
DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR ALBERT KIBICHII ROP

Introduction

1. In April 2017, World Athletics (formerly the IAAF) established the Athletics Integrity Unit ("AIU") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code. World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("ADR") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Mr Albert Kibichii Rop is a 27-year old Kenyan national who competes for Bahrain and is an International-Level Athlete (long-distance) for the purposes of the ADR (the "Athlete").
3. This decision is issued by the AIU pursuant to Article 8.4.7 ADR, which provides as follows.

8.4.7 *"[i]n the event that [...] the Athlete or Athlete Support Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the Integrity Unit (or is deemed to have done so), a hearing before the Disciplinary Tribunal shall not be required. In such a case, the Integrity Unit [...] shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the Specified Consequences [...]."*

Whereabouts Failures

4. Article 2.4 of the ADR provides that the following shall constitute an Anti-Doping Rule Violation:

"2.4 Whereabouts Failures

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."

5. A Missed Test and a Filing Failure are defined in the World Athletics Anti-Doping Regulations (the "Regulations") respectively as follows:

"Missed Test: 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 Whereabouts Filing for the day in question, in accordance with these Anti-Doping Regulations.

"Filing Failure: A failure by an Athlete (or by a third party to whom the Athlete has delegated such a task in accordance with paragraph 3.7 of Appendix A) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts

Filing or to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete, all in accordance with these Anti-Doping Regulations”

6. In short, an athlete violates Article 2.4 where he or she has any combination of three Missed Tests and/or Filing Failures within a 12-month period, starting on the day of the first relevant Missed Test/Filing Failure.

The Athlete's commission of an Anti-Doping Rule Violation

7. In this instance, the Athlete has had two Filing Failures, the first of which occurred related to his Whereabouts Filing for 7 October 2018 and is deemed to have occurred on 1 October 2018¹ (the start date of the 12-month period) and another Filing Failure on 6 July 2019 (deemed to have occurred on 1 July 2019)². The Athlete has also had two Missed Tests on 4 April 2019 and 11 April 2019.

I. First Whereabouts Failure – 7 October 2018 Filing Failure

8. On 11 October 2018, the AIU wrote to the Athlete concerning an apparent Filing Failure which occurred on 7 October 2018 due to the Athlete's failure to update his whereabouts information as soon as his circumstances had changed on that date.
9. Specifically, the AIU asserted that the Athlete had failed to accurately update his whereabouts information in relation to a competition that he had participated in in Utrecht on 7 October 2018 (the Singelloop Utrecht 10km race).
10. According to the Athlete's whereabouts information filed in ADAMS for that date, he was at a hotel in Kapsabet, Rift Valley, Kenya.
11. The Athlete was requested to provide an explanation for the apparent Filing Failure by 25 October 2018, in the absence of which, the apparent Filing Failure would be confirmed against him.
12. On 19 October 2018, the Athlete accepted that a miscommunication on his part had resulted in his failure to update his whereabouts information for 7 October 2018.
13. On 31 January 2019, the AIU wrote to the Athlete and confirmed the Filing Failure on 7 October 2018 against him. The Athlete was advised that he could request an Administrative Review of the decision to confirm the Filing Failure against him by no later than 14 February 2019, and that, if he failed to do so, this would be recorded as his first Whereabouts Failure.
14. The Athlete did not request an Administrative Review of the decision to confirm the 7 October 2018 Filing Failure against him for failing to update his whereabouts information relating to the Singelloop Utrecht 10km race on 7 October 2018.
15. The AIU therefore recorded a Filing Failure against the Athlete for his failure to update his whereabouts information as soon as his circumstances changed.

¹ Comment to Article I.1.3 ISTI “*For the purpose of determining whether a Whereabouts Failure has occurred within the 12-month period referred to in Code Article 2.4, (a) a Filing Failure will be deemed to have occurred on the first day of the quarter for which the Athlete fails to make a (sufficient) filing; and (b) a Missed Test will be deemed to have occurred on the date that the Sample collection was unsuccessfully attempted.*”

² Ibid.

