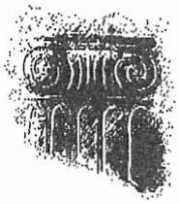

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2016/A/4919 WADA v. World Squash Federation & Nasir Iqbal

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Dirk-Reiner Martens, Attorney-at-law, Munich, Germany

Arbitrators: The Honourable Michael J. Beloff QC, Barrister, London, United Kingdom

Mr Anton Jagodic, Lawyer, Ljubljana, Slovenia

in the arbitration between

World Anti-Doping Agency (WADA), Lausanne, Switzerland
represented by Ross Wenzel & Nicolas Zbinden, Kellerhals-Carrard, Lausanne, Switzerland

Appellant

v.

World Squash Federation (WSF), Lausanne, Switzerland
represented by Claude Ramoni, Libra Law, Lausanne, Switzerland

First Respondent

and

Nasir Iqbal, Pakistan
represented by Olivier Ducrey, Baker & McKenzie, Geneva, Switzerland

Second Respondent

I. FACTUAL BACKGROUND

1. The Parties

1. The World Anti-Doping Agency (hereinafter "WADA" or the "Appellant") is a Swiss private law foundation created to promote, coordinate and monitor the fight against doping in sport. It has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.

2. The World Squash Federation (hereinafter "WSF" or the "First Respondent") governs the sport of Squash worldwide. It has its registered seat in Lausanne, Switzerland.

3. Mr Nasir Iqbal (hereinafter the "Athlete" or the "Second Respondent") is a squash player of Pakistani nationality who participates regularly in World Series events. His highest world ranking was position no. 35 in February 2016.

2. The Dispute between the Parties

4. The circumstances stated below are a summary of the main relevant facts established on the basis of the Parties' submissions and the evidence provided in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

5. On 7 February 2016, the Athlete delivered a urine sample (the "First Sample") on the occasion of a doping control conducted during the South Asian Games in Gluwahati, India (the "Event"). The analysis of the First Sample showed the presence of 19-norandrosterone ("19-NA") in a concentration of 3.8 ng/ml.

6. 19-NA is an anabolic-androgenic steroid prohibited according to S1.1.b of WADA's 2016 List of Prohibited Substances and Methods (Article 4.1 of the WSF Anti-Doping Rules, hereinafter WSFADR). It is not a "specified substance" within the meaning of Article 4.2.2 WSFADR.

7. According to WADA's rules a 19-NA finding above 2 ng/ml must be reported.

8. The analysis of the B-sample of the First Sample confirmed the results of the analysis of the A-sample.

9. On 10 February 2016, the Athlete provided a further sample (the "Second Sample") on the occasion of a second doping control during the Event. The analysis of the Second Sample initially did not reveal the presence of a prohibited substance. However, upon request of WSF, an IRMS (Isotope-Ratio Mass Spectometry) analysis of the Second Sample was

performed by the New Delhi WADA-accredited laboratory which returned a positive result for 19-NA in a concentration of 1.8 ng/ml. According to the New Delhi laboratory an IRMS positive *"constitutes proof of the exogenous origin of the 19-NA detected, independently of the concentration of 19-NA in the sample."*

10. An analysis of the B-sample of the Second Sample was not requested.

11. On 29 February 2016, the Athlete was provisionally suspended.

12. The Athlete had taken and has reported on the doping control form several nutritional supplements prior to providing the First and Second Samples. Upon WSF's suggestion he arranged for "Calcium 1000", "Magnesium 400" and "Optimen" from among these supplements to be analysed by the WADA accredited laboratory in Cologne, Germany (the "Cologne Laboratory"). As he had used all of the supplements in the boxes he had originally bought, he procured further boxes with the same expiry dates.

13. No 19-NA was found by the Cologne Laboratory in the supplements in those boxes. Furthermore, the packages of the supplements did not indicate that the products contained prohibited substances.

14. On 2 October 2016, the WSF and the Athlete signed an "Agreement" (the "Agreement") pursuant to which the Athlete acknowledged to have committed an anti-doping rule violation and would be sanctioned with a one year period of ineligibility starting on the date of the collection of the First Sample on 7 February 2016, and further that all results achieved by him at the Event would be disqualified (the "Decision").

