UNION CYCLISTE INTERNATIONALE

Anti-Doping Tribunal

UCI Anti-Doping Tribunal

Judgment

case ADT 10.2017

UCI v. Mr. Wilson Ramiro Rincón Díaz

Single Judge:

Mr. Julien Zylberstein (France)

Aigle, 27 June 2018

INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (the "Tribunal") in accordance with the *UCI Anti-Doping Tribunal Procedural Rules* (the "ADTPR") in order to decide whether Mr. Wilson Ramiro Rincón Díaz (the "Rider") has violated the *UCI Anti-Doping Rules* (the "ADR"). The allegation against the Rider was made by the Union Cycliste Internationale (the "UCI" and, together with the Rider, the "Parties").

I. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts established based on the submissions of the UCI and not contested by the Rider (who did not participate in the proceedings before the Tribunal) to provide an overview of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

A. The Parties

3. At the time of the alleged anti-doping rule violation, the Rider was a 29-year old cyclist of Colombian nationality who was affiliated to the Colombian Cycling Federation (the "FCC") and a License-Holder within the meaning of the ADR.

4. In 2010, he was sanctioned with a period of ineligibility of two years by the National Anti-Doping Agency of Colombia after he had committed an anti-doping rule violation for presence of a prohibited substance (Gonadotrophin). In 2016, the Rider was under contract with the UCI Professional Continental Team Funvic Soul Cycles – Carrefour (the "Team").

B. The alleged anti-doping violation

5. On 27 July 2016, the Rider provided an In-Competition blood sample (the "Sample") in connection with 2016 *Volta a Portugal*, a men's road Event which took place from 27 July to 7 August 2016. On the Doping Control Form, the Rider declared that he had taken no medications or supplements during the seven days prior to the Sample collection and that the Sample had been conducted in accordance with the relevant procedures.

6. Because there was insufficient volume in the A Sample to conduct the required analyses, it was necessary to split the B Sample. Accordingly, on 15 September 2016, the UCI informed the Rider that:

   (a) his B Sample would be tested and subsequently resealed for storage;

   (b) he had the right to attend or be represented at the opening, splitting and resealing of the B Sample; and

   (c) should he not be able to attend or be represented, an independent witness would be appointed.

7. On 23 September 2016, the Rider informed the UCI that he would not attend the procedure described in Paragraph 6 (b) of the Judgment.

8. On 5 October 2016, the WADA-accredited Laboratory in Lausanne, Switzerland (the "Laboratory"), opened the B Sample, split its volume into two bottles and resealed the second bottle in the presence of an independent witness appointed by the Laboratory. For the sake of

simplicity, these Samples will hereinafter be referred to as the New A and New B Samples – or NA and NB Samples.

9. On 14 October 2016, the Laboratory analysed the NA Sample and reported the presence of CERA (the "Adverse Analytical Finding" or "AAF). CERA is a prohibited substance listed under Class 'S2 Peptide Hormones, Growth Factors, Related Substances' on the 2016 *WADA Prohibited List*. It is prohibited both in- and out-of-competition.

10. On 9 November 2016, the UCI informed the Rider of:

    (a) the AAF;

    (b) the decision of the UCI to impose on a mandatory provisional suspension on the Rider, in accordance with Article 7.9.1 of the ADR, starting on the date of the notification (i.e. 9 November 2016);

    (c) the Rider's right to request by 16 November 2016 the opening and analysis of the NB Sample, failing which he would be deemed to have waived his right to have his B Sample analysed;

    (d) the Rider's right to: (i) request the Laboratory's Documentation Package for the NA Sample; (ii) ask for the provisional suspension to be lifted; (iii) provide explanations on the circumstances of the AAF; and (iv) provide substantial assistance within the meaning of Article 10.6.1 of the ADR.

