



Arbitration CAS 2012/A/2924 Union Cycliste Internationale (UCI) v. Monica Bascio & United States Anti-Doping Agency (USADA), award of 14 June 2013

Panel: Mr Hans Nater (Switzerland); Judge James Robert Reid QC (United Kingdom); Mr Jeffrey Benz (USA)

Cycling

Doping (tuaminoheptane)

Conditions of reduction of the standard period of ineligibility for specified substances

Absence of intent to enhance sport performance

Assessment of the degree of fault

Fine

1. According to the UCI Anti-Doping Regulations (ADR), two conditions must be satisfied to allow for a reduction of the period of ineligibility for specified substances. The first condition is whether the athlete can establish how the specified substance entered his/her body. The second condition is whether s/he can establish in the circumstances of his/her case and by producing corroborating evidence in addition to his/her word that such specified substance was not intended to enhance his/her sport performance. Those conditions must be established to the comfortable satisfaction of the hearing panel.
2. The mere fact that an athlete did not know a product taken to treat a condition contained a specified substance does not itself establish the relevant absence of intent. However, the facts that an athlete's *bona fide* statements were never challenged by the other parties and that an athlete declared the name of the product used on his/her doping control form are factors speaking in favour of an absence of intent to enhance sport performance.
3. According to the UCI ADR the athlete's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility. The negligence of an athlete on the one hand and the circumstances speaking for a short period of ineligibility on another hand shall be considered together. Those elements seen as a whole may speak in favour of a minor anti-doping rule violation justifying a reduced sanction.
4. It would be inappropriate to impose a financial penalty on an athlete where it was not demonstrated that the latter received a salary or any financial rewards in consideration for his/her sports activities. Furthermore, a fine is not justified in a case in which there was no intent to gain any unfair advantage over other competitors or to interfere with fair competition, and where there was no demonstration that an athlete otherwise met the requirements of the very specific mandatory UCI ADR provision on fines.

I. THE PARTIES AND THE FACTUAL BACKGROUND

A. The Parties

a) *The Appellant*

1. Union Cycliste Internationale (the Appellant, hereinafter also referred to as “UCI”) is the association of national cycling federations, the International Olympic Committee-recognized international sports federation for the sport of cycling around the world. The purpose of UCI is to direct, develop, regulate, control and discipline cycling under all forms worldwide.

b) *The Respondents*

2. Mrs. Monica Bascio (the “First Respondent”, hereinafter also referred to as the “Athlete”), is a paracyclist in the women’s elite category with a license from the national cycling federation of the United States, USA Cycling.
3. The United States Anti-Doping Agency (the “Second Respondent”, hereinafter also referred to as “USADA”) is the national anti-doping agency of the United States. USADA is the competent body for anti-doping issues in the United States and is considered the hearing panel of USA Cycling pursuant to article 256 of the UCI Anti-doping Regulations (“UCI ADR”).

B. The Factual Background of the Dispute

4. In May 2012, the Athlete participated in and won the 2012 UCI Road Para-cycling World Cup event in Rome, Italy, an event on UCI’s international calendar.
5. On 26 May 2012, the Athlete was subject to an in-competition urine doping control.
6. In the Doping Control Form that she duly signed the same day, under section 3 requesting her to list the medications “... *taken over the past 7 days* ...”. she indicated “*Emergency Vitamin Supplement (today), tylenol [sic] (25/05/2012), hylites [sic] electro lites (today), trimethoprim (25/05/2012), rinofluimucil (today)*”, and under section that she had “*No Comment*”.
7. The Analysis Result Report dated 20 June 2012 issued by the World Anti-Doping Agency (“WADA”) accredited laboratory of Athens, Greece, indicated that there had been an Adverse Analytical Finding and specified that the prohibited substance found in the sample was “tuaminoheptane”, which under section S6.b. of the applicable WADA Prohibited List is a prohibited substance classified as *Specified Stimulant*.
8. On 11 July 2012, UCI notified the Athlete of the Adverse Analytical Finding.
9. On 12 July 2012, the Athlete waived her right to have the B-sample analyzed and within the same letter, she admitted her anti-doping rule violation by alleging that the presence of tuaminoheptane in her urine was due to her use use of the nasal decongestant “Rinofluimucil”.

