



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2009/A/1871 UCI v/ Rudolf Keller, Swiss Cycling and Swiss Olympic**

**ARBITRAL AWARD**

Pronounced by the

**COURT OF ARBITRATION FOR SPORT**

Sitting in the following composition:

President: Mr. Lars Halgreen, Attorney-at-law, Copenhagen, Denmark  
Arbitrators: Mr. Dirk-Reiner Martens, Attorney-at-law, Munich, Germany  
Mr. Jean Gay, Attorney-at-law, Martigny, Switzerland

In the arbitration between

International Cycling Union, Aigle, Switzerland

Represented by Mr. Philippe Verbiest, Attorney-at-law, Leuven, Belgium

- Appellant -

and

Mr. Rudolf Keller, Klein Düttingen, Switzerland

(not represented by counsel)

- First Respondent -  
or the Rider

Swiss Cycling, Haus des Sports, Ittigen bei Bern, Switzerland

represented at the hearing by Mr Richner, Technical Director of Swiss Cycling

- Second Respondent -

Swiss Olympic, Haus des Sports, Ittigen bei Bern, Switzerland

(not represented at the hearing)

- Third Respondent -

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## I. FACTUAL BACKGROUND

### 1. Parties

- 1.1 The International Cycling Union ("UCI") is the international sporting federation and the world governing body for cycling. The purpose of the UCI is to direct, develop, regulate, control and discipline cycling under all forms world-wide. UCI is headquartered in Aigle, Switzerland.
- 1.2 Mr. Rudolf Keller, born 1970, is a cyclist of the Masters category with a license issued by the National Cycling Federation of Switzerland ("Swiss Cycling"). He is self-employed with an electrical company.
- 1.3 Swiss Cycling is the National Cycling Federation of Switzerland and a member of the UCI.
- 1.4 Swiss Olympic is the Swiss National Olympic Committee.

### 2. Facts

- 2.1 This is a doping offence case regarding the Rider's alleged violation of his obligation to appear for sample collection at the doping control station following the UCI Road Masters World Championship in St. Johann, Austria, on 31 August 2008.
- 2.2 At the UCI Road Masters World Championship, the Rider participated in the race in age category 2 (1969-1973). He was ranked in the 30<sup>th</sup> position in a peloton of 50 riders and arrived after 2 hours and 39 minutes of the race to the finish line at 11.03 a.m.
- 2.3 The UCI was in charge of the doping control at the race, and the riders, who were required to undergo doping control immediately following the finish of the race, were put on a list. The Rider had been selected randomly together with three other riders and the winner of the race. The list of riders required to undergo doping control was

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posted at the finish line, at the end of the slow-down area and at the doping control station.

- 2.4 After having finished the race, the Rider, however, did not show up for the doping control, and by letter of 18 September 2008 the UCI asked Swiss Cycling to initiate disciplinary proceedings against the Rider for a violation of the UCI's anti-doping regulations ("ADR").
- 2.5 On 17 February 2009 the disciplinary commission for doping cases of Swiss Olympic rendered a decision (the "Decision"), in which the Rider was acquitted from having violated the UCI's anti-doping provisions, despite the fact that he had not shown up for the doping control. The disciplinary commission based their decision on the following legal arguments:
- 2.6 The disciplinary commission held that a person, who failed to attend the doping control despite an invitation to do so, was in breach of the anti-doping provisions promulgated by the UCI. The commission noted that a rider, who could not find the list, which had been posted at the finish line, including the names of the persons selected for doping control, should always visit the doping control station. Thus Art. 124 in the UCI ADR stipulated that every rider had a personal responsibility for finding out whether he should attend a doping control, and the commission therefore stated that the legal assessment in this particular instant appeared "perfectly clear". Although the Rider was not notified either verbally or in writing that his name had been chosen for a doping control, he should personally have ascertained whether he had been chosen for such a control, and failing to do so constituted a breach of Art. 15.3 of the UCI ADR.
- 2.7 However, based on the evidence presented before the disciplinary commission, the commission concluded that the announcement of the doping control at the race in St. Johann had not been properly organized, and that the Rider could not be seriously criticized for failing to take sufficient measures to find out whether he should appear for a doping control, when the organizers of the race did not succeed between the end of the race and the announcement of the ranking list at 06.00 p.m. (approximately 6

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hours later) in drawing up a ranking list compliant with the regulations. The Rider's name appeared on the ranking list, and the commission reasoned that a rider, who had been guilty of doping or failed to attend a doping control, without justification should not appear on such a ranking list.

