

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES  
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

**BEFORE:**

William Norris QC (Chair)  
Conny Jörneklint  
Francisco A Larios

**B E T W E E N:-**

**INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (the "IAAF")  
(Anti-Doping Organisation)**

**-and-**

**MS MICHELLE-LEE AHYE**

**(the "Athlete")**

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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**Introduction**

1. The Respondent, Ms Michelle-Lee Ahye (hereafter referred to as "*the Athlete*" or as Ms Ahye) is a 27-year-old track athlete from Trinidad and Tobago. Her main events are sprints, particularly the 100m and 200m in which she has had considerable success. Recently, she won gold in the 100m sprint in the 2018 Commonwealth Games. She has also competed in the Olympics.

2. The issue before this Tribunal concerned what are known (colloquially) as “*Whereabouts Failures*” within the meaning of Article 2.4 of the IAAF Anti-Doping Rules (the “IAAF Rules”).
3. It is common ground that, as a matter of fact, the Athlete was reported for having missed three tests during a twelve-month period. The first was on the 23<sup>rd</sup> June 2018; the second on the 23<sup>rd</sup> February 2019; and third, which was the particular focus of this hearing, occurred on 19<sup>th</sup> April 2019.
4. There was no challenge to the fact that the first two of those missed tests constituted breaches of the IAAF Anti-Doping Rules (albeit the first test was covered by the 2018 IAAF Rules, whereas the two missed tests in 2019 were covered by the 2019 IAAF Rules, which were effective from 1<sup>st</sup> January 2019).
5. Although the Athlete does not contest the missed tests on 23<sup>rd</sup> June 2018 and 23<sup>rd</sup> February 2019, she has sought to explain and, in effect, to mitigate her fault in respect of those incidents by reference to the circumstances in which they occurred. However, the principal focus of the hearing was on the missed test on 19<sup>th</sup> April 2019, which has been contested on the basis that the Anti-Doping organisation has not discharged the burden of proof in relation to the actions of the Doping Control Officer (Mr Thomas).
6. According to the submissions put forward by the Athlete at paragraph 4.1 of her brief;

*“As stated above, under Art. I.4.3 of the WADA ISTI, the AIU cannot meet its burden of proving a “missed test” unless it can prove (i) that during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances; and (ii) that the Athlete’s failure to be available for Testing at the specified location during the specified 60-minute time slot was at least negligent”.*

7. The Notice of Charge was issued on 30<sup>th</sup> August 2019 and the Athlete was thereby charged by the AIU with an Anti-Doping Rule Violation (“ADRV”) in connection with *Whereabouts Failures* within the meaning of Article 2.4 of the IAAF Anti-Doping Rules. The Athlete was provisionally suspended from the date of the Notice of Charge.

8. On 2<sup>nd</sup> September 2019, the Athlete denied the charge and sought a personal hearing before this Tribunal so as to advance and develop the explanation she had offered through her attorney (Howard Jacobs) in a letter of the 13<sup>th</sup> September 2019 and further in the brief submitted by Mr Jacobs on 13<sup>th</sup> November 2019.

### **Procedural Matters**

9. In advance of the oral hearing, the parties agreed and prepared a substantial bundle of documentation extending to some 564 pages. Within that body of documentation, both parties provided succinct and helpful summaries of their respective submissions (the "briefs").
10. The hearing itself was conducted by video link on 19<sup>th</sup> December 2019. The Chairman was present in the offices of Sport Resolutions in London, and was accompanied by the Sport Resolutions representative, Kylie Brackenridge. The other members of the panel were, respectively, in Sweden (Mr Jörneklint) and Miami (Mr Larios). The Athlete and her attorney, Howard Jacobs, joined us from California. The IAAF / Athletics Integrity Unit ("AIU") was represented by Mr Ross Wenzel (in Lausanne) and we heard evidence from the Doping Control Officer ("DCO"), Mr Thomas, who was in Texas.
11. Despite the potential difficulties of such a multi-party arrangement, we can record that the process worked well. We were able to hear and understand all of the submissions made and the evidence given on both sides. Our impression was that the process was equally satisfactory for all those who were in attendance. We should also record our gratitude to both parties' legal representatives for the care and moderation with which they conducted the hearing. We would add a particular mention of Mr Jacobs and Ms Ahye for attending for a hearing which began at 06.00 their time. We are grateful to them for having co-operated in that respect.
12. At the beginning of the hearing, the parties confirmed that there was no objection to the composition or jurisdiction of the Tribunal.