10. On 17 July 2012, in light of the Athlete's admission, she was afforded the opportunity to file written explanations on the events leading to the anti-doping rule violation, with a view to reaching an agreement.
11. On 18 July 2012, the Athlete filed an explanation and documents before the UCI.
12. On 3 August 2012, UCI proposed to suspend the Athlete for eighteen months.
13. With the Athlete having refused UCI's proposal, UCI requested, on the same day, that USA Cycling initiate disciplinary proceedings against the Athlete for her anti-doping rule violation.
14. On 14 August 2012, the Athlete agreed to accept a retroactive 3-month suspension proposed by USADA (the "Decision").
15. On 5 and 7 September 2012, the Athlete won silver medals in the WH3 Time Trial and WH1-3 Road Race during the 2012 London Paralympic Games.
16. It was not until after the London Paralympic Games that UCI filed a challenge before the Court of Arbitration for Sport ("CAS") of the Decision.

II. SUMMARY OF THE ARBITRATION PROCEEDINGS

17. On 14 September 2012, UCI filed its Statement of Appeal with CAS against the Decision.
18. On 3 October 2012, UCI filed with CAS its Appeal Brief.
19. On 29 October 2012, the Athlete filed with CAS her Answer, including the following prayers for relief:
20. On 12 November 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Dr. Hans Nater, President of the Panel, His Honour James Robert Reid QC and Mr. Jeffrey G. Benz as co-arbitrators.
21. On 6 December 2012, USADA filed with CAS its Answer with the following request to the Panel:
"that the Panel and the parties recognize that USADA's limited involvement or lack of response to future submissions is the result of USADA's need to focus its resources on other matters and is not motivated by lack of concern regarding the outcome of this case".
22. On 18 December 2012, the First Respondent informed the CAS Court Office that she shared USADA's position that a hearing is not necessary in this matter.
23. On 27 December 2012, the Appellant informed the CAS Court Office that it would agree not to have a hearing in this proceeding provided that it could submit a reply to the Respondents'

Answers, in particular concerning the issue of “*the CAS scope of review and the consequences of extending Mrs. Bascio’s ineligibility period*”.

24. By CAS letter of 31 January 2013, the parties were informed that the Panel had decided not to hold a hearing in the present matter. However, the parties were given the opportunity to submit additional written submissions, restricted to the issues of the CAS scope of review and the consequences of extending Monica Bascio’s ineligibility period.
25. In the same letter the parties’ attention was drawn to the fact that the Panel reserved its right to re-consider the issue of whether a hearing would be necessary upon receipt of the parties’ additional submissions.
26. On 21 February 2013, the First Respondent requested the CAS Court Office to confirm whether the Appellant had filed any additional submissions within the deadline prescribed in the CAS letter of 31 January 2013.
27. By letter of 22 February 2013, the CAS Court Office confirmed that no reply had been filed by the Appellant within such deadline and advised the parties that the Panel would therefore render its decision in this matter on the basis of the file at stake in due course.
28. On 25 February 2013, the Appellant confirmed that it had not sent any additional written submissions to the CAS and requested an additional deadline until 4 March 2013 to make an additional submission, due to a misreading of the CAS letter of 31 January 2013.
29. On the same day, the CAS Court Office permitted the Respondents to express their position on such request by 27 February 2013.
30. By letter of 28 February 2013, the First Respondent objected to the Appellant’s aforementioned request.
31. By letter of 1 March 2013, the CAS Court office informed the parties that the Panel had granted to the Appellant a deadline until 5 March 2013 to file its additional submission.
32. On 5 March 2013, the UCI filed its additional submission within the new deadline.
33. On 25 March 2013, the Respondents submitted their reply to the Appellant’s additional submission.

III. THE PARTIES’ SUBMISSIONS

34. This section of the award does not contain an exhaustive list of the parties’ contentions, its aim being to provide an overview of the substance of the parties’ main arguments.
35. In considering and deciding upon the parties’ claims in this award, the Panel has accounted for all of the submissions made and evidence adduced by the parties, whether or not they are specifically referred to. While the Panel has considered all of the facts, allegations, legal

arguments and evidence submitted by the parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain the Panel's reasoning.

