CAS 2020/A/6747 Mehdi Sohrabi v. Union Cycliste Internationale

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr André Brantjes, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

Mr Mehdi Sohrabi, Islamic Republic of Iran

Represented by Mr Ali Malihzadeh & Dr Mehhrdad Mohammadi, M&A Law Group, Islamic Republic of Iran

Appellant

and

The Union Cycliste Internationale, Aigle, Switzerland

Represented by Dr Antonio Rigozzi, Attorney-at-law, Levy Kaufmann-Kohler, Geneva, Switzerland

Respondent

I. THE PARTIES

1. Mr Mehdi Sohrabi (the "Appellant" or the "Athlete") is an Iranian professional road cyclist. He was born on 12 October 1981. At the time of the alleged anti-doping rule violation (hereinafter referred to as "ADRV") he was affiliated to the UCI Continental Team Pishgaman, an Iranian UCI Continental cycling team. He was thus a license-holder within the meaning of the UCI Anti-doping Rules ("UCI ADR").

2. The Union Cycliste Internationale ("the UCI" or "the Respondent") is the association of national cycling federations and a non-governmental international association with a non-profit-making purpose of international interests, with legal personality in accordance with article 60 ff. Swiss Civil Code according to article 1.1 and 1.2 UCI Constitution.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. The Appellant started his professional career in 2005 with the UCI Continental Team Paykan. As of 2017, the Appellant was under contract with the team Pishgaman. In 2019, the Appellant was not affiliated to any team.

5. In 2008, the UCI introduced the Athlete Biological Passport (the "ABP"). Each ABP is based on longitudinal monitoring of the athlete and is designed to be an "indirect" method of doping detection. It focuses on the effect of prohibited substances and methods on the athlete's hematological values rather than on the identification of a specific substance or method in the athlete's specimen.

6. The Adaptive Model is a statistic tool which was developed to identify atypical values or profiles that warrant further investigation (Atypical Passport Finding - "APF"). It predicts - for the individual athlete - an expected range within which the athlete's biological markers will fall, assuming a normal physiological condition. The Adaptive Model flags hematological data as atypical if 1) a hemoglobin (HGB) and/or OFF- score (OFFS) marker value falls outside the expected intra-individual ranges, with outliers corresponding to values out of the 99%-range (0,5 - 99,5 percentiles) (1:100 chance or less that this result is due to normal physiological variation) or 2) when sequence deviations (a longitudinal profile or marker values) are present at specificity of 99,9% (1:1000 chance or less that this is due to normal physiological variation). The OFF-score value is a hematological marker which is a combination of HGB and the percentage of reticulocytes (RET%).

7. On 30 January 2018, a blood sample ("Sample 6") was collected from the Appellant for the Athlete's ABP. The Appellant signed the Doping Control Form (the "DCF") related to Sample 6. The DCF was drafted in English. The Appellant did not insert any reservations.

8. Sample 6 was flagged three times by the Adaptive Model for abnormalities at 99% specificity (for lower limit RET%, for upper limit HGB and for upper OFF-score limit). The ABP sequences for HGB of OFF-score were also abnormal at >99.9%.

9. On 11 July 2018, the Expert Panel set forth an unanimous expert opinion (the "Expert Opinion") on the Athlete's ABP as follows:

"[...] In our view, the data of the athlete bears one highly abnormal feature in samples 6 (30.01.2018) obtained 10 days prior to the 2018 Asian Championships, for which no explanation is available at this stage. This sample displays high hemoglobin concentration paired with low reticulocytes, leading to an increased OFF score. Such pattern is typically observed when red blood cell mass has been supraphysiologically increased (high hemoglobin) and the organism tries to downregulate this surplus by suppressing its own red cell production (low reticulocytes). This situation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulant or the application of a blood transfusion (1). Notably, a value of hemoglobin of 18.7g/dl is very abnormal and rarely seen in a few severe medical conditions: the pathological limits indicated by the World Health Organization (2016) for the diagnostic of the neoplastic disease polycythemia vera is 16.5 g/dl.

According to the whereabouts, the athlete resided at altitude (1700- 1900m) between 20.10.17 and 11.01.18 (or until 15.01.18, according to the DCF). The impact of altitude on markers used in the ABP has been studied extensively (2-3). There is agreement that altitude of sufficient duration and height will cause mild changes in the ABP. As main feature, a mild increase in the OFF score is visible within 7 to 10 days upon return to sea level. The magnitude of these changes ranges between 10 and 20 points from baseline. The OFF-score value observed in this case, 150, is 50 -60 points above the OFF-score value of the five other samples. As *a matter of interest, the likelihood of observing an OFF-score of 150 in an undoped population of male athletes even considering a "worst case scenario" (i.e. all confounding factors such as altitude in favor of the athlete) is less than 1/10 000 (4).*

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

Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of the abnormality described above being due to blood manipulation, namely the artificial increase of red cell mass using for example erythropoiesis stimulating substances, is high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is very low.

