



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2016/A/4700 WADA v. Lyudmila Vladimirovna Fedoriva

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Lars Halgreen, Legal Director, Ph.D., LL.M., Copenhagen, Denmark

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden, Attorneys-at-law, Kellerhals Carrard,
Lausanne, Switzerland

Appellant

and

Ms Lyudmila Vladimirovna Fedoriva,

Represented by Mr Aleksandr Chebotarev, Attorney-at-law, Moscow, Russia,

Respondent

I. THE PARTIES

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is the independent international anti-doping agency constituted as a private law foundation under Swiss law with its seat in Lausanne, Switzerland, and having its headquarters in Montreal, Canada. Its aim is to promote and coordinate the fight against doping in sport internationally.
2. Ms. Lyudmila Vladimirovna Fedoriva (the “Coach” or the “Respondent”) is an athletics coach, who is affiliated to the All Russian Athletic Federation (the “ARAF”). In 2015, the Respondent was the coach of the Russian athlete, Mr Dmitry Khasanov.
3. The Appellant and Respondent together shall be referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence and testimony produced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out where relevant in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. This case concerns an alleged violation of Article 2.5 of the Russian Anti-Doping Agency’ Anti-Doping Rules (“RUSADA ADR”), which concerns tampering or attempted tampering with any part of doping control.
6. The facts and the course of events in this matter are disputed between the Parties, and much of the evidence relies on testimonies from witnesses and the Respondent herself.
7. On 7 May 2015, immediately after a race at the Moscow Track and Field Championship, Mr Khasanov was notified by a chaperone from the Russian Anti-Doping Agency (“RUSADA”), Mr Pavel Steshin, that he was to give a urine sample at the Doping Control Station. According to the report from the doping control officer from RUSADA, Mr Andrei Knyasev, and the chaperone, Mr Steshin, Mr Khasanov was reluctant to comply with the instructions given to him. Allegedly, he requested that Mr Steshin select another athlete for doping control.
8. Upon arrival at the Doping Control Station, Mr Khasanov allegedly did not accept to wait in the waiting room as requested. Instead, he remained outside. Mr Knyasev and Mr Steshin decided to keep him under supervision taking turns to do so until Mr

Khasanov was ready to submit to sample collection. At some point during a changing of “guards”, Mr Khasanov allegedly (according to the statements of Mr Knyasev and Mr Steshin) found a way to replace himself with another athlete who presented himself as Mr Khasanov.

9. Mr Knyasev - as the doping control officer in charge - recognized that this new athlete was not the real Mr Khasanov. Allegedly, the two men had the same build, but they had a different haircut, different facial features and a different voice. Both Mr Knyasev and Mr Steshin were convinced that a substitution had taken place.
10. At this point, amid the confusion, the Respondent showed up at the Doping Control Station and interjected herself in the situation. In doing so, the Respondent proceeded to insist that the new, questionable athlete was in fact Mr Khasanov. Mr Knyasev asserts that the Respondent insisted continuously for a period of three to four minutes that the new, questionable athlete was Mr Khasanov and more specifically, that this athlete should be tested. During these discussions, the Respondent and Mr Knyasev were only 1 – 1.5 metres away from the questionable athlete and there could, according to Mr Knyasev, be no confusion in mistaking Mr Khasanov for the questionable athlete.
11. The Respondent eventually realized that she would not be able to persuade Mr Knyasev that the questionable athlete was Mr Khasanov. This said, it is noted that the Respondent denies that she attempted to influence or persuade any of the doping control officers against testing Mr Khasanov or to replace him with another athlete for testing.
12. The “real” Mr Khasanov was eventually located, identified and required to submit to sample collection. Mr Khasanov’s sample returned an adverse analytical finding for Trenbolone and Oxandrolone, both Prohibited Substances pursuant to the World Anti-Doping Code (the “WADC”).
13. During the first-instance procedure, RUSADA found that the Respondent committed an anti-doping rule violation in violation of Article 2.5 RUSADA ADR, which sanctions tampering or attempted tampering with any part of a doping control. Likewise, the Respondent was found guilty of complicity pursuant to Article 2.9 RUSADA ADR. In the light of these findings, the Respondent was sanctioned by RUSADA with a four-year period of ineligibility (the “First-Instance Decision”).
14. An appeal was filed by the Respondent against the First-Instance Decision with the Sports Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation. This court upheld the appeal and annulled the First-Instance Decision by new decision dated 17 May 2016 (the “Appealed Decision”). In the Appealed Decision, the Sports Arbitration Court took a critical look upon the impartiality and objectivity of Mr Knyasev, claiming that RUSADA “long ago had information” about the Respondent. Therefore, he was regarded as “an interested party”, who had a “specific problem

