



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Fabio Iudica, Attorney-at law, Milan, Italy

in the arbitration between

World Anti-Doping Agency, Montreal, Quebec, Canada
Represented by Oliver Niggli and Ross Wenzel, Attorneys-at-law, Lausanne, Switzerland

- Appellant -

and

Ms Marzena Karpinska, Poland

- First Respondent -

and

Polish Weightlifting Federation, Warsaw, Poland
Represented by Szymon Kolecki, President of the Polish Weightlifting Federation, Warsaw,
Poland

- Second Respondent -

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 2

I. INTRODUCTION

1. This appeal is brought by the World Anti-Doping Agency (hereinafter referred to as "WADA" of the "Appellant"), against the decision rendered by the Disciplinary, Anti-Doping and Club Change Committee of the Polish Weightlifting Federation on 3 October 2013 in the appeal proceedings filed by Ms Marzena Karpinska regarding an anti-doping rule violation (hereinafter referred to as the "Appealed Decision").

II. THE PARTIES

2. WADA is a Swiss private law foundation with its headquarters in Montreal, Canada, and its seat in Lausanne, Switzerland, whose object is to promote and coordinate the fight against doping in sport in all its forms.
3. Ms Marzena Karpinska is a professional weightlifter affiliated to the Polish Weightlifting Federation, born on 19 February 1988 (hereinafter referred to as the "Athlete" or the "First Respondent").
4. The Polish Weightlifting Federation is the governing body for weightlifting in Poland, having its headquarters in Warsaw (hereinafter referred to as "PWF" or the "Second Respondent").

III. THE APPEALED DECISION

5. The Appealed Decision is the decision rendered by the Disciplinary, Anti-Doping and Club Change Committee of the PWF on 2 October 2013, in the appeal proceedings filed by the Athlete against the decision issued on 13 September 2012 by the same judicial body of the PWF imposing a sanction of two-years ineligibility for doping on the Athlete.

IV. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
7. On 2 June 2012, during the Polish Weightlifting Championships, the Athlete tested positive for 19-norandrosterone, a metabolite of nandrolone, a prohibited substance included in WADA 2012 Prohibited List (Anabolic Agents), during the analysis performed in Swiss Laboratory for Doping Analysis, instructed by the Institute of Sport - Department of Anti-Doping Research.
8. According to the relevant medical certificates produced by the Appellant, "*delta-values for 19-norandrosterone are superior to 3 delta per mil in comparison with the endogenous reference compounds. These results are consistent with the administration of nandrolone or*

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 3

its precursors". In the same context, the analysis of a B sample of the Athlete "has shown the presence of Prohibited Substance 19-norandrosterone at a concentration of 4.1 ng/ml, which is greater than the DL of 2.5 ng/ml. The combined standard uncertainty 11.6% estimated by the Laboratory at the threshold is 0.29 ng/ml (WADA Technical Document – TD7010DL). Test for pregnancy – negative. Test for norethisterone – negative".

9. On this basis, on 13 September 2012, the Disciplinary, Anti-Doping and Club Change Committee of the PWF, "having examined the document and having heard the witnesses", decided to impose a two-year ineligibility period for doping on the Athlete, starting from 2 June 2012, i.e. the day on which the prohibited substance was detected in the Athlete's body.
10. According to the decision (hereinafter referred to as the "Original Decision"), the Athlete had the right to appeal to the Board of the PWA "through the Committee within 14 days from the service of the decision" by the Disciplinary, Anti-Doping and Club Change Committee.
11. By letter on 4 November 2013, the President of the PWF informed the Polish Commission Against Doping in Sport that on 25 September 2013, the Disciplinary, Anti-Doping and Club Change Committee received a letter from the Athlete asking for the re-examination of her case and that, in this respect, the Committee had decided to shorten the ineligibility period from 2 years to 16 months.
12. In fact, in the abovementioned letter sent to the PWF Disciplinary, Anti-Doping and Club Change Committee, the Athlete, relying on the provisions of the Anti-doping Model Rules for National Anti-Doping Organizations, based her request for reduction on the opinion of Prof. Werner Franke, a German scientist, and by the Institute of Sport.
13. On this basis, the Athlete alleged that the low concentration of Nandrolone detected in the Appellant's body as well as the non-adverse findings of doping tests conducted thirteen (13) days before and three (3) weeks after the relevant Polish championships suggested that the Athlete could not have taken the prohibited substance on purpose.
14. In light of the above, the Athlete considered the two-year ineligibility period imposed by the Disciplinary, Anti-Doping and Club Change Committee in the Original Decision to be excessive and therefore asked the Committee to shorten the sanction period to 16 months.
15. With the Appealed Decision rendered on 3 October 2013, the Disciplinary, Anti-Doping and Club Change Committee upheld the Athlete's request and shortened the ineligibility period from two (2) years to sixteen (16) months.
16. According to the PWF, the Appealed Decision was rendered pursuant to Article 10.4 of the Anti-Doping Model Rules for National Anti-Doping Organizations which permits the elimination or reduction of the period of ineligibility for Specified Substances under specific circumstances.
17. In the light of the Appealed Decision, the Athlete was entitled to compete in the 2013 Weightlifting World Championships which took place in Poland between 20 and 27 October 2013, and placed fifth in her weight category.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 4

