UNION CYCLISTE INTERNATIONALE

Anti-Doping Tribunal

UCI Anti-Doping Tribunal

Judgment

case ADT 04.2018

UCI v. Mr. Jeancarlo Padilla

Single Judge:

Ms. Emily Wisnosky (United States)

Aigle, 16 January 2019

INTRODUCTION

1. The UCI Anti-Doping Tribunal ("the Tribunal") issues the present Judgment in application of the Tribunal Procedural Rules (the "ADT Rules") in order to decide upon a violation of the UCI Anti-Doping Rules (the "ADR") committed by Mr. Jeancarlo Padilla (the "Rider") as asserted by the UCI (collectively, the "Parties").

I. FACTUAL BACKGROUND

2. The following section summarizes the main relevant facts to provide an overview of the matter in dispute. Additional facts are set out where relevant in the legal discussion that follows.

A. The Parties

3. The UCI is the association of national cycling federations and a non-governmental international association with a non-profit-making purpose of international interest, having legal personality in accordance with arts 60 ff. of the Swiss Civil Code according to arts 1.1 and 1.2 UCI Constitution.
4. At the time of the alleged anti-doping rule violation, the Rider was a Costa Rican cyclist, who was affiliated to the Federación Costarricense de Cisclismo ("FECOCI") and a License-Holder within the meaning of the ADR.

B. The alleged anti-doping rule violation

5. On 22 December 2017 the Rider provided an In-Competition blood Sample (Sample # 383380; the "Sample") following stage 5 of the Vuelta Ciclista Internacional a Costa Rica. On the Doping Control Form, the Rider declared that he had taken no supplements or medications in the seven days preceding the Test. Further, the Rider signed the section of the Doping Control Form that confirmed that the Sample had been taken in accordance with the applicable regulations.
6. On 19 January 2018, the World Anti-Doping Agency ("WADA") accredited laboratory of Salt Lake City, USA (the "Laboratory"), reported that the Rider's Sample had returned an Adverse Analytical Finding for Erythropoietin ("EPO").
7. On 31 January 2018, the UCI's Legal Anti-Doping Services notified the Rider by letter (sent also via email) of this Adverse Analytical Finding and of an apparent violation of arts 2.1 and 2.2 ADR.[1]
8. The letter also informed the Rider of his right to attend the opening and analysis of the B Sample and to request a Laboratory Documentation Package. It further instructed the Rider that he had seven days from the receipt of the notification to request the analysis of his B Sample, noting as well that a failure to request the analysis of the B Sample would amount to a waiver of this right. The letter also informed the Rider that a Provisional Suspension had been imposed on him, effective as of the date of the notification, i.e. 31 January 2018. It also informed him of the possibility to provide Substantial Assistance, of the possibility to provide explanations for the Adverse Analytical Finding, of the procedure, and of the possible Consequences of the potential violation.

[1] Whether the letter arrived at the Rider's physical address was contested by the Parties.

9. By a correspondence dated 7 February 2018, the Rider confirmed receipt of the UCI's 31 January 2018 letter. In this correspondence, the Rider declared *inter alia* that he was innocent of an anti-doping rule violation, renounced his right to request the analysis of his B Sample for reasons of lack of resources, and presented various arguments related to irregularities in the notification, Sample collection process, and Sample analysis.

10. By letter dated 9 February 2018 and taking note of the Rider's 7 February 2018 response, the UCI asserted that the Rider committed a violation of arts 2.1 and/or 2.2 ADR. In this same letter, the UCI invited the Rider to provide explanations by 16 February 2018 for the asserted violation. It also indicated the possibility to put an end to the proceedings through an acceptance of Consequences, in the sense of art. 8.4 ADR and informed the Rider of the Consequences of the violation(s).

11. By correspondence dated 18 February 2018, the Rider again underscored his innocence, and expanded upon and elaborated his arguments set forth in his correspondence dated 7 February 2018, including pointing to potential issues with the fact that the rules were not made available in Spanish by the FECOCI and allegations that EPO cannot be detected in blood (only urine).

12. By letter dated 28 February 2018, the UCI notified the Rider that, following review of his submission, it remained satisfied that he violated arts 2.1 and/or 2.2 ADR. The letter also, *inter alia,* emphasized various aspects of the Rider's case, and offered the Rider an acceptance of Consequences in the sense of art. 8.4 ADR, which comprised a four-year period of Ineligibility and the Disqualification of any results in the period in between his Sample collection and the date the UCI imposed his Provisional Suspension.

13. On 4 March 2018, the Rider confirmed that he received the 28 February 2018 letter from the UCI. In this correspondence, the Rider reconfirmed his "*total innocence*". In addition, he *inter alia* elaborated and expanded upon previous arguments, including new arguments relating to the procedure and applicable rules. In addition, he rejected the UCI's proposal for an acceptance of Consequences.

14. By email dated 28 March 2018, the UCI responded to several points raised by the Rider in his various submissions. Also, it granted the Rider a last deadline of 4 April 2018 to accept the Consequences offered and underscored that a failure to accept these Consequences would result in the procedure being deferred to the Tribunal, with potential costs involved for the Rider.

15. On 4 April 2018, the Rider again refused the UCI's offer to accept the Consequences proposed. In addition, he *inter alia* reconfirmed his innocence, and responded (in part) to the UCI's points raised in the 28 March 2018 letter, reiterated his position, and offered additional points in his defence. He also emphasized the difficulty in defending himself given the lack of availability of a Spanish version of the rules.

