recognized the jurisdiction of the Tribunal to decide on his case from the very moment in which he requested the dispute be submitted to the Tribunal. The Rider's request of 26 October 2020, i.e., previous to the Petition's filing, are self-explanatory: "*I request that, immediately, the file be sent to the UCI Anti-Doping Tribunal, so that the procedure can begin*".
 - o The fact that the Rider is also bound by the anti-doping provisions issued by his home country (Portugal) does not preclude the Tribunal to have jurisdiction to deal with the present case.

- The Single Judge concurs with the UCI on the fact that the Rider's argument according to which he did not freely consent to arbitration is premature, for the reasons set out in the UCI's relevant submissions.
 - The considerations made by the Court of Appeal of Brussels in its decision of 29 August 2018 mentioned by the Rider in his submissions, referred to certain football federative statutory clauses, are unrelated to the case at hand and thus of no avail herein.
49. In addition, the Single Judge notes that the Rider questioned his independence and impartiality, based on the fact that the UCI ADT is financed by the UCI itself and that the Single Judge's "*salaries are paid by the UCI*". While the application filed by the Rider to challenge the Single Judge has been unanimously rejected by the other members of the Tribunal in accordance with article 15 paragraph 4 of the Procedural Rules, the Single Judge wishes to also make some remarks in this respect.
50. The Single Judge shall point out that article 4.3. of the ADT Rules stipulates that "*the members of the Tribunal shall be operationally independent and hence not be employees, exercise a function or belong to any non-independent committee or commission within the UCI or within a National Federation member of the UCI*". Moreover, article 5 of the ADT rules establishes that "*The members of the Tribunal shall be and remain impartial and independent of the Parties*".
51. Bearing these articles in mind, it is the Single Judge's view, and this has been confirmed by the other members of the UCI ADT, that the Rider's statements on his alleged lack of independence and impartiality are unsubstantiated and shall be dismissed. Apart from the fact that (i) UCI ADT Single Judges do not receive any "salary" but simply the fees for the specific work they do when specifically appointed to serve as such and (ii) the UCI ADT is an internal disciplinary body of the UCI -so by nature it does not have and is not required to have the same level of independence as a state or arbitral court-, the Single Judge is neither an employee of the UCI, nor a member of any of its commissions, nor exercise any function at the UCI or in a member association of the UCI, nor hold any position or is incurred in any circumstance that compromise his independence and impartiality to resolve this case. The mere fact that the Single Judge is paid for the work he does not put in question his independence and impartiality.
52. Therefore, the Tribunal has jurisdiction to resolve this dispute and the Single Judge is competent, independent and impartial to rule on this matter.

V. APPLICABLE RULES

53. In accordance with article 26 ADT Rules, in rendering this Judgment, the Single Judge shall apply the UCI ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law.
54. The samples of the Rider's ABP were collected between 14 February 2017 and 12 November 2019. Article 25.1 UCI ADR provides that the effective date of the 2015 edition of the UCI ADR is 1 January 2015. Consequently, the Single Judge shall apply the 2015 edition of the UCI ADR in the case at stake. Neither the Rider nor the UCI claimed the application to the case of the 2021 edition of the UCI ADR provisions based on the principle of *lex mitior*.

55. As to the International Standards and Technical Documents, the Single Judge notes that part E of the introduction of the UCI ADR provides as follows:

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

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

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

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

56. The Single Judge also notes that Article 7.5 UCI ADR stipulates in its relevant part that *“Review of Atypical Passport Findings and Adverse Passport Findings shall take place as provided in the UCI Testing & Investigations Regulations, the International Standard for Laboratories, WADA Athlete Biological Passport Operating Guidelines and respectively related Technical Documents. [...]”*. Consequently, the Single Judge will take into consideration and apply these regulations, standards, guidelines and documents to the extent relevant or necessary.

VI. THE FINDINGS OF THE SINGLE JUDGE

57. Considering the submissions filed by the Parties in these proceedings, the main issues to be addressed and decided by the Single Judge are the following:

- (1) whether the Rider committed an ADRV within the meaning of Article 2.2 UCI ADR; and if so,
- (2) the consequences of such an ADRV.

A. The ADRV

58. The UCI submits that the Rider committed an ADRV within the meaning of Article 2.2 UCI ADR as regards of the abnormalities detected in the haematological values contained in his ABP, while the Rider objects to this conclusion based on the arguments that will be set out below.

1. The relevant legal framework

59. The relevant legal provisions with respect to the establishment of the ADRV claimed by the UCI read as follows:

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)]".

