



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2017/O/4978 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) & Ivan Shablyuyev

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Markus Manninen, Attorney-at-Law in Helsinki, Finland

in the arbitration between

**INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF),
Monaco**

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden of Kellerhals Carrard in Lausanne,
Switzerland

Claimant

and

RUSSIAN ATHLETIC FEDERATION (RUSAF), Moscow, Russia

First Respondent

and

Mr. IVAN SHABLYUYEV, St. Petersburg, Russia

Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (the "*Claimant*" or the "*IAAF*") is the international governing body for the sport of athletics recognised as such by the International Olympic Committee. It has its seat and headquarters in Monaco.
2. Russian Athletic Federation (the "*First Respondent*" or "*RUSAF*") is the national governing body for the sport of athletics in Russia. RUSAF has its registered seat in Moscow and is the relevant Member Federation, currently suspended from membership, of the IAAF for Russia.
3. Mr Ivan Shablyuyev (the "*Second Respondent*" or the "*Athlete*"), born in 1988, is a Russian athlete specialising in 400 metres hurdles. The Athlete is an International-Level Athlete for the purposes of the 2016-2017 IAAF Competition Rules (the "*IAAF Rules*").

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings, and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings, and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. The Athlete has been charged with violating Rule 32.2(a) of the IAAF Rules: "*Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.*" The evidence of the Athlete's alleged anti-doping rule violation in the matter at hand is based on a positive doping test.
6. On 19 July 2016, the Athlete underwent a doping control in Khimki, Russia. The sample was analysed in a WADA-accredited doping control laboratory in Stockholm, Sweden. According to the Test Report submitted on 5 August 2016, the analysis of the Athlete's sample has shown the presence of "*metabolites GHRP-6 (2-5) free acid, GHRP-6 (2-6) amide*". GHRP-6 is a GH-Releasing Peptide, prohibited under section S2.5 of the 2016 Prohibited List.
7. On 10 August 2016, the IAAF notified the Athlete of the adverse analytical finding (the "*AAF*"), informing him, in particular, of his right to provide an explanation for such finding and request the analysis of the B sample.
8. On 17 August 2016, the Athlete sent an e-mail to the IAAF and waived his right to the opening and analysis of the B sample. According to the Athlete's e-mail, at that time he

had "*absolutely no grounds to cast doubts upon the laboratory's findings*". The Athlete also noted that the IAAF's letter dated 10 August 2016 was extremely shocking because none of the doping control samples he had given prior to 19 July 2016 had turned positive for any prohibited substances. He also stressed that since he was waiting for a permission to compete at the Rio Olympics, there would not have been sense for him to use any banned substances. Finally, the Athlete denied ever having used any prohibited substances, stated that he has no explanation for the AAF at the time of writing the e-mail, and proclaimed that he will study his supplements as soon as possible. Consequently, the Athlete requested an extension to the time limit for providing an explanation.

9. On 18 August 2016, the IAAF granted the Athlete a 10-day extension to the time limit for providing an explanation.
10. On 1 September 2016, the IAAF noted that it had not received any explanation in the prescribed deadline and that, therefore, the Athlete was provisionally suspended with immediate effect. The Athlete was also informed about his right to request a hearing within 14 days, failing which he would be deemed to have waived his right to a hearing and to have accepted that he has committed an anti-doping rule violation under the IAAF Rules.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 9 February 2017, the IAAF filed a Request for Arbitration with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration. The IAAF informed the CAS that its Request for Arbitration was to be regarded as the IAAF's Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the CAS Code, the procedure being governed by the CAS appeals arbitration rules, pursuant to Rule 38.3 of the IAAF Rules. Furthermore, the IAAF requested the matter to be submitted to a sole arbitrator, acting as a first instance body. The Request for Arbitration contained a statement of facts and legal arguments and included requests for relief.
12. On 10 February 2017, the CAS Court Office initiated the present arbitration and specified that it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the Appeals Arbitration Division rules. The Respondents were further invited to submit their Answers. Additionally, the First Respondent was invited to forward the letter and its exhibits to the Second Respondent. Finally, both Respondents were invited to communicate the personal postal address of the Second Respondent at their earliest convenience. The cover letter accompanying the Request for Arbitration was also sent by email to the email address (*bihi-pyx@mail.ru*) provided by the IAAF for the Second Respondent.
13. On 8 March 2017, in accordance with Article R54 of the CAS Code and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the

parties that Mr Markus Manninen had been appointed as the Sole Arbitrator. The parties did not raise any objection as to the constitution and composition of the Panel.