16. By email dated 9 April 2018, the UCI responded to the Rider's points and underscored that it had no obligation to make the UCI Anti-Doping Rules available in Spanish. In addition, it notified the Rider that it would start the proceedings before the UCI Anti-Doping Tribunal.

17. On 13 April 2018, the Rider replied, contesting points raised in UCI's 9 April 2018 email, including the language of the proceeding. In this correspondence, the Rider also raised an objection to continuing the proceeding.

II. PROCEDURE BEFORE THE TRIBUNAL

18. In compliance with art. 13.1 ADT Rules the UCI initiated proceedings before the Tribunal through the filing of a petition to the Secretariat of the Tribunal on 18 October 2018.

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

- "*Declaring that Mr. Padilla has committed an Anti-Doping Rule Violation.*
- *Imposing on Mr. Padilla a Period of Ineligibility of 4 years, commencing on the date of the Tribunal's decision.*
- *Holding that the period of provisional suspension served by Mr. Padilla since 31 January 2018 shall be deducted from the Period of Ineligibility imposed by the Tribunal.*
- *Ordering the disqualification of all results obtained by Mr. Padilla on at the Vuelta Ciclista Internacional a Costa Rica (from 18 to 27 December 2017) and all subsequent results obtained until 31 January 2018.*
- *Condemning Mr. Padilla to pay the costs of results management by the UCI (2'500.- CHF)*".

20. As already mentioned, before referring the case to the Tribunal, the UCI offered the Rider an acceptance of Consequences within the meaning of art. 8.4 ADR and art. 2 ADT Rules by letter dated 28 February 2018. On 4 March 2018, the Rider rejected the UCI's offer to accept the proposed Consequences. On 28 March 2018, the UCI extended the deadline for the Rider to accept the proposed Consequences, and on 4 April 2018, the Rider confirmed that he did not accept the UCI's offered acceptance of Consequences.

21. On 18 October 2018, the Secretariat of the Tribunal appointed Ms. Emily Wisnosky to act as Single Judge in the present proceedings in application of art. 14.1 ADT Rules.

22. On 22 October 2018, in application of art. 14.4 ADT Rules, the Rider was informed that disciplinary proceedings had been initiated against him before the Tribunal. The Rider was also informed that any challenge to the Single Judge or objection to the jurisdiction of the Tribunal shall be brought to the Secretariat within 7 days of the receipt of the correspondence and that a deadline of 6 November 2018 was granted to submit his answer.

23. The Rider submitted an answer on 6 November 2018.

24. On 6 November 2018, the Single Judge declared the proceedings closed and confirmed that she would render her Judgment based on the documents on file.

III. JURISDICTION OF THE TRIBUNAL

25. Art. 3.2 ADT Rules provides the following: "*Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction*".

26. Neither party objected to the jurisdiction of the Tribunal, thus the Single Judge holds that the Tribunal has jurisdiction to hear this matter. For the sake of completeness, the Single Judge is satisfied that the Tribunal's jurisdiction complies with the applicable provisions of the ADR.

27. Part C of the Introduction of the ADR addresses its scope of application, as follows:

"These Anti-Doping Rules shall apply to the UCI and to each of its National Federations. They shall also apply to the following Riders, Rider Support Personnel and other Persons: a) any License-Holder, …".

28. The Rider was therefore bound by the ADR. He was a License-Holder within the meaning of the ADR since he was affiliated to the FECOCI and held a license in 2017, i.e. at the time of the Sample collection on 22 December 2017.

29. Art. 8.2 ADR provides in relevant part as follows:

"The UCI Anti-Doping 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".*

30. In this case, the UCI asserted the anti-doping rule violation following a results management process under art. 7 ADR, and thus it follows that the Tribunal has jurisdiction in this matter.

IV. RULES OF LAW APPLICABLE TO THE MERITS

31. The ADT Rules provide that "*the Single Judge shall apply the ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law*" (art. 25 ADR). The alleged anti-doping rule violation(s) took place on 22 December 2017 (the relevant point of time being that of Sample collection). Thus, the 2015 edition of the ADR applies to the current matter.

32. With respect to notices in general, arts 14.1.1 and 14.1.2 ADR provide in relevant part as follows:

"14.1.1 In General
Unless otherwise specified, notice by and to the UCI under these Anti-Doping Rules, UCI Regulations, procedures or other document adopted in connection therewith, may be given by any means permitting proof of receipt, including registered or ordinary mail by post or private courier services, electronic mail or facsimile.
…
Notice shall be deemed to have occurred when delivered within the addressee's sphere of control. Proof that the addressee was, without his or her Fault, not in a position to have knowledge of a notice so delivered shall be on the addressee".

33. Art. 2.1 ADR sets forth the violation for the presence of a Prohibited Substance, as follows:

"2.1 ***Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample***
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.

[Comment to Article 2.1.2: The Anti-Doping Organization with results management responsibility may, at its discretion, choose to have the B Sample analyzed even if the Rider does not request the analysis of the B Sample.]"

34. The ADR defines a violation of art. 2.2 as follows:

> *"**2.2 Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method***
>
> *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.*
>
> *[Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Rider, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Rider Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish "Presence" of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.]*"

35. As for the standard period of Ineligibility art. 10.2 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".

36. As for the possibilities to reduce the aforementioned periods of Ineligibility based on Fault, the ADR state 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.*

…

10.5 ***Reduction of the Period of Ineligibility 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".