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

10. On 16 January 2019, the UCI informed the Appellant of the Adverse Passport Finding (the "APF") and the Expert Opinion.

11. On 1 March 2019, the Appellant responded to the abnormal findings and objected to the findings and the way the blood samples were collected on 30 January 2018.

12. On 10 April 2019, the Expert Panel issued a follow-up Report ("Expert Opinion 2"). Expert Opinion 2 provides:

"[...] it... appears that the statement of the athlete regarding his normal hematocrit level is likely correct:, his previous blood tests were measure with hematocrits between 44% and 50% and hemoglobin values between 14.7 and 16.8g/dl. Reticulocytes ranged around 1%. The adaptive model acknowledges this fact and clearly flags the abnormal sample 6 for both hemoglobin (high) and reticulocytes (low). Scrutiny of the scatter gram confirms the abnormality of the test and makes any analytical or pre analytical abnormality related to sampling unlikely.

The athlete further speculates on the dosage to achieve such abnormal blood levels. He states that "40 - 50 2000IU injections" would be necessary "..to achieve a 10% gain in Hematocrit..".

This is obviously not correct. Given his already rather high hemoglobin concentration, an increase of hemoglobin of 2-3g/dl such as seen in the profile has been achieved in numerous studies with

dosages ranging around half of what the athlete suggests: For example, in the landmark study of the performance enhancing effects of Erythropoietin, Ekblom et al (1) achieved an increase of 10% in hemoglobin concentration and hematocrit with a total of 46800IU of Erythropoietin, thus ~23 injections of2000IU. The authors conclude that "...The main finding is that a low dose of rhEpo (20-40 IU - kg -' body weight) injected subcutaneously 3 times a week increased [Hb] and Hct in healthy subjects. After 6 weeks of rhEpo treatment, the increase was about 10%".

These facts demonstrate that contrary to the statement of the athlete, features such as observed in the profile can be achieved by relatively moderate doses of erythropoiesis stimulating substances.

The fact that the suspicious sample was obtained 10 days prior to the Asian Championships further increases the suspicion of this test, as Erythropoietin is typically discontinued in time before major competitions to avoid detection with conventional urine tests (which is more likely to happen at major events).

In summary, the explanations provided by the athlete do not explain the abnormal picture of erythropoietic suppression seen in sample 6 of the profile. On the contrary, the data of the athlete is well explained by the use and discontinuation of an erythropoietic stimulant or the application of a blood transfusion in the weeks prior to sample 6.

We therefore conclude that based on the data available at this stage, it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of the causes highlighted by the athlete in his submission."

13. On 3 July 2019, the UCI contacted the Appellant to: (a) provide him with a copy of Expert Opinion 2; (b) informed him he was provisionally suspended; (c) inform him that an ADRV according to Article 2.2 UCI ADR was alleged against him; (d) inform him of the potential consequences of the alleged ADRV; (e) proposed him an Acceptance of Consequences pursuant to Article 8.4 UCI ADR which would prevent disciplinary proceedings before the UCI Anti-Doping Tribunal (the "UCI ADT"); and (f) advised him that if he did not agree with the proposed Acceptance of Consequences, the case would be referred to the UCI ADT.

14. On 29 July 2019, the Appellant informed the UCI that he did not consent to the Acceptance of Consequences.

15. On 16 and 18 September 2019, the Appellant appealed the provisional suspension of 3 July 2019 (the "Provisional Suspension") alleging that he did not use prohibited substances or methods.

16. On 30 September 2019, the Appellant requested that the Provisional Suspension be annulled.

17. On 24 October 2019, the UCI Disciplinary Commission dismissed the Appellant's request to annul the Provisional Suspension.

III. PROCEEDINGS BEFORE THE UCI ANTI-DOPING TRIBUNAL

18. On 9 October 2019, the UCI filed a petition ("Petition") to the UCI ADT requesting the latter to: (a) declare that the Appellant had committed a violation of the ADRV; (b) impose the Appellant a period of ineligibility of 4 (four) years; (c) disqualify all the results obtained by the Appellant between 30 January 2018 and 3 July 2019; (d) order the Appellant to pay the costs of the results management incurred by the UCI and the costs for the documentation packages of the blood samples analysed for the Biological Passport.

19. On 19 October 2019, the Appellant was informed that: (a) disciplinary proceedings had been initiated against him before the UCI ADT; (b) he was granted until 4 November 2019 to submit his Answer.

20. On 3 November 2019, the Appellant filed his Answer.

21. On 17 January 2020, the UCI ADT rendered its decision (the "Appealed Decision").

22. Regarding the applicable rules and regulations, the UCI ADT held that it was bound to apply the UCI ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law, and that, given that the alleged ADRV took place on 30 January 2018, the 2015 edition of the UCI ADR applied to the Appellant's case.