### **Jurisdiction**

13. As we have already noted, the applicable rules as regards the April 2019 missed test are the IAAF Anti-Doping Rules (“the 2019 IAAF Rules”). Article 1.2 of those Rules provides that:

*“In accordance with Article 16.2 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit (“**Integrity Unit**”) with effect from 3 April 2017 whose role is to protect the Integrity of Athletics, including fulfilling the IAAF’s obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including, but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanction and Appeals. The references in these Anti-Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit).”*

14. The application of those rules to Athletes, Athlete Support Personnel and other Persons is set out in Article 1.6 of the 2019 IAAF Rules, as follows:

*“1.6 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, by condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:*

- a) all Athletes Athlete Support Personnel and other Persons who are members of a National Federation or of any affiliate organisation of a National Federation (including any clubs, teams associations or leagues);*
- b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;*
- c) all Athlete Support Personnel and other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and*

*d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping."*

15. It follows that, as the IAAF has submitted, these rules apply to all Athletes who are members of a National Federation and participating in competitions organised, convened, authorised or recognised by the IAAF.

16. Although no issue arises in this regard, we also note that Article 7.2 of the 2019 IAAF Rules confers jurisdiction for results management on the AIU, including in the following circumstances:

*"Article 7.2 of the 2019 IAAF Rules confers jurisdiction for results management on the AIU in certain circumstances, including:*

*7.2 The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances:*

*[...]*

*7.2.3 For potential violations arising in connection with any investigation conducted in accordance with Article 5.*

*[...]*

*7.2.5 For potential violation of these Anti-Doping Rules where no Testing is involved and where the potential violation involves:*

*(a) Any International-Level Athlete, Athlete Support Person or other Person who has an involvement in any capacity in International Competitions or with International-Level Athletes; or*

*(b) Where the IAAF is the Anti-Doping Organisation which first provides notice to an Athlete or other Person of an asserted Anti-Doping Rule Violation and then diligently pursues that violation."*

17. Again for convenience, and adopting a passage conveniently recorded in the IAAF Brief, it is noted that this Tribunal has been established in accordance with Article 1.4 of the 2019 IAAF Rules.

*"Article 8.1(a) of the 2019 IAAF Rules sets out that the Tribunal shall have jurisdiction over all matters in which:*

*(a) An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules"*

18. In accordance with Article 1.8(a) of the 2019 IAAF Rules, athletes in the International Registered Testing Pool are International-Level Athletes.

### **The Provisions Governing 'Whereabouts Failures'**

19. We return to the IAAF Rules insofar as they explain what is meant by a Whereabouts Failure and also set out the relevant provisions of the International Standard for Testing and Investigations (ISTI) as well as the 'Guidelines for Implementing an Effective *Testing* Program' which were issued by the World Anti-Doping Agency in October 2014 (the 'WADA Guidelines').

20. Article 2.4 of the IAAF Rules provides:

*'Any combination of three Missed Tests and/or Filing Failures, as defined in the International Standard for Testing and Investigations, within a twelve-month period by an Athlete in a Registered Testing Pool.'*

21. A Missed Test is defined by the ISTI as follows:

*'A failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in his/her Whereabouts Filing for the day in question, in accordance with Article I.4 of the International Standard for Testing and Investigations.'*

22. The effect of this provision is that an athlete violates Article 2.4 where he or she has any combination of three Missed Tests or Filing Failures within a twelve-month period, starting on the day of the first relevant Missed Test / Filing Failure.
23. Art. I.4.3 of the ISTI provides as follows (noting here that only sub-paragraphs (c) and (e) are in issue in this case)

*"An Athlete may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:*

- a) that when the Athlete was given notice that he/she had been designated for inclusion in a Registered Testing Pool, he/she was advised that he/she would be liable for a Missed Test if he/she was unavailable for Testing during the 60-minute time slot specified in his/her Whereabouts Filing at the location specified for that time slot;*
- b) that a DCO attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot;*
- c) during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;*
- d) that Article I.4.2 does not apply or (if it applies) was complied with; and*
- e) that the Athlete's failure to be available for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at sub-Articles I.4.3(a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his/her part caused or contributed to his/her failure (i) to be available for Testing at such location during such time slot and (ii) to update his/her most recent Whereabouts Filing to give notice of a different location where he/she would instead be available for Testing during a specified 60-minute time slot on the relevant day."*