37. As for the Disqualification of results obtained in connection with an In-Competition test, art. 9 ADR provides as follows:

"An anti-doping rule violation in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes".

38. As for the Disqualification of results in the Event during which an anti-doping rule violation occurred, art. 10.1 ADR provides as follows:

"An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Rider's

individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Rider's anti-doping rule violation and whether the Rider tested negative in the other Competitions.

[Comment to Article 10.1: Whereas Article 9 Disqualifies the result in a single Competition in which the Rider tested positive (e.g., individual pursuit), this Article may lead to Disqualification of all results in all races during the Event (e.g., the UCI Track World Championships).]"

39. As for the Disqualification of results in Competitions following the Sample collection, art. 10.8 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".

40. In relation to the commencement of the period of Ineligibility art. 10.11 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. …

10.11.1 Delays Not Attributable to the Rider or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person, the UCI may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

…

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".

41. As for the liability for costs of the procedures, art. 10.10.2 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.*

…

The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI".

V. THE FINDINGS ON THE MERITS

42. This case presents three main issues:

- Preliminarily, was the Rider's right to defend himself, or more particularly, his right to be heard violated due to improper notification or lack of availability of the rules in Spanish? (A.)
- Did the Rider violate art. 2.1 and/or art. 2.2 ADR? (B.)
- If so, what are the Consequences? (C.)

A. Preliminary issues

43. At the outset, the Single Judge addresses the Rider's arguments of improper notification (1.), and of a violation of right to a defence due to lack of availability of the rules in the Spanish language (2.).

1. Was the Rider improperly notified?

44. According to the Rider, he did not receive the certified letter sent by the UCI notifying him of the Adverse Analytical Finding for EPO, therefore he did not recklessly fail to collect this letter. He further alleged that the FECOCI was "*irresponsible and remiss*" in failing to deliver this letter. However, as underscored by the UCI, the Rider did confirm that he received the email that included the letter on 31 January 2018.

45. The Single Judge sees no consequential issue with this – or any other notification made to the Rider – in this matter. According to art. 14.1.1 ADR, as set forth above, notices to the Rider may be sent by email, and the burden rests on the Rider to submit proof that he was "*not in a position to have knowledge of a notice so delivered*". Thus, it was acceptable for the UCI to send the notification of the violation by email and therefore would be of no consequence even if it were established that the Rider did not receive the version of the notification of the Adverse Analytical Finding sent by certified letter. Thus, the Rider's arguments pointing to a failure on the part of UCI or the FECOCI to deliver the certified letter must fail.

46. In addition, rules with respect to notification serve to protect one's right to be heard in order to enable one to present a defence. Since the Rider confirmed receiving the letter by email, he obviously had knowledge of its contents, thus fulfilling the purpose of the notification rule.

47. Thus, the Single Judge is satisfied that the notification was given to the Rider in a manner that enabled him to exercise his rights and in particular, his right to be heard.

48. Thus, the Single Judge holds that notification of the Adverse Analytical Finding was properly made to the Rider.

2. Was the Rider's right to a defence violated by the lack of availability of the rules in the Spanish language?

49. The Rider submitted that the lack of availability of the anti-doping rules in Spanish violated his rights and left him "*in a state of helplessness*". He acknowledged that FECOCI may not have a responsibility to translate the rules in Spanish, given that it is linked to the UCI, which has official languages in English and French. Nevertheless, he maintained that the lack of translation was a clear violation of due process and his right to a defence. He also underscored that the Doping Control Form was only available in English and French, which "*represents a serious disadvantage*" for Riders, and violates their "*most basic rights*" since their language is Spanish.

50. For the UCI, the Rider failed to identify a rule that would require his national or intentional federation to translate the anti-doping rules into his own language. In particular, the UCI pointed out that, as per the UCI Constitution, its own official languages are English and French. It further underscored that the Rider was bound to the UCI Constitution, and the ADR.

51. The Tribunal does not accept that the lack of availability of the anti-doping rules or the Doping Control Form violated the Rider's fundamental rights under the circumstances of this case. First, and importantly, the Rider did not submit that he was not competent in English. To the contrary his submissions were made in English, suggesting that the Rider at a minimum had access to some means to understand and communicate in English. Second, the Tribunal acknowledges that neither party presented a specific rule that was violated. Third, WADA provides Spanish-language translations of many of the key documents in the World Anti-Doping Program, including the World Anti-Doping Code, which is the basis for the ADR, and the International Standard for Testing and Investigations, which is the basis for the UCI Testing & Investigation Regulations. Finally, in light of the amount of resources it would take to make reliable translations of anti-doping rules in all languages and across all sports, coupled with the fact that online translation tools are readily available, the solution adopted by the UCI to adopt only two official languages (i.e. English and French) appears reasonable.

52. Therefore, the Tribunal holds that the alleged lack of availability of the mentioned documents in Spanish does not violate the Rider's right to present a defence, right to be heard, or any other fundamental rights under the circumstances of this case.

B. Did the Rider violate art. 2.1 and/or art. 2.2 ADR?

53. Art. 2.1 ADR prohibits the presence of a *Prohibited Substance* in a Rider's Sample (1.). Art. 2.2 ADR prohibits the Use of a Prohibited Substance, permitting the violation to be established "*by any reliable means*" of proof (Comment to art. 2.2 ADR, art. 3.2 ADR) (2.).