regarding the discovery of contraventions of the anti-doping rules” by the Respondent. For that reason, and since there was no confession of the Respondent, nor any other evidence of contravention of the anti-doping rules, the Court held that RUSADA had not delivered the necessary proof of tampering. In the case file, the Sole Arbitrator has not found any evidence to support the alleged partiality or bias of Mr Knyasev.

15. On 24 May 2016, the case file was forwarded to the International Association of Athletic Federations (the “IAAF”). The IAAF chose not to appeal the Appealed Decision.

III. PROCEEDINGS BEFORE THE CAS

16. On 5 July 2016, WADA filed its Statement of Appeal at the Court of Arbitration for Sport (the “CAS”) in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”) against the Respondent with respect to the Appealed Decision.
17. WADA requested that a Sole Arbitrator be appointed for this case, and given the fact that the case file relating to the Appealed Decision was in Russian, WADA requested that the time limit for the filing of the Appeal Brief be extended until 15 August 2016.
18. On 12 July 2016, the CAS Court Office acknowledged receipt of WADA’s Statement of Appeal and *inter alia* invited the Respondent to inform the CAS Court Office, whether she agreed to the appointment of a Sole Arbitrator or would object to conducting the procedure in English.
19. On 20 June 2016, the CAS Court Office noted that the Respondent did not state her position as to the Appellant’s request for a Sole Arbitrator.
20. On 15 August 2016, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
21. On 19 August 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that Mr Ken E. Lalo, Attorney-at-law, in Gan-Yoshiyya, Israel, had been appointed Sole Arbitrator. Mr Lalo accepted his appointment, but wished to disclose certain information contained in the enclosure attached to his independence form.
22. On 23 August 2016, the Respondent challenged the appointment of Mr Lalo as Sole Arbitrator, and on 25 August 2016 Mr Lalo, without agreeing to the basis for the Respondent’s challenge, resigned from the case.

23. On 1 October 2016, the Respondent filed her Answer in accordance with Article R51 of the Code.
24. On 5 October 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that Mr Lars Halgreen, attorney-at-law in Copenhagen, Denmark, had been appointed the Sole Arbitrator following Mr Lalo's declination.
25. On 16 January 2017, the Appellant and the Respondent respectively signed and returned the Order of Procedure to the CAS Court Office.
26. On 24 January 2017, a hearing was held at the Palace Hotel in Lausanne, Switzerland. The Sole Arbitrator was assisted by Mr Brent J. Nowicki, Managing Counsel, and joined by the following:

For the Appellant: Mr Ross Wenzel (Counsel),
Mr Nicholas Zbinden (Counsel), and
Ms Aleksandra Volkova-Jurema (translator).

For the Respondent: Mr Aleksandr Chebotarev, Counsel,
Ms Ilya Inozemtsev (Counsel/Interpreter), and
Ms Lyudmila Vladimirovna Fedoriva (Respondent).
27. The Parties called the following witnesses to give testimony at the hearing:

For the Appellant: Mr Knyasev (via Skype),
Mr Steshin (via Skype)

For the Respondent: Mr Aleksandr Gertlein (via telephone),
Mr Gennadiy Samoïlov (via telephone),
Ms Irina Litovchenko.
28. The parties confirmed at the outset of the hearing that they had no objections to the constitution and composition of the arbitral tribunal.
29. At the end of the hearing, the Parties stated that they had no objections with the procedure of these proceedings, that they had been treated equally and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The position of the Appellant

30. In its Request for Relief, the Appellant provides as follows:

(1) The appeal of WADA is admissible.

(2) The decision rendered by the Sports Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation on 17 May 2016, in the matter of Ms Lyudmila Vladimirovna Fedoriva is set aside.

(3) Ms Lyudmila Vladimirovna Fedoriva is sanctioned with a four-year period of ineligibility starting on the date, on which the CAS award enters into force. Any period of ineligibility or provisional suspension imposed on, or voluntarily accepted by Ms Lyudmila Vladimirovna Fedoriva before the entry into force of the CAS award, shall be credited against a total period of ineligibility to be served.