II. Second Whereabouts Failure – Missed Test dated 4 April 2019

16. On 9 April 2019, the AIU wrote to the Athlete requesting his explanation for an apparent Missed Test that occurred on 4 April 2019.
17. The Athlete was asked to provide his explanation for failing to be available for Testing on 4 April 2019 by no later than 23 April 2019, in the absence of which, the apparent Missed Test on 4 April 2019 would be confirmed against him.
18. The Athlete failed to respond and did not provide any explanation for the apparent Missed Test on 4 April 2019.
19. On 29 May 2019, the AIU wrote to the Athlete and confirmed the apparent Missed Test on 4 April 2019 against him. The Athlete was afforded the right to request an Administrative Review of this decision by no later than 12 June 2019.
20. The Athlete did not request an Administrative Review. Therefore, the AIU recorded a Missed Test against the Athlete effective from 4 April 2019 as his second Whereabouts Failure.

III. Third Whereabouts Failure – Missed Test dated 11 April 2019

21. On 24 April 2019, the AIU wrote to the Athlete by e-mail requesting his explanation for an apparent Missed Test which occurred on 11 April 2019.
22. The Athlete was asked to provide his explanation for the apparent Missed Test on 11 April by no later than 8 May 2019, in the absence of which the apparent Missed Test on 11 April 2019 would be confirmed against him.
23. The Athlete failed to reply or to provide any explanation in relation to the apparent Missed Test on 11 April 2019.
24. On 29 May 2019, the AIU confirmed the Missed Test on 11 April 2019 against him. The Athlete was informed of his right to request an Administrative Review of the decision to record the Missed Test on 11 April 2019 against him by no later than 12 June 2019.
25. The Athlete did not request an Administrative Review. Therefore, the AIU recorded a Missed Test against the Athlete effective from 11 April 2019 as his third Whereabouts Failure.

IV. Fourth Whereabouts Failure – 6 July 2019 Filing Failure

26. On 23 July 2019, the AIU requested the Athlete's explanation for an apparent Missed Test which occurred on 6 July 2019 by no later than 6 August 2019.
27. The Athlete's whereabouts information stated that he would be available at the following location for his 60-minute time slot between 18:00 and 19:00 on 6 July 2019:

“Geneva, Switzerland”

28. Despite the entirely imprecise content of the Athlete's whereabouts information for 6 July 2019, a DCO was able to confirm that the Athlete was staying at a hotel in Lausanne, Switzerland, in relation to his participation in the IAAF Diamond League meeting in Lausanne.

29. Therefore, the DCO did not attempt to test the Athlete in Geneva, Switzerland, but made an attempt to locate him for Testing in Lausanne between 18:00 and 19:00. However, the Athlete could not be located for Testing.
30. On 5 August 2019, the AIU received an e-mail from the Athlete's Authorised Athlete Representative, Mr Marc Corstjens, including the Athlete's explanation for the apparent Missed Test on 6 July 2019.
31. In summary, the Athlete stated that on 6 July 2019 he was not in Geneva (or Lausanne) because he had altered his travel plans in order to avoid fatigue from travelling to Nairobi and back to Europe for a competition in Heusden on 20 July 2019. Instead of travelling to Nairobi, the Athlete had travelled directly from Switzerland to Belgium.
32. According to the Athlete's whereabouts information in ADAMS, an update to the Athlete's whereabouts information was made at 17:29 GMT on 6 July 2019. However, this update was made at 18:29 local time, and therefore after the commencement of the Athlete's designated 60-minute time slot for 6 July 2019 (18:00).
33. Therefore, on 6 August 2019, the AIU wrote to the Athlete confirming the apparent Missed Test on 6 July 2019 against him.
34. The Athlete was afforded the right to request an Administrative Review of that decision by no later than 20 August 2019.
35. On 20 August 2019, Mr Corstjens sent an e-mail to the AIU and included the Athlete's letter requesting an Administrative Review of the decision to record the Missed Test on 6 July 2019 against him.
36. In the Athlete's letter, he stated that in order to avoid fatigue with flights '*up and down to Nairobi*', he had decided to stay in Europe and travel straight to Belgium to prepare for his next race. The Athlete additionally stated that '*We did the necessary communication about the changed whereabouts, but it seems it did not reach you very clear. As I can read in the report for the DCO, there is seen a change in the Whereabouts update, even twice during 6 July. I understand that this may have led to confusion, probably that is also the reason why he called my number and my agents [sic] number. Nevertheless, non [sic] of us has received the call. Also no message on my voicemail, neither on the voicemail for my agent. Evenso [sic] no text-message.*'
37. On 13 September 2019, the AIU wrote to the Athlete with the conclusion of the Administrative Review. The AIU confirmed that a review of the facts of the attempt to test the Athlete on 6 July 2019 demonstrated that that this constituted an apparent Filing Failure instead of an apparent Missed Test.³
38. In fairness to the Athlete, the AIU therefore provided the Athlete with an opportunity to provide an explanation for the apparent Filing Failure by no later than 20 September 2019.
39. The AIU received the Athlete's explanation on 20 September 2019. In summary, the Athlete maintained his arguments set out in the 20 August 2019 letter to the AIU. He confirmed that on 6 July 2019, he had flown from Geneva to Brussels as he had made a last-minute decision to remain in Europe after the IAAF Diamond League meeting in Lausanne until his next competition on 20 July 2019 in Belgium. The Athlete further claimed that he had made "*the necessary changes*" to his whereabouts information to reflect these arrangements.