A. UCI

36. The UCI requests the Panel,

“to set aside the contested decision;

To sanction Mrs. Bascio with a period of ineligibility of 2 years, starting on the date of the Panel's decision;

To disqualify Mrs. Bascio from the 2012 UCI World Cup – Para-cycling Road, Rome and to disqualify any subsequent results;

To condemn Mrs. Bascio to pay to the UCI a fine amounting to 1'500.- CHF;

To condemn Mrs. Bascio to pay to the UCI the cost of the results management by the UCI, i.e. 2'500.- CHF;

To order Mrs. Bascio and USADA to reimburse to the UCI the Court Office fee of CHF 1'000.-;

To condemn Mrs. Bascio and USADA jointly to pay to the UCI a contribution to the costs incurred by the UCI in connection with these proceedings, including experts' and attorneys' fees;

To condemn Mrs. Bascio and USADA jointly to bear the cost of arbitration”.

37. In essence, the Appellant submits the following:

- It has met its burden of proof by establishing to a degree of (more than) comfortable satisfaction that the Athlete committed an anti-doping rule violation under article 21.1 of the UCI ADR.
- The mere presence of the specified stimulant tuaminoheptane is sufficient to demonstrate an anti-doping rule violation according to article 21.1.3 ADR.
- The Athlete does not contest the presence of the prohibited substance in her sample as she admitted the anti-doping rule violation.
- The Athlete is responsible for ensuring that no prohibited substance enters her body and is responsible for any prohibited substance present in her bodily specimens.
- Regardless of the Athlete's supposed health justification, she did not benefit from a Therapeutic Use Exemption (TUE) granted by the UCI for any kind of treatment.
- Tuaminoheptane being a stimulant increases *de facto* the sports capacities of an athlete. Accordingly, the intake of a specified stimulant is a violation *per se* and establishes a presumption of a doping intent.
- Even if the Panel were convinced to a comfortable degree of satisfaction that Mrs. Bascio, when using tuaminoheptane, did not intend to enhance her sports performance, her degree of fault is sufficiently serious to deny her an elimination or, in any case, a twenty-one-month reduction, of the otherwise applicable period of ineligibility.

- The First Respondent has been an elite Paralympic athlete for fourteen years she has been submitted to numerous drug tests throughout her career and is therefore well-versed in the anti-doping regulations.
- The Athlete was granted in the past a TUE, which demonstrates that she is not only aware of the anti-doping rules, but has put them into practice.
- The First Respondent cannot shift her responsibility due to the fact that Rinofluimucil was recommended by a pharmacist. Rinofluimucil is an intranasal vasoconstrictor used to treat nasal congestion and tuaminoheptane is declared as one of the two main ingredients. Such substance has been explicitly forbidden on the WADA Prohibited Substances List since 2007.
- The First Respondent did not ensure that the medication she purchased contained a prohibited substance. The Athlete's obligation to ensure that a medication prescribed by a health professional does not contain any prohibited substance is especially amplified when the professional is not a sport medicine expert as *in casu*.
- The Athlete did not take sufficient effective steps to ensure the respect of the ADR. She was grossly negligent as she used Rinofluimucil, medication she did not know, and purchased in a foreign country of which she did not understand the language, two days prior the competition.
- Furthermore, it was easily verifiable that Rinofluimucil contained the prohibited substance, tuaminoheptane, considering that it is highlighted in bold characters on the package, the bottle and on the first page of the leaflet, repeated throughout the instructions. Even the manufacturer of this medication stresses the correlation between the medication and positive testing with the following mention on the leaflet: "*Attenzione per chi svolge attività sportive: il prodotto contiene sostanze vietate per doping. E vietata un'assunzione diversa, per schema posologico e per via di somministrazione, da quelle riportate*". Appellant's free translation: "*Warning for people practicing sports activities: the medication contains forbidden substances for doping. It is forbidden to use the medicine by a different route or exceed the posology*".
- Accordingly, the Athlete's level of care to avoid the use of a decongestant was extremely low, in view also of her university degree in Occupational Therapy and her fourteen-year career as an athlete. The lack of knowledge of Italian cannot be alleged by the athlete, the terminology in both languages being very similar, "*tuaminoheptano solfato*" which is "*tuaminoheptane sulphate*" in English.
- Anyway, if the Athlete's state of health had been as severe as she claims, she should have refrained from taking part in the competition.
- Considering the above, the Athlete's lack of care excludes any justification for a reduced sanction and the standard two-year period of ineligibility under article 293 UCI ADR is applicable.