(4) WADA is granted an award for costs."

31. The Appellant's submissions, in essence, may be summarised as follows:

- The witness statements of the doping control officers, Mr Knyasev and Mr Steshin, clearly and unequivocally establish that the Respondent deliberately attempted to persuade and convince the doping control officer that the Athlete, Mr Khasanov, should not be tested.
- WADA submits that the Respondent hereby intentionally sought to mislead the doping control officers, first by suggesting that another athlete was in fact Mr Khasanov, and second by insisting that the Doping Control Officer should test the other athlete even after it had transpired that he was not Mr Khasanov.
- Both witness statements from Mr Khyasev and Mr Steshin are highly reliable and consistent, and neither the doping control officer Mr Knyasev nor the chaperone Mr Steshin had any motive to bring false witness against the Respondent. On the contrary, they both acted professionally and reported diligently what they saw as a clear attempt to tamper with the doping control process.
- WADA submits that the behaviour of the Respondent constitutes a violation of Article 2.5 RUSADA ADR, which concerns tampering or attempted tampering with any part of doping control.

- WADA refers in this context to a UK case on tampering (UK Anti-Doping v. Danso and UK Anti-Doping v. Offiah), in which two basketball players were sanctioned for having tampered with doping control. In this matter, Mr Danso played a basketball game impersonating, as a “ringer”, for another player Mr Fagbenle, who was not present at the game. Mr Fagbenle appeared on the team sheet, but it was in fact Mr Danso who played the game pretending to be Mr Fagbenle. The UK Anti-Doping Panel found both men guilty in fraudulent conduct attempting to prevent normal doping control procedures from occurring.
- There are very similar circumstances between the present case and the Danso/Offiah precedent. In both cases, the doping control officers were misled in order to test an athlete who was not the one selected to submit to sample collection. It makes no difference that the Respondent was not the athlete trying to take Mr Khasanov’s place, but in fact the coach of Mr Khasanov.
- To substantiate the seriousness of the Respondent’s attempt of tampering with the doping control of Mr Khasanov, WADA stresses that Mr Khasanov was ultimately found positive for two Prohibited Substances. The only logical inference is that the tampering attempt of the Respondent was aimed at protecting her athlete from testing positive.
- In evaluating the evidence in this matter to establish whether WADA has lifted its burden of proof, it is of paramount importance that the version of facts of the doping control officers of RUSADA must prevail. According to WADA, none of the officers had any interest at all to fabricate or consort any facts.
- With respect to the sanction itself, Article 10.3.1 RUSADA ADR is very clear and states that the period of ineligibility shall be four years for violations of Article 2.3 or Article 2.5 RUSADA ADR.
- The conduct of the Respondent was clearly intentional, and her sole purpose was to mislead the doping control officers in order to avoid that her athlete be tested. Thus, the period of ineligibility cannot be less than four years.

B. The position of the Respondent

32. In its Request for Relief, the Respondent provides as follows:

“The Defendant asked for the Appeal to be dismissed and the decision of the Sports Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in the matter to be upheld.”

33. The Respondent’s submissions, in essence, may be summarised as follows:

- The Respondent denies that she in any way has tampered or attempted to tamper with the doping control of Mr Khasanov on 7 May 2015. Hence, she denies to have violated Article 2.5 RUSADA ADR.
- The Respondent submits that it is the Appellant that must carry the burden of proof for this alleged anti-doping rule violation and that WADA has not provided any proof in this matter. Indeed, Mr Khasanov was disqualified for use of prohibited substances, but the Respondent had no way of knowing of this violation, as Mr Khasanov was a person of majority age, and she had no way of controlling his actions.
- The Respondent did not assist Mr Khasanov in any anti-doping rule violation, nor did she encourage him or conspire with him to take any prohibited substances.
- Before RUSADA, Mr Khasanov stated that the Respondent had not conspired with him in any way.
- The Respondent submits that the doping control carried out by RUSADA on 7 May 2015 did not fulfil the conditions and requirements according to the International Standing for Testing (IST).
- Hence, the Respondent claims that the accusations raised against her by the doping control officers of RUSADA was in fact an ill-fated attempt to cover up for the many faults and wrongdoings by RUSADA officials in conducting the doping control on 7 May 2015.
- Overall, the Respondent contends that the hearing at RUSADA was carried out in a biased and unfair manner, and the version of the facts presented by the doping control officers Mr Knyasev and Mr Steshin is not reliable and trustworthy.
- On the contrary, the statement of Mr Steshin and Mr Knyasev must be considered as corrupt and as a clear proof of perjury, and the statement contradicts the doping protocols, which were prepared and signed in connection with the doping control of Mr Khasanov.
- WADA has – except for the false statements of Mr Knyasev and Mr Steshin – brought forward no additional solid evidence to prove the Respondent's alleged attempted tampering of the doping control. Instead, the Respondent has presented a reliable and consistent statement regarding the course of events at the Doping Control Station, and she has never attempted to prevent Mr Khasanov from being tested or suggested that another athlete be tested instead of Mr Khasanov.
- Her statement of facts is supported and collaborated by the statements of the main