1. Did the Rider violate art. 2.1 ADR?

54. For the reasons that follow, the Single Judge holds that the Rider committed a violation of art. 2.1 ADR. The following sections include preliminary remarks on the relevant burden and standard of proof (a.), followed by the discussion on the merits (b.).

a. Standard of proof and burden of proof, presentation, and substantiation

55. Art. 3.1 ADR reads as follows:

> *"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"*.

56. Art. 3.2.2 ADR reads as follows:

> *"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]".*

57. Art. 3.2.3 ADR reads as follows:

> *"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".*

58. Thus, the UCI bears the burden of proof to establish that the Rider committed an anti-doping rule violation; the standard of proof is "*comfortable satisfaction*". For situations in which a Rider must rebut a presumption or establish specified facts or circumstances, the standard of proof is "*by a balance of probability*".

59. In the context of establishing the source of a Prohibited Substance, the CAS has interpreted this standard of proof to require

> *"the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51%*

chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred".[2]

60. More insight as to the evidence needed to reach a "*balance of probability*" can be gained in the following passage, that as previously set forth by this Tribunal,[3] summarizes a consistent line of CAS case law in this regard:

> *"Previous CAS panels have expressed the conclusion that merely raising unverified hypotheses or mere speculations as to how the substance entered an athlete's body will not be adequate to meet the threshold as set forth in Article 10.5.1 and 10.5.2 of the WADAC (and its corresponding federation's anti-doping regulations) (see for example CAS 2010/A/2230 International Wheelchair Basketball Federation v. UK Anti-Doping & Simon Gibbs, spec. § 11.5 ; CAS 2010/A/2268, I v. FIA, spec. § 129 ; CAS 2007/A/1413, WADA v. FIG & Vysotskaya, spec. §§ 75 and 76 ; CAS 2006/A/1067, IRB v. Keyter, spec. § 6.11, CAS 2006/A/1130, WADA v. Stanic & Swiss Olympic Association, spec. §§ 51 and 52)".*[4]

61. Also as previously set forth by this Tribunal,[5] art. 3.2.2 ADR provides explicit guidance on how a Rider may rebut a presumption of procedural validity and thereby (potentially) invalidate the results of the analysis of a WADA-accredited Laboratory based on a procedural error (or departure) from the ISL: A Rider must establish by a balance of probability "*that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding*", if he or she is able to establish this, the burden shifts to the UCI to prove that the departure did not cause the Adverse Analytical Finding. Art. 3.2.3 ADR provides a similar framework for departures from any other rule set forth in the ADR, or any International Standard or UCI Regulation incorporated in the ADR, providing in short that if the Rider is able to establish that a departure occurred from any of these rules which could reasonably have caused an anti-doping rule violation, the burden shifts to the UCI to prove that the departure did not cause the Adverse Analytical Finding.

62. Also as set forth previously by this Tribunal, CAS case law has further clarified the above prerequisites as follows:

> *"Therefore, the Panel deems a mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis. Further, the Panel remarks that such athlete's rebuttal functions only to shift the burden of proof to the anti-doping organization,*

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2 CAS 2014/A/3615, *WADA v. Daiders*, Award of 30 January 2015, para. 57 *quoting* CAS 2009/A/1926, *ITF v. Gasquet*, Award of 17 December 2009, para. 5.9.

3 UCI ADT 05.2017, UCI v. Nunes Pinho, Judgment of 15 August 2017, para. 67.

4 CAS 2014/A/3615, *WADA v. Daiders,* Award of 30 January 2015, para. 56. Or, as stated in a more recent case: "*To establish the origin of the prohibited substance, CAS and other cases make clear that it is not sufficient for an athlete merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question*". CAS 2016/A/4377, *WADA v. Alvarez Caicedo*, Award of 29 June 2016, para. 52.

5 ADT 05.2017, UCI v. Nunes Pinho, Judgment of 15 August 2017, para. 68.

which may then show, to the Panel's comfortable satisfaction, that the departure did not cause a misreading of the analysis". [6]

63. Also as set forth previously by this Tribunal, CAS case law has also provided insight into the question of when an (established) departure may have reasonably caused an Adverse Analytical Finding:

> *"[T]he Panel considers that Rule 33.3(b) requires a shift in the burden of proof whenever an athlete establishes that it would be reasonable to conclude that the IST departure could have caused the Adverse Analytical Finding. In other words, the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the ISL departure and the presence of a prohibited substance in the athlete's sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible".* [7]

64. More generally, as set forth by this Tribunal in a different matter:

> *"The burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court / tribunal (see also CAS 2011/A/2384&2386, no. 249). It is, in principle, the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court / tribunal in a sufficient manner (SFT 97 II 216, 218 E. 1). The party that has the burden of proof, thus, in principle has also the burden of presenting the relevant facts to the tribunal. Only if the party has satisfied its burden of presentation, the question related to the burden of proof may arise (provided that the fact has been contested by the other party).*
>
> *The ADR 2012 are silent on how specific and detailed the presentation of facts must be in an individual case. Since this question is of a procedural nature, the Single Judge takes – insofar – guidance in the jurisprudence of the Swiss Federal Tribunal (hereinafter referred to as "SFT") with respect to civil procedures before state courts. According thereto submissions of facts are substantiated within the above meaning if the factual submissions are detailed enough to determine and assess the applicability of the legal position derived from a particular provision (SFT 4A_42/2011, 4A_68/2011, E. 8.1). Consequently, the party having the burden of presentation must present the facts in a manner that allows subsumption under the prerequisites of the provision in question (SFT 4A_501/2014, E. 3.1)".* [8]

b. Did the Rider commit an anti-doping rule violation?