15. The WSF was of the view that the Athlete had not acted intentionally and that he bore no significant fault or negligence. According to WSF the negative test by the Cologne Laboratory did *"not exclude that the products actually consumed by the athlete in the days preceding the test were contaminated"* and therefore, that it was more likely on a balance of probability *"that the source of the adverse analytical findings is the ingestion of contaminated nutritional supplements."*

II. ARBITRAL PROCEEDINGS

1. Initiation of the CAS proceedings

16. On 23 December 2016, the Appellant filed its Statement of Appeal with the CAS, followed by the Appeal Brief on 30 December 2016.

17. The Appellant nominated The Hon. Michael J. Beloff M.A. Q.C. as an arbitrator.

18. In the absence of a joint nomination of an arbitrator by the two Respondents, Mr Anton Jagodic from Slovenia was nominated by the President of the CAS Appeals Arbitration Division *in lieu* of the Respondents.

19. Mr Dirk-Reiner Martens was appointed as President of the Panel.

20. On 6 March 2017, after several extensions, the Answers from both Respondents were filed.

21. While the Appellant requested a hearing to take place, the First Respondent left the decision of this issue to the discretion of the Panel. The Second Respondent preferred that an award be rendered on the basis of the written submissions only.

22. On 17 March 2017, the Parties were advised that the Panel had decided to hold a hearing in this matter.

23. On 31 March 2017, the Parties were advised by the CAS on behalf of the Panel that the Second Respondent would be allowed to attend the hearing scheduled for 10 May 2017 via Skype and that only one of the five witnesses proffered by the Second Respondent would be allowed to testify, equally via Skype. On 6 April 2017, the Second Respondent nominated Mr Saqib Yousuf as such witness.

24. On 10 May 2017, a hearing was held at the CAS headquarters. In addition to the Panel assisted by the Deputy Secretary General William Sternheimer the following persons were present:

25. For the Appellant: Messrs Ross Wenzel and Nicolas Zbinden, counsel; Mr Olivier Mosimann, observer. For the First Respondent: Mr Claude Ramoni, counsel; Mr Gianluca Siracusano, Doping Free Sport Unit, WSF. For the Second Respondent: Mr Olivier Ducrey, counsel; Mr Javed Masih, interpreter; the Athlete was heard via Skype.

26. At the outset of the hearing, the Parties confirmed that they had no objection to the composition of the Panel. At the conclusion of the hearing, the Parties further confirmed that they had no objections as to the manner in which the hearing had been conducted and, in particular, that their right to be heard had been respected.

2. Parties' Submissions and Prayers for Relief

27. While the Panel has carefully reviewed all of the Parties' submissions, the following sections will only summarize the Parties' main arguments in support of their respective prayers for relief to the extent relevant for the Panel's findings. Further reference to those arguments may be made, where appropriate, in the section on Merits below.

2.1 The Appellant

28. The Appellant argues that the presence of 19-NA in a concentration of 3.8 ng/ml in the Second Respondent's First Sample proves that he committed an anti-doping rule violation ("ADRV") pursuant to Article 2.1 WSFADR.

29. As to sanctioning, the Appellant submits that according to Article 10.2.1.1 WSFADR the period of ineligibility must be four years as the Athlete's ADRV did not involve a specified substance and as the Athlete was unable to prove that his ADRV was not intentional.

30. According to the Appellant, in order to avoid the otherwise mandatory four-year period of ineligibility the Athlete must prove on a balance of probability that he acted without intent. To that end, according to the Appellant "*it is not sufficient for an athlete merely to make protestations of innocence and suggest that the prohibited substance must have entered his/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.*"

31. The Appellant further points out that the Athlete's argument that the ADRV must have been the result of his intake of contaminated supplements is without any evidential foundation. The analysis conducted in the Cologne Laboratory was negative and, if anything, is to contrary effect. It is thus of no assistance to the Athlete. In order for an athlete to prove the absence of intent, according to more persuasive CAS case law, actual evidence of the origin of contamination must be provided. This the Athlete was unable to do.

