UNION CYCLISTE INTERNATIONALE

Anti-Doping Tribunal

UCI Anti-Doping Tribunal

Judgment

case ADT 09.2017

UCI v. Mr. Nicola Ruffoni

Single Judge:

Ms. Helle Qvortrup Bachmann (Denmark)

Aigle, 14 December 2017

I. INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as "the Tribunal") in application of the UCI Anti-Doping Tribunal Procedural Rules (hereinafter referred to as "the ADT Rules") in order to decide upon a violation of the UCI Anti-Doping Rules (hereinafter referred to as "the ADR") committed by Mr. Nicola Ruffoni (hereinafter referred to as "the Rider") as alleged by the UCI (hereinafter collectively referred to as "the Parties").

II. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain her reasoning.

A. The Parties

1. The UCI

3. The UCI is the association of national cycling federations and is a non-governmental international association with a non-profit-making purpose of international interest, having legal personality pursuant to Articles 60 ff. of the Swiss Civil Code according to Articles 1.1 and 1.2 of the UCI Constitution.

2. The Rider

4. The Rider is a professional cyclist of Italian nationality. He is affiliated to the Italian Cycling Federation ("FCI") and a License Holder within the meaning of the ADR. The Rider started his professional cycling career in 2013 when he joined the UCI Professional Continental Team Bardiani. He remained under contract with Team Bardiani until 19 May 2017.

B. The alleged anti-doping rule violation

5. On 25 April 2017 the Rider provided a urine sample (number 3094049) during an out-of-competition doping control in Castenedolo, Italy. The doping control was carried out by a Cycling Anti-Doping Foundation (CADF) Doping Control Officer on behalf of the UCI. The Rider confirmed on the Doping Control Form that the sample had been taken in accordance with the applicable regulations and declared that he had taken no medication or supplement over the seven days preceding the test.

6. The urine sample provided by the Rider was then analyzed in the WADA-accredited Laboratory in Lausanne, Switzerland (hereinafter referred to as "the Laboratory").

7. On 4 May 2017, the Laboratory reported the presence of GHRP-2 and metabolite GHRP-2 M2 (the Adverse Analytical Finding or "AAF") in the Rider's A-sample. GHRP-2 and its metabolites are Prohibited Substances listed under Class S.2.5 "Growth Hormone-Releasing Peptides" on the 2017 WADA Prohibited List. According thereto GHRP-2 and GHRP-2 M2 are prohibited both in- and out-of-competition. Article 4.1 ADR incorporates the WADA Prohibited List into the ADR.

8. On 4 May 2017, the Rider was notified of the Adverse Analytical Finding for GHRP-2 and GHRP-2 M2. He was also informed of the mandatory Provisional Suspension imposed on him. The UCI also notified the Federazione Ciclistica Italiana (FCI), the Comitato Olimpico Nazionale Italiano (CONI), the Rider's team and WADA of the AAF.

9. On 8 May 2017, Mr. Marino Colosio informed the UCI that he had been appointed by the Rider to represent him in the proceedings. Mr. Marino Colosio also informed the UCI that the Rider requested the B Sample analysis and the A and B Sample Laboratory Documentation Packages.

10. On 10 May 2017, the Rider and the UCI agreed on the date of the opening and analysis of the B Sample (specifically 18 May 2017).

11. The Rider confirmed that the opening and the analysis of his B Sample would be attended by his legal counsel, Mr. Marino Colosio, and the Rider's scientific consultant, Dr. Giuseppe Pieraccini.

12. On 18 May 2017, the analysis of the B Sample took place at the Laboratory in the presence of the above mentioned persons. The Laboratory analysis of the B Sample confirmed the presence of GHRP-2 and GHRP-2 M2 in the Rider's urine.

13. On 19 May 2017, the UCI informed the Rider of the assertion of the anti-doping rule violation (hereinafter also ''ADRV''). In the same communication, the UCI asked the Rider to confirm his intention with respect to the B Sample Laboratory Documentation Package. The UCI also informed the Rider, that the analytical results of the 2 samples collected during the Tour of Croatia on 20 and 21 April 2017, which were previously requested by him, would be communicated as soon as available.

14. On 19 May 2017, the Rider maintained his request for the B Sample Documentation Package.

15. On 30 May 2017, the A and B Sample Laboratory Documentation Packages (dated 29 May 2017) were sent to the Rider. The Rider was also informed of the negative findings for the two samples collected from him during the Tour of Croatia. The Rider was also afforded a 2-week period of time to provide his explanation of the AAF and/or provide substantial assistance.