Appellant's additional submission of 5 March 2013

a) CAS scope of review

- The mission of the CAS is that of an appeal body and not that of a review body.
- According to articles R57, R58 of the CAS Code and 344 of the UCI ADR, its mission is to judge the facts and the law *de novo* and not to examine whether the contested decision is acceptable or not. The CAS decides the case itself by making its own assessment of the case and renders a decision that replaces the contested decision.
- The CAS scope of review is not limited by any clause contained in the World Anti-doping Code (WADC). On the contrary, it provides a right of appeal for various parties that were not a party in the first instance proceedings, which confirms its intention to achieve a uniform jurisprudence and an equal treatment of all athletes. The CAS shall thus not be limited in its powers to decide all aspects of the case *de novo*.
- The agreement passed between the Respondents contained no reasons for a reduction of the two-year period of ineligibility, which were given *a posteriori*, at the request of the UCI. This particular context is another justification for the Panel to examine the case *de novo* and make its own assessment.
- In the event the conditions of Article 295 of the UCI ADR, which corresponds to article 10.4 of the WADC, are met, the appeal body shall determine the degree of fault of the athlete and assess whether any reduction of the two-year period of ineligibility, which is the starting point, may be justified.
- Accordingly, the CAS owes no deference to USADA's decision in the present matter.

b) Consequences of extending Mrs. Bascio's ineligibility period

- Mrs. Bascio underwent a three-month suspension starting from 26 May 2012, which was almost entirely retroactive (two months). She was in fact banned from participating in competitions for 12 days only.
- In the event the Panel decides that the period of ineligibility must start on the date of its decision and that article 316 of the UCI ADR (timely admission) does not apply, Mrs. Bascio shall be entitled to a credit of 12 days.
- In the event the Panel decides to impose a period of ineligibility of more than three months, starting on the date of its decision and as part thereof, the agreed suspension between the Respondents, Mrs. Bascio shall be entitled to a credit of three months.
- Accordingly, the "additional" period of suspension in excess of the three months does not constitute a second sanction but would be part of the unique sanction imposed by the Panel on Mrs. Bascio, which may be executed in two separate periods of time. This is inevitable in cases where the appellate body imposes a longer period of ineligibility than that imposed by the first instance hearing body.
- The concept of a period of ineligibility to be executed at different times has always existed in cycling (cf also article 12.1.037 of the UCI cycling regulations).

B. Respondents

38. Respondent Monica Basico requests the following:

“(…)

13.1.1 that the UCI’s appeal should be denied;

13.1.2 that the three-month sanction issued by USADA be maintained;

13.1.3 that the UCI be ordered to pay all of the costs of this arbitration pursuant to CAS Art. R64.5;

13.1.4 that this Panel decline to assess any of the costs of this arbitration upon Respondent Monica Bascio; and

13.1.5 that Respondent Monica Bascio be awarded a contribution toward her costs in connection with this appeal, pursuant to CAS Art. R64.5”.

39. In essence, the Athlete submits the following:

- The 3-month sanction imposed on the Athlete by USADA is a reasonable penalty under article 295 of the UCI ADR.
- The Athlete established i) the origin of the prohibited substance and ii) that, by ingesting such a substance, she had not intended to enhance her performance.
- Furthermore, the length of her period of ineligibility is within the range of sanctions imposed on other athletes who tested positive for a similar specified substance (methylhexanamine), or where the prohibited substance was listed on the label.
- Contrary to the Appellant’s allegations, first instance decisions of national and international doping tribunals provide helpful guidance.
- She had always paid attention to anti-doping issues, as shown by her personal history and clean anti-doping record over many years.
- She i) admitted her anti-doping rule violation; ii) waived her right to the “B” sample analysis; iii) made inquiries by the pharmacist as to whether, as an athlete subjected to doping testing, she could take the medication Rhinofluimicil; iv) conducted internet research with respect to the first ingredient listed on the bottle, even if it was written in Italian. Furthermore, the use of Rhinofluimicil was medically justified and not intended to enhance her performance.
- The case law listed by the Appellant in its Appeal Brief is irrelevant in the case at hand.
- Accordingly, the 3-month ban imposed on the Athlete should be confirmed and the Appeal rejected. Increasing the sanction would effectively result in a second sanction to the Athlete for “*her one and only positive test*”. which would be excessive.
- The Appellant did not file any appeal, whereas the Athlete’s period of ineligibility ended on 25 August 2012 and she returned to competing on 5 September 2012 (Paralympic Games).
- According to CAS case law (CAS OG 06/001), fairness requires that in cases that do not involve prohibited substances with long-lasting performance-enhancing effects, and

where athletes have tested negative since the date of the positive test, those subsequent results be not disqualified. This should also apply for the Athlete in the present case.