32. In the light of the above the Appellant requested CAS to rule as follows:

> "[...]
>
> *2. The decision rendered by the WSF in October 2016 in the matter of Nasir Iqbal is set aside.*
>
> *3. Nasir Iqbal is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Nasir Iqbal before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
>
> *4. All competitive results obtained by Nasir Iqbal from and including 7 February 2016 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*"

2.2 The Respondents

(a) The First Respondent

33. The Decision bases the (reduced) extent of its sanctioning on Article 10.5.1.2 WSFADR arguing that the Athlete bore no significant fault or negligence by ingesting a contaminated product. In its 6 March 2017 Answer the First Respondent confirms this reasoning and contends that in order to benefit from a reduction of the sanction under Article 10.5.1.2 WSFADR "*it is ....not imperative that an athlete possesses undisputable scientific evidence* [of contamination]."

34. In addition, it had to be taken into account in favour of the Athlete both that he had acquired the supplements at official retailers and that he had a doctor verify that the list of ingredients of these supplements did not contain any prohibited substances.

35. The First Respondent also emphasizes that the Panel's scope of review is not limited (Article 13.1.1 WSFADR) and that it must thus consider all the circumstances of the case whether or not previously relied on by him.

36. With respect to a possible reduction of the sanction the First Respondent argues that there are two separate provisions in the WSFADR which allow the dis-application of the otherwise applicable four-year period of ineligibility in case of a non-specified substance in a contaminated product:

- if the Athlete cis able to establish absence of intent under Article 10.2.1.1 WSFADR where, according to the First Respondent, "*there is no strict requirement to establish how a prohibited substance entered the Athlete's body*", or

- if the Athlete is unable to prove the absence of intent (under Article 10.2.1.1 WSFADR) where he can establish both no *significant fault or negligence* and how the substance entered his body (Article 10.2, first paragraph WSFADR and Article 10.5.1.2 WSFADR "*Definitions*" to the WSFADR under "*No significant fault or negligence*") so benefiting from a reduction under Article 105.1.2 WSFADR.

37. In the light of the above the First Respondent requested CAS to rule as follows:

"[...]

II. The Appeal of the World Anti Doping Agency against the agreement entered into by the World Squash Federation and Nasir Iqbal on 2 October 2016 shall be dismissed.

In the alternative

III. Nasir Iqbal shall be sanctioned with a reduced period of ineligibility pursuant to either article 10.2.1.1 or article 10.6.3 of the World Squash Federation Anti-Doping Regulations."

(b) **The Second Respondent**

38. The Athlete contends that "*at no point did he knowingly or intentionally consume a prohibited substance*" and basically makes two arguments in favour of the upholding of the Decision:

- (1) he could have consumed contaminated food while in India for the Event,
- (2) apart from the supplements tested in the Cologne Laboratory (see para. 12 above) he had consumed other supplements which were not tested for contamination and which could have been the cause of the Adverse Analytical Finding ("AAF").

39. He adds that even if the Decision was set aside, he should be granted a reduction in the period of ineligibility down to two years on the basis of his prompt admission of an Anti-Doping Rule Violation pursuant to Article 10.6.3 WSFADR with the approval of WSF and WADA.

40. As to (1) the Athlete argues that he had consumed high quantities of meat before coming to the Event and that in his home country (Pakistan) the use of hormones such as Bovine Growth Hormone was customary. Moreover, while at the Event in India he had no control over what he was eating, he had to eat what he was served. In conclusion, according to the Athlete it is more than probable that, one way or another, contaminated meat was the cause of the AAF.

41. As to (2) the Athlete argues that he had consumed supplements in addition to those tested at the Cologne Laboratory (see para. 12 above) and that it was entirely possible that these other supplements were contaminated.

42. As to both (1) and/or (2) the low level of 19-NA in his sample was consistent with a contamination and inadvertent intake.

43. On the basis of the above the Second Respondent requested CAS to rule as follows:

"[...]

Principally

1. The Appeal of the World Anti-Doping Agency against the agreement between the World Squash Federation and Mr. Nasir Iqbal dated 2 October 2016 shall be dismissed.