16. On 22 June 2017, the Rider filed a submission dated 21 June 2017 in which the Rider:

    (i) questioned the reliability of the analytical results;

    (ii) suggested, that it would be nonsensical to use an isolated dose of GHRP, relying on the fact that he tested negative in other tests in April and May;

    (iii) alleged, that he had been the victim of sabotage or a contaminated product; and

    (iv) wondered, whether the [redacted] could have caused the AAF.

17. Following receipt and review of the Rider's explanation, on 4 July 2017, the UCI offered an Acceptance of Consequences – in the sense of Article 8.4 of the ADR – to the Rider. The Rider was also advised that if he did not agree with the proposed Acceptance of Consequences, the UCI would refer the matter to the Tribunal.

18. On 20 July 2017, the Rider's lawyer informed the UCI that the Rider did not accept the Acceptance of Consequences.

19. On 28 August 2017, the UCI referred the case to the Tribunal. In its referral to the Tribunal, the UCI requested the following:

    - *Declaring that Mr. Nicola Ruffoni has committed an Anti-Doping Rule Violation;*
    - *Imposing on Mr. Nicola Ruffoni a Period of Ineligibility of 4 years;*
    - *Condemning Mr. Nicola Ruffoni to pay a fine of [redacted].- EUR;*
    - *Condemning Mr. Nicola Ruffoni to pay the costs of results management by the UCI;(2'500.- CHF), the costs incurred for Out-of-Competition testing (1'500.- CHF), the costs of the B Sample analysis (510.- CHF) and the costs of the A/B Laboratory Documentation Package (900.- CHF).*

III. PROCEDURE BEFORE THE TRIBUNAL

20. In accordance with Article 13.1 ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of a petition to the Secretariat on 28 August 2017. Before referring the case to the Tribunal, the UCI tried to settle the dispute by offering the Rider an Acceptance of Consequences within the meaning of Article 8.4 ADR and Article 2 ADT Rules. The offer of Acceptance of Consequences was rejected by the Rider on 20 July 2017.

21. On 29 August 2017, the Secretariat of the Tribunal appointed Ms. Helle Qvortrup Bachmann to act as Single Judge in the present proceedings in application of Article 14.1 ADT Rules.

22. In application of Article 14.4 ADT Rules, the Rider was informed on 30 August 2017 that disciplinary proceedings had been initiated against him before the Tribunal. Furthermore, the Rider was informed that any challenge to the appointment of the Single Judge and any objection to the jurisdiction of the Tribunal should be brought to the Secretariat within 7 days of the receipt of the correspondence, and that he was granted a deadline of 14 September 2017 to submit his answer in conformity with Articles 16.1 and 18 of the ADT Rules.

23. On 5 September 2017, the Rider:

    a. Raised an objection to the jurisdiction of the Tribunal by claiming: *"The undersigned lawyers […] declare to oppose the appointment of the Single Judge […] since we believe that the position of their assisted person can be further assured before the Collegial Court."*; and

    b. Requested an extension of the deadline to file his answer.

24. On 11 September 2017, the Tribunal:

    a) Acknowledged the Rider's jurisdictional objection and advised the Parties that pursuant to Article 3.3 of the ADT Rules, the Tribunal shall rule on its own jurisdiction in its Judgment; and

    b) Informed the Rider, that the Single Judge had granted an extension until 22 September 2017 for the Rider to submit his Answer.

25. On 18 September 2017, the Rider submitted an expert opinion from Dr. Giuseppe Pieraccini, signed on 14 September 2017. No further Answer was submitted by the Rider.

26. On 29 September 2017, the Tribunal informed the Parties that the written proceedings were closed, and invited the Parties to indicate by 5 October 2017 whether they wished a hearing to be held.

27. The Tribunal granted the Rider's request for a hearing.

28. After consultation with the Parties the hearing was scheduled for 23 November 2017 and held via video conference. The hearing was attended on behalf of the UCI by:

    - Mr. Antonio Rigozzi, attorney-at-law, Lévy Kaufmann-Kohler, Geneva;

    and on behalf of the Rider by:

    - Mr. Nicola Ruffoni, the defendant;
    - Mr. Marino Colosio, attorney-at-law, Studio Legale Badinelli – Colosio, Brescia, Italy;
    - Mr. Giuseppe Napoleone, attorney-at-law, Latina, Italy;
    - Ms. Bianchino Concetta, interpreter.

    During the hearing the following expert was heard by the Tribunal:

    - Dr. Giuseppe Pieraccini (called by the Rider).