Furthermore, the commission noted that the statements given by the "chaperones", i.e. persons who were appointed to escort the chosen riders to the doping control station, made a poor impression and were contradicting each other. For these reasons, the commission stated that it would have been necessary to hear other witnesses to clarify the facts surrounding the doping control procedure. The commission argued that it was impossible to understand, why the UCI had declined to give the commission the names and addresses of the other athletes invited to attend the doping control. The commission put emphasis on the fact that 50% of the riders along with the winner selected for the doping control had failed to turn up, and this fact would inevitably attract attention and bring serious doubt about the adequate organisation of the doping control carried out at the particular race.

Finally, the commission also took note of the fact that Anti-Doping Switzerland, which is the National Anti-Doping Agency of Switzerland, had also applied for the Rider to be cleared of any sanctions.

On these grounds, the disciplinary commission ruled that the Rider should be cleared of any accusation for violation of the UCI anti-doping regulations for not attending the doping control on 31 August 2008. Consequently, the Rider was not disqualified from the 2008 UCI Road Masters World Championship.

**3. Proceedings before the Court of Arbitration for Sport**

- 3.1 On 10 June 2009 the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Decision.
- 3.2 On 22 June 2009 the Appellant filed a second appeal brief ("Statement of Case"), which included the following request for relief:

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*“The present appeal aims at*

- *having the contested decision reformed*
- *having declared that Mr. Keller committed an anti-doping rule violation under Art. 15.3 of the UCI anti-doping rules (ADR) and imposed upon Mr. Keller a 2 years ineligibility in accordance with Art. 2.6.3 of UCI's anti-doping rules starting the day of the award*
- *having Mr. Keller disqualified from the 2008 UCI Road Masters World Championship and to disqualify any subsequent results according to Art. 2.7.4 ADR*
- *having Mr. Keller paid to the UCI an amount of CHF 2.000 for costs under Art. 244.2 ADR”.*

3.3 The Appellant's submissions in support of its request for relief may, in essence, be summarized as follows:

3.4 Art. 124 ADR is quite clear, as it stipulates that it is the personal responsibility of any rider to ensure whether he is required to appear for sample collection at the doping control station. According to Art. 125 ADR, the organizer and the anti-doping inspector shall ensure that a list of riders, who are required to appear for sample collection, is displayed at the finish line and at the entrance of the doping control station, before the finish of the winner. Nevertheless, riders that cannot find the list at the finish line shall always proceed to the doping control station.

3.5 Regarding the role of the chaperone, Art. 129 ADR stipulates that “a rider may be notified in person by a chaperone for testing at a post competition testing session in the same way as for individual testing. The organizer is required to provide at least one chaperone for every rider selected to undergo testing”. Further Art. 130 ADR stipulates that “the chaperone shall remain close to the rider and observe him at all times and accompany him to the doping control station. At all times the rider shall remain within sight of the chaperone from the time of notification to the completion of the sample collection procedure. The rider's support personal must not hinder the chaper-

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one from continuously observing the rider. The absence of a chaperone cannot be pleaded as a defence”.