In the alternative

3. Mr. Nasir Iqbal shall be sanctioned with a reduced period of ineligibility pursuant to article 10.6.3 of the World Squash Federation Anti-Doping Regulations."

III. JURISDICTION

44. Article R47 of the Code of Sports-related Arbitration (the "Code") provides as follows:

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

45. The jurisdiction of the CAS results from Articles 13.1 and 13.2 WSFADR. In particular, the Athlete is an International Level Athlete (Article 13.2.1 WSFADR) and his Anti-Doping Rule Violation occurred at an International Event. WADA's right to appeal derives from Article 13.2.3(f) WSFADR.

46. Moreover, all parties confirmed CAS jurisdiction by execution of the Order of Procedure.

47. The Panel agrees that for those reasons the CAS has jurisdiction in this appeal and wishes to add that even though the decision to impose a sanction on the Athlete took the form of an "Agreement" it remains a "decision" under the WSFADR and is thus subject to appeal inter alia by WADA according to Article 13.1 WSFADR.

IV. ADMISSIBILITY

48. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against."*

49. Article 13.7 WSFADR provides that *"[t]he time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party [...]."* The Athlete and WSF executed the "Agreement" on 2 October 2016. It was notified to WADA on 2 December 2016 and WADA filed its Statement of Appeal on 23 December 2016. The Respondents do not dispute that the appeal is therefore admissible.

50. The Panel agrees that for those reasons the appeal is admissible.

V. APPLICABLE LAW

51. 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

52. According to Article 13.2.1 WSFADR, *"[...] the decisions may be appealed exclusively to CAS in accordance with the provisions applicable before such court."*

53. Moreover, Article 20 WSFADR provides, in relevant part, the following:

"20.2 Except as provided in ... these Anti-Doping Rules shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes.

[...]

20.4 The INTRODUCTION, the APPENDIX 1 DEFINITIONS and the Code and the International Standards issued by WADA shall be considered integral parts of these Anti-Doping Rules."

54. Therefore, the applicable law, according to which the Panel will decide the present appeal, is the WSFADR (including the Definitions) and, given the WSF's domicile in Switzerland, subsidiarily, Swiss law.

VI. THE RELEVANT PROVISIONS OF THE WSFADR

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated. Athletes and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

[...]

ARTICLE 3 PROOF OF DOPING

3.1 Burden and Standards of Proof

[...] 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.

[...]

ARTICLE 4 PROHIBITED LIST

4.1 Incorporation of the Prohibited List

These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code. The WSF will make the Prohibited List available to each Member Nation, PSA and WSA by 1 January of each year when the new list becomes effective. Each Member Nation, PSA and WSA shall ensure that the current Prohibited List is available to its members and constituents.

4.2 Prohibited Substances and Prohibited Methods Identified on the Prohibited List

4.2.1 Prohibited Substances and Prohibited Methods

[...]

4.2.2 Specified Substances

For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be Specified Substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. The category of Specified Substances shall not include Prohibited Methods.

[...]

ARTICLE 10 SANCTIONS ON INDIVIDUALS

10.1 Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.
Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.

[...]

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or a Prohibited Method

The period of Ineligibility for a violation of Article 2.1, (Presence of Prohibited Substances or its Metabolites or Markers) 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows: subject to potential reduction or suspenston pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete 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 WSF can establish that the anti-doping rule violation was intentional.

[...]

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

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the other 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 (Presence of Prohibited Substance or its Metabolites or Markers), 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Marker) or 2.6 (Possession of Prohibited Substances and Prohibited Methods).*

***10.5.1.1** Specified Substances*

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

***10.5.1.2** Contaminated Products*

In cases where the Athlete 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 (2) years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

[...]

10.6 Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons Other than Fault

[...]

***10.6.3** Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1*

An Athlete or other Person potentially subject to a four (4) year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), by promptly admitting the asserted anti-doping rule violation after being confronted by the WSF, and also upon the approval and at the discretion of both WADA and the WSF, may receive a reduction in the period of Ineligibility down to a minimum of two (2) years, depending on the seriousness of the violation and the Athlete or other Person's degree of Fault.

