

CAS 2007/A/1332 Jónsson v/The International Powerlifting Federation (IPF)

ARBITRAL AWARD

Pronounced by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Mr Conny **Jörneklint**, Chief Judge of the District Court, Kalmar, Sweden

Arbitrators: Dr Dirk-Reiner **Martens**, Attorney-at-law, Munich, Germany
Dr Lars **Halgreen**, Attorney-at-law, Copenhagen, Denmark

in the arbitration between

Mr Audunn Jónsson, Reykjavik, Iceland

Represented by Mr Stefán Karl **Kristjánsson**, Attorney-at-law, Reykjavik, Iceland

As Appellant

and

The International Powerlifting Federation, Munich, Germany

Represented by Dr Karlheinz **Demel**, Attorney, Vienna, Austria

As Respondent

I. PARTIES

1. Mr Audunn Jónsson is a power lifter, who holds a licence issued by the Icelandic Powerlifting Federation.
2. The International Powerlifting Federation (hereinafter referred to as the “IPF” or the “Respondent”) is a non-governmental association of national power lifting federations recognized by the IOC as the international federation governing the sport of power lifting in all forms worldwide. Its registered office is in Munich, Germany.

II. BACKGROUND FACTS

II.1.

The case concerns the issue whether the drug test of Audunn Jónsson should be invalidated because of an alleged breach of the applicable rules, in particular the IPF Anti-Doping Rules and the International Standard for Testing.

II.2 THE SAMPLE COLLECTING PROCEDURE AND THE FINDINGS IN ANTI-DOPING TESTS

3. Mr Audunn Jónsson participated in the 2006 World Championships in power lifting, which took place in November 2006 in Stavanger, Norway.
4. On 8 November 2006, Mr Audunn Jónsson was subject to what IPF considered as an Out-of-Competition doping test. The anti-doping control form provides the following information:
 - Mr Audunn Jónsson confirmed that he had recently taken "*Irdomedacin (idoud), Ibuprofen, Multi Vitamins, Croatin and Glutamin.*"
 - The urine provided by Mr Audunn Jónsson was dispatched in two bottles (Berlinger System). Their code numbers were A 2214122 and B 2214122.
 - Mr Audunn Jónsson signed the following statement: "*I declare that I am satisfied with the manner in which the sampling-taking procedure was carried out*" and so did Mr. Jónsson's roommate, Mr. Torvaldur Kristbergsson.
5. On 11 November 2007 – the day when Mr Audunn Jónsson's competed and won the 125 kg weight class in the World Championships - Mr Jónsson and his coach Kristinn Oskar Haraldsson made a formal complaint regarding the Doping Control Session. The complaint was made in a letter handed to Mr Robert Wilks.
6. Mr Detlev Albrings, then the Secretary General of IPF wrote an answer to the letter on the same day and passed it on to a representative of the Icelandic Powerlifting Federation on that same evening.
7. The "Deutsche Sporthochschule Köln, Institut für Biochemie" (hereinafter referred to as "the Laboratory") in Cologne, Germany, is a WADA accredited laboratory for doping analysis. On 14 November 2006, it received the collected samples, which were marked with the code number A and B 2214122, and gave the samples the Laboratory Code number 9692/06 A and B.

8. The report from the Laboratory dated 4 December 2006 established the following concerning the analysis of the A Sample: 17 Beta-Hydroxymethyl-17Alfa-methyl-18-norandrost-1,4,13-trien-3-on, which is the chemical equivalent of metandienone.
9. On 7 December 2006 the Secretary General of IPF, Mr Detlev Albrings informed the General Secretary of the Icelandic Powerlifting Federation, Maria Gudsteinsdottir, about the Adverse Analytical Finding in Mr. Jónsson's A sample.
10. On 17 December 2006, IPF was informed that Mr Audunn Jónsson requested the analysis of the B Sample.
11. On 27 December IPF was informed that Mr Audunn Jónsson had transferred the cost for the analysis to the account of IPF.
12. On 5 January 2007 the Secretary General of IPF received information that neither Mr Audunn Jónsson nor any representative of him would attend the analysis of the B Sample.
13. On 10 January 2007 the B Sample analysis was conducted by the Laboratory which confirmed the result of the analysis of the A Sample.
14. The form regarding the opening of the B sample indicated that the bottle code numbers of the A and B Samples and the corresponding forms were identical and that the bottle of the B Sample was correctly closed and sealed.
15. On 13 January 2007 the Secretary General of IPF informed the Icelandic Powerlifting Federation about the result of the B Sample analysis.