³ On the basis, *inter alia*, that the DCO had not visited the location specified in the Athlete's Whereabouts Filing ("*Geneva, Switzerland*") and therefore that the AIU considered that it could not satisfy the requirement of Article 4.3(b) of the Regulations to declare a Missed Test against the Athlete.

40. The Athlete's whereabouts updates made on 6 July 2019 to his 60-minute time slot for that date was made at 17:29 GMT (i.e., 18:29 in Switzerland), after the beginning of his 60-minute time slot for that date (18:00-19:00) and almost 12 hours after the Athlete had in fact departed Switzerland for Belgium. The Athlete had therefore not made the required changes as he asserted.
41. On 23 September 2019, the AIU therefore confirmed a Filing Failure against the Athlete and that its records indicated that the Athlete had a total of four (4) Whereabouts Failures on his record.

Disciplinary Proceedings

42. On 24 September 2019, the AIU issued a Notice of Charge to the Athlete for a violation of Article 2.4 ADR and invited him to respond by no later than 1 October 2019.
43. The Athlete responded by letters dated 26 September 2019, 30 September 2019 and 1 October 2019 confirming that he did not admit that he had committed an Anti-Doping Rule Violation. The AIU confirmed that in the circumstances that the matter should be referred to the Disciplinary Tribunal ("the **Tribunal**").
44. On 4 November 2019, a Preliminary Meeting took place before the Chairman of the Panel of the Tribunal to set procedural directions for the determination of the matter. On 5 November 2019, the Chairman of the Panel issued Directions to the parties, which included (on the Athlete's request) for the Athlete to submit his preliminary objections to the Notice of Charge in writing by 8 November 2019 and for the AIU to submit a written response to the Athlete's preliminary objections by 15 November 2019.
45. On 8 November 2019, the Athlete submitted a "*Preliminary Objection to Charge and Ultimately to Suspension of the Athlete and to Proceedings Before the Disciplinary Tribunal*" ("the **Preliminary Objection**") to the Tribunal.
46. On 15 November 2019, the AIU filed its response to the Preliminary Objection with the Tribunal.
47. By Decision dated 18 November 2019, the Chairman of the Panel of the Tribunal determined that the issues raised in the Preliminary Objection and the AIU's written response should be pursued at the hearing and resolved following opportunity to submit oral argument.
48. The Chairman of the Panel of the Tribunal also issued further Directions for the determination of the matter ("the **Directions**") including that a hearing be scheduled to take place in the week beginning 27 January 2020.
49. On 9 December 2020, the AIU filed its Brief with the Tribunal in accordance with the Directions.
50. On 6 January 2020, the Athlete filed his Answer with the Tribunal in accordance with the Directions.
51. On 16 January 2020, the AIU filed a Reply Brief responding to the arguments raised in the Athlete's Answer in accordance with the amended Directions (as agreed by the Chairman of the Panel).