- In the event, the Panel decides that article 295 of the UCI ADR is not applicable then this is a case of no significant fault or negligence pursuant to article 297 UCI ADR.
- The starting date of the sanction should be the date of the sample collection, namely 26 May 2012.
- The fine requested by the Appellant is not appropriate in the present matter as it is specified in item 3 of article 326 of the UCI ADR that for non-professional riders, "*the imposition of a fine is optional*".
- Finally, there should be no costs awarded against the Athlete, which would otherwise result in a disproportionate penalty and therefore violate Swiss law.

Athlete's reply dated 25 March 2013 to the Appellant's additional submission of 5 March 2013

a) CAS scope of review

- While according to the Appellant, some CAS panels have stated that no deference is owed, other CAS panels say that some limited amount of deference should be granted.
- The Athlete has never contented that this Panel must completely defer to the sanction issued in the first instance. However, there are good reasons to hold that a CAS panel shall only modify a sanction when the sanction is evidently and grossly disproportionate to the offence, in order to avoid and discourage needless appeals.
- A *de novo* CAS panel should certainly not permit a party, such as the UCI, from taking factually and legally inconsistent positions. The Appellant had initially conceded that the Athlete had met the requirements for the application of 295 UCI ADR (specified substance) and, on appeal, now takes the opposite position.
- The reading made by the Appellant of article 295 UCI ADR, whereby the sanction for a first offence would be two years and any reduction should be taken as appropriate, is wholly unjustified. If the UCI (WADA) wanted the rule to read that the sanction was two years with a possibility to reduce, then the rule would have specifically stated it so.
- Considering the application of article 295 of the UCI ADR and the principle of proportionality, the three-month suspension imposed by USADA was appropriate.

b) Consequences of extending Mrs. Bascio's ineligibility period

- It is undisputed that Mrs. Bascio admitted the anti-doping rule violation within 24 hours of being confronted with it, at which time she also waived her right to have the B-sample analysed. Accordingly, the Appellant's contention to suggest that the Panel rejects the application of article 316 of the UCI ADR (timely admission) cannot be seriously considered.
- It is undisputed that USADA imposed a three-month ban on the Athlete. In the event the Panel determines that such suspension was not adequate under the rules, there is no rule

which would permit it to re-designate such suspension as a 12-day suspension for the purpose of determining any credit that should be granted for a suspension which has already been served.

- In the event the Panel increases the sanction, it would unquestionably be a second sanction, to be served almost one year later. Furthermore, the Athlete, having lost the majority of her 2012 results through disqualification, will lose at least one more complete racing season.
 - The Appellant gives no satisfactory explanation for how the rules allow to be split in this way.
 - In addition, the Appellant's request for relief, which amounts to nearly a three-year sanction, appears to be totally disproportionate to the facts of the case.
40. USADA submits that, for the following reasons, the circumstances of Mrs. Bascio's positive test and her degree of fault warranted a three-month suspension:
- USADA considered that the Athlete clearly established the source of the prohibited substance in her body and did not intend to enhance her sports performance so that a reduced sanction under the terms of article 295 of the UCI ADR was justified.
 - USADA based its conclusion on "*(i) the totality of Ms. Bascio's circumstances at the time of the doping control; (ii) the available case law concerning doping offenses involving tuaminoheptane; (iii) the sanction history of the UCI for doping offenses involving tuaminoheptane and other specified substances; (iv) the sanction history of other International Federations for doping offenses involving tuaminoheptane and other specified substances; and (v) CAS case law for doping offenses involving specified substances where the Panel found a lack of intent on the part of the athlete to enhance sport performance or mask the use of a performance-enhancing substance*".
 - The Athlete could demonstrate that at the time of the purchase of the medication, Rhinofluimicil, she was suffering from nasal congestion and feared that a lack of treatment could cause a relapse of her asthma in the days prior to the competition and satisfied therefore the evidentiary requirements of comfortable satisfaction under article 295 UCI ADR.
 - The 3-month period of ineligibility is appropriate and justified in view of the overall circumstances of the present matter and supported by relevant case law involving the same substance or similar specified substances.
 - Considering that the World Anti-Doping Code ("WADC") encourages anti-doping organizations to exercise discretion and tailor sanctions in cases involving specified substances to the particular facts and circumstances of the case, UCI's approach is inconsistent with the spirit of the WADC.
 - Finally, USADA states that it would no longer participate actively in the present procedure.