24. The relevant WADA Guidelines include provisions as to how an Athlete may update his or her Whereabouts Information (paragraph 8.4.3). However, it is paragraph 8.4 which was the particular focus of Mr Jacobs's submissions and those of Mr Wenzel. We quote here just extracts from the guidelines which seemed most pertinent (one part of which appears in more detail in paragraph 52 below):-

*"What constitutes a reasonable attempt to locate an athlete.....will necessarily depend on the particular circumstances of the case in question and, in particular on the nature of the location chosen....The only truly universal guideline is that the DCO should use his/her common sense...If the specified location is the Athlete's house.... The DCO should ring any entry bell and knock on the door...If the Athlete does not answer, the DCO **may** telephone the Athlete...whatever the location specified, it **may** be appropriate for the DCO to speak to the people he/she encounters during the attempt to see if they can assist in locating the athlete..."*  
[added emphasis in **bold**]

### **The Definition of Fault**

25. In the chapter dealing with Further Sanctions for Individuals (Chapter 10) in the 2019 IAAF Rules, Article 10.3.2 sets out the consequences to be imposed for the violation of a Whereabouts Failure:

*"10.3.2 For an Anti-Doping Rule Violation under Article 2.4 that is the Athlete's first anti-doping offence, the period of Ineligibility imposed shall be two years, subject to a reduction down to a minimum of one year, depending on the Athlete's degree of Fault. The flexibility between the two years and one year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being unavailable for Testing."*

26. What is meant by "fault" in context is conveniently defined within the 2019 IAAF Anti-Doping Rules. Page 69 of those rules contains the following definition of "fault":

*"Fault; Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's*

*experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."*

27. There was some discussion in the course of our hearing about whether the concept of "fault" is illuminated to any extent by the provisions of Article 10.4 and 10.5. We need say no more about those provisions, since they are particularly focussed on the approach to sanctions in the case of ADRVs in respect of Specified Substances and/or Contaminated Products. We think the concept of Fault is straightforward and that it is sufficiently explained in the quotation we have set out in the preceding paragraph.

### **Applicable Law**

28. Mr Jacobs, on behalf of the Athlete, submitted that because the concept of "negligence" is material within the International Standard for Testing Investigations ("ISTI") and because that was a document drafted by the World Anti-Doping Agency ("WADA"), which in turn was a Swiss private law foundation, therefore the definition of "negligence" under Swiss law would provide what was characterised (at paragraph 4.3 of the Athlete's brief) as a "useful starting point".
29. In fact, the issue of the applicable law (insofar as it may be in issue at all) is directly addressed within Articles 20.2 and 20.3 of the 2019 IAAF Anti-Doping Rules which provides as follows,

*"20.2 These Anti-Doping Rules should be interpreted in a manner which is consistent with the Code. The Code shall be interpreted as an independent and*

*autonomous text and not by reference to the existing law or statutes of any signatory or government. The comments annotating various provisions of the Code and the various International Standards shall be used to interpret these Anti-Doping Rules.*

*20.3 Subject to Article 20.2 above, these Anti-Doping rules shall be governed by and construed in accordance with Monegasque law.”*

30. In those circumstances, the provisions of the Swiss Criminal Code are not applicable. Nevertheless, had it been material, we would have found that, as is true of the criminal law of most Western legal systems, the provisions of that Code (particularly Article 12(3)) require both the specific circumstances and an individual’s personal capabilities to be taken into account when determining negligence and/or Fault (insofar as there is any distinction between the two). Those are considerations we have taken into account here in determining whether this particular Athlete has failed to make herself available for testing at the specified location and at the appropriate time. They are also relevant considerations in relation to any assessment of Fault.