judge on the competition, Mr Samoïlov, the coach Ms Litovchenko, and the doctor of the stadium, Mr Gertlein. All these witnesses have on their own accord decided to witness in favour of the Respondent's version of the events that took place on 7 May 2015.

V. JURISDICTION

34. Article R47 of the Code provides as follows:

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

An appeal may be filed with CAS against an award rendered by CAS acting as a first-instance tribunal, if such appeal has been expressly by the rules of the federation or sports-body concerned.”

35. It is undisputed that the RUSADA ADR are applicable to the present case. Pursuant to Article 13.2.3, WADA is entitled to appeal to the CAS against decisions issued by the appeal body specified in Article 13.2.2.1 RUSADA ADR. In this case, the final decision at the national Russian level has been made by the Sports Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, and thus WADA has the right to appeal to the CAS with respect to the decision of this national-level appeal body.

36. Therefore, the Sole Arbitrator finds that the CAS has jurisdiction to adjudicate and rule in this matter. CAS jurisdiction has also been confirmed by both Parties without objections by their signing of the Order of Procedure.

VI. ADMISSIBILITY

37. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association, or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be 21 days from the receipt of the disputed decision appealed against”

38. It is undisputed that on 24 May 2016, the IAAF was notified and provided with a copy of the case file regarding the Appealed Decision.

39. Article 13.6.1 RUSADA ADR states that

“The filing deadline for an appeal filed by WADA shall be the latter of: (a) 21 (twenty-one) days after the last day, on which any other party in the case could have appealed, or (b) 21 (twenty-one) days after WADA’s receipt of the complete file relating to the decision.”

40. The IAAF had the possibility to challenge the Appealed Decision within a 21-day time limit, which expired on 14 June 2016. In light of the rule in Article 13.6.1(a) RUSADA ADR, WADA thus had an additional 21-day deadline after the expiry of the time limit granted to IAAF to file an appeal. Therefore, WADA timely filed its statement of appeal on 5 July 2016 and this procedure is hereby admissible.

41. Thus, the Sole Arbitrator holds that the Appealed Decision and the Appeal Brief are both admissible.

VII. APPLICABLE LAW

42. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the Parties, or, in the absence of such a choice, according to the law of the country, in which the federation, association or sports-related body, which has issued the Challenged Decision, is domiciled, or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

43. As pointed out above, it is undisputed that the RUSADA ADR are applicable to the present case. No Party has asserted that any other set of rules or procedure should apply alternatively.

44. For the sake of clarity, this case concerns an alleged violation of Article 2.5 RUSADA ADR, which states as follows:

“Tampering or attempted tampering with any part of doping control.

Conduct which subverts a Doping Control Process, by which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control

Official, providing fraudulent information to an Anti-Doping Organisation or intimidating or attempting to intimidate a potential witness.”