APPENDIX 1 – DEFINITIONS

[...]

No Fault or Negligence: The Athlete or other Persons 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 Athlete must also establish how the Prohibited Substance entered his or her system.

No Significant Fault or Negligence: The Athlete or other Persons 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 Athlete must also establish how the Prohibited Substance entered his or her system.

VII. THE ANTI-DOPING RULE VIOLATION ("ADRV")

55. The presence of a prohibited substance in an athlete's sample constitutes an ADRV (Article 2.1 WSFADR).

56. The First Sample delivered by the Athlete on 7 February 2016 showed the presence of 19-NA in a concentration of 3.8 ng/ml.

57. The Second Sample was equally positive for 19-NA, this time in a concentration of 1.8 ng/ml.

58. Since the WSF is unable to establish that at the time of delivering the Second Sample the Athlete was aware of the adverse analytical finding in the First Sample, both violations will have to "*be considered together as one single first violation* ...." (Article 10.7.4.1 WSFADR).

59. As a result, the Athlete committed an ADRV on 7/10 February 2016. This has been expressly acknowledged by the Athlete in the Agreement.

VIII. THE SANCTION

60. Based on the WSFADR and in view of the fact that the substance present in the Athlete's system on 7/10 February 2016 was not a specified substance, in order for the Athlete to avoid the standard four-year period of ineligibility provided for in Article 10.2.1 WSFADR

- he must establish on a balance of probability (Article 3.1 WSFADR) that his ADRV was not intentional (Article 10.2.1.1 WSFADR; cf. 1. below);

- if he is unsuccessful in so establishing the absence of intent, he can still have his four-year period of ineligibility eliminated or reduced if he can establish on a balance of

probability how the prohibited substance entered his system and if he can further establish

a. that he bears no fault or negligence (elimination of the sanction, Articles 10.2, 10.4 WSFADR; cf. 2. below), or

b. that he bears no significant fault or negligence and that the detected prohibited substance "*came from a Contaminated Product*" (reduction of the sanction, Article 10.5.1.2 WSFADR, cf. 2. below);

- if he fails to succeed under a. or b. above he can still obtain a reduction in the period of ineligibility by showing that he promptly admitted the ADRV (Article 10.6.3 WSFADR; cf. 3. below).

1. No Intent

61. As has been explained above, in order to avoid the standard four-year period of ineligibility the Athlete must establish on a balance of probability that his ADRV was not intentional.

(a) **Proof of the Source of the Prohibited Substance?**

62. While the Definitions in the WSFADR for no or no significant fault or negligence require athletes to establish how the prohibited substance entered their system if they want to benefit from an elimination or reduction of an otherwise applicable sanction, no such requirement is expressly stipulated in the WSFADR in respect of proof of the absence of intent. This discrepancy triggered a lively debate at the hearing of this case (as it appears to have done in earlier cases where the same issue was raised) as to whether such requirement was nonetheless implied. Ultimately, the Appellant conceded (somewhat contrary to its own written submission) that in very exceptional circumstances proof of the absence of intent is conceivable even without evidence on how the prohibited substance entered an athlete's system.

63. The Panel agrees that this concession was rightly made even though it finds it very difficult to imagine how in an Article 2.1 WSFADR case (presence of a prohibited substance) an athlete could establish that he acted unintentionally without knowing how the substance arrived in his body. The Panel is particularly impressed by the consideration that, had the authors of the WADA Code (which has been copied in the WSFADR) wanted to establish for proof of absence of intent the same requirement of proof of the source as is required for proving the absence of no or no significant fault or negligence, they would have said so.

64. The Panel thus follows the view expressed in CAS 2016/A/4534 which provides the most thorough analysis to date of the pros and cons of a requirement of proof of the source.