II.2 THE DECISION OF IPF

16. On 20 June 2007, the Doping Hearing Panel of IPF issued a decision stating inter alia the following :

"The athlete Audunn Jónsson from Iceland will be suspended for two years on the basis of a violation of Article 2.1 of the International Powerlifting Federation (IPF) Anti-Doping Rules on the occasion of the 2006 World Championships held in Stavanger, Norway in November 2006.

(...)

This suspension is based upon the fact that the International Powerlifting Federation conducted an Out-of-Competition Test (OCT) on November 8, 2006 in accordance with WADA and IPF anti-doping rules. The test was requested and supervised by IPF officials Anton Speth and Robert Wilks, both of whom were properly trained, experienced, credentialed, identified and qualified to conduct the OCT and collect the OCT results. According to IPF Officials Speth and Wilks who were present at the time of the OCT request, the athlete Audunn Jónsson cooperated with and followed the instructions provided to him by A. Speth and R. Wilks, including the private production of the sample behind a closed door, the splitting of the sample, and the measuring of the samples pH. According to the IPF officials present and supervising the OCT, the athlete Audunn Jónsson and his roommate (Mr Kristbergsson) both confirmed that the doping control was conducted in accordance with the IPF anti-doping rules.

The athlete Audunn Jónsson produced an A-sample and later a B-sample, both of which tested positive for the presence of 17B-hydroxymethyl-17a-methyl-18-norandrost-1,4,13-trien-3-one (the medication metandienone) which is a banned substance under the IPF Anti-Doping Rules. Metandienone is a substance listed on the 2006 World Anti-Doping Code Prohibited List as “exogenous”, not capable of being produced by the human body naturally. As such, evidence of Audunn Jónsson taking a banned substance has been furnished (Rule 2.1.2) as noted above.”

(...)

The decision also contained further reasons .

17. The Secretary General of IPF has stated that he sent a letter with the decision of the Doping Hearing Panel on 23 June 2007 to Mr Audunn Jónsson’s representative Mr Stefán Karl Kristjánsson and to the Icelandic Powerlifting Federation by letter. Mr Audunn Jónsson has asserted that none of these addressees received that letter and that Mr Audunn Jónsson first saw the decision on IPF’s official website.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

III.1 THE APPEAL

18. By letter of 19 July 2007 the Court of Arbitration for Sport ("CAS") confirmed receipt of the Appellant's statement of appeal dated 16 July 2007.
19. The Appeal Brief contained a statement of the facts and legal arguments accompanied by supporting documents. It challenged the decision of the IPF Doping Hearing Panel, requesting :

"That the decision of the IPF’s Doping Hearing Panel of the 20th of June, last, be invalidated.

That the drug test of Audunn Jónsson be declared invalid.

20. The Appellant’s submission, in essence, may be summarized as follows:
 - a. The doping test was an In-Competition test and as such it was not conducted according to the International Standard for Testing.
 - b. The doping control was not, as it generally is, conducted by two persons, as Mr. Wilks left the hotel room after a few minutes. This means that Mr Anton Speth, who was the Doping Control Officer (DCO), conducted the test on his own and that he alone was in possession of the samples. Therefore, Mr Audunn Jónsson is entitled to raise serious questions about the handling of the samples.
 - c. The DCO didn’t identify himself with the official identification card provided by IPF.
 - d. The DCO was not independent of IPF as he is a member of the Doping Hearing Panel, consisting of five members.

III.2 THE ANSWER

21. On 7 August 2007, the Respondent filed an answer, contending inter alia the following:

"1. The IPF denies, that there were any substantial procedural irregularities invalidating its finding, that Mr Jónsson committed any doping-rule violation. The correct procedure was followed and the decision made is justifiable.

2. WADA several times reminded International Federations to perform unannounced Out-of-Competition controls, also Pre-competitions controls. The finality of WADA's judgement regarding the contents of the Prohibited List is fundamental to the enforceability and consistency of the WADA anti-doping program. The sanction imposed on Mr Jónsson is adequate. The IPF asks that its decision be upheld by CAS."