18. According to the minutes drafted at its session held on 3 October 2013, the Disciplinary, Anti-Doping and Club Change Committee of the PWF *“having examined the appeal from the sanction imposed on 2 June 2012 during the Polish Championships (held in Piekary Slaskie) on Marzena Karpinska, an athlete of “Znicz” Bilgoraj, has decided to admit the evidence submitted, i.e. the opinion of Prof. Werner W. Franke, an independent scientist specializing in biology and cells, as well as the opinion of the Institute of Sport (both appended), and shorten the ineligibility period from 2 years to 16 months. Consequently, the ineligibility period ends on 2 October 2013.”*
19. The Appealed Decision was notified to the Polish Commission Against Doping in Sport by letter dated 4 November 2013 and then served to WADA on 30 December 2013.

V. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 20 January 2014, WADA filed an appeal before the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) against the Athlete and the PWF with respect to the Appealed Decision by submitting a Statement of Appeal according to Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”). At the same time, WADA informed the CAS Court Office that the Statement of Appeal should be considered as the Appeal Brief pursuant to Article R51 of the CAS Code. In the end, WADA appointed Mr Conny Jörnklint as arbitrator and requested that, in the event that one or both of the Respondents failed to pay their share of the advance of arbitration costs and WADA had to substitute for such party (or parties), Mr Conny Jörnklint be nominated as Sole Arbitrator in the proceedings.
21. By letter of 22 January 2014, the CAS Court Office acknowledged receipt of the Appellant’s statement of appeal/appeal brief, and invited the Respondents to file their answers pursuant to Article R55 of the CAS Code. Moreover, the CAS Court Office set deadlines for the Respondents to jointly nominate an arbitrator and state any objection to conducting these proceedings in English.
22. The PWF filed its Answer by letter dated 20 February 2014. However, since they did not respect the prescribed deadline, i.e. 13 February 2014, by letter on 26 February 2014, the CAS Court Office invited the other Parties to provide their position with respect to the admissibility of the PWF’s answer, otherwise it would be for the Panel to finally decide on the issue.
23. On the other side, the Athlete completely failed to file an Answer in the present proceedings.
24. By letter on 27 February 2014, WADA informed the CAS Court Office that it had no objection to the admissibility of the PWF’s untimely Answer and, at the same time, submitted its observations in reply to the arguments put forward by the Second Respondent in its written submission. Moreover, the Appellant considered that a hearing was not necessary in the present matter and expressed its preference for an award to be rendered on the basis of the Parties’ written submissions.
25. On 17 March 2014, WADA sent a letter to the CAS Court Office by which it noted that since both Respondents refused to pay their share of the advance of costs, it requested that,

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpińska & Polish Weightlifting Federation - page 5

consistent with the provisions of R50 of the CAS Code, the present case be submitted to a Sole Arbitrator.