23. Pursuant to Article 7.5 UCI ADR, the UCI ADT held that it needed to take into consideration the UCI Testing & Investigation Regulations, the International Standard for Laboratories, the WADA Athlete Biological Passport Operating Guidelines and the Technical Documents to the extent relevant.

24. Concerning the defence of the Appellant that Sample 6 did not belong to him, the UCI ADT held that the Appellant by signing the DCF, acknowledged that the sample collection was conducted in accordance with the applicable rules.

25. Concerning the defence of the Appellant that his English was weak and that he was not assisted in filling out the DCF, the UCI ATD held that he was an experienced rider and took part in many national, continental and World tour races and filled out these forms numerous times. The UCI ADT further argues that there was no indication that the Appellant asked for assistance to help him translate the DCF form.

26. The UCI ADT went on by noting that the analytical results of Sample 6 were atypical which was corroborated by both Expert Panels.

27. The UCI ADT found that it was convinced by the required threshold, i.e. comfortable satisfaction that the Appellant committed blood manipulation, which was based on the following:

- *The profile was flagged with abnormalities at 99% specificity three times for sample 6: upper limit hemoglobin, lower limit reticulocytes, upper limit OFF score*
- *The sequences for haemoglobin and OFF score are abnormal >99.9%*
- *Sample 6 displays high haemoglobin concentration paired with low reticulocytes, leading to an increasing OFF score*
- *This is typically when red blood cell mass has been supraphysiologically increased (high hemoglobin) and the organism tries to down regulate this surplus by suppressing its own red cell production (low reticulocytes)*
- *This situation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulant or the application of a blood transfusion*
- *A value of haemoglobin of 18.7g/dl is very abnormal and rarely seen in a few severe medical conditions*

- *The pathological limits indicated by the World Health Organization (2016) for the diagnostic of the neoplastic disease polycythemia vera is 16.5 g/dl*
- *There is no other alternative scenario that could explain the plausible doping scenario*
- *Also considering all other evidence on file, there is nothing on file casting doubt on a doping scenario by the Appellant."*

28. With regard to the consequences of the ADRV, the UCI ADT held that, given that the Appellant had failed to establish that the ADRV was not intentional, and that he had not committed such offence with "No Fault or Negligence" in the sense of Article 10.4 of the UCI ADR or "No Significant Fault or Negligence" in the sense of Article 10.5.2 of the UCI ADR, the period of ineligibility set out in Article 10.2.1 (a) of the UCI ADR, i.e. 4 (four) years, should be imposed.

29. In the Appealed Decision, the UCI-ADT further ruled (a) that the period of Ineligibility shall commence on the date of the decision 17 January 2020 (b) that the provisional suspension already served by the Appellant, starting from 3 July 2019 be credited against the four-year period of ineligibility; (c) that the results obtained by the Appellant between 15 and 18 July 2015, if any, are disqualified; (d) that the Appellant is ordered to pay CHF 2,500 for the costs of results management and EUR 800 for costs of laboratory documentation package.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 4 February 2020, in accordance with Article R47 of the Code of Sports-related Arbitration (the "CAS Code") (2019 edition), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS"), with respect to the Appealed Decision. The Appellant designated the Statement of Appeal as his Appeal Brief. The Appellant requested in his Statement of Appeal that the case be submitted to a Sole Arbitrator.

31. On 12 February, the CAS Court Office informed the Parties that pursuant to Article R20 of the CAS Code, the present arbitration was assigned to the Appeals Arbitration Division of the CAS and shall therefore be dealt with according to R47 *et seq.* of the CAS Code. The Respondent was granted a 20-days deadline to file its Answer.

32. On 14 February 2020, the Respondent requested the matter to be submitted to a panel of three arbitrators. On 9 March 2020, the Respondent filed its Answer and the exhibits related hereto. In its Answer, the Respondent, *inter alia*, objected against the jurisdiction of CAS with respect to the Appellant's application for damages.

33. On 10 March 2020, the Appellant noted that the time limit to file the Answer had expired on 7 March 2020.

34. On 11 March, the CAS Court Office invited the Parties to inform by 18 March 2020, whether they preferred a hearing to be held in this matter or that an Award be was to be based solely on the Parties' written submissions.

35. On 12 March 2020, the Appellant reiterated that the Answer was not filed timely and applied for Legal Aid.

36. On 13 March 2020, the Respondent responded to the position of the Appellant that the Answer had not been filed timely, arguing that 7 March 2020 was a Saturday, that the Answer was duly

filed on 9 March 2020, the first subsequent business day. The Respondent, referred to Article 32 of the CAS Code:

"*If the last day of the limit is an official holiday or a non-business day in the location from where the document is to be sent, the time limit shall expire at the end of the first subsequent business day.*"

37. On 16 March 2020, the CAS Court Office informed the Parties that, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided to submit the case to a Sole Arbitrator.