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

61. As to the methods of establishing facts and presumptions, Article 3.2 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

62. In accordance with the aforementioned provisions, (i) the burden of proof to establish that the Rider committed an ADRV under article 2.2 UCI ADR (Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method) rests with the UCI (article 3.1 UCI ADR), (ii) the standard of proof is that of the "*comfortable satisfaction*" as set out in article 3.1 in fine UCI ADR, and (iii) facts related to anti-doping rule violations may be established "*by any reliable means*" (article 3.2 UCI ADR).
63. The comment to Article 2.2 UCI ADR establishes that Use or Attempted Use of a Prohibited Substance or a Prohibited Method may be established by "[...] *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*".
64. In addition, the comment to article 3.2 UCI ADR acknowledges that the UCI may establish an ADRV under article 2.2 UCI ADR based on "*conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete's Biological Passport*".
65. Furthermore, the reliability of the ABP as means of evidence to establish an ADRV has been confirmed by several decisions of the Tribunal (inter alia, ADT 06.2017 UCI vs Alex Correia Diniz,

ADT 03.2020 UCI vs. Domingos Gonçalves and ADT 01.2020 UCI vs Raúl Alarcon García) and numerous CAS awards (inter alia, CAS 2010/2174, CAS 2010/A/2308 & 2335, CAS 2012/A/2773, CAS 2015/A/4006 or CAS 2021/A/7833).

66. Taking into account the above, the Single Judge accepts that the ABP may serve as a reliable means of evidence to establish an ADRV.
67. The UCI submits having established that the Rider has committed an ADRV pursuant to article 2.2. UCI ADR based on the abnormalities detected in the Rider's haematological profile resulting from his ABP. In support of this, various expert reports have been produced by the UCI.
68. On the contrary, the Rider contends that no ADRV has taken place and no sanction is to be imposed on him, based on three sets of arguments: (i) violation of the Rider's right to defense, as part of the laboratory documentation of samples 4 and 12 of his ABP was drafted in German, a non-official language of the UCI, (ii) a number of departures from the WADA International Standards occurred and had an impact over the finding of the ADRV data and (iii) the explanations given by the Rider on his haematological profile exclude a doping scenario.
69. In light of the aforementioned, the Single Judge will analyse and determine in the following paragraphs of this Judgment (i) if the Rider's right of defense was violated, ii) if the alleged departures existed and had an impact on the ADRV finding and (iii) whether the abnormalities in the Rider's ABP were due to the use of a prohibited substance and/or method or not.

2.1. The alleged violation of the Rider's right to defense

70. The Single Judge indeed observes that part of the laboratory documentation of samples 4 and 12, both analyzed by the Laboratory of Köln, is in German.
71. The Single Judge notes that section 1 of the WADA Technical Document on Laboratory Documentation Packages (hereinafter, "TDLDOC") reads as follows:

A Laboratory Documentation Package shall be comprised of the information outlined below to support the result of the Laboratory's analysis of the relevant Sample. Laboratory working documents, computer printouts, and similar documents may be in the native language of the Laboratory. The table of contents, summaries and any flowcharts explaining the sequence of steps in the process and any other explanatory portions of the Laboratory Documentation Packages shall be provided at least in English.

72. Article 2.4. of Appendix E of the TDLDOC reads as follows:

Analytical data:

- *Original Sysmex printouts of all Sample full blood and scattergrams, including:*
 - *Sample Code*
 - *Analysis date and time*
 - *Instrument identification and serial number*

73. The UCI holds that the referred parts of documents in German in the laboratory packages of samples 4 and 12 are considered "working documents" in the sense of section 1 of the TDLDOC and as such may be in the native language of the laboratory (in this case, German) or "original" documents in the sense of article 2.4. of Appendix E of the TDLDOC. According to the Rider, these parts of documentation in German should be in English because they are "important", but he does not prove that these parts in German are of a nature that in accordance with the TDLDOC or any other regulations, should inexcusably be in English.

74. Therefore, the Single Judge does not consider proven that a departure from the relevant regulations has taken place and thus, that a violation of the Rider's right of defense in that regard occurred. Additionally, needless to say that nothing prevented the Rider to order a translation into English of the parts in German in the laboratory packages of samples 4 and 12, should he deemed them that important.
75. The aforementioned approach is consistent with the one followed by the CAS award 2021/A/7833, which ruled on a similar question as follows:

92. As regards the alleged violation of the TDLDOC, the Rider contends the documentation was to be in English, although it was, for the samples 13, 16 and 20, in German. UCI pleads the dismissal of the claim since the documentation in German only concerned working documents of the concerned laboratory, which is perfectly admissible under the applicable version of the TDLDOC. [...]

94. The Panel rejects the Rider's claim regarding the language of the documents, first because the Rider did not characterize the departure from any applicable standards on the language (German/English), and second, because it has no relation to the samples themselves. [...].

2.2. The alleged departures from the WADA International Standards and their consequences over the analysis of the Rider's samples

76. The Rider claims that a number of departures from WADA International Standards occurred in the case at hand and that this should invalidate the results leading to the ADRV alleged by the UCI. The Single Judge will go through the several alleged violations of the WADA International Standards argued by the Rider.