22. The submissions of the Respondent may be summarized as follows:

- a. The test was conducted according to the International Standard for Testing. There are no departures from these standards.
- b. It was an Out-of-Competition-test and it was conducted according to the International Standard for Testing.
- c. The International Standard of Testing *"especially 9.3.5 defines the duties of the DCO, a single person, who is authorised by the ADO with delegated responsibility for the on-site management of a Sample Collection Session."*
- d. *"The test on November 8, 2006 was requested and supervised by IPF officials Anton Speth and Robert Wilks, both qualified to conduct the OCT and collect the OCT results. During the attendance Robert Wilks wore an identification badge, pinned to his left lapel. That badge showed his name, his photo on it, also the IPF's name and logo. Mr Wilks identified himself as an officer of the IPF. Mr Wilks introduced Mr Anton Speth to Mr Jónsson and the accompanying person, stating his name and told them, that Mr Speth would conduct the doping control. Since Mr Jónsson had indicated that he would need some time to be ready to pass a sample for collection, and after discussion by Mr Wilks with Mr Speth, Mr Wilks left the hotel room to attend to other matters. Mr Jónsson made no objection, when Mr Wilks indicated, that he would be departing and leaving Mr Speth to complete the doping control."*
- e. There is no violation of Rule 8.1.1 of the International Standard for Testing. *"Even if the IPF Panel were to conclude, that Mr Speth should not have participated in the doping control, and his participating violated Rule 8.1.1 of the International Standard for Testing, the Applicant has still failed to establish that the adverse analytical finding should be nullified. Moreover, though Mr Speth is a member of the IPF Doping Hearing Panel, he did not participate in the review and adjudication of this case, the high qualification of this DCO can not arouse suspicion..."*
- f. The Appellant could not explain how the banned substance, Metandienone, entered into his system.

III.3 THE HEARING

23. A hearing was held on 14 November 2007 at the CAS premises in Lausanne. All the members of the Panel were present. The Respondent confirmed that it had no objection to the composition of the Panel.
24. The Appellant was absent and had no representative attending the hearing. In a written statement of 24 August 2007 his attorney stated that the Appellant's "*opinion is fully presented in his opinion to the IPF and his appeal to the CAS and therefore his presence in front of the court is not needed. He believes that the court will render a quick but for the most a fair judgement*".
25. The following persons attended the hearing:
 - For IPF, its former Secretary General, now its Chairman, Mr Detlev Albrings. The Respondent was accompanied by its attorney, Mr Karlheinz Demel.
26. The Panel heard evidence from the following persons:
 - Mr Detlev Albrings;
 - Mr Robert Wilks, Chairman of IPF Doping Commission and acting as Chaperone at the time of the test;
 - Mr Anton "Toni" Speth, DCO and a member of the Doping Hearing Panel of IPF.
27. Each of the above was invited by the President of the Panel to tell the truth subject to the Swiss laws on perjury; each witness was examined by the Respondent and questioned by the Panel.
28. After the Respondent's closing statement, the Panel closed the hearing and announced that its award would be rendered in due course.
29. Upon closure, the Respondent expressly stated that it did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

IV. DISCUSSION

IV.1 CAS JURISDICTION

30. The jurisdiction of CAS derives from Article 13 of the IPF Anti-Doping Rules (hereinafter referred to as the "Anti-Doping Rules") and Art. R47 of the Code of Sports-related Arbitration (hereinafter referred to as "Code").
31. Under Art. R57 of the Code the Panel has the full power to review the facts and the law. Thus, the Panel did not examine only the formal aspects of the appealed decision, but held a trial de novo, evaluating all facts and legal issues involved in the dispute.

IV.2 APPLICABLE LAW

32. Art. R58 of the Code provides the following:

“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.”

33. The Respondent has claimed that the Anti-Doping Rules shall apply primarily and that German law shall apply subsidiarily since IPF has its registered office in Munich, Germany.

34. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the Anti-Doping Rules shall apply primarily and German Law shall apply complementarily.

IV.3 ADMISSIBILITY

35. The appeal was filed within the deadline provided by Art. 13.5 of the Anti-Doping Rules as agreed between the parties. In reaching this conclusion the Panel took note that the parties, having discussed the dates of expedition and receipt of the decision being appealed against by the Appellant and Respondent respectively, expressly agreed in their written correspondence of 9 July 2007 that the time limit to file the appeal was 18 July 2007. The Appellant filed his appeal within such time limit, on 18 July 2007, and the admissibility of the appeal is not contested.

The Appeal complies with all other requirements of Art. R48 of the Code.