45. As for the sanction for tampering or attempted tampering with any part of doping control, Article 10.3.1 RUSADA ADR states as follows:
46. *“For violation of Article 2.3 or Article 2.5, the period of ineligibility shall be four years. Unless, in the case of failing to submit to sample collection, the Athlete can establish that the commission of the Anti-Doping Article Violation was not intentional (as defining Article 10.2.3), in which case the period of ineligibility shall be two years.”*

VIII. MERITS

47. The following issues shall be determined by the Sole Arbitrator in these appeal proceedings:
- (1) Did the Respondent violate Article 2.5 RUSADA ADR by tampering or attempting to tamper with any part of the doping control of Mr Khasanov on 7 May 2015?
 - (2) If so, which period of ineligibility in accordance with Article 10.3.1 RUSADA ADR should the Respondent be sanctioned with?
48. The following outlines the relevant context and factual circumstances and evidence, which have been presented in these proceedings and at the hearing as regards the claim presented by WADA that the Respondent has tampered or attempted to tamper with the doping control of Mr Khasanov at the Moscow Track and Field Championship on 7 May 2015.
49. Based on the presentation of WADA’s claim in its written submissions and at the hearing, the Sole Arbitrator notes that the alleged tampering or tampering with the doping control process conducted by the Respondent centres around two main accusations. First, the Respondent allegedly tried to persuade the RUSADA doping control officer Mr Knyasev that the Athlete, present outside of the Doping Control Station, was in fact Mr Khasanov when she allegedly knew that he was not. Second, when the Respondent allegedly failed to convince RUSADA’s doping control officers that the other athlete was in fact Mr Khasanov that she instead tried to persuade the doping control officers to test this athlete instead of Mr Khasanov.
50. On the basis of the Requests for Relief and the submissions made by WADA, the Sole Arbitrator notes that WADA has not brought forward the claim of complicity pursuant to Article 2.9 RUSADA ADR, which the Respondent was found guilty of by RUSADA in the first instance at the national Russian level. The Sole Arbitrator acknowledges that the matter only relates to tampering or alleged tampering of the doping control process

and not a claim that the Respondent was complicit in the anti-doping rule violation committed by Mr Khasanov, who was later found guilty of having tested positive for two prohibited substances.

51. After having carefully examined the written evidence on record in the file, it is the Sole Arbitrator's understanding that WADA's case to a very substantial degree has been built on the testimonies of RUSADA's two doping control officers, namely the chaperone, Mr Steshin, and the doping control officer, Mr Knyasev. There appears to be no other written evidence on file, which may shed light on the course of events, which took place from the time Mr Khasanov was selected to undergo doping control until he provided a urine sample that was later found to be positive.
52. Likewise, the Respondent's defence is to a large degree solely based on the statement of the Respondent herself and the witness testimony given at the hearing by Ms Litovchenko, Mr Gertlein and Mr Samoilov.
53. Before evaluating the evidence in the form of the witness testimonies of the respective witnesses and the Party herself, the Sole Arbitrator wishes to stress that WADA in these proceedings shall have the burden of establishing that an anti-doping rule violation has occurred pursuant to Article 3.1 RUSADA ADR. The standard of proof is whether WADA established an anti-doping rule violation to the comfortable satisfaction of the Sole Arbitrator bearing in mind the seriousness of the allegation that is made. Pursuant to Article 3.2 RUSADA ADR, facts related to anti-doping rule violations may be established by any reliable means, including admissions. In this case, the proof of the Respondent's anti-doping rule violation pursuant to Article 2.5 RUSADA ADR must in the Sole Arbitrator's opinion therefore rely on the trustworthiness of the witness statements made by the two doping control officers, Mr Knyasev and Mr Steshin, as no other physical evidence, e.g. in the form of a positive doping sample is not present in a tampering case such as this one.
54. According to Article 2.5 RUSADA ADR, tampering constitutes an anti-doping rule violation. Tampering is defined as "*conduct which subverts the doping control process....*" Doping Control is defined as "*all steps and processes from test distribution planning to ultimate disposition of any appeal....*" A broad range of behaviours may qualify as "tampering". Article 2.5 OF RUSADA ADR provides a non-exclusive list of examples in this respect such as "*intentionally interfering or attempting to interfere with a doping control official, providing fraudulent information.... or intimidating or attempting to intimidate a potential witness.*" It follows from these examples that whether a certain behaviour qualifies as tampering must be asserted in the individual context.
55. During the hearing, both Mr Knyasev and Mr Steshin testified in full accord with their previous written statements. The Sole Arbitrator found such testimonies credible and

in line with the facts surrounding the incident in question. Indeed, when asked by the Sole Arbitrator, the only point of pause in the testimonies was whether Mr Knyasev could confirm that the Respondent had actually proposed a bribe to either himself or Mr Steshin to substitute Mr Khasanov with another athlete. In response, the Sole Arbitrator is comfortable with Mr Knyasev's response in the negative.