USADA's additional submission of 25 March 2013

a) CAS scope of review

- In cases where the athlete has been sanctioned with a period of ineligibility and does not appeal against the decision of the first instance anti-doping, such decision is generally deferential when it is reasonable and consistent with the legal standards.
- On the contrary, in cases where the athlete wants to appeal against the length of suspension imposed on him, the principles of deference to the decision below are not applicable.
- It is undisputed that the Panel may under the CAS rules, replace USADA's decision with its own. The question is therefore whether the Panel is required to exercise its right to conduct a complete and full scale *de novo* review where the UCI has identified no legal defect in USADA's decision, has not contented that the decision was unreasonable and simply asks to extend the length of the sanction because its rules gives UCI a right to appeal.
- Accordingly, it is not because the rules give UCI the right to appeal and the Panel upon UCI's request has the authority to replace USADA's decision with its own, that it is obliged to do so.
- The legal principle of deference is a salient aspect of the "law" which the Panel has the full power to review and apply in this case. Consequently, based on previous CAS case law (*CAS 2009/A/1870*; *CAS 2011/A/2518*; *CAS 2007/A/1283*; *CAS 2010/A/2283*), to give deference to USADA's decision on the length of the sanction and not to increase a sanction which is concededly both within the law and reasonable, is part of the law which the Panel may review and apply.

b) Consequences of extending ineligibility period

- The sanction was appropriately started on the date of the sample collection due to several UCI delays in dealing with this matter.
- The Appellant has not provided any explanation to the Athlete for the delay between the sample collection (26 May 2012) and the notification to the Athlete (11 July 2012) of the Adverse Analytical Finding and there has been no suggestion that the delay was attributable to the Athlete.
- The Athlete has been very responsive during the whole proceedings, immediately acknowledging an inadvertent rule violation and almost instantaneously providing both the UCI and USADA with the required information to evaluate her case.
- Pursuant to articles 315 and 316 of the UCI ADR, it was, and is appropriate to start the Athlete's ineligibility period from the date of the sample collection, namely on 26 May 2012.
- USADA's decision to impose a three-month period of ineligibility on the Athlete shall be upheld.

IV. DISCUSSION OF THE CLAIMS

A. CAS Jurisdiction and admissibility

41. The jurisdiction of CAS, which is not disputed by the parties, derives from Article R47 of the Code of Sports-related Arbitration (“CAS Code”) and Articles 272 and 329-348 of the UCI ADR which provide that *“the UCI may enter an appeal against the decision rendered by the body that acted on behalf of the national federation of the license-holder by taking the matter to arbitration before an arbitration tribunal constituted in accordance with the statutes and regulations of the CAS in Lausanne”*.
42. Consequently, the CAS has jurisdiction to adjudicate this appeal.
43. The contested decision was rendered on 14 August 2012 and according to the Appellant’s Statement of Appeal the complete file was received by UCI on 23 August 2012. The Appeal was filed with CAS on 14 September 2012 and therefore within the one-month deadline of the receipt of the complete file provided by Article 334 of the UCI ADR. Accordingly, the appeal is admissible.

B. Applicable Law

44. Art. R58 of the CAS Code provides that:
“The Panel shall decide 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 shall give reasons for its decision”.
45. Consequently, given the scope of application of the UCI ADR defined therein, this appeal shall be decided on the basis of the UCI ADR as well as Swiss law subsidiarily.

C. The Merits of the Appeal

a) The Panel’s scope of review

46. Based on Article R57 of the CAS Code the Panel has full power to review the facts and the law of the case.
47. The Appellant is right in stating that the mission of the CAS is that of an appeal body and not that of a review body.
48. The Panel repeats and endorses what was said in the case CAS 2011/A/2518, confirmed in the case CAS 2012/A/2804:
“10.2 Rule 57 of the Code (...) is phrased in the widest terms. The power is firstly a “full one” and, secondly, “to review the facts and the law”; i.e. both. It has been described in awards too numerous to name as a de novo power. (...)
(...)

10.6. *Where, as is the case with Article R57 of the Code, rules or legislation confer on an appellate body full power to review the facts and the law, no deference to the tribunal below is required beyond the customary caution appropriate where the tribunal had a particular advantage, such as technical expertise or the opportunity to assess the credibility of witnesses”.*

b) *Elimination or Reduction of the Period of Ineligibility based on Article 295 UCI ADR*

49. Article 295 UCI ADR states as follows:

“Where a Rider or Rider Support Personnel can establish how a Specified Substance entered his body or came into his possession and that such Specified Substance was not intended to enhance the Rider’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility for a first violation found in article 293 shall be replaced with the following:

at a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the License-Holder must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance-enhancing substance. The License-Holder’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility”.