### **The Material Facts**

31. In our discussion of the material facts, it is necessary to include our analysis not only of what happened on the third missed test in April 2019, but also to go back to the first of the three missed tests which arose during the relevant twelve-month period, namely that which occurred on the 23<sup>rd</sup> June 2018.
32. On that occasion, the Athlete’s Whereabouts Information was that she would be available between 07.00 and 08.00 on 23<sup>rd</sup> June 2018 at an address, Austin House, Round Rock, Texas. That is the same address as on both the later two tests.
33. The explanation for the missed test which was received by the Athletics Integrity Unit (“AIU”) was sent by way of email from the Athlete’s own email account, albeit she told us in the course of the hearing that it was actually drafted by her agent. It was sent at 13:59 on 4<sup>th</sup> July 2018 and reads:

*"Dear AIU Team,*

*Firstly, I must apologise for not being where I had indicated on my previous whereabouts form.*

*I planned to leave for the Trinidad Championships at a later time that day, but had to change my flight late the night before, due to personal reasons. Consequently, I did not update my whereabouts form, as I was rushing around all night and in the morning prior to flying to Trinidad.*

*I understand that whereabouts compliance is a factor for all athletes and this occasion for me was unique.*

*I will endeavour to comply with the AIU and whereabouts filing going forward.*

*Regards, Michelle-Lee Ahye."*

34. In the course of this hearing, Ms Ahye gave evidence herself. It was put to her, and she did not challenge, that the account given in the email of 4<sup>th</sup> July 2018 could not possibly have been correct because, far from having to change her flight at the last minute, she was actually competing in Trinidad at the material time.
35. The Athlete accepted in cross-examination that the explanation given in that email was therefore wrong and misleading (albeit she said she thought it was sent by her agent but that she will have read it at some stage).
36. It follows that we must proceed on the basis that not only has she given no good reason for that particular failure on the first of the three missed tests but, more particularly, the reason that she did offer (or which was offered on her behalf) was wrong.
37. The second Whereabouts Failure was in respect of a missed test on 23<sup>rd</sup> February 2019. We make no finding against her as regards the evidence (or lack of evidence) as to how that test came to be missed. We are prepared to accept that this happened as a result of some administrative muddle and that the Athlete's explanation to that effect should be treated as true.
38. The third Whereabouts Failure was, according to the IAAF, the missed test on 19<sup>th</sup> April 2019. There is no challenge to the fact that the Athlete's Whereabouts

information had stated that she would be available at the same premises, Austin House, Round Rock, Texas between 06.00 and 07.00hrs on 19<sup>th</sup> April 2019. It is also not in issue that the Athlete did not answer the door when (at least according to the DCO, Mr Thomas) he arrived at the above address and tried to contact her.

39. The DCO's original 'Unsuccessful Attempt' and his 'Supplementary' reports were both in the agreed bundle. Mr Thomas, an experienced DCO in the context of other sports (NFL, NBA) but only in his second month of acting as a DCO for the IAAF, gave evidence orally to this Tribunal.
40. He said that he arrived at the property in question, which was a maisonette / apartment on three storeys with a single entrance door and a bell (which looked broken, he said). This was before 06.00 that morning in circumstances where the Whereabouts Information had said that the Athlete would be available for testing between 06.00 and 07.00.
41. He told us that he rang the bell at or shortly after 06.00, and heard it sound (albeit faintly). He then knocked three times – loudly – rang the bell again and knocked another three times before ringing the bell a third time and knocking a further three times – a process which he repeated at 06.16, 06.31 and 06.45.
42. He received no response and so, at 06.55, and at 06.56, he rang the two numbers that had been provided by the Athlete on the relevant form. Both (as he described it) "rang out" but in accordance with standard practice, he left no message. He says he waited until 07.00hrs and then left.
43. Ms Ahye was not able to contradict any of that evidence. Whereas Mr Thomas's phone records show that he did ring the numbers given at the times he gave, the Athlete has not produced any phone or other records which suggest otherwise.
44. The explanation provided by the Athlete came first by way of an email on 3<sup>rd</sup> May 2019. It reads (and we quote):

*"Missed test I was home on that day you can not knock on the door because I would not hear it my room is all the way on the 3<sup>rd</sup> level that's why there is a doorbell.. this miss test is not my fault because I was home."*

45. The Athlete's brief presented what may be regarded as a modified and perhaps contradictory version of that response. We quote paragraph 1.2.2 of that brief:

*"In or around March 2019 (the previous month), Ms. Ahye had submitted a work order request to building maintenance upon realizing that the doorbell to her apartment could not be heard on the second or third stories of the apartment. She was informed that there was nothing the building owners could do to remedy the situation. Despite conducting research into a solution for this issue which she could undertake and implement herself, she was unable to find a short-term solution prior to the attempt made on 19 April 2019."*

46. She supports the assertion that there was something wrong with the bell by providing a print-out of her contact with the Building Manager which reads:

*24<sup>th</sup> March 2019: "Electrical Repair. Not sure what is going on but when I am upstairs in the master bedroom I dont hear the doorbell when someone rings it."*

*The work is reported as having been "completed" on the 27<sup>th</sup> March 2019.*

47. The difficulty with the explanation about the functioning (or lack of functioning) of the doorbell is that, in the course of her oral evidence, the Athlete told us that the situation with the doorbell had remained the same since she had first moved into the property a year or so before the third missed test. That is not consistent with the implication in the report to the Building Manager that something new was "going on" and/or with any suggestion in the material submitted by Mr Jacobs on her behalf to the effect that there was some recent problem with the bell that she had done what she reasonably could to get fixed.

48. In summary, the Tribunal accepts Mr Thomas's evidence. We accept that he saw at least one other person (a lady with a dog) in the vicinity but chose not to speak to any such person as, understandably, he considered that doing so would be unlikely to have helped him to gain access to the building or otherwise enhance his chances of contacting the Athlete (given that the Athlete had her own front door and that he already had the two telephone numbers she had provided).

49. We find that the DCO did ring the bell and knock on the door, and made the telephone calls exactly as he describes. Insofar as the Athlete seeks to contradict

those assertions, we reject her explanation. She has not been a consistent historian as regards the doorbell, nor has she provided any explanation for why she did not hear and answer her phone, nor has she offered anything which contradicts Mr Thomas's record of him having dialled the two numbers she gave, one of which she recognises was live at the material time.

### **Has the IAAF established that there was an Anti-Doping Rule Violation?**

50. We accept that, pursuant to Article 3.1 of the IAAF Rules, the burden is on the IAAF to establish the various elements of the ADRV to our comfortable satisfaction, bearing in mind that this is a serious allegation. That is to say, and as Mr Jacobs submits, it is material in the present context to establish that the DCO did what was reasonable in attempting to contact and to test the Athlete on the given day in the relevant quarter at the correct address and within the 60 minute time slot provided.
51. As we have already said, that involves deciding whether the DCO did what was reasonable in the circumstances, given the nature of the location in question.
52. In deciding that issue, the WADA Guidelines (summarised above) are obviously valuable. Our attention was particularly drawn to one of the Guidelines which appears at page 55 of that document and which we shall quote again (but in full) a section of it which was at the forefront of Mr Jacobs's submissions:

*"Whatever the location specified, it may be appropriate for the DCO to speak to people he/she encounters during the attempt to see if they can assist in locating the Athlete. If so, the DCO should try to get the names and positions (e.g. neighbour, coach, receptionist) of the people with whom he/she speaks, for recording (along with relevant details of the conversations) on the Unsuccessful Attempt Report. The DCO should not identify the purpose of his/her visit, unless necessary for safety or security reasons.*

*The DCO should note any circumstances he/she observes during his/her attempt to test the Athlete that could be relevant.*

*For example, if the attempt is made at the Athlete's home, and no one answers the door, the DCO should note whether or not there are any lights on in the house, or if*

*he/she notices any movement in the house. If there is a car in the driveway, the DCO might note the make/colour/licence plate number, and check whether the engine hood is warm, indicating that the car has been used recently. It is up to the DCO to gather such anti-doping intelligence as may be useful to the ADO. This information should be included in the Unsuccessful Attempt Report."*

53. The criticism which is levelled at Mr Thomas by Mr Jacobs on behalf of the Athlete is that he could have done more and, particularly, that he could have attempted to contact one of the people he saw in the vicinity at the relevant time. In making that submission, Mr Jacobs drew on a ITF Independent Tribunal case, its decision unpublished.
54. We accept there are some similarities between that case and the present one, and we do not find it necessary to deal with the submission by Mr Wenzel to the effect that the decision was simply "wrong". However, it is clear that, despite some similarities, the most relevant circumstances of that case were very different.
55. The logic of speaking to third parties in that case was that one or other of them might have been able to help the DCO gain access through the communal door to the building in which the Athlete lived. That is very different from the present case where the front door led exclusively to the Athlete's property. It is entirely fanciful to suggest that any other person in the area could have said anything constructive or useful that would have enabled the DCO to do more than he did to gain access to the building.
56. In all those circumstances, therefore, we must assess objectively whether the IAAF has established that the DCO did all that he reasonably could in the circumstances to gain access to the Athlete. We find that he did.
57. We find that the Athlete has failed to establish that no negligent behaviour on her part caused or contributed to her failure to be available for Testing at the location she had announced during the time slot she had given. On the contrary we find that she was negligent in respect of the missed test in April 2019. In reaching that conclusion, we took account of a number of considerations.
58. First, by April 2019, she had two previous missed tests within the previous twelve months. She, herself, had asserted (in her email of 4<sup>th</sup> July 2018) that she

understood that *"Whereabouts compliance is a factor for all athletes"*. She assured the AIU that she would *"endeavour to comply with the AIU and Whereabouts Filing going forward"*. She should therefore have been on her guard in April 2019 about the possible consequences of missing a third test.