56. Having examined in particular the witness statement of Mr Knyasev, who was the doping control officer from RUSADA at the Doping Control Station, the Sole Arbitrator puts special emphasis on the following parts of his confirmed witness statement:

"Then Ms Lyudmila Fedoriva showed up and insisted with me that the Athlete was effectively Mr Khasanov; she did insist during three to four minutes and she insisted continuously for this amount of time that it was Mr Khasanov. Ms Fedoriva and I were only 1 – 1.5 metres away from the other athlete, and there could not be any confusion between Mr Khasanov and the other athlete.

In my view, given the distance between Ms Fedoriva and the other athlete, the different physical features and the fact that it was not dark, there could be little confusion between Mr Khasanov and the other athlete.

When Ms Fedoriva realised that she was not going to be successful with me in her attempt to have another athlete tested instead of Mr Khasanov, she told me that I should test the other athlete instead of Mr Khasanov.

In other words, she deliberately asked me to test an athlete, who was not Mr Khasanov."

57. In the Sole Arbitrator's assessment whether this witness testimony of Mr Knyasev is trustworthy bearing the seriousness of the accusations against the Respondent in mind, the Sole Arbitrator must start out from the clear assumption that Mr Knyasev as the doping control officer in charge had no personal interest to fabricate or consort any facts, or to bring false accusations against the Respondent. The Respondent did not present any evidence to substantiate such a claim of impartiality, bias or corruptness on the part of the doping control officers. Thus, the Respondent has not produced any evidence that would support the claim of Mr Knyasev's partiality and lack of objectivity as expressed in the Appealed Decision. On the contrary, in the Sole Arbitrator's opinion, the evidence supports the notion that Mr Knyasev simply carried out his job in a professional and diligent manner and reported what he saw as a clear attempt to tamper with the doping control process to the Russian doping authorities, namely RUSADA. The same goes for his colleague, the chaperone Mr Steshin, who also in the Sole Arbitrator's opinion has reported what he believed to be the reluctance of Mr Khasanov to report for doping control and the "successful" substitution with another athlete.

58. In this context, the Sole Arbitrator concurs fully with the reasoning expressed in the case of *Dobud v. FINA* (CAS 2015/A/4163 at paragraphs 91 – 93), in which the statement of facts by a doping control officer was also relied upon as credible and trustworthy evidence. In cases such as this one, where no other evidence than sworn witness statements from the doping control officer in charge can reasonably be presented as evidence, the Sole Arbitrator finds that, indeed, very substantial counter-evidence must be presented to rebut the doping control officer's version of the facts. Thus, the Sole Arbitrator is comfortably satisfied that WADA carried its burden of proof pursuant to Article 3.1 RUSADA ADR that an anti-doping rule violation has been committed by the Respondent in her attempt to tamper with the doping control process of Mr Khasanov.
59. The Sole Arbitrator is well aware that few tampering cases have been decided by the CAS. In any event, as pointed out above, each case has to be asserted on an individual basis. However, the Sole Arbitrator concurs with the arguments made by WADA that the UK jurisprudence in the form of the decision in *UKAD v. Danso* and *UKAD v. Offiah* may constitute a precedence for an anti-doping rule violation, when one person is engaged in fraudulent conduct intended to prevent normal doping control procedures from occurring. In the UK case, one athlete was impersonating as another player in order for that player to avoid doping control, and even though the circumstances are not exactly the same in this case, the underlying intent of trying to subvert the doping control process by intentionally interfering or attempting to interfere is the same in this matter. By trying first to persuade the doping control officer that the substitute athlete was in fact the real Mr Khasanov, when she as his coach knew that he was not, and second – when that attempt failed – the new attempt to persuade the doping control officer to test the other athlete instead, is clearly an effort to tamper with the doping control process within the meaning of this form of anti-doping rule violation.
60. By holding in favour of WADA and accepting the testimonies of Mr Steshin and Mr Knyasev as reliable and trustworthy evidence, the Sole Arbitrator at the same time dismisses the statement by the Respondent herself. The Sole Arbitrator has not been satisfactorily convinced that she has been trustworthy in her presentation of the facts, and with reference to the CAS jurisprudence in the *Dobud* case, this is not just a simple case of “your word against mine”, as the Respondent's own testimony has not brought forward any compelling evidence to rebut the version of facts from two neutral and unbiased doping control officers.
61. The dismissal of the Respondent's counter-evidence in the form of the witness statements of Mr Gertlein, Mr Samoilov, and Ms Litovchenko is also based on the irrefutable fact that none of the witnesses were actually present at the time, when the Respondent was trying to persuade Mr Knyasev that the substitute athlete was in fact Mr Khasanov and subsequent that this substitute athlete should be tested instead of Mr Khasanov.