IV. JURISDICTION OF THE TRIBUNAL

29. The jurisdiction of the Tribunal follows from Article 8.2 ADR and Article 3.1 ADT Rules according to which *"the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 ADR".*

30. Article 3.2 ADT Rules provides that "*Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction*".

31. The Rider's counsels filed an objection to the jurisdiction of the Tribunal on 5 September 2017 by submitting that: *"[…] we believe that the position of their assisted person can be further assured before the Collegial Court".* No further reasoning or explanation was submitted during the proceedings.

32. It follows from the introduction to the ADR, part C, that *"These Anti-Doping Rules shall apply to the UCI and to each of its National Federations. They shall also apply to the following Riders, Rider Support Personnel and other Persons: a) any License-Holder […]".*

33. For the 2017 season – meaning at the time of the ADRV as well as the entire proceedings – the Rider is affiliated to the Italian Cycling Federation and holds a license. Therefore the Rider is a License-Holder within the meaning of the UCI ADR, and the Rider is bound by the UCI ADR.

34. In this case, the UCI asserted the anti-doping rule violation following a results management process under Article 7 ADR, and thus it follows that the Tribunal has jurisdiction to decide on this matter.

V. APPLICABLE RULES

35. Article 25 ADT Rules provides that "*the Single Judge shall apply the [UCI] ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law*".

36. The relevant Sample collection took place on 25 April 2017.

37. Article 25.1 ADR provides that the effective date of the ADR is 1 January 2015. Since the relevant doping control was carried out after this date, the Single Judge shall apply the 2015 edition of the ADR.

38. Article 2.1 ADR defines the relevant anti-doping rule violation as follows:

> *"**2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample***
>
> *2.1.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*
>
> *2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider's B Sample is analyzed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider's A Sample; or, where the Rider's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*
>
> *2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation.*
>
> *[…]"*.

39. As for the standard period of Ineligibility Article 10.2 ADR provides as follows:

> *"**10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*
>
> *10.2.1 The period of Ineligibility shall be four years where:*

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Riders who cheat. The term therefore requires that the Rider or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance".

40. As for the possibilities to reduce the aforementioned periods of Ineligibility based on fault, the ADR Articles 10.4 and 10.5 state as follows:

"10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If a Rider or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for violations of Article 2.1, 2.2 or 2.6.

10.5.1.1 […]

10.5.1.2 Contaminated Products

In cases where the Rider or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Rider's or other Person's degree of fault.

[…]".

41. The definitions of "No Fault or Negligence" and "No Significant Fault or Negligence" are as follows:

> *"No Fault or Negligence: The Rider or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered his or her system."*
>
> *"No Significant Fault or Negligence: The Rider or other Person's establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered his or her system."*

42. In relation to the commencement of the period of Ineligibility Article 10.11 ADR provides as follows:

> *"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.*
>
> *[…]*
>
> *10.11.3 Credit for Provisional Suspension or Period of Ineligibility Served*
>
> *10.11.3.1 If a Provisional Suspension is imposed and respected by the Rider or other Person, then the Rider or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Rider or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.*
>
> *[…]"*

43. In relation to the Financial Consequences, Article 10.10.1 ADR provides as follows:

> *"In addition to the Consequences provided for in Article 10.1-10.9, violation under these Anti-Doping Rules shall be sanctioned with a fine as follows.*
>
> *10.10.1.1 A fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3.*
>
> *[Comments: 1. A member of a Team registered with the UCI shall be considered as exercising a professional activity in cycling. 2: Suspension of part of a period of Ineligibility has no influence on the application of this Article].*
>
> *The amount of the fine shall be equal to the net annual income from cycling that the Rider or other Person was entitled to for the whole year*

in which the anti-doping violation occurred. In the Event that the anti-doping violation relates to more than one year, the amount of the fine shall be equal to the average of the net annual income from cycling that the Rider or other Person was entitled to during each year covered by the anti-doping rule violation.

[Comment: Income from cycling includes the earnings from all the contracts with the Team and the income from image rights, amongst others.]

The net income shall be deemed to be 70 (seventy) % of the corresponding gross income. The Rider or other Person shall have the burden of proof to establish that the applicable national income tax legislation provides otherwise.
Bearing in mind the seriousness of the offence, the quantum of the fine may be reduced where the circumstances so justify, including:

1. *Nature of anti-doping rule violation and circumstances giving rise to it;*
2. *Timing of the commission of the anti-doping rule violation;*
3. *Rider or other Person's financial situation;*
4. *Cost of living in the Rider or other Person's place of residence;*
5. *Rider or other Person's Cooperation during the proceedings and/or Substantial Assistance as per article 10.6.1.*

In all cases, no fine may exceed CHF 1,500,000.

For the purpose of this article, the UCI shall have the right to receive a copy of the full contracts and other related documents from the Rider or other Person, the auditor or relevant National Federation.