38. On 15 March 2020, the Appellant responded that he did not consider a hearing to be necessary.

39. On 18 March 2020, the Respondent informed the CAS Court Office that it concurred with the Appellant that a hearing was not necessary and that the Award could be issued based on the Parties' written submissions.

40. On 23 April 2020, the Parties were informed that, pursuant to Article 54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to resolve the dispute was constituted as follows:

Sole Arbitrator: Mr André Brantjes, Attorney-at-law, in Amsterdam, The Netherlands

41. On 30 April 2020, the CAS Court Office asked the Appellant to respond by 7 May 2020 on the Respondent's objection of CAS' jurisdiction with respect to his request for damage compensation.

42. On 4 May 2020, the Appellant filed a written submission stating that CAS had jurisdiction based on CAS jurisprudence, and pursuant to Article R58 of the CAS Code.

43. On 7 May 2020, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself to be sufficiently well-informed to decide this case solely on the basis of the Parties' written submissions without the need to hold a hearing.

44. In the same letter, the Parties were informed that the Sole Arbitrator would address the Respondent's objection to the jurisdiction of in the final Award.

45. On 11 May 2020, the CAS Court Office, on behalf of the Sole Arbitrator, provided the Parties with an Order of Procedure, that was duly signed and returned by the Respondent and the Appellant on 18 and 20 May 2020 respectively. Whereas the Appellant indicated that he wanted the proceedings to be kept confidential, the Respondent objected to such request, following which the Appellant did not reiterate his request.

V. SUBMISSIONS OF THE PARTIES

46. The submissions of the Appellant, in essence, may be summarized as follows:

- The UCI disregarded the Appellant's arguments and rights by refusing to lift the Provisional Suspension.
- The UCI ADT ignored the Appellant's explanations and arguments.

- The decision not to lift the Provisional Suspension, violated the principle of the right to be heard and was not fair.
- Sample 6 does not belong to the Appellant and the procedure to collect blood was wrong and flawed.
- UCI has the burden of proof as the claimant pursuant to Article 3(1) UCI ADR. UCI failed to prove its allegations and relies on a flawed blood collection.
- The Appellant objected to the blood collection of 30 January 2018 at Kish Camp. This was reflected in the affidavit signed by the athletes and coaches present during the blood collection.
- The UCI has ignored the defense of the Appellant that at the Kish Camp none of the athletes was asked to present a valid ID-card. The Appellant only informed the doping officer of his passport number orally. The latter does not confirm the correctness of the blood collection.
- The blood collection violated Article 2.6 of the ISTI Blood Sample Collection Guidelines which requires provision of a valid ID.
- The requirements of the Articles 4, 5, 6 and 7 of the ISTI Guidelines were not respected during the blood collection on 30 January 2018.
- The UCI failed to address the issue raised by the Appellant that Article 3.5.2 of the ISTI Guidelines was violated. This Article was violated because the privacy was not respected and the standards of hygiene were not observed, which was shown by the filed photographs.
- The affidavit must be considered as a valid testimony of the flawed blood collection.
- The Appellant's English is very weak. He was not able to duly fill out the DCF and was not assisted by any translator. He did not understand the DCF.
- The UCI ADT rejected all of the arguments superficially and its conclusion was biased and unprofessional.
- The statement of doctor Mr Rahgoshaei who has treated the Appellant for many years, must be taken into account.
- The blood tests of 14 January 2018 and 4 February 2018 have to be taken into account. It is not reasonable that the value of HGB has suddenly risen between the two dates.
- The Appellant finds the UCI ADT made a mistake in the Appealed Decision. The ineligibility period should not start from 3 July 2019 but 30 January 2018 just like the disqualification of results.
- As to the alleged lack of jurisdiction, the Appellant maintains that CAS has jurisdiction to hear and adjudicate paragraph 4 of his request for relief.

47. The Appellant therefore requested the Sole Arbitrator to decide as follows:

1. *To annul and set aside the judgement rendered by the UCI anti-doping tribunal (17 January 2020).*

2. *To establish and declare that Mr Mehdi Sohrabi has not committed any ADRV.*

3. *To declare that UCI shall incur costs of proceedings, witnesses and experts (if required). Also the UCI shall cover the legal costs of Mr. Mehdi Sohrabi.*

4. *To compensate the Appellant for his professional and moral damages in accordance with the relevant Swiss laws.*

5. *Alternatively, in case of dismissal of the above requests, to declare that the period of ineligibility has started from 30 January 2019.*