50. According to Article 295 UCI ADR, two conditions must be satisfied to allow for the possibility for reduction of the period of ineligibility. The first condition that the athlete must satisfy is whether he or she can establish how the specified substance entered his or her body. The second condition that the athlete must satisfy is whether he or she can establish that such specified substance was not intended to enhance his or her sport performance.

51. Although the UCI did not formally concede for the purpose of the appeal that the source of Mrs. Bascio’s Anti-Doping Rule Violation was the intake of Rhinofluimicil to treat Sinusitis during the UCI World Cup – Para- Cycling-Rode in Rome held from 25 to 27 May 2012, it suggested no other possible source. The Panel is comfortably satisfied on the basis of the evidence before it and in the light of the concession made by the UCI in its letter dated 3 August 2012 (as to which see paragraph 56 below) that the source was indeed the intake of Rhinofluimicil taken to treat sinusitis. Rhinofluimicil contains Tuaminoheptane, a specified substance, which has been explicitly forbidden since 2007. Consequently, the first condition for the application of Article 295 UCI ADR has been met.

52. In order to meet the second condition, the athlete must, in the circumstances of this case, produce corroborating evidence in addition to his or her word, to establish to the comfortable satisfaction of the hearing panel the absence of an intention to enhance sport performance. It is inevitable that any Panel will look with some scepticism on the assertion of an athlete that medication was taken with no intent to enhance performance, and the Panel has considered with great care whether Mrs. Bascio has discharged the onus placed upon her.

53. The Panel takes the view that Mrs. Bascio had no knowledge that Rhinofluimicil contained the specified substance Tuaminoheptane. However, as confirmed in CAS A2/2011 the mere fact

that the athlete did not know the product contained a specified substance did not itself establish the relevant absence of intent.

54. In its letter dated 3 August 2012 to USA Cycling, the UCI conceded that Mrs. Bascio had *“established to a comfortable satisfaction the source of the prohibited substance and the lack of intent to enhance performance”*.
55. Although, the UCI, in its Appeal Brief challenged its own earlier position by submitting that the Rhinofluimicil was used to get better for the upcoming sport event, the Panel is convinced to its comfortable satisfaction that Mrs. Bascio, when taking Rhinofluimicil, did not intend to enhance her sport performance for the competition starting 25 May 2012. Mrs. Bascio provided the UCI with a detailed explanation and supporting documentation demonstrating the circumstances that resulted in Tuaminoheptane being found in her sample. USADA, investigating the circumstances surrounding the Athlete’s use of Tuaminoheptane, concluded that Mrs. Bascio had adequately established that she did not intend to enhance performance through the use of the medication Rhinofluimicil. At no time did the UCI challenge the Athlete’s bona fide statements.
56. The Panel, in reaching this conclusion, has carefully considered the emails exchanged between Mrs. Bascio and her husband, which, as submitted by the UCI, established that Mrs. Bascio’s health condition seems to have been less intense than the alleged *“severe congestion, headache, inability to sleep”* expressed in her statement regarding the anti-doping rule violation. This Panel notes that this email exchange had been considered by all the parties when the agreement to suspend the athlete retro-actively for a three month period was reached on 14 August 2012. The Athlete’s evidence that she used Rhinofluimicil to treat her cold and sinus symptoms has been corroborated by the statements of her roommate Greta Neimanas and the email correspondence between the Athlete and Ian Lawless and her coach Allison Powers. The UCI has not come forward with any new evidence. Nor has it submitted that those statements were not true.
57. In addition, Mrs. Bascio declared Rhinofluimicil on her doping form control. She did that with the awareness of the advice given by the pharmacist that the use of the medication would not result in a doping violation.

c) Degree of fault

58. According to Article 295 (3) UCI ADR the athlete’s degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility. On 14 August 2012, Mrs. Bascio accepted a three month period of ineligibility, beginning on May 26, 2012 as well as disqualification of her competitive results obtained on and subsequent to May 25, 2012.
59. It is undisputed that Mrs. Bascio is at fault for the presence of a prohibited substance in her urine sample.
60. The Appellant takes the view that the standard sanction of two years ineligibility for a first anti-doping violation should not be reduced. Conversely, the Respondents submit that the standard

period of ineligibility should be reduced to three month as per the Acceptance of Sanction dated 14 August 2012.

