



Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

CAS 2021/A/7833 Raul Alarcon Garcia v. Union Cycliste Internationale

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms Carine Dupeyron, Attorney-at-law in Paris, France
Arbitrators: Mr Miguel Ángel Fernández-Ballesteros, Professor and Attorney-at-law in Madrid, Spain
Mr Massimo Coccia, Professor and Attorney-at-law in Rome, Italy

in the arbitration between

Mr. Raúl Alarcón García, Spain

Represented by Mr. Ignacio Arroyo Martínez of Consejeros y Abogados S.L., in Santander, Spain

Appellant

and

Union Cycliste Internationale, Switzerland

Represented by Prof. Antonio Rigozzi and Ms. Charlotte Frey of Lévy Kaufmann-Kohler, in Geneva, Switzerland

Respondent

I. THE PARTIES

1. The Appellant is Raúl Alarcón García (the “Rider”), a Spanish professional road cyclist who was affiliated to the Real Federación Española de Ciclismo and a License-Holder within the meaning of the UCI Anti-Doping Rules (the “UCI ADR”).
2. The Respondent is the Union Cycliste Internationale (the “UCI”), the international federation for cycling and a non-governmental international association, with head offices in Switzerland. The UCI’s responsibilities include disciplining cycling in all forms worldwide. As such, it enacted various regulations, one of the most important being the UCI ADR.

The Rider and the UCI are hereinafter collectively referred to as the “Parties”.

II. SUMMARY OF THE MAIN RELEVANT FACTS

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Rider’s Athlete Biological Passport and the Adverse Passport Finding

4. The Athlete Biological Passport (the “ABP”) is an indirect method of doping detection. It is based on longitudinal monitoring of the athlete and focuses on the effect of prohibited substances or methods on the athlete’s haematological values, rather than on the identification and presence of a specific substance in an athlete’s specimen or sample.
5. Following the detection of abnormalities, the Rider’s ABP made of 22 samples collected between 3 August 2011 and 4 November 2018 was submitted to a panel consisting of three experts: Prof. Giuseppe d’Onofrio, Dr. Jakob Mørkeberg and Dr. Yorck Olaf Schumacher (the “Expert Panel”).
6. On 8 May 2019, the Expert Panel issued a joint expert opinion (the “First Expert Opinion”) in which they concluded that it was highly likely that a prohibited substance or prohibited method had been used by the Rider and that it was unlikely the abnormalities detected in the Rider’s ABP were the result of any other cause.

7. On 6 August 2019, the Rider was informed of the Adverse Passport Finding (the “APF”). The Rider was granted the opportunity to provide explanations for the APF by 20 August 2019.
8. On 18 August 2019, the Rider answered, producing a report from Mr. Douwe de Boer. Dr. de Boer concluded the use of a prohibited substance and/or a prohibited method was very low, based on, mainly for the following reasons:
 - (i) The number of tests in the Rider’s ABP was not sufficient to offer a real profile.
 - (ii) A real profile could have been guaranteed and a more adequate explanation could have been provided if private analytical tests had been performed, so that the samples studied be representative.
 - (iii) The OFF-score features showed abnormalities, but this was due to immunological reactions suffered by the Rider.

B. The Expert’s Panel second opinion and the finding of the ADRV

9. On 8 September 2019, having been provided with the Dr. de Boer report, the Expert Panel issued a second joint expert report (the “Second Expert Opinion”) confirming their previous evaluations, “*in the absence of any suitable explanation*”. The Expert Panel concluded it was highly likely that a prohibited substance or method had been used and rejected the reasons and explanations put forward in Dr. de Boer’s report.
10. On 21 October 2019, the UCI informed the Rider by letter that the Expert Panel rejected his explanations; accordingly, the UCI asserted that he committed an anti-doping rule violation (“ADRV”) under Article 2.2 UCI ADR and provisionally suspended him pursuant to Article 7.9.2 UCI ADR.
11. The UCI further proposed the Rider to admit the ADRV and agree with the sanctions and consequences thereof, *i.e.* a 4-year ineligibility, a disqualification of all results obtained at the 2015, 2017 and 2018 Volta a Portugal, the payment of a fine of EUR 10,967, the payment of the costs for results management (CHF 2,500) and the reimbursement of the costs of the documentation packages of the samples analysed for the ABP (CHF 6,279).
12. On 4 November 2019, the Rider informed the UCI that he did not agree with the ADRV, did not accept any consequences and that he intended to prove his innocence.