48. The submissions of the UCI, in essence, may be summarized as follows:

- The Appellant had ample opportunity to provide his explanations and evidence to the UCI and its bodies.
- Assuming the right to be heard was violated, such procedural flaws would be cured by the CAS appeal. According to Article R57 of the CAS Code, the Sole Arbitrator has the power to hold a *de novo* trial.
- The DCF with respect to Sample 6 was signed by the Appellant, which indicated that the sample was taken on 30 January 2018 and had a unique number. The DCF links this number to the Appellant.
- The Appellant has not contested at any point that he provided a blood sample on 30 January 2018 and that he signed the DCF.
- The contentions of the Appellant that Sample 6 does not belong to him, should be rejected.
- The Appellant's allegations regarding the presentation of the valid ID card, should be dismissed because it is not established that this could have had any impact on the analytical results.
- The Appellant's allegations regarding the conditions of the room should be disregarded. This conclusion is corroborated by the fact that the Appellant signed the DCF without making any comments or objections.
- The allegations regarding the language issue should be dismissed. The Appellant signed the DCF and did not protest and did not request assistance of an interpreter.
- The Appellant failed to establish that the alleged several departures of the ISTI and the ISTI Guidelines could have caused the ADRV.
- A rider's ABP in general constitutes a reliable means for the establishment of a Use violation.
- The Appellant's ABP shows abnormalities.
- There is a credible doping scenario for the abnormalities observed in the Appellant's ABP.
- The Appellant has not provided an alternative scenario or explanation for the abnormalities observed in his ABP.
- The UCI submits that it has established, to the Sole Arbitrator's comfortable satisfaction, that the Appellant committed an ADRV.
- As the Appellant has not alleged, let alone established, that the ADRV was not intentional, the 4-year period of ineligibility should be confirmed.
- As the Appellant has not established that a delay was not attributable to him, Article 10.11.1 and Article 10.11.2 cannot be applied, so the Appealed Decision should be confirmed.
- As to the lack of jurisdiction, the UCI argues that CAS has no jurisdiction to decide on the paragraph 4 of the request for relief in the Statement of Appeal about damage compensation.

49. The UCI therefore requests the Panel to issue an award:

1. *Denying jurisdiction with respect to Mr. Mehdi Sohrabi s claim for damages.*

2. *Dismissing Mr. Mehdi Sohrabi' s Appeal.*

3. *Upholding the Decision of the Single Judge of 17 January 2020.*

4. Condemning Mr. Mehdi Sohrabi to pay the UCI a contribution towards the UCI s legal fees and other expenses.

VI. JURISDICTION

50. Article R47 of the CAS Code states the following:

"*An appeal against a decision of a federation, association or sports-related body may be filed with CAS in the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body*."

51. The jurisdiction of the CAS derives from Article 13.2.1 and 13.2.2 of the UCI ADR, in which it is stated that the decision may be appealed exclusively to CAS.

52. In the present case, the Respondent expressly consents to the partial jurisdiction of the CAS in its Answer. In light of the foregoing, the Sole Arbitrator finds that the CAS has jurisdiction in this appeal in accordance with the paragraphs below. In addition, both Parties confirmed CAS jurisdiction by execution of the Order of Procedure.

53. As for the jurisdiction of CAS regarding the request for professional and moral damages, the Sole Arbitrator points out that the jurisdiction is limited to the scope of the arbitration agreement. The scope of the arbitration agreement is set out in Article 13.1 and 13.2 UCI ADR. Art. 13.1 UCI ADR provides:

"Decisions made under the Code or rules adapted pursuant to the Code may be appealed as set forth below in Articles 13.2 through 13.4 or as otherwise provided in these Anti-Doping Rules. [..]"

54. Article 13.2 UCI ADR provides:

"Appeals from Decisions Regarding Anti-Doping Rule Violation, Consequences, Provisional Suspensions, Recognition of Decisions and Jurisdiction.

- *A decision that an anti-doping violation was committed,*
- *A decision imposing Consequences or not imposing Consequences for an anti-doping rule violation,*
- *A decision that no anti-doping rule violation was committed,*
- *A decision that an anti-doping rule violation cannot go forward for procedural reasons (including, for example, prescription),*
- *A decision by WADA not to grant ex exception to the six months notice requirement for a retired Rider to return to Competition under Article 5.7.1,*
- *A decision by WADA assigning results management under Article 7.1,*

- *A decision by an Anti-Doping Organization not to bring forward an Adverse Analytical Finding or an Atypical Finding as an anti-doping rule violation,*
- *A decision not to go forward with an anti-doping rule violation after an investigation under Article 7.5, 7.6 & 7.7,*
- *A decision to impose or maintain a Provisional Suspension as a result of a Provisional Hearing,*
- *An Anti-Doping Organization's failure to comply with Article 7.9,*
- *An decision that an Anti-Doping Organization lacks jurisdiction to rule on an alleged anti-doping rule violation or its Consequences,*
- *A decision to suspend, or not suspend, a period of ineligibility or to reinstate, or not reinstate, a suspended period of Ineligibility under Article 10.6.1,*
- *A decision under Article 10.12.3,*
- *And a decision by an Anti-Doping Organization not to recognize another Anti-Doping Organization decision under Article 13.2,*

may be appealed exclusively as provided in Article 13.2."