14. On 22 March 2017, the CAS Court Office advised the parties that it had received no communication from the Respondents. Therefore, the CAS Court Office invited the First Respondent to inform the CAS Court Office by 27 March 2017 of the date on which the CAS letter of 10 February 2017 was delivered to the Second Respondent and to produce any relating evidence on this date. Furthermore, the Claimant and the Respondents were again invited to communicate the personal postal address of the Second Respondent within the same time limit.
15. On 24 March 2017, the Claimant provided the CAS Court Office with the Second Respondent's postal address.
16. On 31 March 2017, upon receipt of the Second Respondent's postal address, the CAS Court Office re-sent its letters, including its letter of 10 February 2017, with appendices in a digital form to the Second Respondent and invited him to submit an Answer. The CAS Court Office advised that if he remains silent, it will be considered that he has chosen not to file any written submissions in the matter, and the Sole Arbitrator will nevertheless proceed with the arbitration. In the same letter, the parties were invited to inform the CAS Court Office on or before 6 April 2017 whether they prefer a hearing to be held in this matter.
17. On 6 April 2017, the Claimant informed the CAS Court Office that it does not deem a hearing necessary. Neither Respondent expressed their preference as to whether a hearing should be held within the prescribed time limit.
18. On 27 April 2017, the CAS Court Office advised the parties that its letter dated 31 March 2017 as well as the enclosures thereto were halted by the Russian customs and returned to the CAS Court Office. Consequently, the CAS Court Office dispatched its letter dated 31 March 2017 with all enclosures listed therein to the Second Respondent as hard copies.
19. On 11 May 2017, the CAS Court Office's letter dated 27 April 2017 was delivered to the Second Respondent.
20. On 23 June 2017, the CAS Court Office advised the parties that it had not received any Answer or communication from the Respondents. The CAS Court Office informed the parties that, in accordance with Article R55 of the CAS Code, the Sole Arbitrator may proceed with the arbitration and deliver an award even if the Respondent fails to submit an Answer within the given time limit. The parties were further informed that the Sole Arbitrator had decided to deliver an award solely on the basis of the parties' written submissions. Finally, the CAS Court Office provided the parties with an Order of

Procedure. It was signed by the Claimant's counsel on 23 June 2017. The Respondents failed to return a duly signed copy of the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

21. The following is a summary of the parties' submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in his deliberation all the evidence and arguments submitted by the parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.
22. The IAAF submits, in essence, the following:
 - The IAAF's case is that Rule 32.2(a) of the IAAF Rules forbids the presence of a prohibited substance or its metabolites or markers in an athlete's sample.
 - According to Rule 32.2(a) (ii) of the IAAF Rules, sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by the *"presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed"*.
 - The presence of GHRP-6 has been found in the Athlete's A sample. GHRP-6 is prohibited in- and out-of-competition under section S2.5 of the 2016 Prohibited List. It is a non-specified substance.
 - As the Athlete has waived his right to the analysis of the B sample and the B sample was not analysed, the violation of Rule 32.2(a) of the IAAF Rules is established.
 - As to the period of ineligibility, the IAAF refers to Rule 40.2 of the IAAF Rules and notes that as GHRP-6 is not a specified substance, the Athlete shall be sanctioned with a four year ineligibility period unless he can establish that the anti-doping rule violation was not intentional.
 - To satisfy his burden of establishing a lack of intention, the Athlete must first establish how the prohibited substance came to be present in his system. If an athlete cannot explain what the conduct was that led to the positive test, then he cannot show that the violation was not intentional.
 - The Athlete did not provide any explanation for the positive finding. Therefore, as he has failed to establish the origin of the substance, the IAAF considers that the Athlete shall be sanctioned with an ineligibility period of four (4) years.

- Finally, pursuant to Rule 40.9 of the IAAF Rules, all results obtained by the Athlete from the date of collection of the positive sample, i.e. 19 July 2016, until the commencement of his provisional suspension on 1 September 2016 must be disqualified.