36. It follows that the appeal is admissible, which is not disputed.

IV.4 MERITS

37. The main issues to be resolved by the Panel are:

- a) Should the analysis results of the A and B samples be invalidated because according to the Appellant the doping test was not an “Out-of-Competition Test” and as such not conducted according to the International Standard for Testing?
- b) Should the results of the analysis of the A and B samples be invalidated because the entire doping control was not conducted by two persons?
- c) Should the results of the analysis of the A and B samples be invalidated because the DCO did not identify himself by the official identification card provided by IPF?
- d) Should the analysis of the analysis of the A and B samples be invalidated because the DCO was not independent of IPF as he was a member of the Doping Hearing Panel, consisting of five members, or because the Doping Hearing Panel was not independent of IPF?
- e) Has IPF established that a doping offence has been committed?

f) If yes, what is the sanction and how should it be calculated?

IV.4.1 Should the results of the analysis of the A and B samples be invalidated because the doping test was an “In-Competition Test” and as such not conducted according to the International Standard for Testing??

38. The Appellant argues that the test conducted was in fact an “In-Competition Test”. The Appellant has argued as follows. Mr Jónsson came to Norway to compete in the World Championship. The test on 8 November 2006 was conducted in connection with the World Championship 2006 in Stavanger, Norway. According to the Appellant an In-Competition Test shall be conducted at the Doping Control Station and according to Art. 6.3.2 of the International Standard for Testing “the DCO shall use a Doping Control Station which at a minimum ensures the Athlete’s privacy and is used solely as a Doping Control Station for the duration of the Sample Collection Session. The DCO shall record any significant deviations from these criteria”. Any deviations from the rules of the International Standard for Testing are to be interpreted in favour of the Athlete. The test conducted on Mr Jónsson on 8 November 2006 was in connection with his participation of the World Championship and therefore an “In-Competition Test”. Thus, the venue for the test was wrong.
39. According to the Definitions of the Anti-Doping Rules in its Appendix 1 an “Event” is “A series of Individual Competitions conducted together under the ruling body (e.g., the Olympic Games, FINA World Championships, or Pan American Games)”. The Respondent has argued that the IPF World Championships is an event. A “Competition” is, according to the same Definitions, “A single race, match, game or singular athletic contest. For example, the finals of the Olympic 100-meter dash”. According to IPF a Competition in the World Championships in power lifting starts as soon as the weigh-in of the bodyweight category, in which the Athlete is competing, commences and ends with the completion of the victory ceremony. IPF states that as soon as the Athlete is actually weighed in, he/she shows willingness to take part in the competition. The Anti-Doping Rules (Appendix 1, Definitions) define “In-Competition” as follows: “For purposes of differentiating between In-Competition and Out-of-Competition Testing, unless provided otherwise in the rules of an International federation or other relevant Anti-Doping Organization, an In-Competition test is a test where an Athlete is selected for testing in connection with a specific Competition”. “Out-of-Competition” is defined as “Any Doping Control which is not In-Competition”.
40. On the basis of the above Definitions, the Panel finds that the IPF World Championships is to be considered as an “Event”, as the specific Competition is the individual contest of a weight class. IPF has argued that such a Competition according to the Rules of the Federation starts with the weighing-in. This explanation cannot be questioned. The 125 kg class – in which Mr Jónsson competed – took place on 11 November 2006. This means that the testing of Mr Jónsson on 8 November 2006 was an Out-of-Competition Test and should be considered as such according to the International Standard of Testing.
41. For these reasons, the Panel considers the complaints of the Appellant that the testing should be considered as an In-Competition Test as unfounded.

IV.4.2 Should the results of the analysis of the A and B samples be invalidated because the doping control was not conducted by two persons?