2.2.1. Sample temperature issues with respect to samples 4, 5, 6, 7, 12 and 14 and delivery to laboratory issues with regard to samples 4, 12 and 14

77. The Rider claims that the samples shall be kept refrigerated between 2 and 8 degrees Celsius from the moment they are collected until they are analyzed, and this was not respected with regard to samples 4, 5, 6, 7, 12 and 14. According to the Rider, these samples should have been invalidated. In addition, the Rider submits that the time limit within which the ABP samples shall be delivered to the relevant laboratory (24 hours) was not respected in samples 4, 12 and 14. The Rider also refers to the "lack of truth" in the documentation of the Laboratory of Madrid concerning samples 5, 7, 11, 17 and 18, where it was indicated that samples arrived refrigerated when in his view, it was not the case.
78. The UCI rejects all Rider's contentions and states in essence that (i) the samples showed stable temperatures, (ii) the relevant standard does not require a specific temperature for samples, but only that they are refrigerated and at a cool temperature, (iii) the ISTI states that samples should be transported to the laboratory as soon as possible, not within 24 hours from collection as sustained by the Rider and, (iv) in any event, even assuming that the alleged departures occurred, the Rider not even attempted to establish that this alleged breach could have caused his ADRV.
79. The Single Judge, after having analyzed all the submissions, arguments and evidence brought by each of the Parties to support their respective positions in this specific matter, notes the following:

- Section K.2.3. of the ISTI reads in the pertinent part as follows: *“The Sample shall be refrigerated from its collection until its analysis with the exception of when the Sample is analyzed at the collection site without delay. The storage procedure is the DCO responsibility. The storage and transport device shall be capable of maintaining blood Samples at a cool temperature during storage. [...]”*.
- It is thus clear that in accordance with the ISTI, samples shall be refrigerated and kept at a cool temperature, but at the same time that the ISTI does not specifically establish that the refrigeration and conservation temperatures are to be between 2 and 8 degrees Celsius as claimed by the Rider. The Rider mentions in his submissions to a Swiss Quality Control Center document appearing in the laboratory documentation of the samples which refers to such temperatures and to some scientific literature that *“recommends that blood samples be stored at a temperature of + 4°C and that they be analyzed within 6 hours after extraction”*, but not to any legal rule, provision or technical document imposing such a range of temperatures. Dr. Córdova expert report produced by the Rider with his Answer does not refer to any provision specifically ordering the refrigeration and conservation temperatures between 2 and 8 degrees Celsius either, which is also quite revealing.
- The Expert Panel, in its Second Opinion, specifically and repeatedly mentioned in this respect that *“in the document there is no specific upper temperature limit that, if exceeded, will invalidate the sample”*.
- Section K.4.1. of the ABP Operative Guidelines provides in the pertinent part that *“the integrity of the Markers used in the haematological module of the ABP is guaranteed when the Blood Stability Score (BSS) remains below 85”*, and the BSS of samples 4, 5, 6, 7, 12 and 14 is below 85 (unlike samples 1, 9 and 13, which were precisely invalidated because their BSS was above 85). The Rider’s allegations on the purported unlawfulness of the BSS formula are unsubstantiated and unproven and thus of no avail.
- With regard to the Rider’s contention that samples 4, 12 and 14 were analyzed after 24 hours from their collection and that this could affect their analytical results:
 - Section 9.3.2 of the ISTI stipulates in the pertinent part that *“Samples shall always be transported to the laboratory that will be analysing the Samples using the Sample Collection Authority’s authorized transport method, as soon as practicable after the completion of the Sample Collection Session”*, but not that the samples shall be analyzed within 24 hours from their collection as contended by the Rider, who failed to identify any provision from which this alleged duty may result.
 - The Second Opinion issued by the Expert Panel established in this respect that *“According to the ISTI, January 2017 (WADA, 2017), there is no rule dictating that the collection to reception time should not exceed 24 hours. Since the introduction of the Blood Stability Score (BSS) in 2017, there has been no specific requirement to the transportation time. Since the stability of the measured markers in the ABP depend on both the time of transportation and the temperature, both factors are taken into consideration in the BSS. The BSS is calculated from the following formula: $BSS = 3 * T + CAT$, where CAT is the Collection to Analysis Time, and T is the average temperature of the sample during that period. In order to ensure the stability of the markers used in the hematological module of the ABP, the BSS should not exceed 85 (Robinson et al. 2016). All samples with a BSS less than 85 will be considered valid as long as the samples have not been frozen.”*, being it noted that the BSS of samples 4, 12 and 14 is 59,8, 45,4 and 55,9 respectively, all of them well below 85.

- With regard to the Rider's contentions on the lack of truth of the documentation of the Laboratory of Madrid concerning the refrigeration of samples 5, 7, 11, 17 and 18, the Single Judge (i) deems unproven that samples 5 and 7 were not properly refrigerated, (ii) notes that sample 11 was already invalidated by the Expert Panel and (iii) points out that no reference is made to samples 17 and 18 in the Rider's ABP.