11. On the same day, the UCI notified a teammate of the Rider (Mr Joao Marcelo Pereira Gaspar) of an AAF for the same substance, i.e. CERA. This notification came three months after another teammate of the Rider, Mr Kleber Da Silva Ramos, had been notified of multiple adverse analytical findings for CERA after out-of-competition controls conducted on 31 July and 4 August 2016. The Tribunal has imposed on Mr Kleber Da Silva Ramos a four-year period of ineligibility (see in this regard ADT, 08.2017, *UCI v. Mr Kleber Da Silva Ramos*, Judgment of 8 January 2018).

12. On 24 November 2016, the UCI contacted the Rider to give him a final opportunity to:

    (a) request the opening and analysis of the NB Sample; and

    (b) request the Laboratory's Documentation Package for the NA Sample.

    The Rider did not respond to the UCI.

13. On 19 December 2016, the UCI Disciplinary Commission imposed on the Team a suspension for a period of 55 days (i.e. from 19 December 2016 to 12 February 2017) in accordance with Artide 7.12.3 of the ADR.

14. On 23 December 2016, the UCI contacted the Rider to:

    (a) inform him that since he had not requested the opening and analysis of the NB Sample, he was deemed to have waived his right to do so;

    (b) assert that he had committed an anti-doping rule violation for the Presence and/or Use of CERA under Articles 2.1 and 2.2 of the ADR; and

    (c) give him an opportunity to submit explanations on the AAF and/or provide substantial assistance within the meaning of Article 10.6.1 of the ADR.

15. On 23 March 2017, the UCI contacted the Rider to propose an Acceptance of Consequences within the meaning of Article 8.4 of the ADR. The Rider was also advised that if he did not agree with this before 6 April 2017, the UCI would refer the matter to the Tribunal. The Rider did not revert to the UCI by the set deadline.

16. On 15 November 2017, the UCI referred the case to the Tribunal in order to determine the sanction(s) and Consequences to be applied.

II. JURISDICTION AND PROCEDURE BEFORE THE TRIBUNAL

17. The jurisdiction of the Tribunal follows from Article 8.2 of the ADR and Article 3.1 (a) of the ADTPR which provides that "*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*".

18. In compliance with Article 13.1 of the ADTPR, the UCI initiated proceedings before the Tribunal through the filing of a Petition to the Secretariat of the Tribunal on 21 November 2017.

19. In its Petition, the UCI requested the following relief:

    (a) declare that the Rider had committed an anti-doping rule violation for Presence/Use of a Prohibited Substance in his Samples;

    (b) impose on the Rider a Period of Ineligibility of 8 years;

    (c) deduct the period of provisional suspension served by the Rider since 9 November 2016;

    (d) disqualify all the results obtained by the Rider from 27 July 2016 until he was provisionally suspended; and

    (e) condemn the Rider to pay the costs of the UCI's results management (CHF 2'500).

20. As described in Paragraph 15 of this Judgment, before referring the case to the Tribunal, the UCI offered the Rider an Acceptance of Consequences within the meaning of Article 8.4 of the ADR and Article 2 of the ADTPR, however, the Rider never responded to the proposed Consequences.

21. On 21 November 2017, the Secretariat of the Tribunal appointed Mr. Julien Zylberstein to act as Single Judge in the present proceedings in application of Article 14.1 of the ADTPR.

22. On the same day, the Rider was informed that:

    (a) disciplinary proceedings had been initiated against him before the Tribunal in accordance with Article 14.4 of the ADTPR;

    (b) any challenge to the Single Judge or objection to the jurisdiction of the Tribunal should be brought to the Secretariat within 7 (seven) days of the receipt of the correspondence; and

    (c) he was granted until 7 December 2017 to submit his Answer pursuant to Articles 16.1 and 18 of the ADTPR.

23. By letter dated 8 December 2017, the Tribunal granted the Rider a further extension until 15 December 2017 to submit his Answer. The Rider did not submit any response to this correspondence.

24. Accordingly, on 20 December, the Tribunal advised the Rider that the Single Judge would render his Judgment on the basis of the documentation on file.

III. APPLICABLE RULES AND REGULATIONS

25. The case concerns an alleged violation of the ADR.

26. The ADTPR provide 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*". The alleged anti-doping rule violation took place on 27 July 2016 (the relevant point of time being that of Sample collection). The 2015 edition of the ADR is therefore applicable to the current matter.