42. The Appellant submits that the Doping Control should have been conducted by two persons.
43. The Rules, which prescribe the Sample Collection Session, are the Guideline for Sample Collection in Appendix 4 of the Anti-Doping Rules. Art 4 of the Guidelines sets out the rules about the Out-of-Competition control. According to Art 4.8.1 the main activities for the Doping Commission consist of conducting the appointment of authorised DCO(s), Chaperone(s) and other Sample Collection Personnel who have been trained for their assigned responsibilities and who do not have a conflict of interest in the outcome of the Sample collection, and who are not minors. Art 4.11 states that the President, DCO or Chaperone, as applicable, shall establish the location of the selected Athlete and plan the approach and timing of notification taking into consideration the specific circumstances of the situation in question. According to Art 4.14 the DCO/Chaperone shall, when in-person contact is made "from this time until the Athlete leaves the Doping Control Station at the end of his/her Sample Collection Session, keep the Athlete under observation at all times". There are a number of other rules which prescribe the details of the Sample Collection Session. The Guideline of the Anti-Doping Rules also refers to the WADA International Standard for Testing.
44. The Guideline mentions both DCO and Chaperone when discussing the Sample Collection Session, and it is obvious that this can not be the same person. Therefore, it is a departure from the Guidelines that the Doping Control Session in this case has been conducted by only one person. This means that the Chaperone, Mr Wilks, should not have left the hotel room before the Doping Control Session was finished.
45. According to Art 3.2.2 of the Anti-Doping Rules, departures from the International Standard for Testing which did not cause an Adverse Analytical Finding shall not invalidate such result. If the Athlete establishes that departures from the International Standard have occurred during Testing, then IPF or its National Federation shall have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the anti-doping violation.
46. The Appellant indicates that the sample could have been tampered with since the sample was in Mr. Speth's sole possession at a time. Mr Jónsson did, however, not provide any facts to support this allegation. On the contrary, he states that "Mr. Speth's knowledge or background is not under criticism."
47. On the verification protocol from the opening of the B Sample there is no evidence of tempering the Sample, on the contrary it is said that the code numbers of the A and B Samples and the corresponding forms were identical and that the bottle of the B Sample was correctly closed and sealed according to the Berlinger System.
48. The Panel concludes that there is no indication that any tempering with the Samples has occurred. On the contrary, there is evidence that the samples arrived intact at the Laboratory and even the Appellant admits that he can only "speculate" that the sample was tempered with. Under these circumstances the burden of proving that the sample has been tampered with passes back to the Appellant who has done nothing to discharge that burden. Therefore, the Appellant's complaint regarding the procedure in this respect is unfounded.

49. In summary, the Panel finds that IPF has shown that this departure from the Guidelines has not caused any Adverse Analytical Finding, and the Panel therefore dismisses the Appellant's claim on this matter.

IV.4.3 Should the results of the analysis of the A and B samples be invalidated because the DCO did not identify himself by the official identification card provided by IPF?

50. The Appellant has alleged that the DCO didn't identify himself with the official identification card provided by IPF and that therefore the doping test should be invalidated.
51. IPF has admitted that Mr Anton Speth did not bring with him his official identification card provided by IPF but has nonetheless argued as follows. During the attendance in the hotel room of Mr Jónsson, Robert Wilks wore an identification badge, pinned to his left lapel. That badge showed his name and his photo, and also the IPF's name and logo. Mr Wilks identified himself as an officer of IPF. Mr Wilks introduced Mr Anton Speth to Mr Jónsson and his roommate and told them, that Mr Speth would conduct the doping control. Since Mr Jónsson had indicated that he would need some time to be ready to pass a sample for collection, and after discussion between Mr Wilks and Mr Speth, Mr Wilks left the hotel room to attend to other matters. Mr Jónsson made no objection, when Mr Wilks indicated, that he would be departing and leaving Mr Speth to complete the doping control.
52. During the hearing Mr Robert Wilks has described that he introduced Mr Speth to Mr Jónsson and noticed that Mr Jónsson already knew, who Mr Speth was. Mr Speth has told the Panel that he had forgotten his identification card in his hotel room, some floors up in the same hotel where Mr Jónsson was staying. Mr Speth would have been prepared to get the card if Mr Jónsson had asked him to do so, before Mr Wilks left the room, but Mr Jónsson was satisfied, as he had already recognized Mr Speth.
53. Art 4.14 b) of the Guideline for Sample Collection in the Anti-Doping Rules states that the DCO/Chaperone shall identify themselves to the Athlete using their official identification card/document provided by IPF or the other Anti-Doping Organization appointed for conducting the Sample Collection Session. This is in accordance with the International Standard for Testing which states in Art 5.3.3 that Sample Collection Personnel shall have official identification that is provided and controlled by the ADO. The minimum identification requirement is an official card/document naming the ADO through which they have been authorised. For DCO's there are additional identification requirements which include their name, their photograph and the card's/documents expiry date.
54. Even if Mr Jónsson did recognize the DCO and even if the DCO was introduced by another person provided with an identification badge it is a technical departure from the Guidelines when Mr Anton Speth did not identify himself using his official identification card provided by IPF.
55. As has been said in para 45 of this award, Art 3.2.2 of the Anti-Doping Rules states that departures from the International Standard for Testing which did not cause an Adverse Analytical Finding shall not invalidate such result. If the Athlete establishes that departures from the International Standard have occurred during Testing, then IPF or its National Federation shall

have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the anti-doping violation.