23. In light of the above, the IAAF submits the following prayers for relief in the Request for Arbitration:

- "(i) CAS has jurisdiction to decide on the subject matter of this dispute.*
- (ii) The Request for Arbitration of the IAAF is admissible.*
- (iii) The Athlete is found guilty of an anti-doping rule violation in accordance with Rule 32.2(a) or, in the alternative, Rule 32.2(b) of the IAAF Rules.*
- (iv) A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.*
- (v) All competitive results obtained by the Athlete from 19 July 2016 through to the commencement of his provisional suspension on 1 September 2016 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
- (vi) The arbitration costs are borne entirely by the Respondents.*
- (vii) The IAAF is awarded a contribution to its legal costs."*

24. Although duly invited, neither of the Respondents filed an Answer to the IAAF's Request for Arbitration, to be considered as its combined Statement of Appeal and Appeal Brief, within the prescribed time limit or thereafter. Pursuant to Article R55 of the CAS Code, the Sole Arbitrator can proceed to make an award in relation to IAAF's claims. Despite the lack of any formal Answer from the Respondents, the legal analysis below will take into account all available relevant information and is not restricted to the submissions of the IAAF.

V. JURISDICTION AND APPLICABILITY OF THE APPEAL ARBITRATION PROCEDURE

25. The IAAF maintains that the jurisdiction of the CAS derives from Rule 38.3 of the IAAF Rules, effective from 1 November 2015.

26. Rule 38.3 of the IAAF Rules provides as follows:

"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42. A failure by a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45."

27. The suspension of RUSAF's IAAF membership was confirmed on the occasion of the IAAF Council meeting in Monaco on 26 November 2015. On 17 June 2016 and, more recently, on 1 December 2016, the IAAF Council decided that RUSAF had not met the conditions for reinstatement to membership, and therefore RUSAF's suspension remains in place. As a consequence of its suspension, RUSAF was not in a position to conduct the hearing process of the Athlete's case by way of delegated authority from the IAAF pursuant to Rule 38 of the IAAF Rules.
28. Consequently, RUSAF is not in a position to convene a hearing within the two-month time period set out in Rule 38.3 of the IAAF Rules. In these circumstances, it is plainly not necessary for the IAAF to impose any deadline on RUSAF for that purpose.
29. The Sole Arbitrator further notes that the Athlete is an International-Level Athlete as defined in the IAAF Rules and that RUSAF is indeed prevented from conducting a hearing in the Athlete's case within the deadline set by Rule 38.3 of the IAAF Rules. The Sole Arbitrator confirms that IAAF was therefore permitted to refer the matter directly to a sole arbitrator appointed by the CAS, subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules.
30. It follows that the CAS has jurisdiction to adjudicate and decide the present matter and that the present case shall be dealt with in accordance with the Appeals Arbitration rules.

VI. ADMISSIBILITY

31. The Claimant's Request for Arbitration to be considered as its combined Statement of Appeal and Appeal Brief complies with all procedural and substantive requirements of the CAS Code. Neither Respondent disputes the admissibility of the IAAF's claims. Accordingly, the Sole Arbitrator deems the claims admissible.

VII. APPLICABLE LAW

32. The IAAF submits that IAAF rules and regulations, in particular IAAF Rules, are the applicable rules in this case. According to the IAAF, Monegasque law shall be applied on a subsidiary basis.
33. RUSAF or the Athlete did not put forward any specific position in respect of the applicable law.
34. Article R58 of the CAS 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

35. This provision is in line with Article 187 para 1 of the Swiss Private International Law Act (PILA) which in its English translation states as follows: *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected."*
36. Rule 42.23 of the IAAF Rules states as follows:

"In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). (...)"

37. Rule 42.24 of the IAAF Rules further provides as follows:

"In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise."

38. Rule 30.1 of the IAAF Rules reads as follows:

"The Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation or accreditation."

39. Based on the above, and considering that the applicable law is not in dispute, the applicable laws in this arbitration are the IAAF regulations, in particular the IAAF Rules, and, subsidiarily, Monegasque law.

VIII. MERITS

40. Considering all parties' submissions, the main issues to be resolved by the Sole Arbitrator are the following:

- A. Did the Athlete violate Rule 32.2(a) – or, alternatively, 32.2(b) – of the IAAF Rules?
- B. In case the first question is answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

A. Did the Athlete Commit an ADRV?

41. The Sole Arbitrator observes that the following general regulatory framework is relevant as to the merits of the case at hand.

42. The relevant parts of Rule 32 of the IAAF Rules read as follows:

"RULE 32 Anti-Doping Rule Violations

1. Doping is defined as the occurrence of one or more of the anti-doping rule violations set out in Rule 32.2 of these Anti-Doping Rules.

2. The purpose of Rule 32.2 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 specific rules have been violated. Athletes or 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:

(a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

(i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited

Substance or its 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 rule violation under Rule 32.2(a).

(ii) sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed (...)"

43. Rules 33.1, 33.2, and 33.3 of the IAAF Rules read as follows:

"RULE 33 Proof of Doping

Burdens and Standards of Proof

1. The IAAF, Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant 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.

2. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

Methods of Establishing Facts and Presumptions

3. Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information."

44. The Sole Arbitrator observes that, in its attempt to establish the anti-doping rule violation of the Athlete under the IAAF Rule 32.2(a), the IAAF relies firstly on the AAF in the Athlete's A sample taken on 19 July 2016, secondly on the fact that the Athlete has waived his right to the analysis of the B sample, and thirdly on the fact that the B sample was not analysed.

45. The Sole Arbitrator notes that pursuant to Rule 32.2(a)(ii), the presence of GHRP-6 in the A sample shall be deemed sufficient proof of an anti-doping rule violation in the circumstances of the case: the Athlete waived his right to B sample analysis and the B sample was not analysed. Consequently, the Sole Arbitrator finds that the Athlete has violated Rule 32.2(a) of the IAAF Rules and thus committed an anti-doping rule violation.

B. If an ADRV Has Been Committed, What Is the Sanction?

a. The Duration of the Ineligibility Period

46. Rule 40.2 of the IAAF Rules reads, in the relevant parts, as follows:

"The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers) (...) shall be as follows, subject to potential reduction or suspension pursuant to Rules 40.5, 40.6 or 40.7:

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

(i) 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 (...)

(b) If Rule 40.2(a) does not apply, the period of Ineligibility shall be two years."

47. As stipulated in Rule 40.2, the starting point for the length of the ineligibility period is four years when the anti-doping rule violation is based on a non-specified substance. However, if an athlete is able to prove by a balance of probability that the anti-doping rule violation was not intentional, the basic period of ineligibility shall be two years.

48. RUSAF or the Athlete have not filed any submissions with regard to the length of the period of ineligibility or any other consequence imposed on the Athlete. In particular, the Athlete has not submitted that the period of ineligibility should be mitigated for some reason.

49. However, the Athlete has, in his e-mail to the IAAF on 17 August 2016, denied ever having used prohibited substances and expressed a suspicion that some of the nutritional supplements given to him by the Russian national athletics team staff in July 2016 had been contaminated. The Athlete reported having received the following supplements: "Collagen Liquid; L-Carnitine; Moriamin forte; L-Arginine; Mio-aktiv sport; Biosport; Citrullini; BCAA; ZMA; Ecdysterone gold; Biofosfina; Stimol; Actovegin; Panangin; Neoton; Hypoxenum". After his initial response, the Athlete failed to provide any further explanation to the IAAF. He did not submit an Answer to the CAS either.

50. The Sole Arbitrator notes that pursuant to established CAS case law, apart from extremely rare cases (CAS 2016/A/4534; CAS 2016/A/4676), an athlete must establish how the prohibited substance entered their system in order to discharge the burden of establishing the lack of intention (e.g. CAS 2016/A/4377, paragraph 51). To establish the origin of the prohibited substance, it is not sufficient for an athlete to merely protest their innocence and suggest that the substance must have entered their body inadvertently from a supplement, medicine, or other product. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication, or other product that the athlete has taken contained the substance in question. For example, details about the date of intake, the location and route of intake, or any other details about the ingestion are necessary.
51. In CAS 2010/A/2230, the Sole Arbitrator expressed the athlete's burden as follows:
- "To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes for such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature for the athlete's basic personal duty to ensure that no prohibited substances enter his body."*
52. The Athlete's preliminary explanation presented in his e-mail on 17 August 2016 is broad and has no evidentiary basis supporting it. The Athlete has completely failed to specify which of the altogether 16 supplements and medications allegedly given to him had been contaminated. This fundamental shortage alone is enough to impede a finding of non-intentional administration of the prohibited substance GHRP-6. Furthermore, the Athlete has also failed to prove that he has had any of the supplements and medications in his possession or that the supplements were given to him by the team staff.
53. Moreover, the Sole Arbitrator has taken notice that the Athlete had not declared any medication or supplements taken over the past seven days prior to the doping test in the doping control form. Indeed, the form contains a handwritten word "None" in the relevant field. Had the team staff in reality given no less than 16 supplements and medications to the Athlete in July 2016 – of which no evidence has been produced – while the Athlete was aiming to compete at the Rio Olympics in August 2016, he likely would have used at least some of the supplements or medications between 12 July 2016 and 19 July 2016 as well. The fact that the Athlete had not declared any supplements or medications in the doping control form undermines his initial explanation that the AAF was caused by a contaminated supplement.
54. For the above reasons, the Sole Arbitrator finds that the Athlete has not met his burden of proof and that the anti-doping rule violation must be deemed to have been intentional. The Athlete must therefore be sanctioned with a four-year period of ineligibility under the IAAF Rules.

b. Commencement of the Ineligibility Period

55. Rule 40.11 of the IAAF Rules stipulates, in the relevant parts, 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 the Ineligibility is accepted or otherwise imposed.