59. We are not necessarily finding that she should have heard Mr Thomas's knock on the door. It may also be that the bell was indeed faint, though we are sceptical about the suggestion that a problem with the bell was any kind of an excuse, bearing in mind the inconsistency in her accounts about that, to which we have already drawn attention.
60. Even if there was something amiss with the bell, we think that the reasonable athlete in her situation should have done more than make what appears to have been, at best, a desultory attempt to ask the Property Manager to fix it. When we read the suggestion in the Athlete's brief that she was informed *"that there was nothing the building owners could do to remedy the situation. Despite conducting research into a solution for this issue, which she could undertake and implement herself, she was unable to find a short term solution prior to the attempt made on 19<sup>th</sup> April 2019"*, we expected her to suggest that she had made various enquiries to try and find a way to get it fixed – after all, that is what might be suggested by the reference to *"conducting research"*.
61. The enquiries that might have been made would be to see if a local hardware store could assist or if there was some other form of device which might have provided a more satisfactory way of attracting her attention than a rather feeble bell. But she did nothing along those lines and does not even seem to have pursued the matter further with the Building Manager. Moreover, if, as now appears to be the case from what she said in evidence to us, this was a problem of very long standing (dating back to a very short time after she originally entered the property) then her failure to do anything substantial about it for many months, even if that cost money, is all the more reprehensible.
62. However, even assuming that there was nothing more that she could or should have done about the bell, there are at least two other things that she could have done to

ensure that she was available at the material time and that she did not miss a knock at the door.

63. The easiest thing to have done would have been to have been awake between 06.00 and 07.00. That was the time-slot she had chosen. If, for some reason, she felt it necessary to sleep during that particular period, there was another option available to her. She told us that the bedroom that she occupied was on the third floor. No doubt that was where she preferred to sleep, but it would not have been impossible for her to have emptied out the "vanity room" on the second floor and put a bed in there so that she was better placed to hear any sounding of bell or knocking on the door.
64. She did not do that: the only practical step she seems to have taken was to sleep with the door open to her third floor bedroom (but with the air-conditioning on). She did not even ensure that she could hear her own phone (which we accept the DCO rang).
65. It may be understandable that she preferred to sleep in the comfort of her own bedroom and had not enjoyed sleeping on a couch when she had tried it. But, bearing in mind the particular circumstances that she was an athlete already on two missed tests, she should have ensured that she was available for testing. In short, she took the risk that she was not available and there can be no good excuse for that. This means that the Athlete has not rebutted the presumption in Art I.4.3 (e) that she has been negligent.
66. In Article 2.4 of the IAAF Rules Whereabouts Failures is defined as;

*"Any combination of three Missed Tests and/or Filing Failures, as defined in the International Standard for Testing and Investigations, within a twelve-month period by an Athlete in a Registered Testing Pool".*
67. As the IAAF has established that the Athlete has three Missed Tests within a twelve-month period and as the Athlete is in a Registered Testing Pool the Tribunal finds that the IAAF has established that there was an Anti-Doping Rule Violation according to Art. 2.4. of the IAAF Rules and that the Athlete must be declared to have committed a missed test in accordance with Article I.4.3 of the ISTI.