[Comment: No fine may be considered a basis for reducing the period of Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules]."

44. As for the liability for costs of the procedures, Article 10.10.2 ADR provides as follows:

"If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Tribunal determines otherwise:

1. *The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
2. *The cost of the result management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
3. *The cost of the B Sample analysis, where applicable.*
4. *The cost incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
5. *The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*
   […]".

VI. THE FINDINGS OF THE TRIBUNAL

45. The issues for the Tribunal to decide are:

- whether the Rider committed an anti-doping rule violation, and
- if so, to decide upon the consequences of such anti-doping rule violation.

A. Preliminary remarks

46. The Rider is charged with alleged violations of Articles 2.1 and 2.2 ADR, which relate respectively to the "Presence" of a prohibited substance in a rider's sample and "Use" of a prohibited substance.

1) Burdens and Standards of Proof

47. Article 3.1 ADR reads as follows:

> *"The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability."*

48. Article 3.2.2 ADR reads as follows:

> *"WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*
>
> *If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*
>
> *[Comment to Article 3.2.2: The burden is on the Rider or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. If the Rider or other Person does so, the burden shifts to the UCI to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]"*

49. Thus, the UCI bears the burden of proof to establish that the Rider committed an anti-doping rule violation; the standard of proof is "*comfortable satisfaction*". For situations in which a Rider must

rebut a presumption or establish specified facts or circumstances, the standard of proof is *"by a balance of probability".*

50. In the context of the Athlete establishing the source of a Prohibited Substance, the CAS has interpreted this standard of proof to require:

> *"the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred."*[1]

51. More insight as to the evidence needed to reach "a balance of probability" can be gained in the following passage, that summarizes a consistent line of CAS case law in this regard:

> *"Previous CAS panels have expressed the conclusion that merely raising unverified hypotheses or mere speculations as to how the substance entered an athlete's body will not be adequate to meet the threshold as set forth in Article 10.5.1 and 10.5.2 of the WADAC (and its corresponding federation's anti-doping regulations) (see for example CAS 2010/A/2230 International Wheelchair Basketball Federation v. UK Anti-Doping & Simon Gibbs, spec. § 11.5 ; CAS 2010/A/2268, I v. FIA, spec. § 129 ; CAS 2007/A/1413, WADA v. FIG & Vysotskaya, spec. §§ 75 and 76 ; CAS 2006/A/1067, IRB v. Keyter, spec. § 6.11, CAS 2006/A/1130, WADA v. Stanic & Swiss Olympic Association, spec. §§ 51 and 52)."*[2]

52. Article 3.2.2 ADR provides explicit guidance on how a Rider may rebut a presumption of procedural validity and thereby (potentially) invalidate the results of the analysis of a WADA-accredited Laboratory based on a procedural error (or departure) from the International Standard for Laboratories (ISL): A Rider must establish by a balance of probability "*that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding*", if he or she is able to establish this, the burden shifts to the UCI to prove that the departure did not cause the Adverse Analytical Finding.

53. As set forth previously by this Tribunal, CAS case law has further clarified the above prerequisites as follows:[3]

> *"Therefore, the Panel deems a mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete*

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1 CAS 2014/A/3615, *WADA v. Daiders*, Award of 30 January 2015, para 57 *quoting* CAS 2009/A/1926, *ITF v. Gasquet*, Award of 17 December 2009*,* para 5.9.

2 CAS 2014/A/3615, *WADA v. Daiders,* Award of 30 January 2015, para 56. Or, as stated in a more recent case: "*To establish the origin of the prohibited substance, CAS and other cases make clear that it is not sufficient for an athlete merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question*". CAS 2016/A/4377, *WADA v. Alvarez Caicedo*, Award of 29 June 2016, para 52.

3 ADT 05.2016, *UCI v. Jure Kocjan*, Judgment of 28 June 2017, para 64 *quoting* CAS 2013/A/3112, *WADA v. Chernova,* Award of 16 January 2014, para 85.

must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis. Further, the Panel remarks that such athlete's rebuttal functions only to shift the burden of proof to the anti-doping organization, which may then show, to the Panel's comfortable satisfaction, that the departure did not cause a misreading of the analysis."