- 3.6 Based upon the legal basis for sanctioning a rider, who, once he has been selected for sample collection, did not appear at the doping control station, the Appellant refuted the arguments used in the Decision in the following way:

Valid notification

- 3.7 Mr. Harald Baumann from the organization of the UCI Road Masters World Championship had in a statement dated 19 June 2009 confirmed that

- Riders were all informed by the organization by written notice in four languages (French, German, English, Italian) i.e. on the race leaflet, on the race schedule and on the website of the race that doping controls were going to be carried out.
- During the distribution of the start numbers, riders received an information sheet explaining that doping controls were going to be carried out.
- There was a notice from the Austrian NADO posted in the race office explaining the situation regarding doping controls.
- Before the start of the race the speaker gave announcements in four languages that doping controls were going to be carried out.
- The list of riders selected for the anti-doping test was posted at the finish area clearly visible from both sides.
- The sign posting from the finish line to the doping control station was sufficient. There was a distance of 200 metres between the two venues.
- The speaker announced the names of the riders selected to undergo doping control. Furthermore, the speaker repeated several times the names of the riders who did not show up.
- The chaperones did their best to find the riders and to escort them to the doping control station.

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3.8 As for the specific measures taken to properly inform the Rider, the Appellant made reference to the information given by the anti-doping inspector, Mr. Stephan Rosiejak, who confirmed the following:

- The Rider was properly designated to undergo the anti-doping test on the list.
- He was notified by all the means made available by the organizers, i.e. a list had been posted at the finish line, and at the end of the finishing area a list had been posted on the door of the testing station. No written summons was issued by a chaperone, as Mr. Harald Baumann, the chaperone appointed for the Rider, did not succeed in delivering a written notification to the Rider. The chaperone had explained in a supplementary report on 31 August 2008 that “despite calling out for the anti-doping control, the Rider went on his way and then could not be found”.

3.9 The Appellant concluded his arguments concerning the valid notification by stating that the signpost at the end of the finish area in addition to the one at the finish line and the one at the doping control station was not even necessary. Also radio announcements were not necessary, as no rider could rely on radio announcements to be made.

Presence of a chaperone

3.10 The Appellant refuted that it was the chaperone’s responsibility to ensure that the Rider appeared for the doping control. On the contrary, the Rider himself was personally responsible for attending the doping control, and the absence of a chaperone could not be pleaded as a defence, which was clearly stated in Art. 130 ADR.

Conflicting statements

3.11 The Appellant refuted that the statements made before the disciplinary commission were in fact contradictory, and, if so, that they had no bearing on the result of the case.

The disciplinary commission referred for instance to statements made on the one hand by Mr. Christian Wanner and on the other hand made by Mr. Christoph Haselmeier,

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which were both chaperones during the race. Mr. Haselmeier declared “as far as Mr. Keller is concerned, he could unfortunately not be found [.....] after the finish line”. Whereas Mr. Wanner stated: “the following measures (were) taken by the chaperones to find rider Keller [.....]. Request or loud call the rider Keller to stop, as he had been selected for the doping control. However, the rider Keller simply rode away from the finishing zone without paying attention to the chaperones”.

- 3.12 The Appellant argued that the statements of the chaperones were not contradictory, as each chaperone had to give his personal account of the Rider’s reasons not to attend the doping control.

Inadequate organization of the announcement of the doping control

- 3.13 The Appellant claimed that the argument used by the disciplinary commission that there was an inadequate organisation of the announcement of the doping control was unsubstantiated.

- 3.14 The race was governed by UCI rules, and it had been established that the requirement for notifications under Art. 125 UCI ADR was complied with during the race in St. Johann by displaying the list at the finish line, in the finishing area and at the doping control station.

UCI failed to provide evidence

- 3.15 The Appellant made a correction in the number of riders selected for doping control. Five riders were designated, including the winner of the race, not four as stated in the Decision. Out of these five riders, only two riders, including Mr. Keller, had failed to turn up for the doping control. The other rider, who failed to show up, Mr. Igor Ovdienko-Shevchenko, was, according to the Appellant, sanctioned by the National Cycling Federation of Ukraine with a two years’ suspension. This doping sentence was rendered by the Ukrainian Cycling Federation on 11 May 2009 after the Decision.



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- 3.16 The fact that the UCI had not submitted information to the disciplinary commission should not have any bearing on the guilt or innocence of the rider.

Ranking

- 3.17 Furthermore, the Appellant refuted the argument used by the disciplinary commission that the ranking of Mr. Keller following the race should have any influence on the rider's breach of the anti-doping regulations.