A. Anti-doping rule violation

27. Article 2.1 of the ADR defines an anti-doping rule violation for 'Presence' as follows:

> *"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 Except 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.*
>
> *2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List or other International Standards or UCI Regulations incorporated in these Anti-Doping Rules may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously."*

28. Article 2.2 of the ADR defines an anti-doping violation for 'Use' as follows:

> *"2.2.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. 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 for Use of a Prohibited Substance or a Prohibited Method.*
>
> *2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed".*

B. Burdens and Standards of Proof

29. As per the burden and standard of proofs, Article 3 of the ADR reads as follows:

> *"3.1 Burdens and Standards of Proof*
>
> *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.*
>
> *[Comment to Article 3.1: This standard of proof required to be met by the UCI is comparable to the standard which is applied in most countries to cases involving professional misconduct.]*
>
> *3.2 Methods of Establishing Facts and Presumptions*
>
> *Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:*
>
> *[Comment to Article 3.2: For example, the UCI may establish an anti-doping rule violation under Article 2.2 based on the Rider's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete Biological Passport.]*
>
> *3.2.2 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.]*
>
> *3.2.3 Departures from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Rider or other Person establishes a departure from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation".*

C. Sanctions and Consequences

1. Period of Ineligibility

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

> *"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. …*
>
> *10.2.2 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".*

31. As for the possibilities to eliminate or reduce the aforementioned periods of Ineligibility based on fault, the ADR states 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.*
>
> *[Comment to Article 10.4: This Article and Article 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example where a Rider could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Riders are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Rider's personal physician or trainer without disclosure to the Rider (Riders are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Rider's food or drink by a spouse, coach or other Person within the Rider's circle of associates (Riders are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence].*
>
> *…*

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If a Rider or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Rider or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years".

[Comment to Article 10.5.2: Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Rider or other Person's degree of Fault].

32. In case of a second anti-doping rule violation, Article 10.7.1 of the ADR provides for the following:

"For a Rider or other Person's second anti-doping rule violation, the period of Ineligibility shall be greater of:

a) *six months;*

b) *one half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Article 10.6; or*

c) *twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.*

The period of Ineligibility established above may then be further reduced by the application of Article 10.6".

33. In relation to the commencement of the period of Ineligibility, Article 10.11 of the ADR provides (in relevant part) 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. …

10.11.3.1 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. …".

2. Disqualification

34. As for the Disqualification of results, Article 10.8 of the ADR provides as follows:

"*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes*".

3. Fine and mandatory costs

35. As for the financial Consequences of the alleged anti-doping rule violation, Article 10.10.1 of the ADR directs the following:

> *"In addition to the Consequences provided for in Article 10.1-10.9, violation[s] 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.*
>
> *…*
>
> *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. …*
>
> *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.*
>
> *…".*

36. As for the liability for costs of the procedures, Article 10.10.2 of the 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 results 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."*
>
> *…*

4. Procedural costs

37. Finally, the costs of the proceedings are governed by Article 28 of the ADTPR which 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 towards the costs of the Tribunal. Whenever the hearing is held by video-conference, 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."*

IV. FACTUAL AND LEGAL APPRECIATION BY THE TRIBUNAL

38. As a preliminary matter, the Tribunal stresses that the Rider was given ample opportunity to express his views on all relevant facts, to submit written observations, to present his own evidence and to actively and proactively participate in the present procedure. The Rider had knowledge of the proceedings and the knowledge he had was of such a nature as to enable him to defend himself and his legal interests. This notwithstanding, the Rider decided not to respond to any of the communication from the UCI. He voluntarily waived his right to present his position regarding the potential Consequences to the alleged anti-doping rule violations and, generally, did not make any representation to the Tribunal nor produce any evidence – despite several invitations to do so.

39. According to Article 16.2 of the ADTPR, the Tribunal may proceed with the case and render a Judgment even if a Defendant fails to submit an Answer at all. Thus, the Tribunal finds itself in a position to reach a final determination as to both the alleged anti-doping rule violation and its Consequences, despite not having the benefit of a submission from the Rider with respect to the potential Consequences of the anti-doping rule violation.