80. In addition, the Single Judge shall stress that (i) the Expert Panel expressly mentioned in the Second Opinion that *"there are no pre-analytical nor analytical issues with any of the valid samples included in the profile. Especially, it is not explained by the expert of the athlete how any of the issues raised would have impacted the sample analysis result to the disadvantage of the athlete"*, (ii) these experts convincingly confirmed this position at the hearing held in this case and (iii) the expert reports brought by the Rider to the proceedings did not convincingly rebut, in the Single Judge's view, the aforementioned position expressed in the Second Opinion.
81. In summary, the Single Judge is of the view that the Rider neither accredited that the departures from international standards denounced by him have occurred nor that samples' refrigeration, conservation or delivery issues could have produced variations in the samples' analytical results as alleged by the Rider. Consequently, the Rider's contention in this respect shall be fully dismissed.

2.2.2. Alleged Breach of article 6.2.1.3. of the International Standard for Laboratories

82. The Rider alleges that in the documentation of samples 4 and 12, the name and signature of the representative that received the samples is missing as only the initials are indicated. With regard to sample 7, the Rider contends that the person who received the sample in the laboratory was not a custodian technician.
83. Article 6.2.1.3. of the International Standard for Laboratories (hereinafter, "ISL") reads as follows:

"The transfer of the Samples from the courier to other person delivering the Samples shall be documented including at a minimum, the date, the time of receipt and the name and signature of the Laboratory representative receiving the Sample(s). This information shall be included into the Laboratory Internal Chain of Custody record(s)".

84. The Single Judge notes that the date and time of receipt of samples 4 and 12 by the laboratory appear in the relevant documentation, but agrees that the full name and signature of the laboratory representative receiving these samples is missing in the documentation (only the initials of these representatives are there).
85. However, the Single Judge shall point out in this respect that in accordance with article 3.2.2. UCI ADR:

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.]

86. In accordance with such article, to rebut the presumption of its para.1 the Rider shall not only establish that a departure from the ISL occurred, but also that this could reasonably have caused the Adverse Analytical Finding.
87. After examining the Rider's allegations, the Single Judge does not consider established that the lack of the full name and signature of the laboratory representatives in the documentation package could have reasonably caused the ADRV. The Rider affirms in this Answer that the mere reference to the initials of the laboratory representatives and the absence of their full name and signature "*must have led to the cancellation of these samples, which led to erroneous results in the biological passport, since they didn't meet the quality, legal and scientific requirements to be taken as valid samples*", but fails to specifically explain, and less prove, why, how or to which extent this circumstance could have caused the ADRV *in casu*. In other words, the presumption established in para. 1 of article 3.2.2. UCI ADR cannot be considered rebutted.
88. With regard to the allegation that the person who received sample 7 in the laboratory was not a custodian technician, the Single Judge shall point out that it is a mere unsubstantiated allegation from the Rider not sustained in any piece of evidence. Therefore, no irregularity can be deemed proven in this respect.
89. Therefore, the arguments of the Rider on the breach of the ISL are rejected.

2.2.3. Alleged Breach of Annex E.4 of the ISTI

90. The Rider contends that the fact that only one person intervened in the collection of samples 4, 5, 6, 7 and 14, constitutes a breach of Annex E.4 of the ISTI that should have led to the cancellation of these samples.
91. In this respect, the Single Judge shall point out that the Rider generally refers to a breach of Annex E.4 of the ISTI but fails to identify which specific provision/s of such Annex undoubtedly establish that "*is required to participate in the least two people: the Blood Collection Officer, the Doping Control Officer, each with different and distinct responsibilities*", as affirmed by the Rider in its Answer.
92. On the contrary, the Single Judge observes that the Expert Panel, in its Second Opinion, clearly state that "*there is no requirement in the ISTI that both a DCO and BCO should be present when conducting the sample collection*".
93. Therefore, the Single Judge does not find proven that a breach of Annex E.4 alleged by the Rider occurred in the present case. In any event and for the sake of completeness, it is also noted that the Rider failed to establish how the alleged (and rejected) breach of Annex E.4 could have reasonably caused the ADRV (article 3.2.3. UCI ADR).

2.2.4. Alleged Breach of Annex H of the ISTI

94. The Rider claims that a breach of Annex H of the ISTI has taken place because "*it didn't appear in the documentation of the file that the personnel who intervened in the recollecting of samples met the requirements demanded by the standard*". He subsequently argues that "*the personnel*

who have taken the samples are probably not meeting the requirements of the WADA regulations”.

95. In this respect, the Single Judge notes that the Rider simply affirms, on a general basis, that the personnel that intervened in the collection of samples “probably” does not meet the requirements established by the applicable regulations, but does not make any probationary effort to support that general statement *in casu* (and less to accredit that such alleged departure from the ISTI could have reasonably caused the ADRV). Last but not least, the Rider fails to identify a provision that obliges the Laboratory to provide a record of the qualifications of its personnel.
96. The Single Judge shares (i) the Expert Panel’s view, expressed in its Second Opinion, that given the accreditation of laboratories by WADA and the ISO certification involved, that require specific qualifications for each position in the laboratory, it is “*highly likely that the staff members involved in the sample handling procedures have been appropriately qualified to perform his/her duties [...]*” and (ii) the UCI’s position according to which “*it is not for the UCI to “prove” that the sample collection personnel met the requirements of Annex H of the ISTI, but for the Rider to establish, on the balance of probability, that there is (credible) evidence to cast doubt on the fulfilment on the relevant requirements”.*
97. In conclusion, the departure from the standard denounced by the Rider in this respect is rejected.