54. Also as set forth previously by this Tribunal, CAS case law has also provided insight into the question of when an (established) departure may have reasonably caused an Adverse Analytical Finding:[4]

> *"the Panel considers that Rule 33.3(b) requires a shift in the burden of proof whenever an athlete establishes that it would be reasonable to conclude that the IST departure could have caused the Adverse Analytical Finding. In other words, the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the ISL departure and the presence of a prohibited substance in the athlete's sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible."*

2) The Burden of presentation and substantiation

55. More generally, as set forth by this Tribunal in previous cases:[5]

> *"The burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court / tribunal (see also CAS 2011/A/2384&2386, no. 249). It is, in principle, the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court / tribunal in a sufficient manner (SFT 97 II 216, 218 E. 1). The party that has the burden of proof, thus, in principle has also the burden of presenting the relevant facts to the tribunal. Only if the party has satisfied its burden of presentation, the question related to the burden of proof may arise (provided that the fact has been contested by the other party)".*

B. Has the Rider committed a violation of Article 2.1 ADR ?

1) Did the UCI establish that the Rider committed an anti-doping rule violation?

56. The UCI alleged that the Rider committed a violation of Article 2.1 ADR (Presence of a Prohibited Substance or its Metabolites or markers in a Rider's Sample). The Single Judge agrees.

57. A violation of Article 2.1 ADR is evaluated according to the principle of Strict Liability. According to the definition of Strict Liability in Appendix 1 ADR, this principle provides that "*it is not necessary that intent, Fault, Negligence, or knowing Use on the Rider's part be demonstrated by the Anti-Doping Organization in order to establish an anti-doping rule violation*". In particular, the ADR instructs that sufficient proof of an anti-doping rule violation is established – *inter alia* – by the "*presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample*

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4 ADT 05.2016, *UCI v. Jure Kocjan*, Judgment of 28 June 2017, para 65 *quoting* CAS 2014/A/3487, *Campbell-Brown v.IAAF*, Award of 24 February 2014, para 155.

5 ADT 05.2016, *UCI v. Jure Kocjan*, Judgment of 28 June 2017, para 66, and ADT 05.2017, *UCI v. Josemburg Nunes Pinho,* Judgment of 15 August 2017, para 71.

where the Rider waives the analysis of the B sample and the B Sample is not analysed; or, where the Rider's B Sample is analysed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider's A Sample". The analysis must be conducted by a WADA-accredited laboratory (or a laboratory otherwise approved by WADA) (Article 6.1 ADR).

58. In the present case, the analysis of both the A and B Samples collected from the Rider revealed the presence of GHRP-2 and its metabolite (GHRP-2 M2).

59. Article 2.1.2 ADR provides, that sufficient proof of an anti-doping rule violation under Article 2.1 can be established by the *"presence of a Prohibited Substance or its Metabolites […] in the Rider's A Sample […] where the Rider's B Sample is analyzed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance or its Metabolites […] found in the Rider's A Sample […]".*

60. While the Rider has contested these findings, alleging that *"An isolated intake of the dopant substance under consideration therefore would not have benefited the athlete […], who, however has always denied that he voluntarily introduced into his body forbidden substances […]. It thus emerges that Mr Ruffoni, engaged in the aforementioned cycling competition, had not in any way assumed doping substances […]"*, the Tribunal finds that a mere denial of the Rider to have committed any violation of the ADR has no bearing in the determination of whether a violation of Article 2.1 ADR has occurred. As noted by this Tribunal, with a reference to CAS case law *"a simple denial without any supporting evidence should be afforded at most limited evidentiary weight".*[6]

61. Similarly, the contention of the Rider that *"An isolated intake of the dopant substance under consideration therefore would not have benefited the athlete […]"* and the statement in the expert opinion that *"[…] the molecules of GHRP-2 and of its M2 metabolite were present, at very low concentration (around 2 and 5 ng/mL, respectively) […]"*[7] is irrelevant since the presence of the prohibited substance GHRP-2 and it's metabolites in a Rider's Sample is sufficient proof of an anti-doping rule violation pursuant to Article 2.1, and since GHRP-2 is not subject to any quantitative threshold. Pursuant to Article 2.1.3 ADR, the presence of any quantity of a substance that is not specifically identified as being subject to a quantitative threshold on the WADA Prohibited List is sufficient to establish an anti-doping rule violation.

62. Therefore the Single Judge is comfortable satisfied that the Rider committed a violation of Article 2.1 ADR.

2) Are there any grounds to invalidate the apparent violation?

a) Challenge of the reliability of the analytical results

63. The Rider challenged the reliability of the analytical results reported from the Lausanne Laboratory. The Rider argued the following:

"[…] On May 18, 2017, at the Laboratory of Lausanne, the required operations [the B Sample analysis] were carried out confirming the outcome of the previous analysis.

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6 See e.g. ADT 02.2016, *UCI v. Fabio Taborre*, Judgment of 25 May 2016, para 85, and ADT 04.2016, *UCI v. Carlos Oyarzun*, Judgment of 16 September 2016, para 68.