55. The Sole Arbitrator firstly notes that the scope of the arbitration agreement is limited to these decisions. A decision not to compensate the moral and professional damages, is not a decision subject to appeal according to Article 13.2 UCI ADR.

56. Secondly, the Sole Arbitrator notes that in his Appeal Brief, the Appellant did not substantiate or made clear where the jurisdiction of CAS to decide on the request for moral and professional damages was based on. In his statement of defence of 3 November 2019 in the first instance procedure, the Appellant also did not elaborate about these damages, nor did he substantiate why a request for damages is part of the scope of the arbitration agreement.

57. For probably all these reasons, no decision was made about these damages in the Appealed Decision.

58. The Sole Arbitrator concurs therefore with the position of the Respondent that the CAS has no jurisdiction to address this request.

59. Consequently, the Sole Arbitrator finds that CAS is not competent to adjudicate and decide on this part of his appeal about the moral and professional damage compensation.

60. In any event, the Appellant failed to quantify his damages and did not provide any guidance on the legal framework that would have to be applied for awarding damages on the basis of Swiss law. In addition, the Sole Arbitrator wants to emphasize that, as substantiated further in this Award, this discussion about jurisdiction for moral and professional damage compensation has no direct consequences on the merits of the case considering that he is comfortably satisfied that the Appellant committed an ADRV.

VII. ADMISSIBILITY

61. Article R49 CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against."*

62. Article 13.2.5.1 of the UCI ADR provides that "[…] *unless otherwise specified in these rules, appeals under Article 13.2.1 and 13.2.2 from decisions made by the UCI[-ADR] shall be filed before CAS within 1 (one) month from the day the appealing party receives notice of the decision appealed*".

63. The Appellant received notification of the grounds of the Appealed Decision on 17 January 2020 and filed his Statement of Appeal on 3 February 2020. The Respondents do not dispute that the Appeal is admissible to the extent that it is directed against the UCI.

64. In light of the foregoing, the Sole Arbitrator finds that the Appeal is admissible.

VIII. APPLICABLE LAW

65. Article R58 of the CAS Code provides as follows:

> *"The Panel decides the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the application of which the Panel deems appropriate. In the latter case the Panel gives reasons for its decision."*

66. Given that the UCI is the relevant International Federation, the Sole Arbitrator finds that the UCI rules and regulations, in particular the UCI ADR, are applicable to the present appeal proceedings.

67. In particular, the following Articles are relevant in the case at hand:

Article 2.2. UCI ADR defines the relevant ADVR as follows:

> "*2.2 Use or Attempted Use by a Rider of a Prohibited Substance or Prohibited Method*
>
> *2.2.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
>
> *2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*

[Comment to Article 2.2: It has always been the case that Use or Attempted Use of a prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the Attempted Use may 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 alone (without conformation 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).]"

68. As to 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 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 […]*."*

69. 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 cause 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 ant-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".

70. In addition, as the UCI has its headquarters in Switzerland, Swiss law will apply subsidiarily.

IX. MERITS

A. Preliminary issues and legal framework

71. As an initial matter, the Sole Arbitrator needs to decide about the position of the Appellant that the Answer was not filed timely. The UCI was granted a 5-day extension of the official deadline of 2 March 2020. The Answer was filed on 9 March 2020. Pursuant to Article R32 of the CAS Code, the UCI had until Monday 9 March 2020, as 7 March 2020 was a Saturday. The UCI therefore timely filed its Answer on Monday 9 March 2020.

72. The Sole Arbitrator secondly points out that the Appellant's submissions not to lift the Provisional Suspension are not relevant for the case at hand. The Provisional Suspension is not part of the Appealed Decision and the Appellant did not appeal that decision. In his Statement

of Appeal, the Provisional Suspension is also not part of the request for relief. The Sole Arbitrator will therefore not deal with these submissions.

73. The Sole Arbitrator thirdly wants to point out that he has full power to review all facts pursuant to Article R57 of the CAS Code (*de novo*). Even in the case the right to be heard was violated in the earlier proceedings, which was argued by the Appellant, this is cured by the present appeal arbitration proceedings.

B. Evidence, affidavit, the laboratory report filed by the Appellant and language issue

74. Before deciding whether or not the evidence submitted by the UCI has convinced the Sole Arbitrator that he is comfortably satisfied that the Appellant committed an ADRV, the Sole Arbitrator wants to address the arguments raised by the Appellant in his Statement of Appeal.

75. The Sole Arbitrator notes that the Expert Reports of the analysis of the blood sample taken on 30 January 2018 are not put into doubt by the Appellant. The Appellant only contests that Sample 6 was his blood sample and that according to his own evidence, the increase of his HGB values on 30 January 2018 would have been unlikely. The Appellant also finds that the blood collection on 30 January 2018 was flawed because the hygienic conditions were poor and no valid ID-cards were requested from the riders. He submits that the procedures for blood collection were *totally messed and wrong.*

76. The Appellant did not contest the analytical results of Sample 6. He only submitted that due to flawed circumstances during the blood collection on 30 January 2018, the Sample 6 cannot be attributed to him.