2.2.5. Breach of the ISL and the TDLDOC provisions on the title of the position of the personnel involved in the analysis of samples 2, 3, 4, 8, 10 and 12

98. The Rider contends that article 5.2.6.2 of the ISL and section 3.2 of the TDLDOC were breached with respect to samples 2, 3, 4, 8, 10 and 12 and that for this reason, these samples should not be part of the Rider’s ABP.
99. Article 5.2.6.2. of the ISL stipulates that “*each step of Analytical Testing shall be traceable to the staff member who performed that step*”, while section 3.2. of the TDLDOC establish in the pertinent part that Laboratory Documentation Packages shall contain, among other information, the “*List of Laboratory staff involved in the analysis of the Sample, including signatures and/or initials and position title(s)*”.
100. In addition, it is pointed out that last paragraph of section 1.0 of the TDLDOC reads as follows:
- “This TD sets forth formal requirements. Deviations from the requirements set forth herein shall not invalidate the AAF(s) or ATF(s).”*
101. After careful review of the Laboratory Documentation Packages of the samples concerned, the Single Judge is of the opinion that although the position title of the laboratory staff involved in the analysis is not mentioned, it is still not deem proven that such circumstance could reasonably have caused the ADRV. In fact, the Rider denounces the breach but fails to persuasively explain and justify why, how or to which extent the lack of mention to the staff title position in the Laboratory Documentation Package of the samples concerned could reasonably have caused the ADRV. In addition, no comment was made by the Rider on section 1.0 of the TDLDOC and its effects.
102. Therefore, the allegations made by the Rider in this respect are dismissed.

2.2.6. Breach in the chain of custody of sample 6

103. The Rider submits that the facts that surrounded the custody of sample 6 reveal that this sample was manipulated before being delivered to the relevant laboratory and thus shall be invalidated.

104. The Rider grounds this contention on the following statements made in the sample Laboratory documentation Package:

“In the remittance guide of the Mission code AMIZADE, the seal number of the refrigerator that appears (034273) does not match that of the refrigerator in which it has arrived (ADoP 034077).

In the remittance guide of the Mission code AMO, the seal number of the refrigerator that appears (034036) does not match that of the refrigerator it has arrived in (ADoP 034077).”

105. The UCI contends in this respect that no manipulation of sample 6 may exist, among other reasons because (i) as asserted by the Expert Panel in its Second Opinion, *“The reference to the Mission Code ‘AMIZADE’ is irrelevant since it refers to another sample received by the laboratory but not included in the profile. With regards to the Mission Code ‘AMO’ the seal number on the chain of custody is 034096 (not 034036) and is sealed by the doping control officer on the 5th of August [sic] 2019 (Page 16/38 of the LDP). From the same page it is evident that the bag is resealed with seal number 034077 by ‘AEPSAD’ (Agencia Espanola de Proteccion de la Salud en el Deporte) on the 6th of August 2018. Sample 034077 is also the seal number, which is registered by the laboratory when receiving the sample (Page 17/38 and 19/38 of the LDP). Hence the chain of custody has been documented. Autoridade Antidopagem de Portugal (ADoP) was contacted to clarify the procedure of resealing. In the reply by Manuel Brito, President of ADoP, it was explained that because blood samples are sent to the WADA-accredited laboratory in Madrid, Spain and urine samples are sent to the WADA accredited laboratory in Gent, Belgium, sometimes doping control officers and collaborators need to open their refrigerator’s bag to separate urine from blood samples. This was done in this case, where the blood was resealed by the Spanish Anti-Doping Authority, AEPSAD”* and (ii) the sample’s code number appearing in the DCF is the same than the one appearing in the laboratory documentation package (260164), which confirms that it was the Rider’s sample 6 the one that arrived at, and was analyzed by, the Laboratory of Madrid.

106. The Single Judge, after reviewing the allegations of the Parties and the evidence adduced, does not deem accredited that sample 6 analyzed by the Laboratory of Madrid was manipulated, for the following main reasons: the sample code number in the DCF and in the laboratory documentation package is the same, the explanation on the change of refrigerator contained in the Second Opinion is in the Single Judge’s view reasonable and plausible, and the allegations of the Rider that at some point before reaching the Laboratory of Madrid the device containing the sample was subjected to manipulation are purely speculative, unsubstantiated and lack any probatory basis.

107. Therefore, the Single Judge considers that there is no reason to invalidate sample 6 of the ABP based on the grounds alleged by the Rider, so his allegations in this respect are rejected.

2.3. The abnormalities in the Rider’s ABP

108. The Single Judge notes that the UCI submits having established that the Rider has committed an ADRV pursuant to article 2.2. UCI ADR based on the abnormalities detected in the Rider’s haematological profile resulting from his ABP.