61. Among the several circumstances which are speaking for a longer period of ineligibility than three month are the following facts and circumstances which demonstrate the negligence of Mrs. Bascio and are underlined by the Panel:
 - Mrs. Bascio did not contest that the specified substance “Tuaminoheptane” is highlighted on the bottle, in the leaflet and on the package. This reference to the specified substance is certainly understandable even for a non-Italian-speaking person.
 - The leaflet contains a specific warning for people practicing sports activities.
 - Mrs. Bascio is an educated and experienced athlete familiar with the risks of doping.
 - Mrs. Bascio omitted to request a TUE.

62. Among the several circumstances which speak for maintaining a three month period of ineligibility the following facts and circumstances are underlined by the Panel:
 - Mrs. Bascio indicated the use of Rhinofluimicil on the doping control form.
 - Mrs. Bascio submitted on 12 August 2012 a detailed account of the circumstances of her positive test.
 - Mrs. Bascio has a clean anti-doping record over her long career.
 - It has not been disputed by UCI that Mrs Bascio advised the pharmacist at the pharmacy located one block from the team hotel in Rome that she was an athlete and subject to doping controls. The pharmacist confirmed that her use of the medication would not result in a doping violation.
 - Mrs. Bascio informed the team’s assistant coach that she had obtained a medication from a local pharmacy.
 - Mrs. Bascio could not benefit from the same support as normal professional athletes and was not accompanied by medical staff when she committed the anti-doping violation.
 - The warning and contents label on the medication was written in Italian, a language that is not Mrs. Bascio’s native tongue, nor was there evidence she had any knowledge of the language.

63. In view of the above elements, the Panel has reached the conclusion that Mrs. Bascio has committed a minor anti-doping rule violation which justifies a reduced sanction. A period of ineligibility of 3 months is therefore appropriate in the circumstances. In coming to this result, the Panel has had regard to USADA’s cogently reasoned decision. The Panel also bore in mind the delay in notification of the positive test and the delay in giving notice of intention to appeal against the decision of USADA until the last possible moment shortly after Mrs. Bascio had competed in the Paralympic Games and after Mrs. Bascio had served the period of ineligibility imposed upon her by the Decision. In all the circumstances, it would not in the view of the Panel now be in the interests of justice or achieve any useful purpose to impose a further period of ineligibility, particularly in circumstances where any further disqualification of results would

be inappropriate as such results could not have been affected by Mrs. Bascio's anti-doping rule violation.

d) Fines

64. UCI requests Mrs. Bascio be condemned to pay to the UCI a fine amounting to CHF 1'500.

65. Article 326 UCI ADR reads as follows:

"In addition to the sanctions provided for under articles 293 to 313 anti-doping violations shall be sanctioned with a fine as follows:

1. The fine is obligatory for a License-Holder exercising a professional activity in cycling and in any event for members of a team registered with the UCI.

(...)

2. No fine shall be imposed for violations for which article 296 (No Fault or Negligence) is applied.

3. In other cases than those under paragraphs 1 and 2 the imposition of a fine is optional

(...)"

66. The Panel reaches the conclusion that Mrs. Bascio does not get paid for her sports activities. UCI has not produced any evidence that Mrs. Bascio received a salary in consideration for her sports activities, nor has it sought to identify any financial rewards received by Mrs. Bascio from her sporting activities. UCI also did not demonstrate that Mrs. Bascio was a UCI "License-Holder" who was a member of a team registered with the UCI. It would, in the Panel's view be inappropriate in these circumstances to impose a financial penalty in a case in which there was no intent to gain any unfair advantage over other competitors or to interfere with fair competition, and where there was no demonstration that the athlete otherwise met the requirements of the very specific mandatory UCI ADR provision on fines. Therefore, UCI's request to impose a fine on Mrs. Bascio is rejected.

e) Conclusion

67. While the Panel might well have been of a mind to impose a longer period of ineligibility than the period of three months imposed by USADA, in the particular circumstances of the present case the Panel does not think it appropriate to interfere with the sanction originally imposed to make a comparatively minor adjustment to the penalty imposed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by UCI on 14 September 2012 against the decision of USADA of 14 August 2012 is dismissed.
2. The decision of 14 August 2012 of USADA is confirmed.
3. (...).
4. (...).
5. All other requests for relief are rejected.