26. Following the relevant request of the Appellant, by letter on 17 March 2014, the CAS Court Office invited the Parties to express their position with respect to the appointment of a Sole Arbitrator, pointing out that their silence would be deemed acceptance. And that, in case of disagreement between the Parties on the relevant issue, it would be for the Division President to decide.
27. Failing any communication by the Respondents with regard to the composition of the Panel, by letter on 28 March 2014, the CAS Court Office informed the Parties that a Sole Arbitrator would be appointed by the President of the CAS Appeals Arbitration Division, pursuant to Article R50 of the CAS Code.
28. On 16 April 2014, the CAS Court Office informed the Parties that Mr. Fabio Iudica, Attorney-at-law in Milan, Italy had been appointed Sole Arbitrator in the present proceedings.
29. On 24 April 2014, the CAS Court Office informed the Parties that the Sole Arbitrator decided to admit the Second Respondent's Answer.
30. On 13 May 2014, the CAS Court Office notified the Parties that the Sole Arbitrator decided to settle the present dispute based solely on the Parties' written submissions, without a need to hold a hearing, in accordance with R57 of the CAS Code.
31. On 9 July 2014, the Appellant signed and returned the Order of Procedure; on 18 July 2014, both Respondents separately signed and returned the Order of Procedure.

VI. SUBMISSIONS OF THE PARTIES

32. Considering that the Athlete failed to submit an Answer in the present proceedings, the following outline is a summary of the main positions of the Appellant and the Second Respondent and does not comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by Appellant and Second Respondent, even if no explicit reference has been made in what follows. The Parties' written submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

Appellant's Submissions and Requests for Relief

33. WADA made a number of submissions in his Statement of Appeal/Appeal Brief and in its letters to the CAS Court Office on 27 February 2014 and 17 March 2014. These can be summarized as follows.
34. Since the Athlete is affiliated to the PWF, she is subject to the Anti-Doping Model Rules of the Polish Commission Against Doping in Sport (hereinafter referred to as PANDA); it also appeared from the letter from the PWF to PANDA dated 4 November 2013 that the PWF Disciplinary, Anti-Doping and Club Change Committee applied the PANDA Anti-Doping Model Rules to decide the case. In addition, the First Respondent is an International-Level

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 6

Athlete, which was confirmed by the International Weightlifting Federation in an e-mail sent to WADA on 24 January 2014, and which was attached to WADA's letter to the CAS Court Office on 27 February 2014.

35. In this context, the Appellant argues that according to Article 13.2.1 of the PANDA Anti-Doping Model Rules, the Original Decision rendered by the PWF should only have been lodged before CAS, since the appeal involved an International-Level athlete.
36. In any case, the PANDA Anti-Doping Model Rules do not entitle the PWF to review and amend the Original Decision, therefore the PWF lacked any basis for rendering the Appealed Decision.
37. Irrespective of and in addition to the above, WADA also argues that the Athlete did not lodge an appeal within the deadline of 21 days after her receipt of the Original Decision, whether before the CAS or otherwise. In fact, the Athlete's request for review of the Original Decision was received by the PWF Disciplinary, Anti-Doping and Club Change Committee on 25 September 2013.
38. In addition, no reduction of the period of ineligibility would have been possible, not even under Article 10.5.3 of the PANDA Anti-Doping Model Rules since the Athlete did not provide any Substantial Assistance in the meaning of the said rule, not to say that such a reduction would have required the approval of both WADA and the International Weightlifting Federation, which is not the present case.
39. Finally, the Appealed Decision is also fundamentally flawed on its merits for the following reasons:
 - the reduction of the ineligibility period was based on Article 10.4 of PANDA Anti-Doping Model Rules which is not applicable to anabolic steroids, which is indeed the present case;
 - contrary to the Athlete's allegations in her request to re-examination, the analysis instructed by the Institute of Sport - Department of Anti-Doping Research on her samples, definitely demonstrates that the prohibited substance detected in her body resulted from exogenous administration;
 - moreover, Article 10.5.2 of PANDA Anti-Doping Model Rules which is invoked by the PWF for the first time in its Answer, is not applicable to the present case, since the Athlete gave no explanation as to how the prohibited substance entered her system, contrary to the requirements of the said rule.
40. As a conclusion, in its Statement of Appeal/Appeal Brief, the Appellant submitted the following prayers for relief:
 1. *The Appeal of WADA is admissible.*
 2. *The decision rendered by the PWF Anti-Doping Committee on 3 October 2013, in the matter of Ms Marzena Karpinska is set aside.*
 3. *Ms Marzena Karpinska is sanctioned with an additional period of ineligibility of eight months starting on the date on which the CAS award enters into force.*
 4. *All competitive individual results obtained by the Athlete from 3 October 2013 through the commencement of the additional period on ineligibility imposed pursuant to the CAS award shall be annulled.*