## **Consequences for the Anti-Doping Rule Violations**

68. The standard applicable sanction for a violation of Art. 2.4 of the 2019 IAAF Rules according to Art. 10.3.2 of those Rules is a two-year period of ineligibility. The period of ineligibility is subject to a possible reduction on the basis of the Athlete's degree of Fault according to the meaning of 'Fault' as explained above.
69. Although, as we accept, this is the Athlete's first ADRV, we regard this as a case in respect of which the standard two-year period of ineligibility is obviously appropriate.
70. We say that because:
- (i) The Claimant, notwithstanding lack of formal doping education, is an experienced Athlete who has been in the Registered Testing Pool since around 2013 and has been subject to doping control for more years than that. She, herself, acknowledged back in July 2018 that she realised the importance of compliance with those Rules.
  - (ii) April 2019 was the third of three missed tests in twelve months. We say nothing about the second of those missed tests other than to note it was not contested. However, we consider that the first missed test in June 2018 is something for which she must certainly be criticised, since it is apparent now that either she gave – or at least she allowed her agent to give – an explanation for the missed test, which was untrue.
  - (iii) Third, for the reasons that we have already explained, we reject the Athlete's explanations for why she did not hear the DCO's attempt to contact her on 19<sup>th</sup> April 2019. We have no view, one way or the other, as to whether she was or was not present in the property. For the purposes of this decision, we are quite prepared to accept that she was. However it is abundantly clear to the Tribunal for the reasons we have explained that she made no adequate effort to place herself in a position in which she would have been able to hear the DCO knocking on her door, ringing her door bell or calling her phone. In

short, it demonstrates that she failed to take her obligations in relation to whereabouts sufficiently seriously.

- (iv) We do not accept the argument advanced on behalf of the Athlete that we are in some way holding her to a higher standard than that which is required of the DCO.

71. It follows that there is no basis upon which we can reduce the standard sanction of two years' suspension. We consider that the appropriate date upon which such suspension should begin would be the date of the missed test on 19<sup>th</sup> April 2019.

### **Other Consequences – Disqualification of Results**

72. Article 10.8 of the IAAF Anti-Doping Rules provides that:

***“Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation***

*In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produce the Adverse Analytical Finding (if any), all other competitive results of the Athlete obtained from the date the Sample in question was collected (whether In-Competition or Out-of-Competition) or other Anti-Doping Rule Violation occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary tribunal determines that fairness requires otherwise.”*

73. It is argued on behalf of the Athlete that we should not disqualify her results during the period between attempted sample collection and the date of her Provisional Suspension on 30<sup>th</sup> August 2019 and reliance was placed on the fact that she competed on a number of occasions between May 2019 and August 2019, and was apparently tested (blood or urine) on some ten occasions – and on each occasion the test was either negative or yielded “no result”.

74. We do not consider such arguments provide a sufficient reason to do other than rule that the sanction of suspension should start to run from the date of the third missed test, namely 19<sup>th</sup> April 2019.
75. It follows that any competitive results obtained by the Athlete after that date shall be disqualified, which involves forfeiture of any medals, titles, ranking points, prize and appearance money. In short, all competitive results that she has returned between 19<sup>th</sup> April and 30<sup>th</sup> August 2019 shall be disqualified with the consequences associated therewith.

### **Decision and orders**

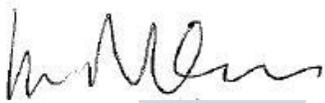
76. The decision and orders made are as follows
- (i) The Disciplinary Tribunal has jurisdiction to decide on the subject matter of this dispute.
  - (ii) The Athlete has committed an ADRV under Article 2.4 of the IAAF Anti-Doping Rules.
  - (iii) A period of Ineligibility of two years is imposed upon the Athlete commencing on 19<sup>th</sup> April 2019.
  - (iv) The Athlete's results from 19<sup>th</sup> April 2019 until the date of the provisional suspension on 30<sup>th</sup> August 2019 shall be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

### **Costs**

77. We do not regard it as appropriate to make any award of costs, noting that no particular submissions were made by the IAAF in that respect.

## **The right of appeal**

78. Article 8.9.2 of the IAAF Rules requires the Tribunal to set out and explain in its decision the rights of appeal applicable pursuant to Article 13 of the IAAF Rules.
79. As this proceeding involves an International Level Athlete, the decision may be appealed exclusively to CAS. The scope of review on appeal includes “all relevant issues to the matter and is expressly not limited to the issues or scope of review before the initial matter” (see Article 13.1.1 of the IAAF Rules). The deadline for filing an appeal to CAS is 30 days from the date of receipt of the decision by the appealing party (see Article 13.7 of the IAAF Anti-Doping Rules). In making its decision, CAS need not give deference to the discretion exercised by the Disciplinary Tribunal (see Article 13.1.2 of the ADR).



**WILLIAM NORRIS QC (Chair on behalf of the Panel)**  
**London**  
**07 January 2020**



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