77. The Appellant argues that the International Standard for Testing and Investigation (the "ISTI") and the ISTI Guidelines were violated because *inter alia* the lack of ID cards, the privacy, hygiene and safety were not respected during the blood collection.

78. The Sole Arbitrator finds that the Appellant carries the burden of proof to establish on a balance of probability that a departure of the UCI ADR occurred and that such departure could have caused the ADRV pursuant to Article 3.2.3 UCI ADR.

79. The Sole Arbitrator finds the decision of the UCI ADT (para 42 and 43) about this issue convincing. The Appellant did not give a credible explanation that the ID issue, the lack of privacy and the hygienic circumstances on 30 January 2018 during the blood collection, could reasonably caused the ADVR.

80. The Appellant also did not object that he provided a blood sample on 30 January 2018 or gave a credible explanation as to how Sample 6 could have been swapped with a sample of someone else.

81. The Sole Arbitrator finds that the fact that the Appellant signed the DCF decisive in the case at hand. By signing this form, the Appellant clearly indicated that the sample was taken from him on 30 January 2018 which showed a unique number (347877), which was reported to the LDP. By signing the DCF the Appellant unconditionally declared that the information in the DCF was correct.

82. The Appellant submits that the results of his blood tests before and after 30 January 2018 were obtained by a valid lab and that they should be taken into account. The tests would make the

Expert Results not logical because it is not *reasonable* that the blood values would sharply rise and fall.

83. The private tests filed by the Appellant however are not from a WADA-accredited laboratory and it is not even clear if the tests were provided by the Appellant. The Sole Arbitrator therefore finds that these private tests cannot be taken into account.

84. The affidavit and photos filed by the Appellant, are not convincing. The affidavit only states that none of the athletes had an ID card and that the privacy was not respected on 30 January 2018. According to the Appellant the photos would show the lack of privacy too. But the Sole Arbitrator finds that these documents do not provide any evidence that the conditions during the blood collection would have caused an ADRV.

85. The Sole Arbitrator finds that the Appellant's explanation that he did not or misunderstood the DCF is not credible. He is an experienced rider and obviously participated in many cycling races and should therefore have been familiar filling out these forms. The Appellant submits that he was not able to duly fill out the form, was not assisted and had only written down his address and phone number. The Appellant submits that the rest of the form was filled out by a doping officer. No evidence was offered or shown to support this submission, but even if this was proven, the Sole Arbitrator finds that if the Appellant was not able to understand the content of the DCF, he should have actively asked for intervention of a translator. In addition to this he signed the form without making any reservations. This all makes his explanation that he did not understand the DCF not credible.

86. The Sole Arbitrator finds that the Appellant could not establish on a balance of probability that a departure of the UCI ADR occurred and that such departure could have caused the ADRV pursuant to Article 3.2.3 UCI ADR. That threshold is not met.

87. The Sole Arbitrator finds therefore that the defence of the Appellant that Sample 6 did not belong to him, has to be rejected.

C. Evidence relied on by the UCI

88. The Sole Arbitrator emphasizes that the UCI still has the burden of proof that the Appellant committed an ADRV.

89. To establish this proof, the UCI relies *inter alia* on the two Expert Reports of analysis of the blood Sample 6 analyses taken on 30 January 2018.

90. The analyses of Sample 6 displays: *high hemoglobin concentration paired with low reticulocytes, leading to an increased OFF score. Such pattern is typically observed when red blood cell mass has been supraphysiologically increased (high hemoglobin) and the organism tries to downregulate this surplus by suppressing its own red cell production (low reticulocytes). This situation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulant or the application of a blood transfusion (1). Notably, a value of hemoglobin of 18.7g/dl is very abnormal and rarely seen in a few severe medical conditions: the pathological limits indicated by the World Health Organization (2016) for the diagnostic of the neoplastic disease polycythemia vera is 16.5 g/dl.*

Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of the abnormality described above being due to blood manipulation, namely the artificial increase of red cell

mass using for example erythropoiesis stimulating substances, is high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is very low.
We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is highly unlikely that the passport is the result of any other cause.

91. Regarding the reliability of the Reports brought forward by the UCI, the Sole Arbitrator recalls that pursuant to Article 3.2.2 of the 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 Appellant 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.

92. In the present case, the Appellant has not been able to rebut this presumption, as he did not establish that the alleged departures, if any, could have caused the Adverse Analytical Findings. In fact, the Appellant did not even argue how these deviations could possibly have caused the Adverse Analytical Finding.

93. According to the UCI, the analytical results are evidence. It is undisputed that there were no issues with the analysis of the Sample 6. Thus, according to the Sole Arbitrator, the analytical results of the two samples have to be considered as valid and reliable evidence.

