

Independent Anti-Doping Disciplinary Panel– Jamaica

No. 13 of 2021

In the Matter of Jamaica Anti-Doping Commission v. Mr. Nesta Carter

**Decision on JADCO complaint that athlete breached Article 2.1 of the 2015 Anti-Doping
Act**

Jamaica Anti-Doping Commission, Kingston, Jamaica, W.I. Complainant

Represented by Mr. Ian Wilkinson, Q.C., Mr. Jhawn Graham and Lenroy Stewart Attorneys-at-law
instructed by Wilkinson Law, Attorneys-at-law

v.

Mr. Nesta Carter, athlete, Jamaica, W.I. Respondent

Represented by Mr. Stuart Stimpson, Attorney-at-law instructed by Hart, Muirhead and Fatta,
Attorneys-at-law

1. The parties

1.1. Mr. Nesta Carter (hereinafter ‘athlete’) is an athlete within the meaning of Rule 1.3.1 of the JADCO 2015 Anti-Doping Rules. He competes in athletics at both the national and international level.

1.2. The Jamaica Anti-Doping Commission (JADCO) is an independent Anti-Doping Organisation in Jamaica and is charged with the responsibility to administer the anti-doping programme in Jamaica. It has the necessary authority, in keeping with its core functions, to implement the World Anti-Doping Code and the International Standards.

1.3. JADCO is independent of the Independent Anti-Doping Disciplinary Panel (IADP) and the Anti-Doping Appeal Tribunal.

2. The factual background

2.1 On the 15th day of March 2021 JADCO conducted an out-of-competition testing at the National Stadium whereby a JADCO doping control officer (DCO) collected a urine sample from the athlete and with the knowledge of the athlete allocated the sample code number 4511551 (A sample).

2.2 On the 15th day of March 2021 the aforesaid urine sample was dispatched to the WADA accredited laboratory, INRS-Institut Armand Frappier in Laval, Quebec, Canada ('WDAD lab'). The A sample bearing code number 4511551A and on the 31st March 2021 the WADA lab revealed the presence of Clomiphene and Metabolites. Clomiphene falls under the category of Class [S4.2], Anti-estrogenic substances [Anti-estrogens and Selective Estrogen Receptor Modulators (SERMS); Hormone and Metabolic Modulators in the World Anti-Doping Agency's 2021 Prohibited List.

2.3 On the 19th day of April 2021 JADCO notified the athlete in writing ('JADCO letter') that the urine sample taken from him in the out-of-competition testing on the 15th day of March 2021 at the National Stadium revealed the presence of prohibited substances under the the World Anti-Doping Agency's 2021 Prohibited List namely Clomiphene Metabolites.

2.4 The complainant thus alleges that the athlete, Mr. Nesta Carter, breached Article 2.1 of the JADCO rules.

2.5 The athlete was also notified in the aforementioned letter as to his rights under the Anti-Doping In Sport Act and JADCO Rules and that he was not provisionally suspended but rather given the opportunity to accept a provisional suspension voluntarily pending the final determination by the Disciplinary Panel of the assertion of the Anti-Doping Rule violation, pursuant to Article 8.

2.6 The athlete submitted a Therapeutic Use Exemption (TUE) Application Form dated 14th May 2021 and signed by the athlete as well as correspondence from Dr. Mohamed H. Basir who identified medical related issues of a private nature to the TUE Committee. The athlete also submitted to the TUE Committee a medical report from one Dr. W. F. B Clarke similarly citing the same medical related issues of a private nature as that identified by Dr. Mohamed H. Basir and laboratory findings from Biomedical Caledonia Medical Laboratory Ltd.

2.7 On the 05th day of June 2021 the athlete wrote to JADCO stating inter alia, that he did not wish to have his B-Sample tested and that due to the nature of his medical condition he was retiring from the sport of athletics.

2.8 On the 11th day of June 2021 the athlete wrote to JADCO again stating inter alia, that he did not wish to have his B-Sample analyzed and that he intended to use his TUE application in addressing his adverse analytical finding.

2.9 On the 04th day of June 2021 JADCO notified the athlete in writing that they had received his submission of a TUE application form dated 14th May 2021 and informed him that the TUE application form was incomplete. The athlete was advised to provide a formal, written explanation for the presence of the prohibited substance in the athlete's urine sample.

2.9.1 On the 30th day of July 2021 JADCO notified the athlete in writing that the TUE Committee had denied his application for an emergency therapeutic exemption certificate for the medication Clomiphene as listed on his application.