65. The Tribunal holds that the Rider committed an anti-doping rule violation for the presence of a Prohibited Substance in his Sample (art. 2.1 ADR) for the reasons that follow.

66. The UCI takes the position that, in short, the presence of EPO in the Rider's A Sample was sufficient proof of a violation of art. 2.1 ADR. According to art. 2.1.2 ADR, the presence of a Prohibited Substance in the A Sample alone where the Rider waived the analysis of the B Sample and the B Sample is not analysed amounts to "*sufficient proof*" of this violation. For the UCI, since the Laboratory's analysis of the A Sample revealed the presence of EPO, a substance

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6 UCI ADT 05.2017, UCI v. Nunes Pinho, Judgment of 15 August 2017, para. 69.; ADT 05.2016, *UCI v. Kocjan*, Judgment of 28 June 2017, para 64 *quoting* CAS 2013/A/3112, *WADA v. Chernova,* Award of 16 January 2014, para. 85.

7 ADT 05.2017, UCI v. Nunes Pinho, Judgment of 15 August 2017, para. 70; ADT 05.2016, *UCI v. Kocjan*, Judgment of 28 June 2017, para 65 *quoting* CAS 2014/A/3487, *Campbell-Brown v. IAAF*, Award of 24 February 2014, para. 155.

8 ADT 05.2017, *UCI v. Nunes Pinho*, Judgment of 15 August 2017, para. 71; ADT 05.2016, *UCI v. Kocjan*, Judgment of 28 June 2017, paras 66 and 67.

prohibited at all times, and the Rider waived his right to the B Sample, the violation was established.

67. Moreover, the UCI underscores that since a WADA-accredited Laboratory conducted the analysis of the Rider's Sample, the Laboratory enjoys a presumption that the analysis and custodial procedures were done in accordance with the International Standard for Laboratories ("ISL"). The UCI also emphasizes that departures from the ISL or any other applicable regulations do not automatically invalidate an Adverse Analytical Finding, rather it is for the Rider to prove that any given departure "*could reasonably have caused*" the anti-doping rule violation.

68. The Rider made various allegations of deficiencies in the Sample collection and analysis process, each of which the UCI contests. More generally, the UCI takes the view that the "*allegations of the Rider are generic in nature, speculative, and insufficient to establish a breach of a provision in the ISL or any other applicable regulations*".

69. The Tribunal agrees with the UCI, but for the sake of thoroughness and after carefully considering all of the Rider's submissions, addresses the Rider's key submissions in turn:

- **Improper notification and selection for Sample collection and failure to communicate his rights and responsibilities prior to Sample collection**.

  The Rider alleges that he did not receive written notification for the Sample collection, that his name did not appear in the forms in the custody of the "*assigned specialized physician*", and that this physician filled out forms outside of the supervision of the "*of[f]icial inspector, select[ed] by the FECOCI*". The Rider also submits that he was not informed of his "*rights, duties and consequences that could result from such action*" at the time of Sample collection. While he did not contest that he signed the Doping Control Form,[9] he highlighted that the form was only available in English and French, representing a "*disadvantage*" for Riders, in violation of their "*most basic rights*".

  The UCI submits that the Rider did not provide any indication that any of this was in breach of the applicable rules, let alone that it could have reasonably caused his Adverse Analytical Finding. Moreover, the UCI underscores that the Rider signed the Doping Control Form acknowledging that notice was given and consenting to provide a Sample.

  The Tribunal does not accept that any of the allegations made by the Rider constitute a departure that "*could reasonably have caused*" an anti-doping rule violation as required by the ADR or would otherwise constitute a violation of the Rider's fundamental rights. As to the Rider's allegations with respect to the physician, the Tribunal cannot conclude that any departure from the applicable rules was committed. As to any failure to inform the Rider of his rights, the Tribunal has not been presented with any evidence that the Rider was not informed of his rights, nor as to how any such failure put the Rider in a disadvantaged position. Finally, as discussed above in section V.A.2, even if the Tribunal could imagine that the availability of the form in only two languages may pose a difficulty in certain circumstances, it has not been presented with any concrete disadvantages the Rider himself faced. More particularly, the Tribunal has not been presented with evidence that this limited choice of languages for the form constituted a departure that would disturb the finding of an

[9] The Doping Control Form read "*I hereby acknowledge that I have received and read this notice, including the Athlete rights and responsibilities text on the overleaf of copy 1 and I consent to provide sample(s) as requested (I understand that failure or refusal to provide a sample may constitute an anti-doping rule violation)*".

anti-doping rule violation or otherwise violated the Rider's fundamental rights under the circumstances of this case.

- **Unsanitary conditions during Sample collection and irregular switching of the Sample from one container to another**.

  The Rider submits that the blood Sample collection took place in a room that failed to meet the "*basic hygiene measures and safety for the patient*" and that the containers themselves did not comply with safety and hygiene standards. The Rider also submits that the blood Sample was irregularly transferred from one container to another.