- 3.18 The Appellant pointed out that it would be inconceivable that the organizer of the race, who has no jurisdiction in anti-doping, would consider a rider as disqualified, even before the responsible anti-doping organization was informed by the doping control officer or the doping case had been heard. Therefore, the argument used by the disciplinary commission could not be valid, when assessing the breach committed by the Rider according to the Appellant.

Anti-Doping Switzerland

- 3.19 Finally, the Appellant argued that the fact that Anti-Doping Switzerland proposed the acquittal of the rider was not relevant and did not constitute a reason to acquit him.

Sanctions

- 3.20 Accordingly, the Appellant argued that the reasons for acquitting the Rider, which were found in the Decision, should not be accepted by the CAS. The Rider at the very least failed to submit to sample collection without compelling justification, and therefore an anti-doping violation was indeed established. Thus, the Rider had to be sanctioned according to Art. 2.63 ADR, which provided for a period of ineligibility for a first violation of two years' suspension. Finally, the rider should be disqualified from the race UCI Road Masters World Championship 2008.

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Position and Arguments of Respondent 1 and Respondent 2

3.21 Neither the Respondent 1 nor 2 have submitted any written submissions before the CAS within the deadline.

Position and Argument of Respondent 3

3.22 On 8 July 2009 Respondent 3 wrote a letter to the CAS office stating that the Respondent fully supported the Decision. The Respondent therefore respectfully requested CAS to rule as follows:

1. *The appeal of the UCI dated 22 June 2009 to be dismissed.*
2. *The decision of Swiss Olympic disciplinary commission dated 17 February 2009 in the matter of Mr. Rudolf Keller to be confirmed.*
3. *Swiss Olympic to be granted an award for costs.*

3.23 On 19 January 2010 the president of the Panel issued an Order of Procedure that was signed by all parties in the proceeding.

3.24 The hearing was held in Lausanne on 20 January 2010. At the hearing the Appellant was represented by Mr. Verbiest. Mr. Keller represented himself, and Swiss Cycling was represented by its technical director, Mr. Roland Richner. There were no persons representing Swiss Olympic at the hearing.

3.25 The parties presented their arguments in support of their requests, and the rider gave oral evidence. The rider testified in accordance with his statements before the disciplinary commission. He was born 17 October 1970, and he was presently self-employed with an electrical company. Until the age of 32, he took part in elite races as an amateur, and for the past 2 years he had held a master's license, because after the age of 30, he could go back to the lowest cycling category, i.e. the Masters category.

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- 3.26 He did not earn any income from his sport, at most, maybe price money of approx. CHF300.
- 3.27 As regards the doping case in question he stated that he himself was perhaps to blame for not checking 100 percent whether he was to undergo doping control. He maintained that the planned doping controls were badly notified, and that he rode past the finishing zone, where several trainers were standing, and waited for approx. 10-15 minutes, before he rode away. He had not seen the list of names that had been selected for doping control, nor had he heard any loud speaker announcement. He had not seen a single chaperone in the finishing zone, and he failed to understand the statement made by the chaperones before the disciplinary commission's hearing. No other testimony was given at the hearing.
- 3.28 At the end of the hearing, the President of the Panel asked the parties whether they could confirm that their right to be heard in the matter had been respected, which the parties unanimously confirmed.

## II. IN LAW

### 4. CAS Jurisdiction and Applicable Law

- 4.1 The UCI ADR apply to all licence holders of the UCI member federations participating in a race of the UCI international calendar (Art. 2 ADR). Anyone who receives a licence shall be committed thereby to respect the UCI regulations and to participate in cycling events in a fair and sporting manner. In particular, each licence holder undertakes to submit to doping tests and accepts the jurisdiction of the CAS as final instance in doping matters (Art. 1.1.001, 1.1.004 and 1.1.023 of the UCI Cycling Regulations).
- 4.2 None of the parties have objected to CAS jurisdiction in this matter. In accordance with UCI ADR, Art. 280 states that the decisions of the hearing body of a national federation under Art. 242 may be appealed to the CAS. Furthermore, according to Art.