2.9.2 The IADP panel dispatched a letter dated 15th September 2021 to the athlete's home address notifying him of the proposed hearing to take place on Thursday 30th day of September 2021 at 03:30pm via Zoom on-line platform. He was also informed that his letter of 11th June 2021 in which he explained to JADCO Executive Director, Mrs. June Spence Jarrett, that the presence of the prohibited substance (Clomiphene) were in his urine sample based on instructions of his physician who prescribed medication to address medical related issues as outlined in a letter from Dr. Basir dated 05th May 2021, again this letter was not brought to the IADP's attention during the hearing.

2.9.3 The matter came up for a hearing on 30th September 2021 but was adjourned to 14th October 2021 as the athlete was given an opportunity to seek legal representation as he indicated that he did not wish to waive his right to a hearing but was unrepresented by counsel.

2.9.4 The IADP considered it important that the athlete in the particular circumstances of this case seek counsel and adjourned the hearing on that basis.

2.9.5 The matter came up for another IADP hearing on the 14th October 2021 and was adjourned again as the athlete had just recently engaged the legal services of Counsel Stuart Stimpson and Mr. Stimpson asked for another adjournment to take full instructions in the matter.

2.9.6 The IADP hearing was then adjourned to 26th October 2021 at 02:30pm. At this hearing a letter dated 05th May 2021 prepared by Dr. Basir which was not amongst the list of exhibits but was read out to the IADP by JADCO's Counsel.

2.9.7 At the IADP hearing on the 26th October 2021 Mr. Stuart Stimpson referred to and relied on a witness statement of Nesta Carter.

3. The substantive issue to be decided

3.1 Whether the athlete is in breach of article 2.1 of the JADCO Anti-Doping Rules.

4. Legal Analysis

4.1 Article 2.1 of the JADCO rule reads “Presence of a prohibited substance or its metabolites or markers in an athlete’s sample. 2.1.1 It is each Athlete’s personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, *Fault*, negligence or knowing use on the athlete’s part be demonstrated in order to be establish an Anti-Doping Rule Violation under Article 2.1”.

4.2 JADCO was represented by Queen’s Counsel, Ian Wilkinson, and accompanying Attorneys-at-law, Jhawn Graham and Lenroy Stewart and after presenting the list of exhibits in support of the adverse analytical findings asked that the IADP consider the appropriate sanction but that the IADP is duty bound to take into account that this is a second adverse analytical finding for this athlete.

4.3 The athlete was represented by Stuart Stimpson who submitted a witness statement of Nesta Carter in which the athlete stated he could not challenge the adverse analytical finding of Clomiphene and that it was his doctor who prescribed him medication that contained the banned substance.

4.4 JADCO’s counsel recommended to the IADP that we take into account that this is a second adverse analytical finding of the athlete. JADCO’s counsel asked the IADP to take into consideration the time frame of the adverse analytical finding when his urine sample was found positive for a banned substance out of the Beijing 2008 Olympics and had been retested on 01st June 2016.

4.5 The athlete’s counsel recommended to the IADP that the athlete be reprimanded.

4.6 The TUE Committee dismissed the athlete’s retroactive therapeutic exemption application and the IADP takes no issue with that finding.

5. Orders-

The Independent Anti-Doping Panel finds as follows:-

5.1 The athlete had in his body prohibited substances in violation of the World Anti-Doping Agency's 2021 Prohibited List, namely Clomiphene and Metabolites.

5.2 The IADP finds that the material date to take into account of an adverse analytical finding in the context of a second doping violation, vide paragraph 4.4 herein, is 23rd August 2008 when the sample out of the Beijing 2008 Olympics of the athlete was retested on 01st June 2016 and was found positive for a banned substance under the WADA prohibited list as a stimulant having a similar structure and effects as one listed – tuaminoheptane.

5.3 As a result of using the material date as at 23rd August 2008 the athlete would have the good fortune of being outside the same ten-year period in order to be considered multiple violations as per Rule 10.7.5.

5.4 The IADP does not find that there any factors of reduction which would be applicable based on the facts and circumstances of his case.

5.5 In the circumstances of this case the athlete is ineligible for **four (4)** years as of the date hereof and as per JADCO rule 10.2.1.

Dated this 25th day of November 2021

Kent P. Gammon – Chairman IADP

Dr. Japheth Ford – Member of the IADP

Heron Dale – Member of the IADP