52. On 25 January 2020, the Athlete sent to the AIU a signed copy of an Admission of Anti-Doping Rule Violation and Acceptance of Consequences Form (“the **Signed Admission**”) that had been sent to the Athlete with the Notice of Charge on 24 September 2019. The Signed Admission included that the period of ineligibility of two (2) years for the violation of Article 2.4 ADR would commence on 11 April 2019⁴.
53. On 26 January 2020, the AIU wrote to the Athlete setting out its position being that the Athlete was unable to benefit from any backdating to the commencement of the period of ineligibility in accordance with Article 10.10.2(b) ADR on the basis that the Athlete (i) had already requested a hearing before the Tribunal (ii) that the AIU had been put to significant time and expense in preparing for the hearing of the matter and (iii) had only admitted the Anti-Doping Rule Violation at the very last moment, two (2) days before the hearing and some four (4) months after the AIU had asserted the violation against him in the Notice of Charge on 24 September 2019.
54. On 27 January 2020, a hearing took place before the Tribunal. The Athlete confirmed his admission of the Anti-Doping Rule Violation as sent to the AIU on 25 January 2020 and the parties confirmed the matters that remained in dispute as being (i) the commencement of the period of ineligibility and (ii) the AIU’s application that the Athlete contribute to the AIU’s legal costs incurred in relation to the dispute.
55. The hearing was adjourned to enable the parties to put forward any competing submissions as to the outstanding issues in writing, assuming that they could not be resolved in discussions between the parties outside of the hearing.
56. On 5 February 2020, the Athlete confirmed that he agreed to the commencement of the period of ineligibility on 24 September 2019 (the date of the Athlete’s Provisional Suspension).
57. On 12 February 2020, the Athlete confirmed that he did not agree to make a contribution to the legal costs incurred by the AIU in relation to this matter. The parties were therefore directed to serve written submissions on the issue of costs for consideration by the Tribunal.
58. On 27 February 2020, having reviewed the parties’ submissions, the Tribunal issued its decision on the matter of costs and ordered the Athlete to make a contribution of £1,000 to the AIU by way of costs. On 6 March 2020, the Tribunal further confirmed its understanding that the parties had agreed the commencement of the period of ineligibility as being 24 September 2019, but that in any doubt as to the parties’ agreement, that this was the ruling in any event and issued an updated Decision⁵.
59. On the basis that the Athlete has admitted the Anti-Doping Rule Violation charged and accepted the Consequences specified by the AIU, the AIU therefore issues this decision in accordance with Article 8.4.7 ADR.

Consequences

60. This constitutes the Athlete’s first Anti-Doping Rule Violation under the ADR.
61. On the basis that the Athlete has admitted the Anti-Doping Rule Violation under Article 2.4 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:

⁴ Pursuant to Article 10.10.2(b) ADR for a timely admission

⁵ See Annex 1 to this Decision

- 61.1. a period of Ineligibility of two (2) years, pursuant to Article 10.3.2, commencing on 24 September 2019 pursuant to Article 10.10.2(a) ADR; and
- 61.2. disqualification of the Athlete's results between 11 April 2019 and 24 September 2019 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Articles 9 and 10.8 ADR.

Publication

62. In accordance with Article 8.4.7(b) ADR, the AIU shall publicly report this decision on the AIU's website.

Rights of Appeal

63. This decision constitutes the final decision of the AIU pursuant to Article 8.4.7 ADR.
64. Further to Article 13.2.4 ADR, WADA and the Bahrain Olympic Committee have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Article 13.7.2 ADR.
65. If an appeal is filed against this decision by WADA or the Bahrain Olympic Committee, the Athlete will be entitled to exercise his right of cross-appeal in accordance with Article 13.9.3 ADR.

Monaco, 26 March 2020

ANNEX 1

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF WORLD ATHLETICS**

Before:

William Norris QC (Chair)

Dr Tanja Haug

Thi My Dung Nguyen

BETWEEN:

World Athletics

Applicant

-and-

Albert Kibichii Rop

Respondent

AWARD AS REGARDS PERIOD OF INELIGIBILITY AND FOR COSTS

1. Following the adjourned hearing on 27 January 2020, the parties were invited to discuss and, if possible, agree the period of the Athlete's suspension including the date on which such period of suspension should begin.

2. The parties were also invited to put forward written submissions on the issue of costs (if the application for costs by World Athletics could not be dealt with by consent).
3. The Panel's understanding is that it is agreed by both parties, notwithstanding that agreement was reached after the expiry of the deadline we had set, that the start date for the two year period of Ineligibility shall be 24th September 2019 (as set out in the Notice of Charge). Should there be any doubt as to that understanding of the parties' agreement, that is our ruling in any event.
4. In the absence of any agreement as to costs, both parties have provided written submissions in accordance with our directions, the terms of which are helpfully and sufficiently recorded in that of World Athletics of 19 February 2020. For the reasons given by World Athletics in that written submission, which we endorse as accurate and adopt, we consider that this is a case in which it is appropriate that the Athlete make a contribution to the costs of World Athletics. Notwithstanding the costs actually incurred are significantly greater than this, the unanimous view of the Panel is that the Athlete should pay a contribution of £1,000 by way of costs which we regard as fair and appropriate in all the circumstances.



William Norris QC

Chair on behalf of the Panel

World Athletics Disciplinary Tribunal

London

06 March 2020



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