7 Expert Opinion on *"Additional comments on the doping case of Mr. Nicola Ruffoni"* of September 14, 2017.

It is worth pointing out that on April 20, 2017 and April 21, 2017, the athlete was subjected to further anti-doping investigations, prepared by the UCI, whose outcomes attest to the negativity of any doping substance.
Following the investigation of 25 April 2017 and the non-negligence of 5 May 2017, on 6 May 2017, Mr Ruffoni Nicola voluntarily subjected to a new specific control attesting the absence of GHRP-2 substance. […]
From what emerges, ictu oculi is an objective uncertainty about the results of the analyzes carried out by accredited international structures that, on the contrary, should guarantee maximum fairness and, therefore, ensure impartial results.
In the present case, the analyzes carried out on samples taken at the athlete are placed in a particularly narrow and narrow time span so as to make reservations about the genuineness of laboratory outcomes. The perimeter findings, in fact, deny the positivity found at the withdrawal of 25 April 2017. The conflict resulting from the various drawings, which have resulted in two opposite results, can only cast a shadow on the correctness and homogeneity of the methods used in International laboratories. In just over 15 days, Mr. Ruffoni underwent 4 biological investigations and only one of the examinations gave positive feedback to the banned substance. […]"

64. The relevant analysis was carried out by the WADA-accredited Laboratory in Lausanne. WADA-accredited Laboratories enjoy a presumption that they "*have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories*" (Article 3.2.2 ADR). The ADR sets out a step-by-step procedure for rebutting the presumption of procedural regularity, and thereby challenging the results of a Sample analysis by a WADA-accredited laboratory, in Article 3.2.2. This procedure relies, in the first place, on the Rider establishing that a departure from the International Standard for Laboratories occurred, and in the second place, on the Rider establishing that the departure "*could reasonably have caused the Adverse Analytical Finding*".

65. The Single Judge finds that the Rider did not in any way establish a departure from the International Standard for Laboratories.

3) Conclusion

66. It is not and cannot be sufficient for the Rider to make general allegations about the reliability of the Lausanne Laboratory. No specific procedural departures were identified by the Rider, let alone a departure that "*could reasonably have caused the Adverse Analytical Finding*"; Nor did the Rider set forth any other potential legal basis on which his argument may rest. The Rider's argument is hereby dismissed, and the results of the Sample analysis must stand.

C. Consequences of the anti-doping rule violation

67. Satisfied that the Rider committed and anti-doping rule violation, the Tribunal must decide upon the consequences of the violation. In this regard, the Single Judge notes that since the ADRV for Presence (Article 2.1 ADR) is established, it is not necessary to examine the alleged ADRV for Use (Article 2.2 ADR).

1) Period of Ineligibility

68. For first time violations of Article 2.1 ADR, the starting point in determining the sanction is Article 10.2 ADR. According to Article 10.2.1.1 ADR, the period of Ineligibility to be imposed shall be four (4) years where "*the anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional*".

69. As set forth above, the Rider's violation involves the Prohibited Substance GHRP-2 and metabolites. GHRP-2 is a Prohibited Substance listed under Class S.2.5 "Growth Hormone-Releasing Peptides" on the Prohibited List. GHRP-2 is not a Specified Substance.

70. For violations that do not involve Specified Substances (such as the violation at stake), Article 10.2.1.1 in combination with Article 10.2.2 ADR provide that the period of Ineligibility shall be two years in the event that a Rider establishes that the violation was not "intentional" within the meaning of the ADR. Thus, the Rider bears the burden of proof to establish that a violation was not intentional, and according to the general rule set forth in Article 3.1 ADR, the standard of proof is by a balance of probability.

71. In general, a Rider may be entitled to a further reduction – or even elimination – of the period of Ineligibility if the Rider establishes that one of the Fault-related reductions enshrined in Articles 10.4 or 10.5 ADR apply.

72. Thus, the threshold question in setting the period of Ineligibility is whether the Rider discharged his burden of proof to establish that the violation was not intentional (a), followed by the question of whether any Fault-related reductions apply (b).

a. Was the violation intentional?

i. Position of the Parties

73. The Rider denied that he knowingly consumed a Prohibited Substance, stating that he *"has always denied that he voluntarily introduced into his body forbidden substances".* The Rider submitted that the presence of GHRP-2 could possibly have been due to one of various sources, and the Rider also submitted that it would be nonsensical that he had used an isolated dose of GHRP-2 by alleging the following:

- **Nonsensical to use an isolated dose of GHRP-2.** The Rider submitted that it would be nonsensical to use an isolated dose of GHRP, relying on the fact that he tested negative in other tests in April and May 2017. In support of this possibility, the Rider emphasised that he won two events at the end of April and that he underwent two in-competition doping controls on 20 and 21 April. These tests were negative. On 25 April he underwent an out-of-competition doping control, which was positive and which is the relevant doping control in the case at hand. On 3 and 4 May he underwent doping controls before the Giro d'Italia. The results of these latter controls were also negative. Again, on 6 May, another out-of-competition doping control was carried out and it reported negative. This means that in a period of 2 weeks, 6 doping controls were carried out and only 1 was positive. The Rider submitted that this is evidence [for non-intentional behaviour], because it is not plausible that the Rider ingested the substance without it being detected in the other tests. The Rider knew about the controls before the Giro d'Italia, and it is not plausible that he would ingest the substance before the big race because he knew that doping controls would be carried out. It is also known that using growth hormones 1 time does not enhance performance. The use of growth hormones must be done for 2 continuous weeks to enhance performance.

The Single Judge understands that the Rider's initial position was that he was unaware of how the Prohibited Substance came into his system. In addition to the above, The Rider further submitted that the presence of GHRP-2 in his system could possibly have been due to one of the following sources:

- **Victim of sabotage or a contaminated product.** The Rider submitted that he could possibly have been the victim of sabotage or a contaminated product by submitting: *"The overall uncertainty of the matter is also reflected in the possible demonstration of the assumption of this substance: occasional ingestion that would justify the positivity and the presence of growth hormone might be compatible with virtual manipulation of the substance Drinks, food or anything else that the athlete might have taken in good faith."* At the hearing the Rider referred to the sabotage theory and stated that it is possible that someone sabotaged his drink. This would be a logical explanation for the case. The rider referred to the fact that he has never had any kind of problem from a doping perspective.

  The expert referred at the hearing to the possibility of the substance having entered the Rider's body through contamination.

- **Pathology.** [redacted]

74. The UCI submitted that from a factual point of view in the case at hand, there is a positive test for GHRP-2 and metabolites as confirmed by the Rider's expert in the Expert Opinion; that there is no dispute that the substance is a non-specified substance; that there is no doubt that the applicable regime is a suspension of four years; that only in case of non-intentional use the period of ineligibility can be reduced to 2 years; and that non-intentional use has to be established by the Rider. The UCI referred to the Rider's 3 'stories' and submitted that none of these are established by "a balance of probability".

ii. Position of the Single Judge

75. In evaluating the submissions and evidence before it, the Tribunal concludes that the Rider failed to discharge his burden of proof to convince this Tribunal, on a balance of probability, that the violation was not intentional.

76. In the proceedings the Rider submitted that *"an isolated intake of the dopant substance under consideration therefore would not have benefited the athlete"*, that the Rider *"has always denied that he voluntarily introduced to his body forbidden substances"*, that the presence of growth hormone could be due to *"virtual manipulation of the substance Drinks, food or anything else that the athlete may have taken in good faith",* and that [redacted]

77. The Tribunal emphasises, that it is not sufficient for the Athlete to deny the use of doping. It is well established in CAS case law[8] and confirmed on multiple occasions by this Tribunal,[9] that a simple denial without any supporting evidence should be afforded at most limited evidentiary weight. Likewise, the Tribunal in the case at hand affords the Rider's denial only limited evidentiary weight.

78. Also, it is not sufficient to claim that the ADRV could be due to *virtual manipulation, sabotage* or *pathology* without providing any corroborating evidence as to either establish the source of the Prohibited Substance or to establish that the violation was not intentional within the meaning of Article 10.2.3 ADR.

79. In evaluating the evidence before it, the Tribunal concludes that the Rider failed to discharge his burden of proof to convince the Tribunal, on a balance of probability, that the anti-doping rule violation was not intentional.

b. Fault-related reductions

80. In order to establish a Fault-related reduction within the meaning of Article 10.4 or 10.5, the Rider must establish that the violation was committed with No Fault or Negligence or No Significant Fault or Negligence. Both require that the Rider establish how the Prohibited Substance entered his or her system (Appendix 1 ADR). As set forth above, the Single Judge finds that the Rider did not establish how the Prohibited Substance entered his system, and therefore no Fault-related reductions are available.

c. Conclusion

81. In conclusion, the Rider failed to establish that the violation was not intentional, nor did the Rider establish that any of the Fault-related reductions in Articles 10.4 or 10.5 should apply to the case at hand. Therefore, the period of Ineligibility is four years.

82. The Single Judge also notes that in reaching this conclusion, she considered the entirety of the Rider's submissions made throughout these proceedings. Any and all other arguments or allegations raised by the Rider throughout the proceeding were considered and dismissed.