  For the UCI, the Rider's allegations were both "*unproven and unfounded*". Again, the UCI underscores that the Rider did not identify a specific provision of the applicable rules that was breached. It further casted doubt on the Rider's allegations by pointing out that the Rider did not identify any such issues on his Doping Control Form and failed to provide any evidence in support of his allegations.

  The Tribunal is not convinced by balance of probability that unsanitary conditions or irregular switching of the Samples occurred in violation of the applicable rules. While obviously it is critical for blood Samples to be collected in a hygienic environment, in this case the Rider did not produce any evidence or concrete examples at all as to how the conditions fell below minimum hygiene standards. Nor did he explain how or why the transfer of the Samples was irregular. Therefore, neither of these allegations constitute a departure that may call into question the alleged anti-doping rule violation.

- **Failure to provide chain of custody documents**. The Rider also submits that the FECOCI did not send him any documents related to the transport of the Samples.

  The UCI submits that the Rider never requested this documentation, noting that the Rider was given an opportunity to request the entire Laboratory Documentation Package, but did not do so. The UCI also attached a copy of the chain of custody documents to its petition to this Tribunal.

  The Tribunal fails to see in what way the FECOCI did not live up to its responsibilities in this regard but considers that the UCI's enclosure of the chain of custody documents with its petition addresses any concerns the Rider may have had.

- **Impossibility of detecting EPO in a blood Sample**. The Rider submits that the doctor sent by the UCI to oversee the Sample collection in Costa Rica, claimed that EPO (unlike CERA) can only be detected in urine, and not blood. More particularly, the Rider submitted that the doctor stated in an interview that "*EPO is detected in the urine and CERA is detected in the blood*".[10]

  The UCI's position is, in short, that EPO can in fact be detected in blood. In support of this, it pointed to a WADA Technical Document and the Laboratory accreditation documents, both of which show that EPO is in fact detectable in blood. It also underscores that the Rider did not follow the proper procedure for contesting the scientific validity of methods used by the Laboratory.

  The Tribunal holds that the Rider failed to establish that EPO cannot be detected in blood. Rather, the Tribunal sees no reason here to doubt that the analysis performed on the Rider's

[10] As included in the Rider's submissions: "*la EPO se detecta en la orina y la CERA se detecta en la sangre*".

blood Sample was scientifically valid. Even the UCI doctor's statement the Rider relies upon does not exclude this possibility, i.e. the doctor did not say that EPO is only detected in the urine, he merely said it is detected in urine. Therefore, the Tribunal does not accept the Rider's challenge to the validity of the analysis results.

- **Reasons underlying his B Sample waiver.** The Rider submits that the UCI failed to acknowledge that his waiver of his right to conduct the B Sample analysis was made due to lack of resources, namely due to the high cost of the Sample analysis and the fact that he is located far from the Laboratory, which is in Salt Lake City, Utah, USA. The UCI emphasizes that the Rider waived his right to the B Sample analysis.

  For the Tribunal, the Rider's reasons for waiving the B Sample analysis does not invalidate the anti-doping rule violation under the circumstances of this case. More particularly, the Tribunal is not convinced the Rider was put in an "*almost impossible*" situation, effectively denying him his right to the B Sample.[11]

- **Consistent denial of the Use of Prohibited Substances**.

  The Rider consistently denied in his submissions that he Used Prohibited Substances. In support of this, he also included what appears to be a statement made by two individuals who he submits travelled with the Rider's team on occasion and were present the day of his Sample collection. In the statement, the individuals appear to attest that they never witnessed the Rider "*use any medication or substance*".

  The Tribunal does not consider this evidence to be compelling. Even if one accepts the statement as accurate, the fact that two people travelling with the team on occasion never saw the Rider Use Prohibited Substances does not preclude the possibility the Prohibited Substances were Used. By its nature, the Use of Prohibited Substances is obviously an act that can be accomplished in private.

  As to the Rider's denials, as underscored in the case law of this Tribunal, "*a simple denial without any supporting evidence should be afforded at most limited evidentiary weight*".[12] In light of all of this, in examining the Rider's submission, the Tribunal cannot accept that the Rider's denial of the Use of a Prohibited Substance undermines the evidence presented by the UCI of the presence of a Prohibited Substance in the Rider's Sample.

70. Thus, for all the reasons set forth above, the Single Judge holds that the UCI established a violation of art. 2.1 ADR to the comfortable satisfaction of this Tribunal. It is comfortably satisfied that the Laboratory's report of an Adverse Analytical Finding for EPO in the Rider's A Sample does represent sufficient proof of the alleged anti-doping rule violation.

2. Did the Rider violate art. 2.2 ADR?

71. The UCI also alleged that the Rider committed a violation of art. 2.2 ADR (Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method). In the UCI's view the presence of

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11 CAS 2016/A/4828, *Oyurzan v. UCI*, Award of 31 May 2017, para. 123.

12 See, e.g., ADT, 02.2016, *UCI v. Taborre*, Judgment of 25 May 2016; ADT, 04.2016, *UCI v. Oyarzun*, Judgment of 16 September 2016, para. 68. For the same sentiment expressed in CAS case law, see, e.g. CAS 2014/A/3615, *WADA v. Daiders*, Award of 30 January 2015, para. 51. In this case, the Panel observed, in the context of considering the WADC 2015's allocation of burden of proof among the parties that "*it is rare for a person charged with a doping offence to admit to deliberate ingestion. For this reason, the weight to be given to an outright denial is diminished by the fact that it is as likely to be the approach taken by a person who is guilty as by one who is not*".