94. However, the Sole Arbitrator agrees with the reasoning in the Appealed Decision, that a high haematological value is no proof of doping and that the UCI has to demonstrate that doping is a plausible source for abnormal ABP values and that other explanations can be excluded.

95. To prevent an impossible evidentiary position in case of proving negative facts, the Sole Arbitrator refers to the cases CAS 2011/A/2384 and 2386), in which the Panel decided that in case of a difficult evidentiary position in proving negative facts, like in the case at hand, the contesting party has to substantiate and explain other possible sources for the abnormal values.

96. The Appellant however, did not submit any alternative scenario. The argument that the high values could have been caused by altitude training, was rejected by the Experts. The Experts also rejected other alternative scenarios and even qualified these as very unlikely. The Sole Arbitrator follows this reasoning as the UCI ADT did in the Appealed Decision. The arguments of the UCI ADT are convincing.

97. The Sole Arbitrator also follows the reasoning in the analytical results stating that: *it is highly likely that a prohibited substance or prohibited method has been used and that it is highly unlikely that the passport is the result of any other cause.*

98. The tests submitted by the Appellant are not convincing as stated above. There is no evidence that the blood samples related to such analyses were provided by the Appellant. In addition to this, the Sole Arbitrator emphasizes again that the Farabi Pathobiology Laboratory is not WADA-accredited.

99. The Sole Arbitrator finds therefore that the Appellant did not explain other sources convincingly for the abnormal blood values.

100. The Sole Arbitrator concludes therefore that he is comfortably satisfied that the Appellant committed an ADRV according to Article 2.2. UCI ADR.

D. Sanction

101. Article 10.2.1 of the UCI ADR provides:

> *The period of ineligibility shall be four years where: 10.2.1.1. The anti-doping violation does not involve a Specific Substance unless the Rider or the person can establish that the anti-doping violation was not intentional."*

102. Article 10.11 of the UCI ADR provides:

> *"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."*

103. As the Sole Arbitrator is comfortably satisfied the Appellant committed an ADRV and the Appellant has not substantiated that this ADRV was not intentional, consequently, the period of ineligibility to be imposed on the Appellant shall be four (4) years.

104. According to Article 10.11.3.1 of the UCI ADR the period of ineligibility starts on the date of the decision: *"[…} receive a credit for such a period of Ineligibility […]".*

105. The Appellant submits subsidiarily that the ineligibility period should be calculated form the sample collection, therefore 30 January 2018 instead of 3 July 2019 as mentioned in the Appealed Decision which, according to the Appellant, was a mistake. This argument was not substantiated.

106. The Sole Arbitrator finds that pursuant to Article 10.11.3.1 of the UCI ADR, the period of ineligibility starts on 3 July 2019 and that no mistake was made in the Appealed Decision.

107. In light of the foregoing, the Sole Arbitrator concludes that he sees no room for reducing the period of ineligibility set out in the Appealed Decision or use another starting date for the ineligibility. As a result, the Appeal has to be dismissed and the Appealed Decision confirmed.

IX. COSTS

108. This proceeding falls under Article R65.2 of the CAS Code, which provides:

> "*Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*
>
> *Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.— without which CAS shall not proceed and the appeal shall be deemed withdrawn.*
>
> […]"

109. Article R65.3 of the CAS Code reads as follows:

"*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

110. Article R65.4 of the CAS Code provides as follows:

"*If the circumstances so warrant, including whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel.*"

111. Having taken into account the outcome of the proceedings, as well as the conduct and the financial resources of the Parties, the Sole Arbitrator rules that the Appellant shall bear his own costs and pay a contribution of CHF 1,000 ("one thousand Swiss francs") towards the UCI's legal fees and other expenses incurred in connection with the present arbitration proceedings.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sports has no jurisdiction to rule on the appeal filed by Mr Mehni Sohrabi on 3 February 2020 in respect to paragraph 4 of the request of relief in the Statement of Appeal about the damage compensation.

2. The appeal filed by Mr Mehni Sohrabi on 3 February 2020 against the decision rendered by the UCI Anti-Doping Tribunal on 17 January 2020 is dismissed.

3. The decision rendered by the UCI Anti-Doping Tribunal on 17 January 2020 is confirmed.

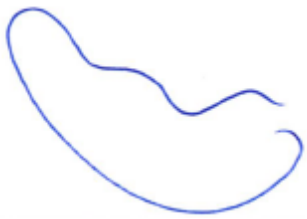
4. The Award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr Mehni Sohrabi, which is retained by the Court of Arbitration for Sport.

5. Mr Mehni Sohrabi shall pay to the Union Cycliste Internationale a contribution in the amount of CHF 1,000 (one thousand Swiss Francs) toward its legal fees and expenses incurred in connection with the present proceedings.

6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 29 October 2020

THE COURT OF ARBITRATION FOR SPORT



André Brantjes
Sole Arbitrator