(...)

(c) Credit for Provisional Suspension or Period of Ineligibility Served: If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. (...)"

56. The Sole Arbitrator finds that for practical reasons, and in order to avoid any eventual misunderstanding, the period of ineligibility shall start on 1 September 2016, the date of commencement of the provisional suspension, and not on the date of this Award.

c. Disqualification of Results

57. Rule 40.9 of the IAAF Rules reads as follows:

"In addition to the automatic Disqualification of the Athlete's individual results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained by the Athlete from the date the positive Sample was Collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred, through to the commencement of any Provisional Suspension or Ineligibility period shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money."

58. The IAAF has submitted that all results obtained by the Athlete between the date of collection of the positive sample, 19 July 2016, and the starting date of his provisional suspension, 1 September 2016, must be disqualified.

59. Pursuant to Rule 40.9 of the IAAF Rules, the disqualification of results is the main rule, and applying fairness would be an exception. The Sole Arbitrator finds that no reasons of fairness which could justify mitigating the effects of Article 40.9 of the IAAF Rules exist in this case. The Athlete has been found to have committed an intentional anti-doping rule violation, which has led to the setting of an ineligibility period of four years. Furthermore, the disqualification period covers less than 1.5 months. Based on these facts and considering, in particular, that RUSAF or the Athlete have not submitted any claims or arguments with respect to the disqualification of results, the Sole Arbitrator considers it

justified to disqualify all of the Athlete's results obtained between 19 July 2016 and 1 September 2016.

IX. COSTS

60. Article R64.4 of the CAS Code provides the following:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

61. Furthermore, Article R64.5 of the CAS Code reads:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule 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 outcome of the proceedings, as well as the conduct and the financial resources of the parties."

62. Finally, according to Rule 38.3 of the IAAF Rules, "[t]he hearing shall proceed at the responsibility and expense of the Member".

63. Taking the outcome of the arbitration into account and considering Rule 38.3 of the IAAF Rules, the Sole Arbitrator determines that the costs of these arbitral proceedings shall be borne by RUSAF. The amount will be determined and notified to the parties by the CAS Court Office.

64. Pursuant to Article R64.5 of the CAS Code, in making his determination with respect to granting a contribution towards the legal fees and other expenses of the prevailing party, the Sole Arbitrator has to consider the complexity and outcome of the arbitration as well as the conduct and the financial resources of the parties.

65. In this respect, the Sole Arbitrator notes that the IAAF's claim has been accepted in full. As to the conduct of the parties, the Sole Arbitrator is mindful that the Athlete did not admit the anti-doping rule violation and thereby forced the IAAF to initiate the arbitral proceedings in the CAS. Then again, both Respondents remained passive during the arbitration without disputing the claims and grounds thereof presented by the IAAF. Furthermore, the Respondents did not request a hearing. With respect to the financial resources of the parties, the IAAF appears to have more financial means than the Athlete. In light of the relevant elements, the Sole Arbitrator finds it reasonable that the Athlete shall pay a contribution to the IAAF's legal fees and expenses. He shall pay the IAAF CHF 2,000. In addition, RUSAF and the Athlete shall bear their own legal fees and expenses.
66. The present award may be appealed to the CAS pursuant to Rule 42 of the IAAF Rules.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed by the International Association of Athletics Federations (IAAF) on 9 February 2017 is upheld.
2. Mr Ivan Shablyuyev has violated Rule 32.2(a) of the 2016-2017 IAAF Competition Rules.
3. A period of ineligibility of four (4) years is imposed on Mr Ivan Shablyuyev, starting from 1 September 2016.
4. All competitive results of Mr Ivan Shablyuyev from 19 July 2016 through to 1 September 2016 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money).
5. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in their entirety by the Russian Athletic Federation.
6. Mr Ivan Shablyuyev is ordered to pay CHF 2,000.00 (two thousand Swiss Francs) to the International Association of Athletics Federations as a contribution towards its legal fees and expenses. The Russian Athletic Federation and Mr Ivan Shablyuyev shall bear their own legal fees and expenses.
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 25 August 2017

THE COURT OF ARBITRATION FOR SPORT


Markus Manninen
Sole Arbitrator