40. The present Judgment being given in default, the Tribunal will rely only on the documentation on file and ensure that the prayers for relief of the UCI are consistent with both the factual background and the ADR.

41. In the present case, the Tribunal must determine whether, in the circumstances of this case:

    (a) The Rider committed an anti-doping rule violation pursuant to Article 2.1 and/or 2.2 of the ADR; and

    (b) If so, what are the consequences of such anti-doping rule violation.

A. Did the Rider breach the ADR?

42. The UCI alleges that the Rider violated Articles 2.1 and 2.2 of the ADR, which relate respectively to the 'Presence' and 'Use' of a prohibited substance. Pursuant to Article 3.1 of the ADR, the UCI bears the burden of proof to establish that the Rider committed such violation/s to the "*comfortable satisfaction*" of the Tribunal.

43. The ADR imposes on riders a regime of 'strict liability'. The principle of strict liability allows for a violation of Article 2.1 of the ADR to be established without regard to a Rider's Fault. Each rider being responsible for any Prohibited Substance in his samples, it is therefore not necessary for the UCI to demonstrate intent, Fault, Negligence or knowing Use on the rider's part to establish an anti-doping rule violation.

44. More specifically, Article 2.1.2 of the ADR provides that sufficient proof for an anti-doping rule violation can be 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*"* (emphasis added by the Tribunal). Thus, a violation of Article 2.1 of the ADR may be found in the absence of an admission by the Rider, as is the case in the present matter.

45. In the present case, the analysis of the NA Sample reported the presence of CERA (as described in Paragraph 9). The Rider has not challenged this finding in the context of the present proceedings.

46. For the sake of clarity, the Tribunal recalls that the Laboratory decided to split the B Sample into two bottles because there was insufficient volume in the A Sample (as noted above at Paragraph 6 of this Judgment). It was the analysis of NA Sample which reported the presence of CERA. The NB Sample was not analysed.

47. The Tribunal notes however that this evidence does not perfectly align with the third constellation of Article 2.1.2 of the ADR (as highlighted above). The latter indeed requires that the second bottle confirms the analysis of the first bottle – thus implying that both bottles should be analysed in order to establish a violation of Article 2.1 of the ADR. In this case, only the first bottle – the NA Sample was analysed. As a result, the question which must be decided is whether the evidentiary basis in the case at hand forms, in fact, "sufficient proof" of a violation of Article 2.1 of the ADR.

48. Whilst on face value it could therefore appear that Article 2.1 of the ADR does not encompass this situation, the Tribunal is mindful that the ADR cannot be read in isolation and notes that Article 25 of the ADTPR provides that "*the Single Judge shall apply the ADR and the standards referred therein…*".

49. In this regard, the *International Standards for Laboratories 2015* (the "ISL") acknowledge that "*[t]he World Anti-Doping Programme encompasses all of the element needed in order to ensure optimal harmonisation and best practice in international and national anti-doping programmes. The main elements are: The Code (level 1), International Standards (level 2)…*". It follows that the ADR should always be read in conjunction with the relevant applicable rules regarding testing, retesting and splitting procedures, which are contained in the ISL. The Tribunal notes that such a conclusion is supported by recent CAS jurisprudence (CAS, 2016/A/4648 Blaza Klemencic v UCI, Award of 3 March 2017, paragraph 109).

50. The clarifications offered by the ISL are, however, limited. Article 5.2.2.12 of the ISL describes the process for opening and splitting an original B Sample under the general heading "*Long-term storage of Samples*". Accordingly, it is not immediately clear whether the ISL permit a B Sample to be split outside the context of long-term storage, and more specifically under the circumstances of the present case.

51. Pursuant to Article 5.2.4.3.1.1 of the ISL, a Confirmation Procedure for a suspicious result in the initial Testing procedure is as a general rule to be conducted on an additional aliquot taken from the A Sample. Article 5.2.2.12.10 of the ISL, provides for its part that initial testing may exhaust the volume of urine from the A Sample and offers as a solution splitting the B Sample to perform a confirmation analysis. However, none of these or other provisions address the situation whereby, as in the present case, insufficient urine remains in the A Sample.