C. The UCI Anti-Doping Tribunal proceedings

13. On 19 March 2020, the UCI filed a petition to initiate disciplinary proceedings against the Rider, for his violation of the UCI ADR.
14. On 24 March 2020, the UCI informed the Parties of the Rider's petition, the appointment of Ms. Helle Qvortrup Bachmann as a Single Judge and confirmed her independence and impartiality to the case.
15. On 2 April 2020, the UCI Anti-Doping Tribunal (the "UCI ADT") acknowledged receipt of the Rider's application, in which he raised the following objections:
 - (i) The lack of jurisdiction of the UCI ADT;
 - (ii) The incorrect constitution of the UCI ADT;
 - (iii) The lack of legal qualification of the Single Judge;
 - (iv) The lack of independence and impartiality of the Single Judge; and
 - (v) The breach of his right to make a full answer and defence given the current circumstances related to the COVID-19 epidemic in Spain.
16. The Rider further requested the procedure to be suspended due to restrictions in place because of the pandemic in Spain.
17. On 14 April 2020, the UCI submitted its comments on the Rider's various objections, in particular:
 - (i) The UCI ADT's jurisdiction was established based on the UCI ADR, the application of which was not contested by the Rider;
 - (ii) The UCI did not violate the UCI ADT Procedural Rules (the "ADT Procedural Rules") by appointing a Single Judge;
 - (iii) The Single Judge met all the requirements of Article 4(2) of the ADT Procedural Rules;
 - (iv) The UCI ADT satisfied the requirements of independence and impartiality; and
 - (v) The UCI did not object to a suspension of the proceedings of no more than two months, following which the most diligent party will resume them.
18. On 15 April 2020, the UCI ADT issued a procedural order on these objections, which was challenged by the Rider in subsequent correspondence.
19. On 15 May 2020, the UCI ADT (i) confirmed that it would rule on its jurisdiction in its judgment, pursuant to Article 3(3) of the ADT Procedural Rules; (ii) reaffirmed that it already ruled on the issue of the UCI ADT's constitution; and (iii) informed the Rider

that the Single Judge's alleged lack of legal qualifications and expertise, as well as alleged lack of independence and impartiality, would be referred to the other members of the UCI ADT pursuant to Article 15(4) of the ADT Procedural Rules.

20. On 30 June 2020, the Rider submitted its answer to the UCI's petition (the "Rider's Answer"), along with an expert report from Prof. Cordova Martinez (the "Cordova Report").
21. Numerous correspondence followed, on procedural and merits questions, including on the scheduling and organisation of the hearing on 25 November 2020. The hearing took place by video-conference.

D. The Appealed Decision

22. On 8 March 2021, the UCI ADT issued its judgment (the "Appealed Decision"), in which it found that:
 - It was "*very unlikely that the abnormalities in the Rider's ABP can be explained by the impact of confounding factors, plasma volume impact on the blood values, the coefficient of variation of the machines and laboratories or any of the other claims put forward by the Rider*";
 - There was "*no evidence in the case at hand that render[ed] the doping scenario implausible*";
 - It followed from Article 3.1 UCI ADR that the applicable standard of proof was "*greater than a mere balance of probability but less than proof beyond a reasonable doubt*".

23. The UCI ADT therefore ruled:

"1. Mr. Raul Alarcon Garcia has committed an Anti-Doping Rule Violation (Article 2.2 UCI ADR).

2. Mr. Raul Alarcon Garcia is suspended for a period of ineligibility of 4 (four) years. The period of ineligibility shall commence on the date of this decision, i.e. 8 March 2021. However, considering the credit for the period of provisional suspension already served by Mr. Raul Alarcon Garcia, starting from 21 October 2019, Mr. Raul Alarcon Garcia's period of ineligibility effectively began on 21 October 2019, and shall end four years from this date, i.e. 20 October 2023.

3. The results obtained by Mr. Raul Alarcon Garcia between 28 July 2015 and 21 October 2019 are disqualified.

4. Mr. Raul Alarcon Garcia is ordered to pay to the UCI the amount of EUR 10'325 as monetary fine.

5. Mr. Raul Alarcon Garcia is ordered to pay to the UCI:

a) the amount of CHF 2'500 for the costs of the results management; and

b) the amount of EUR 5'600 for costs of the documentation packages of the blood samples analysed for the Biological Passport.

6. Mr. Raul Alarcon Garcia is ordered to pay a contribution in the amount of CHF 7'320.00 + EUR 4'100.00 towards UCI's costs and expenses incurred in connection with these proceedings.

7. All other and/or further reaching requests are dismissed.”

24. The present appeal lodged by the Rider (the “Appeal”) arises out of the above Appealed Decision to impose a final ineligibility of 4 years to the Rider for the violation of Article 2.2 UCI ADR.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 6 April 2021, the Rider filed his Statement of Appeal and supporting exhibits with the Court of Arbitration for Sport (the “CAS”) against UCI with respect to the Appealed Decision rendered by the UCI ADT on 8 March 2021, in accordance with Article R47 of the Code of Sports-related Arbitration (2020 edition) (the “CAS Code”).