65. .This Panel would wish in the interests of clarification to comment on one aspect of the reasoning in CAS 2016/A/4534 at paragraph 37 where it is stated *"[...] the Panel can envisage the theoretical possibility that it might be persuaded by an athlete's simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history (it is recorded if apocryphally, that the young George Washington admitted chopping down a cherry tree because he could not tell a lie. Mutatis mutandis the Panel could find the same fidelity to the truth in the case of an athlete denying a charge of cheating)"* This Panel does not construe this passage in CAS 2016/A/4534 to mean that a mere denial by an athlete of intent to cheat would ever be dispositive. It recalls that not only was George Washington in the apocryphal tale someone endowed with qualities not enjoyed by ordinary humans of being incapable of telling a lie but that his inbuilt inability to do so led him to admit to guilt not to proclaim his innocence. It is confident in this interpretation since it was also said in CAS 2016/A/4534.

Where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him".

66. So while this Panel assumes in favour of the Athlete that he does not have to necessarily establish how the prohibited 19-NA entered his system when attempting to prove on a balance of probability the absence of intent, in all but the rarest cases the issue is academic.

(b) **The Decision's and Respondents' Reasoning and the Legal Analysis**

67. On the premise, the Panel finds that the present case is not one of those very rare cases, it respects and applies the broad consensus in CAS jurisprudence (CAS 99/A/234 and CAS 99/A/235; CAS 2014/A/3820; CAS 2016/A/1067; CAS 2014/A/3615) that in order for an athlete to establish the absence of intent for purposes of Article 10.2.1.1 WSFADR, it is not sufficient for him to assert that he did not consume a prohibited substance and that he does not know how it came into his body. It is also not sufficient to offer mere speculation as to what the source could theoretically have been (CAS 2014/A/3820; CAS 2016/A/4626). Rather, the athlete must provide actual evidence of the circumstances in which the allegedly unintentional ingestion of the prohibited substance occurred (cf. CAS 2006/A/1067 and CAS 2014/A/3820).

68. From that point of departure, the Panel will now examine the explanations of the ADRV offered in the Decision and by the Respondents.

(1) The "Decision"

69. The Decision provides the following reasoning:

> *"WSR Anti-Doping Administration had analysed the overall circumstances and in particular investigated the possible origin of the adverse analytical findings. The Athlete reported to have ingested nutritional supplements in the days preceding the tests. The intake of the products was attested in the doping control forums of the samples collected at the event, therefore WSF Anti-Doping Administration believed that the Athlete proved*

on a balance of probability to have used nutritional supplements. WSF Anti-Doping Administration has also conducted a comparative assessment on the possible route of administration of the prohibited substance and believes that the Athlete proved on a balance of probability that the nutritional supplements is the more likely source of the adverse analytical findings. The fact that the Athlete returned two adverse analytical findings at the event allows to conclude that the findings were caused by a contentious intake of the prohibited substance. WSF Anti-Doping Administration requested the analysis of the nutritional supplements to the WADA accredited laboratory of Cologne. However the analysis could be performed only on similar products and not on the one actually consumed by the athlete. The Cologne laboratory did not find steroids on the products analyzed; however this element does not exclude that the products actually consumed by the athlete in the days preceding the tests were contaminated. Therefore WSF Anti-Doping Administration believes that the athlete proved on a balance of probability that the source of the adverse analytical findings is the ingestion of contaminated nutritional supplements."

70. The Panel disagrees. It may be true that the Athlete proved "*to have used nutritional supplements*", but this does not provide any evidence that these supplements were the source of the AAF. On the contrary, as the Decision correctly states, similar supplements were tested in the Cologne Laboratory and returned no positive results, and further, these supplements were "*acquired in an official retailer*" and "*verified*" with the Athlete's doctor. It remains unclear, therefore, how on the basis of these statements the conclusion could be reached in the Decision that the source of the adverse analytical finding is the ingestion of contaminated nutritional supplements.

71. In essence, the Decision fails to offer a single element of concrete evidence for the alleged contamination of supplements which thus remains pure speculation.