52. In a previous judgment, the Tribunal addressed the same issue and came to the conclusion that a violation of Article 2.1 of the ADR could be the basis of a split B-Sample in circumstances such as those in the case at hand for the following reasons (ADT, 11.2017, *UCI v. Mr Sergio Perez Gutierrez*, Judgment of 25 April 2018, paragraph 84):

- *"The wording of art. 2.1.2 ADR does not state that only long-term stored split B Samples may constitute sufficient proof of a violation of art. 2.1 ADR;*

- *…While the ISL only provides instructions for Further Analysis under the heading "long-term stored Samples", the ADR provides inter alia that further analysis may be conducted at any time before both the A Sample and B Sample (if applicable) results are communicated to a Rider as the asserted basis for a violation of art. 2.1 ADR (art. 6.5 ADR), and not only on long-term stored Samples. This suggests that the split B Sample may also be appropriate for more situations than those involving long-term storage.*

- *The reason for the placement of the possibility to split a B Sample under the heading of long-term storage is understandable in light of the background of the provision. Looking back at the ISL 2012, it appears that the process to split a B Sample was previously correlated to Sample re-testing, which usually takes place on long-term stored Samples. The ISL 2015 removed the specific reference to "re-testing" here and added the broader term "Further Analysis". A reasonable explanation for this revision would be to facilitate more "novel" methods and analyses processes, such as those associated with the steroidal module of the Athlete Biological Passport program;*

- *No indication has been presented to the Single Judge that a confirmation analysis based on the first bottle of a split B Sample is less reliable than one conducted on only the A Sample. To the contrary, the CAS and this Tribunal have viewed a split B Sample as substantively comparable to a traditional A and a B Sample, where the Rider's procedural safeguards provided in the ISL were respected in splitting the B Sample. Moreover, without any compelling arguments to take into consideration and absent any precision in the rules, the Single Judge fails to see an obvious correlation between the intended duration of the storage and the acceptability of splitting a B Sample;*

- *Splitting a B Sample to perform this confirmation analysis in this case was not out of sync with the interest of the Rider, since it provided the possibility for a second independent analysis; and*

- *The Single Judge is also comforted by the fact that, as a general principle of interpretation (at least for the ADR), the headings of the provisions are "for convenience only" and should not be read to impact the substance of the provisions themselves".*

53. The Tribunal has no difficulty in following this line of argument for the purposes of the present case in order to conclude that the applicable rules permitted the Laboratory to split the Rider's B Sample.

54. The next question touches upon the procedural safeguards of the Rider in the case at hand.

55. Article 5.2.4.3.2.6 of the ISL, which relates to the procedural safeguards of a "normal" Sample analysis, provides that a rider "*shall be authorised*" to attend (or to appoint a representative to attend) the B Sample confirmation analysis (which includes the opening of the B Sample). By contrast, the rule associated with a split B Sample (Article 5.2.2.12.10 of the ISL) is less stringent in that it does not require the Rider to be notified or present for the opening and splitting of the B Sample.

56. Even accepting that the Rider should benefit from the provisions of Article 5.2.4.3.2.6 of the ISL, the Tribunal is of the view that no apparent procedural departure undermined the validity of the analytical finding. As described in Paragraph 8 of this Judgment, the procedure was handled on 5 October 2016 in the presence of an independent witness after the Rider had decided not

to appoint a representative to attend the procedure. As noted by this Tribunal, "*the fact that the Rider chose not to attend cannot (…) be held against the UCI or the Laboratory*" (ADT, 01.2017, *UCI v. Giampaolo Caruso*, Judgment of 19 June 2017, paragraph 86). Moreover, the UCI offered the Rider ample opportunity to request the analysis of the NB Sample.