62. In fact, in the witness statement of Mr Samoilov, who was the main judge of the competitions, Mr Samoilov stated that he refused to sign any additional statement because he was not an eye witness to what had happened. In the witness statement of Ms Litovchenko, there were no references to her being present when the Respondent talked to Mr Knyasev at the Doping Control Station, and in the statement by the doctor of the stadium, Mr Gertlein, there is only a reference to the fact that corridor leading up to the office being used for the doping control was poorly lit.
63. Against this background, the Sole Arbitrator finds that the Respondent has not through her own statement or the witness statements by Ms Litovchenko, Mr Samoilov, and Mr Gertlein, been able to overturn the reliability and trustworthiness of the witness statements of the doping control officers presented during these appeal proceedings. Consequently, the Sole Arbitrator finds that the Respondent is liable of having committed an anti-doping rule violation pursuant to Article 2.5 RUSADA ADR.
64. With respect to the sanctioning of this anti-doping rule violation, the Sole Arbitrator is – given the nature of the offence – of the firm opinion that the Respondent acted intentionally, when she tried to tamper with the doping control of Mr Khasanov. In reaching this conclusion, the Sole Arbitrator has, based on the evidence presented by WADA, been satisfactorily convinced that the Respondent was aware of the substitution of Mr Khasanov with another athlete, since she as her coach would have recognised him standing only 1 – 1.5 metres away from him outside the Doping Control Station. Moreover, it was, in the firm opinion of the Sole Arbitrator, with clear intent that she tried to persuade Mr Knyasev to test the other athlete instead of Mr Khasanov, because she may have suspected that he would test positive.
65. Based on the clear language in Article 10.3.1 RUSADA ADR, once a violation of Article 2.5 RUSADA ADR has been established, the period of ineligibility shall be four years.
66. As the provision is drafted, there can be no room for any reduction of ineligibility, when intent is established, and no mitigating or other circumstances have been presented during these appeal proceedings to argue that the period of ineligibility should be reduced.
67. Thus, the Sole Arbitrator finds that the Respondent shall be sanctioned with a four-year period of ineligibility starting on the date upon which this CAS award enters into force, with credit given for any period time already served.

VI. COSTS

68. Article R64.4 of the Code provides as follows:

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

69. Article R64.5 of the Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the cost of witnesses and interpreters.” When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

70. Having taken into account the outcome of the arbitration, in particular the fact that the Appellant’s appeal has been upheld in full, the Sole Arbitrator finds it reasonable that the Respondent bears all the costs of the arbitration in an amount that will be determined and notified by the CAS Court Office.

71. Furthermore, pursuant to Article R64.5 of the Code, and in consideration of the outcome of the proceedings as well as the conduct and the financial resources of the Parties (namely, the disparity in income and assets between the parties), the Sole Arbitrator rules that the Respondent shall pay a contribution of CHF 1,500 to the legal costs of the Appellant in these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency on 5 July 2016 is upheld.
2. The decision of 17 May 2016 by Sport Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation is set aside.
3. Ms. Lyudmila Vladimirovna Fedoriva is sanctioned with a four-year period of ineligibility starting on the date of the present award. Any period of ineligibility or provisional suspension imposed on or voluntarily accepted by Ms Lyudmila Vladimirovna Fedoriva before the entry into force of this CAS award, shall be credited against a total period of ineligibility to be served.
4. The costs of the arbitration, to be separately determined and served on the Parties by the CAS Court Office, shall be borne by Ms Lyudmila Vladimirovna Fedoriva.
5. Ms. Lyudmila Vladimirovna Fedoriva shall pay a contribution to the legal costs in these arbitration proceedings to the World Anti-Doping Agency in the amount of CHF 1,500.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 15 May 2017

THE COURT OF ARBITRATION FOR SPORT



Lars Halgreen
Sole Arbitrator