109. However, as stated in the CAS award 2021/A/7833 and in other CAS and UCI decisions in the same line, *“abnormalities are not sufficient to conclude to an ADRV; one must establish that doping is the plausible cause of the abnormality, to the comfortable satisfaction of the Panel”*.
110. The UCI contends that the Rider’s ABP was flagged with sequence abnormalities at a specificity of 99,9% for HGB and OFF-score as well as RET%, and additionally that some samples of the Rider’s ABP (numbers 7, 12 and 14) were flagged by the Adaptative Model at 99% specificity as follows: (i) Sample 7: flagged for upper limit OFF-score and lower limit RET%, (ii) Sample 12: flagged for upper limit HGB and OFF-score and (iii) Sample 14: flagged for lower limit OFF-score and upper limit RET%. These abnormalities, in accordance with the Expert Panel’s Initial Opinion, subsequently confirmed by its Second and Third Opinion, reveal in the UCI’s view a doping scenario of the Rider.
111. On the other hand, the Single Judge notes that the Rider has adduced some reasons and explanations on his haematological profile which in his opinion, would exclude a doping explanation for the abnormalities detected by the Expert Panel in his ABP and which can be summarized as follows:
- The Influence of plasma volume on haematological parameters excludes doping.
 - The coefficient of variation of the different machines analyzing the Rider’s samples was not taken into account.
 - The Rider’s haematological behaviour has a physiological explanation that excludes doping.
112. The Single Judge has carefully reviewed all the allegations, arguments and evidence brought to the proceedings by the Parties and is comfortably satisfied that the abnormalities in the Rider’s haematological profile are highly likely to be the result of the Use of a Prohibited Substance or Prohibited Method and that there is no other plausible explanation for the referred abnormalities.
113. In particular, the content of the Initial Opinion issued by the Expert Panel in this respect is clear, unambiguous, well-grounded and duly reasoned. In the Single Judge’s opinion, there are no convincing reasons to deviate from the conclusion reached by the Expert Panel, which is self-explanatory and do not leave room to doubt or interpretation (emphasis added):
- We therefore conclude that **it is highly likely that a prohibited substance and/or prohibited method has been used and that it is unlikely that the passport is the result of any other cause.***
114. The same can be said with regard to Second and Third Opinion, which are also sound, comprehensive and are consistent with the Initial Opinion. In the Second Opinion, the Expert Panel clearly asserted, after analyzing the explanations and arguments raised by the Rider on the exclusion of a doping scenario, that *“We therefore confirm the opinion expressed in our JEO that it is highly likely that a prohibited substance and/or prohibited method has been used and that it is unlikely that the passport is the result of any other cause”*, and in the Third Opinion, the Expert Panel, after analyzing the explanations, arguments and evidence brought by the Rider in the Answer, once again *“confirm the opinion expressed in our Joint Expert Opinion of 6 March 2020 and our report of 25 August 2020 that it is highly likely that a prohibited substance and/or prohibited method has been used and that it is unlikely that the passport is the result of any other cause”*.
115. The timing of the abnormalities with the Rider’s competition schedule is also an element reinforcing the Single Judge conviction: as stated in the Initial Opinion, *“the profile bears features of blood manipulation on several occasions, coinciding with the Volta a Portugal in 2018 and the*

Tour of Denmark in 2019 as well as during the off season period". This is, in the Single Judge's view, quite telling.

116. In the same vein, the explanations and answers given by Dr. Schumacher and Dr. Mørkeberg, members of the Expert Panel, at the hearing were, in the Single Judge's opinion, solid, conclusive and consistent with the reasoning contained in the Initial Opinion, the Second Opinion and the Third Opinion.
117. On the contrary, the Single Judge is not convinced by the arguments, explanations and expert reports raised by the Rider to exclude a doping scenario, for the following reasons:
- Concerning the Rider's allegation that the impact of plasma volume on haematological parameters explains the abnormalities in his profile and excludes a doping scenario, after examining the evidence brought to the proceedings and in particular the expert reports filed by each of the Parties, the Single Judge became convinced that (i) changes in the plasma volume were already taken into account and valued in the ABP, (ii) the % of reticulocytes is not affected by changes in the plasma volume and (iii) the abnormalities in the Rider's ABP are not explained by the plasma volume changes' influence on the Rider's haematological parameters.

In particular, the Single Judge finds that the explanations given on this matter by the Expert Panel in the Second and Third Opinion, and the criticism and objections made to Dr. Córdova's reports in this sense therein, are consistent and reliable.

In this respect, the Single Judge also wants to make reference to the considerations made by the CAS Panel that resolved the case CAS 2021/A/7833, in which the issue of the variation of the plasma volume was also raised and in which the Panel stated the following: *"The Panel is satisfied with the adaptative model approach, which is meant to apply automated adjustments and further submits the profile to expert review that considers the individual situation of the athlete at the time of sampling. The Panel notes the Expert Panel reviewed the Rider's individual situation and rejected the Rider's claim in that regard"*.