57. The Tribunal also observes that the analysis of the Sample was conducted at a WADA-accredited laboratory. It is therefore presumed to have been conducted in accordance with the ISL unless, pursuant to Article 3.2.2 of the ADR, the Rider can "*rebut this presumption by establishing that a departure from the International Standards for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding*". In this case, it is not disputed that the Laboratory is a WADA-accredited laboratory and the Rider confirmed through his signature on the 'Doping Control Form' that the blood samples (which evidenced the presence of CERA) were taken in accordance with the relevant procedures.

58. For the sake of completeness, the Tribunal notes that pursuant to the 2016 WADA Prohibited List, CERA is not subject to any quantitative threshold, which means that the presence of any quantity of the substance is sufficient to establish an anti-doping rule violation under Article 2.1.3 of the ADR.

59. Based on the foregoing, the Tribunal determines to its comfortable satisfaction that the UCI successfully established that the Rider committed a violation of Article 2.1 of the ADR.

60. An anti-doping rule violation under Article 2.1 of the ADR having been established, the Tribunal does not deem it necessary to determine whether the facts of the case also constitute a violation of Article 2.2 of the ADR.

B. What are Consequences of the Rider's anti-doping rule violation?

61. Having established that the Rider committed an anti-doping rule violation, the Tribunal has to determine the applicable sanction(s).

1. Period of ineligibility

62. The UCI submits that the Rider should be subject to an 8 (eight)-year period of ineligibility.

63. Under Article 10.2.1 (a) of the ADR, the period of ineligibility to be imposed for a violation of Article 2.1 of the ADR shall be 4 (four) years where "*[t]he 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*".

64. As described in Paragraph 9 of this Judgment, the anti-doping rule violation committed by the Rider involves CERA, a non-specified substance pursuant to Article 4.2.2 of the ADR. Accordingly, a reduction of the 4 (four)-year period of ineligibility to a period of 2 (two) years may be granted if the Rider is able to establish that the violation was not intentional within the meaning of Article 10.2.3 ADR, i.e. that he did not either "*engage in conduct which he (…) 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*". In this case, however, the Rider made no representations in order to discharge his burden that the violation was not intentional in the sense of Article 10.2.1.1 of the ADR. Likewise, he did not seek to benefit from the application of Article 10.4 ('No Fault or Negligence') and 10.5.2 ('No Significant or Negligence') of the ADR.

65. Against this background, the Tribunal notes that it is the second anti-doping rule violation committed by the Rider. As described in Paragraph 4 of this Judgment, he was sanctioned with a period of ineligibility of 2 (two) years by the National Anti-Doping Agency of Colombia in 2010.

66. For second anti-doping rule violations, Article 10.7.1 of the ADR provides that the period of ineligibility shall be "*twice the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking any reduction under Article 10.6 of the ADR*".

67. In view of the above, since the period of ineligibility to be imposed for the present matter is in principle 4 years, the Tribunal holds that a mandatory period of ineligibility of 8 (eight) years (i.e. twice four years) shall be imposed on the Rider.

2. Commencement of the period of Ineligibility

68. A period of ineligibility of 8 (eight) years having been imposed on the Rider, the Tribunal has to determine its starting point.

69. The UCI submits in this regard that the period of ineligibility ought to start on the date of this Judgment, with a credit for the time the Rider was subject to a provisional suspension.

70. Article 10.11 of the ADR provides as a general rule that the period of ineligibility shall start on the date of the final decision providing for ineligibility. However, Article 10.11.3.1 of the ADR also provides that the Rider receives credit for any provisional suspension that was imposed on him, provided that he respected the terms of the provisional suspension.

71. In the present case, the Rider has been provisionally suspended since 9 November 2016. It is not contested that he respected this provisional suspension. Accordingly, the Tribunal determines that the Rider shall receive a credit for the period of the provisional suspension, i.e. from 9 November 2016 until the date of this Judgment, i.e. 27 June 2018.

3. Disqualification

72. The UCI requests the Tribunal to disqualify all of the Rider's competitive results between the date of the sample collection and the date that his provisional suspension commenced.