EPO in the Rider's Sample represents reliable means of proving that the Rider Used EPO, since EPO could not have been detected without the Rider having used, applied, ingested, injected, or consumed the substance.

72. However, in light of the fact that the Single Judge held that the Rider committed a violation of art. 2.1 ADR, the question of whether the Rider also committed a violation of art. 2.2 ADR is of no practical consequence, since both bear the same Consequences.

73. Thus, the issue of whether the Rider also committed a violation of art. 2.2 ADR need not be addressed.

C. Consequences of the Rider's anti-doping rule violation

1. Period of Ineligibility

74. For first time violations of art. 2.1 ADR, the starting point is art. 10.2 ADR. According to art. 10.2.1.1 ADR, the period of Ineligibility to be imposed shall be four (4) 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*".

75. As set forth above, the Rider's violation involves the Prohibited Substance EPO, which is listed under category "*S.2 Peptide Hormones, Growth Factors, Related Substances, and Mimetics"* of the 2017 Prohibited List and is not a Specified Substance.

76. For violations that do not involve Specified Substances (such as the violation at stake), art. 10.2.1.1 ADR allows for a reduction of a four-year period of Ineligibility to two years if a Rider establishes that the violation was not "*intentional*" within the meaning of the ADR. Thus, the Rider bears the burden of proof to establish that a violation was not intentional, and according to the general rule set forth in art. 3.1 ADR, the standard of proof is by a balance of probability.

77. The Rider may be entitled to a further reduction – or even elimination – of his period of Ineligibility if he establishes that one of the Fault-related reductions enshrined in arts 10.4 ADR or 10.5 apply. Finally, the Rider may also reduce or suspend his period of Ineligibility by establishing that one of the non-Fault related reductions in art. 10.6 ADR apply.

78. Thus, the threshold question in setting the period of Ineligibility is whether the Rider discharged his burden of proof to establish that the violation was not intentional (a.), followed by the question of whether any Fault-related (b.) or non-Fault-related (c.) reductions apply.

a. Was the violation intentional?

79. In this case, the Rider clearly failed to discharge his burden of proof to establish that the violation was not intentional in the sense of art. 10.2.3 ADR.

80. As stated above, the Rider consistently denied the Use of Prohibited Substances. But, after carefully considering this denial and all the circumstances of the matter at stake, the Tribunal holds that the evidence does not suffice to convince the Tribunal that on a balance of probability the violation was not intentional. Therefore, the Rider failed to rebut the presumption in art. 10.2.1.1 that the violation was committed intentionally.

b. Fault-related reductions

81. In order to establish a Fault-related reduction within the meaning of art. 10.4 or 10.5 ADR, the Rider must establish that the violation was committed with No Fault or Negligence or No Significant Fault or Negligence. Both require that the Rider establish how the Prohibited Substance entered his or her system (Appendix 1 ADR).

82. In this case, the Rider failed to establish that the violation was not intentional, thus the violation is presumed to be intentional. In absence of sufficient evidence that the Rider's violation was committed with No (Significant) Fault or Negligence, the Tribunal cannot apply any Fault-related reductions as set forth in arts 10.4 or 10.5.

c. Non-Fault-related reductions

83. For the sake of thoroughness, the Single Judge notes that the non-Fault-related reductions available under art. 10.6 ADR do not apply in this case.

d. Conclusion

84. In conclusion, the Rider failed to establish that the violation was not intentional, nor did he establish that any of the Fault- or non-Fault-related reductions in arts 10.4, 10.5, or 10.6 ADR apply.

85. Therefore, in application of art. 10.2.1.2 ADR, his period of Ineligibility is four years.

2. Commencement of the period of Ineligibility

86. Art. 10.11 ADR provides as a general rule that the period of Ineligibility shall start on the date of the final hearing decision. Art. 10.11.11 ADR creates an exception to this general rule: If "*substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person*" occurred, UCI has discretion to start the period of Ineligibility as early as the date of Sample collection. In addition, art. 10.11.3.1 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.

87. In application of the above provisions, the Rider's period of Ineligibility would in principle commence on the date of this Judgment, i.e. 16 January 2019. The Single Judge notes that the Rider's Sample was collected on 22 December 2017 and he was notified of the Adverse Analytical Finding on 31 January 2018. The Single Judge sees no reason to consider this as a substantial delay. Thus, the Single Judge does not stray from the general rule of art. 10.11.11 ADR.

88. The Rider in the present case has been Provisionally Suspended since 31 January 2018. The UCI submitted that to its knowledge, the Rider respected this Provisional Suspension. Accordingly, the Single Judge holds that the Rider shall receive a credit for the period of the Provisional Suspension, i.e. from 31 January 2018 until the date of the present Judgment.

89. The Single Judge also takes note that the date of this Judgment is more than one year after the date of Sample collection. For the sake of thoroughness, the Single Judge notes that if any portion of this period amounted to a substantial delay in these proceedings not attributable to the Rider within the meaning of art. 10.11.11 ADR, it is accounted and compensated for by the fact that the Rider receives credit for the Provisional Suspension served since 31 January 2018.