2) Commencement of the period of Ineligibility

83. A period of ineligibility of four years is imposed on the Rider. The Tribunal has to determine the commencement of the period of ineligibility.

84. Article 10.11 ADR provides that the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility and that if a Provisional Suspension has been imposed and respected by the Rider, then the Rider shall receive a credit for such period of Provisional Suspension.

85. It is undisputed between the Parties that the Rider respected the Provisional Suspension. Therefore the Rider shall receive a credit for the period of the Provisional Suspension.

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8 See e.g. CAS 2014/A/3615, *WADA v. Daiders,* Aaward of 30 January 2015, para 51.

9 See e.g. ADT 02.2016, *UCI v. Fabio Taborre*, Judgment of 25 May 2016, para 85, ADT 03.2017, *UCI v. Ms. Isabella Moreira Lacerda*, Judgment of 17 August 2017, para 105 and ADT 05.2017, *UCI v. Josemburg Nunes Pinho,* Judgment of 15 August 2017, para 122.

86. Therefore, the period of Ineligibility shall commence on the date of the decision, i.e. 14 December 2017. The Provisional Suspension already served by the Rider, starting from 4 May 2017 until the date of the present Judgment, shall be credited against the four year period of Ineligibility.

3) Mandatory Fine and Costs

a) Application of the mandatory fine

87. Pursuant to Article 10.10.1.1 ADR "*A fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3.*" This prerequisite is fulfilled in the case at hand.

88. With respect to the calculation of the fine, the UCI submits that the Rider was entitled to an annual gross income from cycling of EUR [redacted] in 2017. Therefore, according to the UCI, a mandatory fine of EUR [redacted] should be imposed unless the Rider can establish that a reduction of the fine would be justified in application of the criteria set out in Article 10.10.1.1 ADR.

89. The Rider has not contested the above figures and not put forward any arguments for reduction of the fine.

b) Liability for Costs of the Procedures

90. In application of Article 10.10.2, the Single Judge holds that the Rider shall reimburse to the UCI the following amounts:

- CHF 2'500 for costs of the results management by the UCI (Article 10.10.2.2 ADR);
- CHF 510 for costs of the B-Sample analysis (Article 10.10.2.3 ADR);
- CHF 1'500 for costs of the Out-of-Competition Testing (Article 10.10.2.4 ADR); and
- CHF 900 for costs of the A and B Sample Laboratory Documentation Packages (Article 10.10.2.5 ADR).

VII. COSTS OF THE PROCEEDINGS

91. Article 28 ADT Rules provides as follows:

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

92. In application of Article 28.2 ADT Rules, the Single Judge decides that the present Judgment is rendered without costs.

93. Notwithstanding the above, the Tribunal may order the unsuccessful party to pay a contribution toward the prevailing party's costs and expenses incurred in connection with the proceedings

and, in particular, the costs of witnesses and experts (Article 28.4 ADT Rules). The provision states that if the prevailing party was represented by a legal representative the contribution shall also cover legal costs.

94. The Single Judge notes that the UCI did not call any witness or expert and that the UCI managed this case almost entirely with in-house counsel. The involvement of an external counsel was limited to the end of these proceedings.

95. Therefore, the Single Judge decides that each party shall bear its own costs in connection with these proceedings.

VIII. RULING

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

1. **Mr. Nicola Ruffoni has committed an Anti-Doping Rule Violation (Article 2.1 ADR).**

2. **Mr. Nicola Ruffoni is suspended for a period of ineligibility of 4 (four) years. The period of ineligibility shall commence on the date of this decision, i.e. 14 December 2017.**

3. **The provisional suspension already served by Mr. Nicola Ruffoni, starting from 4 May 2017, shall be credited against the four year period of ineligibility.**

4. **Mr. Nicola Ruffoni is ordered to pay to the UCI the amount of EURO [redacted] as monetary fine.**

5. **Mr. Nicola Ruffoni is ordered to pay to the UCI:**

   a) **the amount of CHF 2'500 for costs of the results management;**
   b) **the amount of CHF 510 for costs of the B-Sample analysis;**
   c) **the amount of CHF 1'500 for costs of the Out-of-Competition Testing; and**
   d) **the amount of CHF 900 for costs of the A and B Sample Laboratory Documentation Packages.**

6. **All other and/or further reaching requests are dismissed.**

7. **This Judgment is final and will be notified to:**

   a) **Mr. Nicola Ruffoni;**
   b) **the Italian National Anti-Doping Agency;**
   c) **UCI; and**
   d) **WADA.**

97. This Judgment may be appealed before the CAS pursuant to Article 30.2 ADT Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 ADR.

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Helle Qvortrup Bachmann
Single Judge