- With regard to the coefficient of variation between the different laboratories, the Rider alleges that the Rider's samples were analyzed by the same machine model (Sysmex) but in 3 different laboratories (Madrid, Köln and Paris), that a significant variability between the results may exist from one machine to the other and that the coefficient of variation deriving from it was not taken into account to the study of the Rider's ABP. In this respect, the Single Judge, after checking and assessing the considerations made by the parties and in particular the expert reports produced by them, does not share the Rider's view and finds that the Rider's allegations were convincingly contested by the Expert Panel in the Second and Third Opinion. In particular, the Single Judge is satisfied with the UCI allegations on the misinterpretation made by Dr. Córdova of the relevant study's findings. In accordance with the Third Opinion, Dr. Córdova *"confuses instruments and parameters"* and *"evidently mixed up the results mentioned in the abstracts, without considering the content of the article. He has confused blood parameters with instruments"*. The Rider could have examined Dr. Córdova on this alleged misinterpretation at the hearing, but Dr. Córdova failed to appear at the hearing even if the Rider had announced his presence. With the evidence made available to him, the Single Judge shall conclude that the abnormalities in the Rider's ABP cannot be explained by this reason either.
- Finally, in what concerns the Rider's haematological behaviour and the expert report of Dr. Pereira produced by the Rider, the Single Judge, after analyzing the reports of Dr. Pereira and the Expert Panel and their respective declarations at the hearing, did not become

convinced that Dr. Pereira's theories and arguments (Rider's exposure to extreme heat, pathologies, etc.) can reasonably explain the abnormalities detected in the Rider's profile. The counterarguments raised by the Expert Panel were strong and persuasive enough for the Single Judge to get the conviction that the explanations of Dr. Pereira cannot exclude, in this specific case, a doping scenario.

118. In conclusion, the Single Judge considers that the Rider did not provide a credible alternative explanation to the abnormalities raised in his ABP profile and the UCI has discharged its burden of proof with respect to the ADRV as explained. The Single Judge is thus comfortably satisfied that the Rider committed a violation of article 2.2 UCI ADR in the form of Use of a Prohibited Substance or Prohibited Method.

B. The Consequences of the ADRV

119. The UCI ADR provide for different types of consequences in case of an ADRV.
120. The UCI is requesting the Tribunal to sanction the Rider with a period of ineligibility, to disqualify his results and to impose a monetary fine.

1. Period of Ineligibility

121. If the Rider's ADRV constitutes a first violation (as it is the case herein), Article 10.2 UCI ADR applies, which reads as follows:

"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. [...]"

122. Pursuant to this article, 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.
123. In the case at hand, Article 10.2.1.1. shall apply given that blood manipulation by Use of a Prohibited Substance or Prohibited Method is not a Specified Substance, being for the Rider to prove (by a balance of probability, as per article 3.1. UCI ADR) that the violation was not intentional if he intends to reduce the standard period of ineligibility set out above.
124. After analysing the submissions and evidence brought to the proceedings by the Parties, the Single Judge concludes that the Rider failed to establish that the ADRV was not intentional. In fact, the Rider's allegations were rather focused on demonstrating that no ADRV existed and

did not devote specific efforts or made concrete submissions addressed to establish and prove his lack of intentionality in the ADRV.

125. In this respect, it shall be recalled that in accordance with this Tribunal's precedents, the simple denial of use of doping do not discharge the burden of proof on the Rider's lack of intentionality. For instance, in UCI ADT 09.2019 UCI vs Nicola Ruffoni, the Tribunal asserted that *"it is not sufficient for the Athlete to deny the use of doping. It is well established in CAS case law (See e.g. CAS 2014/A/3615, WADA v. Daiders, Award of 30 January 2015, para 51.) and confirmed on multiple occasions by this Tribunal (See e.g. ADT 02.2016, UCI v. Fabio Taborre, Judgment of 25 May 2016, para 85, ADT 03.2017, UCI v. Ms. Isabella Moreira Lacerda, Judgment of 17 August 2017, para 105 and ADT 05.2017, UCI v. Josemburg Nunes Pinho, Judgment of 15 August 2017, para 122) that a simple denial without any supporting evidence should be afforded at most limited evidentiary weight. Likewise, the Tribunal in the case at hand affords the Rider's denial only limited evidentiary weight"*.
126. Therefore, the Single Judge finds that the standard period of ineligibility of 4 years shall apply to the Rider.
127. This being said, it shall be also noted that in accordance with 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) 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 UCI ADR sets out conditions under which a period of ineligibility may be eliminated, reduced or suspended for reasons other than fault.
128. In the case at stake, the Rider has not expressly requested the elimination or reduction of the sanction based on the aforementioned articles, and in any event, the Single Judge, after analysing the facts and evidence brought to the proceedings, does not find that the Rider can qualify for such an elimination or reduction of the standard period of ineligibility. In consequence, it is reiterated that the period of ineligibility to be imposed on the Rider is of 4 years.
129. In relation to the commencement of the period of ineligibility, article 10.11 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. [...]"*
130. 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.