(2) The First Respondent (WSF)

72. The WSF confirms the conclusions it had reached in the Decision and reiterates its view "*that, on a balance of probabilities, the prohibited substance had come from a contaminated supplement.*" It does so on the basis of the following elements:

a. "*The low concentration of the Prohibited Substance in the Athlete's sample which is consistent with contamination and inadvertent intake;*

b. *The negative test reported by the New Delhi Laboratory for the Second Sample due to the fact that the concentration was below the detection limit;*

c. *The supplements were listed on the Athlete's doping control form;*

d. *Although the products tested had the same expiry date as the products bought by the Athlete they were not of the same batch and so were not really equivalent products;*

e. *Anabolic steroids are primarily beneficial for increasing muscle strength and body size. In a sport such as squash, muscularity is not a significant factor and other,*

biomechanical factors such as technique and swing length, and timing are more beneficial to a high-level squash player such as the Athlete."

73. The Panel does not find any of these arguments, singly or cumulatively, sufficient for the Athlete to discharge his burden of proof.

74. The elements under a. and b. may be consistent with contamination but they are equally consistent with intentional use. As to the arguments under c. and d. the Panel fails to see how the fact that (clean) supplements were listed on the doping control form and that similar products were tested as clean, can prove the absence of intent of the intentional intake of a prohibited substance. Finally, the alleged lack of usefulness of a prohibited substance in a particular sport does not provide proof that an athlete did not intentionally take such substance (CAS 2005/A/847; CAS 2007/A/1312)

(3) The Second Respondent

75. The Athlete advances several arguments why he proved on a balance of probability that his ADRV was unintentional. The Panel finds these arguments unconvincing.

76. The fact that this is the Athlete's first ADRV only helps him to avoid an even more severe sanction under the WSFADR but not to prove absence of intent for this ADRV.

77. The Athlete contends that a possible source of the AAF is the fact that during his stay in India he was strictly limited in his consumption of food and that he was deprived of the choice of what to consume. He further argues that in his home country the "*usage of hormones such as Bovitee Growth Hormones is a potential cause of contamination in commercially available products*," e.g. the contamination of meat. The Panel is not persuaded that these arguments assist the Athlete in discharging his burden of proving the absence of intent in connection with his ADRV. The very fact that he is compelled to advance two different and inconsistent arguments casts doubt on their solidity.

78. In fact, the Athlete offers nothing else than purely theoretical causes for his AAF. He argues that he "*may have consumed some contaminated meat*" in Pakistan and/or India without even stating, still less providing evidence that contamination with steroids in fact occurs in Pakistan and/or India and when and where he did in fact eat meat. He further contends that while in India he was not in control of what he was consuming without even specifying or evidencing what he in fact consumed. Such speculation is simply not sufficient to counter the presumption of intentional use in Article 10.2.1.1 WSFADR.

79. The same holds true for the Athlete's theory that he may have consumed contaminated food supplements. In order to discharge his burden of proof it is plainly not sufficient for the Athlete to state that contaminated supplements exist which he may have consumed. The Athlete ignores the fact that the burden of proving absence of intent is on him not on the WSF. It therefore does not help him to argue that WSF did not request certain

supplements to be tested or, in more general terms, that "*there is no alternative or corroborating evidence which in any way suggests that [he] was engaging in inappropriate consumption of prohibited substances.*" The Panel recognizes the difficulties in proving a negative (absence of intent) but there is no effective alternative to such a rule as only the athletes can and should know what substances enter their body (Article 2.1.1 WSFADR).

80. In conclusion, the Panel is of the view that the Athlete failed to prove that his ADRV was unintentional so that the standard four-year sanction in Article 10.2.1 WSFADR is engaged.

2. Elimination or Reduction of the Sanction?

81. According to Article 10.2 WSFADR, the sanctions provided for in this article, inter alia, for a violation of Article 2.1 WSFADR are "*subject to potential reduction ... pursuant to Articles 10.4, 10.5 or 10.6*".

82. In order to benefit from an elimination (Article 10.4 WSFADR) or reduction (Article 10.5 WSFADR) of his otherwise applicable four-year period of ineligibility the Athlete must establish that he bore no or no significant fault or negligence. In either case he must also "*establish how the Prohibited Substance entered his system*". (Appendix 1 Definitions to the WSFADR).

83. The Athlete's submissions relative to his alleged proving the absence of intent was exclusively focused on attempting to establish the source of his ADRV. In the Panel's view, as already explained, these attempts were unsuccessful. In inevitable consequence he cannot pray in aid, Articles 10.4 WSFADR and 10.5 WSFADR.