73. According to Article 10.8 of the ADR, all competitive results obtained from the date an anti-doping rule violation occurred, through the commencement of any provisional suspension or ineligibility period, shall, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

74. In this case, the Tribunal is not persuaded that fairness would justify a derogation from the principle set forth in Article 10.8 of the ADR.

75. As a result, the Tribunal determines that all competitive results obtained by the Rider between the date of the sample collection (i.e. 27 July 2016) and the date of the commencement of the provisional suspension (i.e. 9 November 2016), which according to the UCI included the Rider's results from the *78th Volta a Portugal Santander Totta 2016* (Tour of Portugal 2016), shall be disqualified.

4. Mandatory fine and costs

a. Mandatory fine

76. Pursuant to Article 10.10.1.1 of the 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"*.

77. In this case, it is not disputed that the Rider was exercising a professional activity in cycling since, in line with the Comment of Article 10.10.1.1 of the ADR, he was "*a member of a team registered with the UCI*".

78. Article 10.10.1.1 of the ADR further provides that the fine to be imposed shall amount to 70% of a rider's gross annual income from cycling for the whole year in which the anti-doping rule violation occurred, unless the rider is able to establish that the applicable national income tax law provides otherwise.

79. In this case, the Rider was a member of his Team as a mere trainee at the time he committed the anti-doping rule violation. He had no annual income from cycling in 2016. The Tribunal therefore holds that no fine shall be imposed on the Rider.

b. Costs

80. The Tribunal decides that the Rider is liable for the cost of the result management (CHF 2'500) in accordance with Article 10.10.2.2 of the ADR.

V. COSTS OF THE PROCEEDINGS

81. Pursuant to the provisions of Article 28.1 of the ADTPR, the Tribunal has to determine the cost of the proceedings as provided under Article 10.10.2.1 of the ADR.

82. While Article 28.2 of the ADTPR, provides that judgments are rendered without costs "*as a matter of principle*", Article 28.3 of the ADTPR enables the Tribunal to order the Defendant to pay a contribution toward the costs of the Tribunal.

83. In this case, the Tribunal notes that the Rider decided not to communicate with the UCI, resulting in the absence of any possible form of cooperation with the Rider and, eventually, in significant delays. The Tribunal considers that it should not encourage such procedural behaviour. For this reason, the Tribunal decides to order the Rider to pay a contribution towards the costs of the present proceedings in the amount of CHF 3'000 (three thousand Swiss francs).

84. Pursuant to Article 28.4 of the ADTPR, 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. The provision states that if the prevailing party was represented by a legal representative the contribution shall also cover legal costs.

85. In light of all of the circumstances of this case, especially the fact that there was no hearing in this matter and the UCI was not represented by external counsel, the Tribunal finds it appropriate to refrain from ordering the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VI. OPERATIVE PART

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

1. The Rider has committed an anti-doping rule violation (Article 2.1 of the ADR).

2. A period of Ineligibility of 8 (eight) years commencing on the date of this Judgment, i.e. 27 June 2018, is imposed on the Rider.

3. The provisional suspension already served by the Rider, starting from 9 November 2016 shall be credited against the eight-year period of Ineligibility.

4. The results obtained by the Rider between 27 July 2016 and 9 November 2016, including the Tour of Portugal 2016, are disqualified.

5. The Rider shall pay to the UCI CHF 2'500 (two thousand and five hundred Swiss Francs) for the costs of the results management by the UCI.

6. The Rider shall pay to the UCI CHF 3'000 (three thousand Swiss francs) for the costs of these proceedings.

7. All other and/or further reaching requests are dismissed.

8. This Judgment is final and will be notified to:

    a) Mr. Wilson Ramiro Rincón Díaz;

    b) the Colombian National Anti-Doping Agency;

    c) the World Anti-Doping Agency; and

    d) the UCI.

87. This Judgment may be appealed before the CAS pursuant to Article 30.2 of the ADTPR and Artide 74 of the *UCI Constitution*. The time limit to file the appeal is governed by the provisions set forth in Article 13.2.5 of the ADR.

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Julien ZYLBERSTEIN
Single Judge