131. In the case at stake, on 16 October 2020, the Rider was informed of a mandatory provisional suspension imposed on him. It is undisputed between the Parties 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

132. The UCI requests the Single Judge to disqualify all the results obtained by the Rider between 31 July 2018 (the date of collection of Sample 4, which is the first which displayed abnormalities in accordance with the ABP Experts) and 16 October 2020 (the day the Rider was provisionally suspended).

133. Article 10.8 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.”

134. The aforementioned provision stipulates the Disqualification of all results from the date the ADRV occurred until the date the Provisional Suspension was imposed, unless *“fairness requires otherwise”*.

135. With regard to the start of the results’ disqualification, the Single Judge shall refer to a recent CAS precedent on ABP (CAS 2021/A/7833) which reasoning on the results’ disqualification start date is shared by the Single Judge:

“121. On the start date, Respondent contends, according to Article 10.8 UCI ADR, that all competitive results obtained from the date the ADRV occurred shall, unless fairness requires otherwise, be disqualified. In the present case, the UCI contends that UCI ADT rightly considered the date of collection of Sample 3 as the date the ADRV occurred. Therefore, Respondent submits that all competitive results obtained from 28 July 2015 until the date the Rider was provisionally suspended, i.e., 21 October 2019, shall be disqualified.

122. The Panel concurs with the UCI and, after examining the fairness of said start date, confirms the Appealed Decision in this regard.”

136. Considering that (i) the Rider’s defense has been rejected, (ii) no specific allegations have been made by the Rider on the potential existence of reasons of fairness enabling to deviate from the effects foreseen in article 10.8 UCI ADR or on the start date of the results’ disqualification, and (iii) the Single Judge does not see a reason that would justify a derogation from the principle set forth in the aforementioned article, the Single Judge finds that the Athlete’s results from 31 July 2018 until 16 October 2020 shall be disqualified.

3. Mandatory Fine and Costs

137. Article 10.10.1 UCI 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]."

138. The Rider is a professional rider which has committed an ADRV and that could not establish that this ADRV 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.
139. With respect to the calculation of the fine to be imposed, the UCI submits that the Rider was entitled to an average annual gross income from cycling in 2018 and 2019 (when the ADRV was committed) of ██████████ (in particular, ██████████ in 2018 and ██████████ in 2019). Therefore, according to the UCI, a mandatory fine of ██████████, representing 70% of such Rider's annual gross income, should be imposed as per article 10.10.1.1 UCI ADR. The Rider has not submitted specific allegations as to the fine's amount requested by the UCI.
140. In light of the seriousness of the ADRV, the experience of the Rider at the time of the doping control 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 UCI ADR, the Single Judge decides to impose on the Rider a fine of ██████████.

141. Finally, in relation to the Liability for Costs of the Procedures, article 10.10.2 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.”

142. 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;
- EUR 2'477.- for costs of the documentation packages of the blood samples analysed for the ABP.

143. The costs for the results management claimed by the UCI are in line with those foreseen in article 10.10.2 UCI ADR, and the UCI has provided the relevant invoices corresponding to the costs of the documentation packages, the amount of which has not been contested by the Rider.

144. In light of the aforementioned the Single Judge considers that the Rider shall pay the amounts claimed by the UCI and condemns the Rider to pay them.

VII. COSTS OF THE PROCEEDINGS

145. Article 28 ADT Rules provides as follows:

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

146. In light of all 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

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

1. **Mr Lemos Pinto has committed an Anti-Doping Rule Violation (Article 2.2 UCI ADR).**
2. **Mr Lemos Pinto is suspended for a period of Ineligibility of 4 years. The period of Ineligibility shall commence on the date of the decision, i.e., 13 July 2022. However, considering the credit for the period of the provisional suspension already served by Mr Lemos Pinto since 16 October 2020, Mr Lemos Pinto's period of Ineligibility effectively began on 16 October 2020, and shall end four years from this date, i.e., 16 October 2024.**
3. **The results obtained by Mr Lemos Pinto from the date of collection of Sample 4 (31 July 2018) until the day he was provisionally suspended (16 October 2020) are disqualified.**
4. **Mr Lemos Pinto is ordered to pay to the UCI the amount of [REDACTED] as monetary fine.**
5. **Mr Lemos Pinto is ordered to pay to the UCI the amount of CHF 2'500 for the costs of results management, and the amount of EUR 2'477 for costs incurred for the documentation packages of the blood samples analysed for the Biological Passport.**
6. **All other and/or further-reaching requests are dismissed.**
7. **This judgment is final and will be notified to:**
 - a) **Mr Lemos Pinto ;**
 - b) **Autoridade Antidopagem de Portugal ("ADoP") ;**
 - c) **UCI ; and**
 - d) **WADA.**

148. This Judgment may be appealed before the CAS pursuant Article 31.2 ADT Rules and Article 72 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 UCI ADR.

Jordi López Batet
Single Judge