56. The Panel finds that there are no facts or circumstances which would indicate that the departure from the Guidelines caused the Adverse Analytical Finding: In these circumstances, as a matter of principle, the burden to prove that the departure from the rules did not cause the Adverse Analytical Finding rests with the Respondent. In the present case, where the Panel finds that on the basis of the evidence presented by the parties, there are no circumstances indicating that the departure from the rules did in fact have an effect on the result of the test, the Respondent will have to be deemed to have discharged its burden of proof.

IV.4.4 Should the results of the analysis of the A and B samples be invalidated because the DCO was not independent of IPF as he is a member of the Doping Hearing Panel, or because the Doping Hearing Panel was not independent of IPF?

57. The Appellant has argued that the DCO was not independent of IPF as he is a member of the Doping Hearing Panel, consisting of five members, and that the Doping Hearing Panel was not independent of the DCO as he is a member of that Panel.
58. The Appellant has argued as follows. According to Art 5.1 of the Anti-Doping Rules the IPF Doping Commission is responsible for overseeing all testing conducted by IPF. Testing shall be conducted by suitable persons authorized by the IPF Doping Commission. In the definitions of “Chaperone” and “DCO”, a distinction is made. The main difference is that the Chaperone is not allowed to conduct doping control. He acts solely as an assistant to the DCO. Robert Wilks is the Chairman of the IPF Doping Commission and he is not qualified to act as a DCO. Mr Anton Speth signed the doping control document as a DCO. The International Standard for Testing deals with the requirements of the Sample Collection personnel. The objective is to ensure their total impartiality. The Chairman of the Doping Commission is clearly not competent to carry out a doping control. He cannot be responsible for the appointment of the DCO and act as one at the same time. It is not put into question that the persons that conducted Mr Jónsson’s doping test are qualified, but rather whether their position within IPF’s committees disqualifies them to act as DCOs. Mr Speth is a member of the IPF Doping Hearing Panel. Therefore, he is a member of the Panel that is supposed to apply sanctions with respect to an Athlete with an adverse analytical finding. Even though Mr Speth did not sit in the Panel discussing Mr Jónsson’s case, he as a member is not authorized to perform a doping control – he is not allowed to act as a DCO.

According to the Appellant, Art 8.1.1 of the Anti-Doping Rules states that “Each panel member shall be otherwise independent of IPF”. Therefore, Mr. Speth lacked competency in Mr Jónsson’s case. Furthermore, Mr Speth alone conducted the test and he alone was in possession of the sample, since Mr Wilks left the room after Mr Jónsson had signed the papers of participation. Even if Mr Jónsson and his roommate Mr Kristbergsson signed the protocol of the doping control, this does not in itself validate the test or exclude the Athlete’s right to protest later.

As regards the Doping Hearing Panel’s observation that Mr Speth’s participation in the doping control did not “cause” the Adverse Analytical Finding, the Appellant argues that this fact is not established with logical certainty, as Mr Speth alone was in possession of the sample after

Mr Jónsson had given it. Since Mr. Speth was not empowered to conduct the test and in view of the subsequent breach of the International Standard for Testing, sufficient doubt has been established to question the validity of Mr Jónsson's sample.

The Appellant finally argues that even though he cannot explain how the banned substance entered his system, the sample was in possession of a single person, who moreover was not empowered to possess it. This being so the Panel is obliged to investigate the authorisation behind the doping control. There are many departures from the International Standard for Testing in Mr Jónsson's case. There has been a debate as to whether procedural rules enshrined in human rights apply to doping issues. Such rules should ensure that athletes receive a fair hearing. One of the elements of a fair hearing is that the hearing process will respect the principle of a fair and impartial hearing body. The Appellant contends that in his proceedings this was not the case, since a member of the hearing body exceeded the limits of his powers by conducting a doping control. According to Art 8.3 of the Anti-Doping Rules, all hearings pursuant to either Art 8.1 or 8.2 shall respect the principle of a fair and impartial hearing body. This principle is also stated in Art 8 of the World Anti-Doping Code. It is also stated in the Art 6.1 of the European Convention of Human Rights. Although Mr Speth did not have a seat in the Panel discussing the concrete case, he has been a member of similar panels handling other cases jointly with the same panel members that handled Mr Jónsson's case. According to Mr Jónsson he can therefore legitimately fear that the Panel did not act with proper neutrality in its judgement of a fellow panel member's findings.