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281, *litra c* ADR, the UCI shall have the right to appeal a decision promulgated by an instance mentioned in Art. 280 ADR.

4.3 Consequently, the Panel decides that CAS has jurisdiction to decide the present dispute in accordance with UCI ADR, Art. 281, *litra c*, cf. Art. 280 a.

4.4 Art. R 58 of the Code provides the following:

*"The panel shall decide the dispute according to the applicable regulations and 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 the law the application of which the panel deems appropriate. In the latter case the panel shall give reasons for its decision".*

4.5 As the race in St. Johann, Austria, on 31 August 2008 was a UCI Masters World Championship, the UCI anti-doping regulations in the version in force in 2008 shall apply primarily, and Swiss law shall apply additionally, as the UCI is domiciled in Switzerland.

**5. Admissibility**

5.1 It is undisputed that the Decision is the last instance for Swiss Olympic and Swiss Cycling regarding doping matters in Switzerland.

5.2 The UCI ADR Art. 285 stipulated that the declaration of appeal by the UCI must be submitted to the CAS within 1 month of receipt of the full case file from the competent body of the national federation, or if the file has not been requested within 15 days of receiving the full decision, within 1 month from receiving that decision.

5.3 The challenged decision is dated 17 February 2009. According to the information submitted to the Panel, it was received by the UCI on 26 April 2009 by e-mail, and on

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27 April 2009 by post. By fax sent on 7 May 2009 (but erroneously dated 18 September 2008), the UCI asked for the complete file. On 11 May 2009 the UCI received the case file by post, and the appeal before CAS was filed on 10 June 2009, which is within 1 month of receipt of the case file.

5.4 It follows here from that the appeal is admissible.

6. Merits

6.1 Based on the above facts, the Panel will address two main issues, which will have to be resolved with respect to the merits of the case:

- a. Did the rider violate the relevant anti-doping provisions (Art. 124, 125, 127, 128, 129, 131 ADR) in connection with his no-show at the doping control station following the race in St. Johann, Austria, on 31 August 2008?
- b. If so, are there any mitigating circumstances, which will justify that his sanction be reduced or eliminated all together?

Did the Rider violate the relevant anti-doping provisions (Art. 124, 125, 127, 128, 129, 131 ADR) in connection with his no-show at the doping control station following the race in St. Johann, Austria, on 31 August 2008?

6.2 Based on the above mentioned provisions in the UCI ADR regarding the Rider's obligation to provide a doping sample having been selected for doping testing, it is the firm opinion of the Panel that the language of Art. 124 is quite clear and does not leave room for much misunderstanding. Any rider, even those riders that may have abandoned a race before its finish, shall be aware that he may have been selected to undergo testing after the race and is responsible for ensuring personally whether he is required to appear for sample collection. The Panel finds that this language is so strong and clear in its message that it requires a lot of indisputable evidence to deviate from the main principle that the rider himself is responsible for ensuring whether he has or has not been selected for doping control after the race.

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6.3 The wording in Art. 125, 127, 128, 129 and 130 also strengthens the Panel's understanding of the intention and background of these anti-doping provisions. A list shall be drawn up and displayed at the finish line and at the entrance of the doping control. Riders shall be identified on the list by their name or their race number or their place in the ranking. Riders may be notified in person by a chaperone, but at the end of the day it is still the personal responsibility of any rider to check whether he has been selected for sample collection by showing up at the doping control station. As pointed out by the disciplinary commission in the first instance, the Panel agrees that the legal assessment in this case appears to be "perfectly clear" based on the personal and individual responsibility of the Rider.

6.4 Since the Rider both before the disciplinary commission and at the hearing admitted that he blamed himself that he did not make certain whether he was to undergo a doping control, the Panel finds that he is in violation of Art. 15.3 ADR and is therefore in principle subject to a sanction in accordance with Art. 263 ADR, unless the Panel finds that there are any mitigating circumstances that would lead to a reduced or eliminated sanction period.