90. Thus, the effective date of the period of Ineligibility is 31 January 2018 and will extend for a period of four years from this date, i.e. until 30 January 2022.

3. Disqualification

91. Art. 9 ADR provides that *"[a]n anti-doping rule violation in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes*". A Competition is defined in the ADR as "*[a] single race organized separately (for example…a stage in a stage race…)*".

92. Therefore, the Tribunal hereby Disqualifies all of the Rider's results during the Competition in which the Sample collection took place, i.e. Stage 5 of the Vuelta Ciclista Internacional a Costa Rica, with all resulting Consequences, including forfeiture of any medals, points and prizes.

93. UCI also asks this Tribunal to Disqualify the Rider's other results obtained in the Event, i.e. the Vuelta Ciclista Internacional a Costa Rica. Art. 10.1 ADR provides that, "*[a]n anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Rider's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes*". Factors to be considered include "*the seriousness of the Rider's anti-doping rule violation and whether the Rider tested negative in the other Competitions*". For the Tribunal, the Rider's violation, an intentional violation involving EPO, is relatively serious. As observed by this Tribunal in the context of the Athlete Biological Passport, "*blood manipulation is not committed inadvertently, but intentionally and purposefully in order to enhance sporting performance. Furthermore, general experience dictates that in order to achieve performance enhancing effects blood manipulation must be applied more than once*".[13] In light of all of the above, the Tribunal grants the UCI's request to Disqualify all of the results the Rider obtained in the Event.

94. Finally, according to art. 10.8 ADR, "*all other competitive results of the Rider obtained from the date a positive Sample was collected…shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences, including the forfeiture of any medals, points and prizes*". The UCI saw no reason to derogate from the general rule of Disqualifying all competitive results from the date of the Rider's positive Samples until the start date of the Rider's Provisional Suspension, i.e. a period just over one month long.

95. Taking into account in particular the nature of the Prohibited Substance and the severity of the effects of Disqualification, as well as the fact that no arguments were submitted by the Rider that would call for the application of the "fairness exception" in this case, the Single Judge does not see any reason that would justify a derogation from the principle set forth in art. 10.8 ADR.

96. Thus, the Single Judge holds that all results obtained by Mr. Padilla at the 2017 Vuelta Ciclista Internacional a Costa Rica and in the period between the date of his Sample collection (i.e. 22 December 2017) and the date his Provisional Suspension began (i.e. 31 January 2018) are Disqualified, including forfeiture of any medals, points and prizes.

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[13] ADT, 06.2017, *UCI v. Diniz*, Judgment of 13 September 2017, para. 108.

4. Mandatory fine and costs

a. Application of a mandatory fine

97. In accordance with art. 10.10.1.1 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 [ADR]*".

98. In this case and according to the UCI, the Rider was an amateur, and therefore not exercising a professional activity in cycling.

99. Therefore, the Single Judge holds that the Rider is not subject to a mandatory fine.

b. Amount of the costs

100. As a result of being found to have committed an anti-doping rule violation, the Rider shall, however, bear the cost of results management set at an amount of CHF 2'500 (art. 10.10.2.2 ADR).

VI. COST OF THE PROCEEDINGS

91. Article 28 ADT Rules 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 toward the costs of the Tribunal. Whenever the hearing is held by videoconference, 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".*

101. In application of art. 28.1 ADT Rules, the Single Judge must determine the cost of the proceedings as provided under art. 10.10.2.1 ADR. Per art. 28.2 ADT Rules, as a matter of principle, the Judgment is rendered without costs.

102. Notwithstanding the above, the Single Judge 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 (art. 28.4 ADT Rules). The provision states that if the prevailing party was represented by a legal representative the contribution shall also cover legal costs.

103. In application of art. 10.10.2 ADR, and in light of all of the circumstances of this case, especially the fact that the prevailing party, i.e. the UCI was not represented by external counsel and that the UCI did not need to present expert evidence, the Single Judge finds it appropriate to refrain from ordering the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VII. RULING

1. In light of the above, the Single Judge decides as follows:
   - Mr. Padilla has committed a violation of art. 2.1 ADR.
   - Mr. Padilla is subject to a period of Ineligibility of four years. The period of Ineligibility shall commence on the date of the decision, i.e. 16 January 2019. However, considering the credit for the period of the Provisional Suspension already served by Mr. Padilla since 31 January 2018 the Rider's period of Ineligibility effectively began on 31 January 2018, and will end four years from this date, i.e. 30 January 2022.
   - All results obtained by Mr. Padilla at the 2017 Vuelta Ciclista Internacional a Costa Rica and in the period between the date of his Sample collection (i.e. 22 December 2017) and the date his Provisional Suspension began (i.e. 31 January 2018) are Disqualified, including forfeiture of any medals, points and prizes.
   - Mr. Padilla shall pay the costs of the results management by the UCI in the amount of CHF 2'500.
2. All other and/or further reaching requests are dismissed.
3. This Judgment is final and will be notified to:
   - Mr. Jeancarlo Padilla;
   - Comisión Nacional Antidopaje en el Deporte (the Costa Rican National Anti-Doping Organization);
   - WADA; and
   - UCI.
4. This Judgment may be appealed before the CAS pursuant art. 30.2 ADT Rules and art. 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in art. 13.2.5 ADR.

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Emily WISNOSKY
Single Judge