59. The Panel disagrees.

In Annex G to the International Standard for Testing the Sample Collection Personnel Requirements are described. The objective is to ensure that Sample Collection Personnel have no conflict of interest and have adequate qualifications and experience to conduct sample collection sessions. The ADO has the responsibility for all activities defined in Annex G. The ADO shall ensure that Sample Collection Personnel that have an interest in the outcome of the collection or testing of a Sample from any Athlete, who might provide a Sample at a session, are not appointed to that Sample collection session. Sample Collection Personnel are deemed to have an interest in the collection of a Sample if they are: a) Involved in the planning of the sport for which testing is being conducted; or b) Related to, or involved in the personal affairs of any Athlete who might provide a Sample at that session.

60. Art 8 of the Anti-Doping Rules deals with the right to a fair hearing. The IPF Executive shall appoint a standing panel consisting of a Chair and four other experts with experience in anti-doping ("IPF Doping Hearing Panel"). According to Art 8.1.1 each panel member shall be otherwise independent of IPF. The Chair of the IPF shall, according to Art 8.1.3, appoint three members from the panel (which may include the Chair) to hear each case. The appointed members shall have had no prior involvement with the case and shall not have the same nationality as the Athlete or other person alleged to have violated the Anti-Doping Rules.

61. In order to grant all Athletes the right to a fair hearing and a fair judgement it is - from a general point of view - very important that the hearing body of a Federation be independent from that same Federation. As said in the Art 8.1.1 the Panel members of the IPF Doping Hearing Panel shall be otherwise independent of IPF. In the Panel's view the meaning of this phrase is far from clear. However, at a minimum the use of the word "otherwise" seems to indicate that it is not a requirement for the IPF Panel members to be totally from outside the IPF; if they

were they would conceivably qualify as true arbitrators and in the Panel's opinion it does not seem to have been the IPF's intention to create an arbitral tribunal. This being said, it remains unclear what level of "independence" is required; it could mean for example that a member of the Doping Hearing Panel can not be engaged in the anti doping work of the Federation.

62. It seems to the Panel that Mr Anton Speth is quite involved in the planning of the sport of power lifting. In strict application of the Anti-Doping Rules he could thus be deemed to have an interest in the collection of a Sample and he should therefore not have been appointed as DCO.
63. If he is not involved in the planning of the sport of power lifting pursuant to a strict reading of the IPF rules, it would still be improper to appoint Mr Anton Speth as DCO, as he obviously is engaged in the anti doping work of IPF. It would also be improper to chose him as a DCO as it would mean that his colleagues in the Doping Hearing Panel would have to examine whether he has violated any of the rules or guidelines, if an Athlete asserts that the DCO did something wrong in the handling during the Doping Collection Session. This could imply that the Panel would call the DCO as a witness before the Panel. In the Panel's view it is therefore inadequate and not proper in the sense of a fair hearing to choose a member of the panel as DCO.
64. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel therefore did not examine only the formal aspects of the appealed decision but held a trial de novo, evaluating all facts and legal issues involved in the dispute.
65. This means that Mr. Jónsson's challenge of the Doping Hearing Panel as not being impartial can be remedied by a de novo examination by this CAS Tribunal. If this Panel finds that there are no departures from the International Standard for Testing or only departures which did not cause the Adverse Analytical Finding, a possible finding that the Doping Hearing Panel was not completely independent from the IPF would not affect the validity of the test.
66. As already stated the above possible departures from the International Standard for Testing that may have occurred in this case did not cause the Adverse Analytical Finding. The CAS is therefore entitled to rely on the test results in its decision.
67. The conclusion of this Panel is that the improper choice of the DCO has no bearing on the test result, as this CAS Tribunal has examined not only the formal aspects of the appealed decision but held a trial de novo, evaluating all facts and legal issues involved in the dispute.

IV.4.5 Has IPF established that that a doping offence has been committed?

A) In general

68. According to Art. 2 of the Anti-Doping Rules compiled in accordance with The World Anti-Doping Code *"The following constitute anti-doping rule violations:*

2.1. The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily Specimen.

2.1.1. It is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Me-

tabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1. (...)

2.1.2. Excepting those substances for which a threshold concentration is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Athlete's Sample shall constitute an anti-doping rule violation."