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 7

5. *WADA is granted an award for costs.*"

The Second Respondent's Submissions and Requests for Relief

41. The position of the PWF is summarized in its letter to the CAS Court Office dated 20 February 2014, to be regarded as its Answer, and is the following.
42. The PWF does not negate the fact that the prohibited substance was actually present in the Athlete's body and also acknowledges that the relevant substance is included on the WADA Prohibited List.
43. On the other hand, the Second Respondent maintains that the low concentration of the prohibited substance detected in the Athlete's body cannot be the result of a deliberate doping and also emphasizes that all tests which were conducted on the Athlete before and after the relevant adverse findings on 2 June 2012 which gave rise to the present case, were favourable.
44. In this respect, according to the PWF, the Athlete had allegedly no valid reasons to make use of prohibited substances in order to enhance her sport performance, since her sport level and sport results were satisfactory and also, her behaviour and attitude after the disclosure of the positive result allegedly raises doubts as to the deliberate taking any preparation containing a prohibited substance.
45. In addition, the PWF Disciplinary, Anti-Doping and Club Change Committee made no reference to any possible contribution of the Athlete to the presence of the prohibited substance in her body and did not take into account any possible participation of third parties in the relevant adverse finding in the Athlete's body nor any other circumstances which might speak in favour of the Athlete. As a consequence, the sanction of a two-year ineligibility period was imposed arbitrarily.
46. As to the procedural issue, according to the PWF's position, the Athlete had in fact lodged an appeal against the Original Decision on 25 September 2012 before the PWF Board, in accordance with the PWF Disciplinary Regulations, but the PWF Board did not allegedly recognize the appeal. In this context, the Second Respondent maintains that "*it was only after the change of the authorities of the Federation, which took place in December 2012, steps were taken to enable the athlete to execute her rights, recognize the appeal and verify all the circumstances in which there was a finding of presence the prohibited substance in the athlete's body*".
47. The PWF also refers to Article 10.5.2 of the PANDA Anti-Doping Model Rules in the sense that the Athlete allegedly established that she bears No Significant Fault or Negligence with respect to the presence of the prohibited substance in her body.
48. In its written submission, the Second Respondent did not put forward any specific prayer for relief, but simply maintained the admissibility of the procedure followed by the PWF in reviewing the Athlete's case and shortening the sanction imposed by the Original Decision, which was allegedly in accordance with the Anti-Doping and Disciplinary Rules of the PWF.

VII. CAS JURISDICTION

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 8

49. The admissibility of an appeal before CAS shall be examined in light of Article R47 of the CAS Code (Edition 2013), which reads as follows: *“An Appeal against the decision of a federation, association or sports-related body may be filed with CAS if 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”*.
50. Having established that the Athlete is an International-Level Athlete, the Appellant relies on Article 13.2.1 of the PANDA Anti-Doping Model Rules which states as follows: *“In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court”*, reproducing Article 13.2.1 of the World Anti-Doping Code.
51. Moreover, the jurisdiction of CAS is not disputed by the Respondents.
52. Accordingly, the Sole Arbitrator is satisfied that he has jurisdiction to hear this case and in accordance with Article R57 of the CAS Code, the Sole Arbitrator now has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and refer the case back to the previous instance.

VIII. APPLICABLE LAW

53. Article R58 of the CAS Code provides the following: *“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.
54. In their respective written submissions, both the Appellant and the Second Respondent rely on the PANDA Anti-Doping Model Rules, while the Second Respondent also specifically refers to the PWF Disciplinary Regulations.
55. Since the Athlete is affiliated to the PWF and considering that the PWF and its affiliates are subject to PANDA Anti-Doping Model Rules pursuant to Article 1 of the said Rules and also considering that the PWF Disciplinary Regulations shall apply pursuant to § 1, the Sole Arbitrator deems that PANDA Anti-Doping Model Rules (edition June 2011) and the Disciplinary Regulations of the PWF are applicable to the present dispute.