If so, are there any mitigating circumstances, which will justify that his sanction be reduced or eliminated all together?

6.5 The Respondents have all referred to the arguments made in the disciplinary commission's acquittal of the Rider as their primary defence in this case. Accordingly, the arguments in the Appellant's brief and at the hearing were aimed at refuting the argumentation used by the disciplinary commission in its decision. No further arguments have been presented in support of the request for relief. Thus, the Panel will address the reasons based on which the disciplinary commission acquitted the Rider for his anti-doping offence in accordance with Art. 15.3 ADR.

Valid Notification

6.6 Based on the evidence, which was also present during the hearing before the disciplinary commission, the Panel finds that the organization of the UCI Road Masters

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World Championship did live up to what was to be expected of an organizer vis-à-vis Art. 125 ADR. Riders were informed by written notices in four languages both on the race leaflet and on the race schedule and at the website of the race, that doping controls were going to be carried out. The Panel also finds that based on the evidence, the speaker did give announcements in four languages that doping controls were going to be carried out, and that the list of the riders selected for the anti-doping test was posted at the finish area clearly visible from both sides.

- 6.7 Based on the submitted evidence the Panel is equally satisfied in finding that the Rider's name was put on the list of riders selected for doping control, and that the Rider was properly designated to undergo the anti-doping test on the list. The Panel believes that the statements of Mr. Harald Baumann and Mr. Stephan Rosiejak have not been questioned sufficiently by the Respondents, and no solid counter-evidence has been presented to rebut the notion that valid notification of Mr. Keller had in fact taken place.

**Presence of a chaperone**

- 6.8 As pointed out above, the Panel is confident that the proper understanding of the UCI ADR regarding the notification by a chaperone for testing at a post-competition testing session does not relieve the individual rider of his personal responsibility to check whether he had been selected for sample collection. In fact, it is quite clearly stated in Art. 130 ADR that the absence of a chaperone cannot be pleaded as a defence. Regardless thereof the Panel finds that there is nothing in the evidence to suggest that the chaperones in any way had mislead or confused the Rider into believing that he should not appear for doping control. On the contrary, none of the chaperones were obviously able to locate the Rider in the finishing area after the race. Therefore, the Panel cannot follow the argument used by the disciplinary commission to exonerate Mr. Keller, because the chaperones were not responsible for not finding him. Instead he was responsible for checking whether he had been selected for doping control.

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### Conflicting Statements

6.9 After having carefully examined the statements given by the various chaperones, the Panel may agree that some of the statements may appear to be contradictory to some extent. However, the Panel believes that this contradiction or conflicting content may come from the very obvious fact that each of the chaperones may have had their own personal experience as regards the efforts of finding Mr. Keller. One may have seen him ride away from the finishing area another may not even have been able to locate him. Notwithstanding, the Panel finds that these contradictory or conflicting statements have no bearing on the responsibility of the Rider to check whether he had been selected for doping control, and the chaperones may only be regarded as a help, not a legal requirement, to ensure that he would turn up for the doping control.

### Inadequate Organization of the Announcement of the Doping Control

6.10 The Panel finds that arguments used by the disciplinary commission to demonstrate that there had been an inadequate organization of the announcement of the doping control are not substantiated. As pointed out above, the Panel feels confident that the statements of Mr. Baumann and Mr. Rosiejak are true and correct, and once again there is no evidence to suggest the opposite. Therefore, the Panel must also reject the basis of this argument.

### UCI failed to provide evidence

6.11 Because of the allegedly conflicting or contradictory statements of the chaperones, the disciplinary commission put great emphasis on the fact that the UCI had not provided the commission with the names and addresses of the other riders, who had not shown up for the doping control. The number of riders, who did not show up, was in accordance with the evidence submitted before this Panel, in fact 2 persons, including the rider Mr. Keller. The other rider, who failed to show up, Mr. Igor Ovdienko-Shevchenko, has later been sanctioned by the National Cycling Federation of Ukraine with a two years' suspension, according to the undisputed information from the UCI.