69. The "*Prohibited List*" which is published and revised by the World Anti-Doping Agency is incorporated in the Anti-Doping Rules pursuant to their Art. 4.1.
70. Metandienone is listed in the "*Prohibited List*" as an Anabolic Androgenic Steroid, which is exogenous. Exogenous in this context refers to a substance which is not ordinarily capable of being produced naturally in the body.
71. According to Art. 3.1 of the Anti-Doping Rules: "*The IPF and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IPF or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing body 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 Athlete 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.*"
72. Art. 3.2.1 of the Anti-doping Rules provides that: "*WADA-accredited laboratories or as otherwise approved by WADA are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis. The Athlete may rebut this presumption by establishing that a departure from the International Standard occurred. If the Athlete rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the IPF or the National Federation shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*"

B) Mr Audunn Jónsson's case

73. The Laboratory is a WADA-accredited laboratory. It analysed Mr Jónsson's A and B samples and the test results indicated the presence of Metandienone, an Anabolic Androgenic Steroid, which is exogenous, which means that the substance can not be produced by the body naturally. WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis.

74. Mr Jónsson has not given any explanation as to how the banned substance entered into his system. Nor did he rebut the presumption that the Laboratory has conducted Sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis.
75. Based on the foregoing and after careful analysis of the facts and evidence submitted to it by the parties, the Panel finds beyond any reasonable doubt that a Prohibited Substance was present in Mr Jónsson's bodily Specimen. Mr Audunn Jónsson must therefore be considered as having committed a doping offence involving a prohibited substance and must take responsibility for it.

IV.4.6 What is the sanction and how should it be calculated?

A) In general

76. According to Art 10.2 of the Anti-Doping Rules, "Imposition of Ineligibility for Prohibited Substances and Prohibited Methods" it is said that *"Except for the specified substances identified in Art 10.3, the period of Ineligibility imposed for a violation of Art 2.1 (presence of Prohibited Substances or its Metabolites or Markers (...)) shall be: First violation: Two (2) years' ineligibility. (...) However, the Athlete or other Person shall have the opportunity in each case, before a period of ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Art 10.5."*
77. Art 10.5 offers a possibility to the Athlete to establish that he or she bears no Fault or Negligence or no significant Fault or Negligence for the violation. Mr Jónsson has not offered any facts or circumstances which would justify the application of Art 10.5.
78. Pursuant to Art. 10.8 *"The period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served. Where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Athlete, the IPF (Doping Hearing Panel) or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection"*.

B) In particular

79. It is well established that a two-year suspension for a first time doping offence is legally acceptable (Gabrielle Kaufmann-Kohler, Giorgio Malinverni, Legal opinion on the conformity of certain provisions of the draft World Anti-Doping Code with commonly accepted principles of international law, 2003, N°62 et seq., p. 22; CAS 2001/A/337). Art 10.2 provides for a 2 years period of suspension for a first-time violation.
80. Mr Jónsson was provisionally suspended from 8 November 2006. Therefore the period of ineligibility shall commence on that date.
81. This means that the decision of the IPF Doping Hearing Panel shall be upheld.

V. COSTS

82. Arts. R65.1 and R65.3 of the Code provide that, subject to Arts. R65.2 and R65.4, the proceedings shall be free; that the costs of the parties, witnesses, experts and interpreters shall be advanced by the parties; and that, in the Award, the Panel shall decide which party shall bear them, or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.
83. In the present matter, the Respondent was assisted by a professional legal adviser and did not ask for any contribution to their costs. In the light of all of the circumstances and of the financial resources of the parties, the Panel finds reasonable to order that each party shall bear its own legal and other costs incurred in connection with these arbitral proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Audunn Jónsson on 18 July 2007 against a decision of the IPF Doping Hearing Panel is dismissed.
2. The appealed decision issued on 20 June 2007 by the IPF Doping Hearing Panel is upheld.
3. Mr Audunn Jónsson shall be declared ineligible for two years from 8 November 2006.
4. This award is rendered without costs except for the Court Office fee of CHF 500 (five hundred Swiss francs) already paid by Mr Audunn Jónsson, which is retained by the CAS.
5. Each party shall bear its own legal and other costs.
6. All other motions or prayers for relief are dismissed.

Done in Lausanne, 21 December 2007

THE COURT OF ARBITRATION FOR SPORT

Judge Conny **Jörneklint**
President of the Panel

Dr Dirk-Reiner **Martens**
Arbitrator

Dr Lars **Halgreen**
Arbitrator