3. Prompt Admission?

84. The Athlete finally argues that in the event that an elimination/reduction of his period of ineligibility is not granted, he is still entitled to a reduction, pursuant to Article 10.6.3 WSFADR, because by signing the Agreement he promptly admitted his ADRV.

85. The application of Article 10.6.3 WSFADR requires, inter alia, "*the approval and* [is] *at the discretion of both WADA and the WSF ...*" WADA refused to give such approval. That refusal is fatal to the Athlete's attempt to rely on that provision.

86. At the Hearing, the Parties entered into a lively debate as to whether WSF was legally obligated to grant the approval, whether a failure to do so would be subject to an appeal under Article 13 WSFADR and, if so, whether the WSF properly exercised its discretion in this case. After the Panel had expressed doubts that from a procedural point of view it was authorized to entertain these questions as part of these proceedings, all Parties, WADA included, requested the Panel to do so. Because of that unanimity the Panel therefore felt able to accede to that request.

87. The Panel is of the view that a party affected by a decision like the one not to grant the approval required under Article 10.6.3 WSFADR, must be entitled to appeal by reason of the rule of law, notwithstanding the absence of an express provision to that effect. However, the WSF has wide discretion whether or not to grant such approval and the Panel cannot identify and the Athlete has not proposed any particular reason why the WSF's denial of approval was improper. The Panel need not therefore address the question whether the Athlete did in fact "promptly admit" the ADRV when signing the Agreement.

IX. THE PANEL'S DECISION

88. Based on the above, the Panel concludes that the Athlete failed to establish that his anti-doping rule violation was not intentional. The Decision of the WSF as set out in the Agreement must thus be set aside and a period of ineligibility of four (4) years must be imposed on the Athlete.

89. As the Athlete has been provisionally suspended since 29 February 2016 he shall receive a credit from that date forward (Article 10.11.3.1 WSFADR) so that his period of ineligibility shall start on 29 February 2016.

90. Finally, in accordance with Article 10.8 WSFADR all results achieved by the Athlete at the Event are disqualified.

91. In addition to the above, all other competitive results of the Athlete obtained from 7 February 2016 are disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

X. COSTS

92. According to Article R65.2 of the Code, the present proceedings shall be free, except for the CAS Court Office fee of CHF 1,000 which was paid by the Appellant and which is retained by the CAS.

93. Article R65.3 of the Code states that:

"Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, 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 costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties."

94. Considering the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, the Panel decides that each Respondent shall bear its own legal fees and expenses and pay a contribution of CHF 1,500 towards the legal fees and expenses incurred by the Appellant in connection with the present proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 23 December 2016 by the World Anti-Doping Agency against the decision to impose a sanction on Mr Nasir Iqbal contained in the "Agreement" between the World Squash Federation and Mr Nasir Iqbal of 2 October 2016 is upheld.

2. The decision to impose a sanction on Mr Nasir Iqbal contained in the "Agreement" between the World Squash Federation and Mr Nasir Iqbal of 2 October 2016 is set aside.

3. A period of ineligibility of four (4) years beginning on 29 February 2016 is imposed on Mr Nasir Iqbal.

4. All results achieved by Mr Nasir Iqbal at the South Asian Games held in Gluwahati/India in February 2016 are disqualified.

5. All other competitive results of Mr Nasir Iqbal obtained from 7 February 2016 are disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

6. The award is pronounced without CAS costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the World Anti-Doping Agency, which is retained by the CAS.

7. The World Squash Federation and Mr Nasir Iqbal shall bear their own costs and are ordered to pay each to the World Anti-Doping Agency an amount of CHF 1,500 (one thousand five hundred Swiss Francs) as a contribution towards the legal fees and other expenses incurred by the World Anti-Doping Agency in connection with the present arbitration.

8. All other motions or prayers for relief are dismissed.

Lausanne, Switzerland
Date: 26 June 2017

THE COURT OF ARBITRATION FOR SPORT

Dirk-Reiner Martens
President of the Panel