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6.12 For these reasons, the Panel feels confident that no double standard has been applied for riders failing to appear before the doping control, and therefore the Panel may disregard this piece of evidence as insignificant for the question of reducing or eliminating the sanction of Mr. Keller. Equally, the number of riders that did not show up, does not provide any evidence of irregularities of the doping control procedures.

**Ranking**

6.13 As pointed out by the Appellant, the Panel finds it difficult to combine the question of Mr. Keller's violation of any anti-doping regulations with the fact that he appeared on the ranking list after the race had finished in St. Johann. These two matters do not, in the opinion of the Panel, have anything to do with one another. For obvious reasons, the placing of a rider on the ranking list cannot have any consequences with respect to whether he has committed a doping offence. At the end of the day, a man is innocent until proven guilty, and Mr. Keller's disqualification could not have been expected before any hearing had taken place in the matter. Thus, the Panel must also disregard this particular argument as a valid reason for eliminating or reducing the rider's sanction.

**Anti-Doping Switzerland**

6.14 The Panel agrees with the Appellant that the recommendation of Anti-Doping Switzerland does not have any bearing on the subject matter of this case and is no valid reason for reducing his sanction.

**Conclusion and Sanction**

6.15 Based on the above reasons, the Panel finds that there are no mitigating or otherwise exceptional circumstances that could justify a deviation from the UCI sanction provisions in Art. 263, cf. Art. 261 ADR. Accordingly, the period of ineligibility for a violation of Art. 15.3 ADR (failing to submit sample collection) shall for a first violation be 2 years of ineligibility. As pointed out by the Appellant, the new UCI doping regulations applicable from 1 January 2009 provide for the same sanction table for the anti-

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doping rules violation committed by Mr. Keller. Hence, the principle of *lex mitior* does not apply, as the new regulations are not more favourable to the Rider.

6.16 Thus, the Panel considers that the Decision should be set aside, and the sanction replaced by a 2 year period of ineligibility for violating Art. 15.3 ADR. Consequently, the Rider's ineligibility shall commence at the date of this award. In addition, the Rider shall be disqualified from the 2008 UCI Road Masters World Championship.

7. Costs

- 7.1 As this is a disciplinary case "of an international nature ruled in appeal", Art. R65 of the Code governs the allocation of costs,
- 7.2 According to Art. R65.1: "Subject to Art. R65.2 and R65.4 the proceeding shall be free. The fees and costs of the arbitrators calculated in accordance with the CAS fee scale, together with the costs of CAS, are borne by the CAS".
- 7.3 Art. R65.2 of the Code provides: "Upon submission of the Statement of Appeal, the Respondent shall pay a minimum court office fee of CHF 500 (five hundred Swiss Francs) without which the CAS shall not proceed, and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee".
- 7.4 Art. R65.3 of the Code provides: "The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them, or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties".
- 7.5 As this is a disciplinary case of an international nature brought by the Appellant, the proceedings will be free except for the court office fee, already paid by the Appellant, which is retained by CAS.

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7.6 Having taken into account the outcome of the arbitration and the financial resources of the first Respondent, the Panel is of the view that each party shall bear its own legal costs in connection with these arbitration proceedings.

\* \* \* \* \*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

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**ON THESE GROUNDS**

The Court of Arbitration for Sport rules:

1. The appeal filed by the UCI on 10 June 2009 is upheld.
2. The decision of 17 February 2009 from the disciplinary commission for doping cases of Swiss Olympic is set aside.
3. Mr. Rudolf Keller is sanctioned with a 2 years period of ineligibility starting on the day, on which this award enters into force.
4. Mr. Rudolf Keller is disqualified from the 2008 UCI Road Masters World Championship.
5. This award is pronounced without costs, except for the Court Office fee of CHF 500.- (five hundred Swiss francs) already paid by the Appellant and which is retained by the CAS.
6. Each party shall otherwise bear its own legal costs and all other expenses incurred with this arbitration.
7. All other motions or prayers for relief are dismissed.

Lausanne, 18 August 2010

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

  
Lars Halgreen