IX. ADMISSIBILITY OF THE APPEAL

56. Article R49 of the 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of*

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 9

the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

57. In addition to that, Article 13.2.3 of the PANDA Anti-Doping Model Rules establish that WADA is among those subjects which are entitled to appeal from decisions made under the said Anti-Doping Model Rules and also, according to Article 13.5 *“the time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party The filing deadline for an appeal or intervention filed by WADA shall be the later of:*

a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or

b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision”.

58. The Sole Arbitrator notes that the Appealed Decision was rendered on 3 October 2013, and notified to the Appellant on 30 December 2013. Considering that WADA filed its Statement of Appeal on 20 January 2014, and also that the admissibility of the present appeal is not contested by the Respondents, the Sole Arbitrator is satisfied that the Appellant's appeal was timely filed and is therefore admissible.

X. MERITS OF THE APPEAL – LEGAL ANALYSIS

59. It emerged from the file and it is also undisputed between the Parties that the Original Decision (imposing a two-year ineligibility period on the Athlete) was rendered by the PWF Disciplinary, Anti-Doping and Club Change Committee on 13 September 2012 and also that the same Committee received a letter from the Athlete requesting the re-examination of her case on 25 September 2013.

60. According to the PANDA Anti-Doping Model Rules, which are applicable to the present case, appeals from decisions regarding Anti-Doping Rule Violations, Consequences and Provisional Suspensions may be appealed exclusively as provided under Article 13.2.

61. The Sole Arbitrator notes that pursuant to Article 13.2.1 of the PANDA Anti-Doping Model Rules, in cases involving an International-Level Athlete, such a decision may be appealed exclusively to CAS in accordance with the provisions applicable before such Court.

62. As established by the Appellant, the Athlete is considered to be an International-Level Athlete in the meaning of the abovementioned Article 13.2.1, since this circumstance was confirmed by the International Weightlifting Federation by communication on 24 January 2014, which was also attached to WADA's letter to the CAS Court Office on 27 February 2014. Moreover, neither the Athlete nor the Second Respondent objected this condition.

63. As a consequence, the Sole Arbitrator believes that the Athlete should have lodged appeal against the Original Decision before this Court within the prescribed deadline of 21 days from the day of receipt of the decision, according to Article 13.5 of the PANDA Anti-Doping Model Rules and that therefore the PWF Disciplinary, Anti-Doping and Club Change Committee had no jurisdiction over the appeal.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 10

64. With regard to the PWF's assumptions that the Athlete had allegedly appealed against the Original Decision on 25 September 2012 before the PWF Board, and that the Appealed Decision was allegedly rendered within the framework under the provisions of the anti-doping and disciplinary rules of the PWF, the Sole Arbitrator makes the following observations:
- as to the respect of the deadline for filing the appeal, the PWF failed to provide any evidence of the filing of the alleged appeal by the Athlete on 25 September 2012; therefore the Athlete's request for re-examination received by the PWF Disciplinary, Anti-Doping and Club Change Committee on 25 September 2013 is unquestionably late both under the applicable PANDA Anti-Doping Model Rules and also under the PWF Disciplinary Regulations invoked by the Second Respondent. In this respect, the Sole Arbitrator notes that according to the Original Decision, the Athlete would have had the right to appeal to the PWF Board within 14 days from the service of the said decision, which condition is not demonstrated;
 - irrespective of the above, in consideration of the matter at stake (Anti-Doping Rule Violation) and also considering the status of International-Level Athlete, the appeal should have been lodged before the CAS according to Article 13.2.1. of the PANDA Anti-Doping Model Rules and not before the PWF Board according to the PWF Disciplinary Rules.
65. As a final consideration, the Sole Arbitrator notes that, in its Answer, the PWF referred to Articles 10.4 and 10.5 of the PANDA Anti-Doping Model Rules as the basis on which the Appealed Decision was allegedly founded. These provisions concern the assessment of mitigating circumstances in determining the appropriate level of sanction under the procedures provided by the same PANDA Model Rules. In this respect, the Sole Arbitrator emphasises that the above-mentioned rules cannot in any case apply outside the context of a formal proceedings to be lodged according to the applicable PANDA Anti-Doping Model Rules, and, particularly, in compliance with the rules governing the jurisdiction as well as the prescribed deadline.
66. In consideration of the foregoing, it is the opinion of the Sole Arbitrator that the appeal lodged by the Athlete against the Original Decision on 25 September 2013 was not admissible since it was not filed within the prescribed deadline and, in any case, since the PWF Disciplinary, Anti-Doping and Club Change Committee had no jurisdiction to decide the relevant appeal according to the applicable PANDA Anti-Doping Model Rules. Accordingly, the Athlete shall face an additional suspension of eight (8) months from the date of this Award.
67. Notwithstanding the above, the Sole Arbitrator finds that imposing the additional disqualification of all competitive individual results obtained by the Athlete from 3 October 2013 through the commencement of the additional period of ineligibility as requested by WADA would mean applying too harsh a sanction, in light of the facts presented in this case.
68. In other words, WADA is seeking an additional eight (8) months of suspension on the Athlete, to start on the date of the CAS award, as well as a suspension of the Athlete's individual results between the first sixteen (16) months and the now eight (8) additional months of suspension. Such a suspension of the Athlete's results in addition to the supplementary eight (8) months of ineligibility would have the additional effect to extend the overall sanction over the period of two (2) years of ineligibility originally imposed. Therefore, the Sole Arbitrator believes that according to Article 10.8 of the PANDA Anti-Doping Model Rules, reasons of fairness suggest that the relevant request for relief put forward by WADA shall not be upheld.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzenna Karpinska & Polish Weightlifting Federation - page 11

69. This is especially true given that the Athlete dutifully served her original sixteen (16) month suspension and began to compete, in good faith, following the conclusion of such suspension. Moreover, the Athlete should not be faulted for improperly filing her appeal of the Original Decision, as directed.
70. Consequently, given that the additional eight (8) months suspension is set to begin from the date of this Award, any awards, earnings, etc. earned by the Athlete from 2 October 2013 until the date of this Award shall be retained by the Athlete.

XI. CONCLUSION

71. In view of all the above, the appeal filed by WADA against the Appealed Decision is partially upheld, and the latter decision is dismissed and replaced by the Original Decision.

XII. COSTS

72. Pursuant to Article R64.4 of the CAS Code, the Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of this arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators, computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters, if any. Article R64.4 of the CAS Code provides as follows:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."

73. In addition to the payment of the arbitration costs, the award shall also determine to the prevailing party or parties a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Article R64.5 of the CAS Code provides as follows:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the award shall 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 outcome of the proceedings, as well as the conduct and the financial resources of the parties."

74. Given that the Appellant's appeal is almost entirely upheld, the Sole Arbitrator is of the view that the costs of this appeal shall be borne in full by the Second Respondent, in an amount to be notified by the CAS Court Office. After an overall appreciation of the matter and legal issues at stake, in consideration of the outcome of the proceedings, and also given the conduct by the PWF which did not object to the irregular appeal proceedings lodged by the Athlete before the Disciplinary, Anti-Doping and Club Change Committee and did not raise any

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzenna Karpinska & Polish Weightlifting Federation - page 12

objection regarding the lack of jurisdiction of the said Committee to review the Original Decision (thus delaying the efficient resolution of this matter), the Sole Arbitrator deems it fair and reasonable that the Second Respondent is condemned to pay to the Appellant an amount of CHF 3,000.00 towards the legal expenses and costs incurred by the Appellant in connection with the present procedure.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3472 WADA v. Marzena Karpinska & Polish Weightlifting Federation - page 13

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency is partially upheld.
2. The decision rendered by the Polish Weightlifting Federation Disciplinary, Anti-Doping and Club Change Committee on 3 October 2013 is set aside.
3. The decision rendered by the PWF Disciplinary, Anti-Doping and Club Change Committee on 13 September 2012 (the Original Decision) is re-established.
4. Ms Marzena Karpinska is sanctioned with an additional period of ineligibility of eight (8) months starting from the notification of the present award by the CAS Court Office.
5. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by the Polish Weightlifting Federation.
6. The Polish Weightlifting Federation shall contribute CHF 3,000.00 towards the legal expenses and costs incurred by the World Anti-Doping Agency in connection with this procedure.
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 5 September 2014

Fabio Iudica
Sole Arbitrator