26. The Rider requested the present case to be submitted to a Sole Arbitrator and that the language of the arbitration be Spanish.

27. On 14 April 2021, the CAS Court Office invited the Appellant to file an Appeal Brief within ten days following the expiry of the time limit for the Appeal and granted the Appellant's request for a 10-day extension of such time limit. It further invited the UCI to inform (i) by 16 April 2021 whether it agreed with Spanish as the language of the procedure and (ii) by 21 April 2021 whether it agreed to the Appellant's request for the case to be submitted to a Sole Arbitrator.

28. On 15 April 2021, the UCI objected to both Appellant's requests.

29. On the same day, the CAS Court Office acknowledged the objections and informed the Parties that it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the issue of (i) the language, and (ii) the number of arbitrators, considering all the circumstances of the case.
30. On 16 April 2021, the Deputy President of the CAS Appeals Arbitration Division advised the Parties it decided to submit the procedure to a three-member Panel, pursuant to Article R50 of the Code. It granted until 23 April 2021 to the Appellant to nominate an arbitrator from the CAS arbitrators' list.
31. It further issued an Order on Language in which it ruled that, pursuant to Article R29 CAS Code, "*English shall be the sole language of this procedure*".
32. On 23 April 2021, the Rider designated Mr. Miguel Ángel Fernández-Ballesteros, Professor and Attorney-at-law in Spain, as arbitrator.
33. On 26 April 2021, the CAS Court Office noted the Appellant's nomination and requested the Respondent to nominate its own before 3 May 2021.
34. On 26 April 2021 also, the Appellant filed its Appeal Brief.
35. On 3 May 2021, the UCI nominated Prof. Massimo Coccia, Professor and Attorney-at-law in Italy, as arbitrator.
36. On 21 May 2021, the CAS Court Office sent copy of the "Arbitrators' Acceptance and Statement of Independence" form completed by Ms. Carine Dupeyron, who had been appointed as President of the Panel by the Division President. On 31 May 2021, the CAS Court Office sent the Notice of Formation of a Panel together with copies of Acceptance and Statement of Independence forms signed by the arbitrators to the Appellant and Respondent pursuant to Articles R33, R52, R53 and R54 CAS Code. The Panel was constituted as follows:

<u>President:</u>	Ms. Carine Dupeyron, Attorney-at-law in Paris, France
<u>Arbitrators:</u>	Mr. Miguel Ángel Fernández-Ballesteros, Professor and Attorney-at-law in Madrid, Spain
	Mr. Massimo Coccia, Professor and Attorney-at-law in Rome, Italy
37. On 28 May 2021, UCI submitted its Answer.
38. On 6 July 2021, the CAS Court Office, on behalf of the President of the Panel, issued the Order of Procedure, which was duly signed by the Parties.

39. On 14 and 15 October 2021, the hearing took place by video-conference (the “Hearing”).
40. In addition to the Panel and Mr. Antonio de Quesada, CAS Head of Arbitration, the following persons attended the Hearing:
- For the Appellant: Mr. Raúl Alarcón García (the Appellant himself) and Mr. Ignacio Arroyo (Counsel for the Appellant)
 - For the Respondent: Mr. Antonio Rigozzi and Ms. Charlotte Frey (Counsels for the Respondents)
 - Experts: Mr. Alfredo Córdova (expert called by the Appellant); Mr. Giuseppe d’Onofrio, Mr. Jakob Sehestad Morkeberg and Mr. Yorck Schumacher (experts called by the Respondent).
41. The Parties were given at the Hearing a full opportunity to present their case, submit their arguments/submissions and answer the questions posed by the Panel and allegations made by the Parties’ experts on the issues in dispute. The Hearing encountered no technical difficulties. The Parties expressly confirmed at the end of the Hearing that they had no objection as to the way in which the proceedings had been conducted and that their right to be heard had been fully respected during the CAS proceedings.

IV. SUMMARY OF THE PARTIES’ POSITIONS

42. This Section of the Award does not contain an exhaustive list of the contentions but rather only a summary of the principal arguments of the Rider (**A.**) and the UCI (**B.**) in relation to the Appeal, as presented in the Parties’ written submissions and orally during the Hearing. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in this arbitration, only the submissions and evidence required for purposes of its findings on law and fact are addressed in this Award.

A. The Rider’s prayer for relief and submissions

43. The Rider’s prayers for relief (**1.**) and a summary of his submissions (**2.**) are set forth below.

1. Rider’s prayers for relief

44. In his Appeal Brief of 26 April 2021, the Rider requests the following relief from the CAS:

“WE REQUEST THE COURT, taking this brief, together with the accompanying documents, as presented, to admit it, to consider the MEMORANDUM OF APPEAL as formulated, to admit it for processing and, following due process, to issue a decision upholding our appeal and annulling the appealed sentence.

ALSO, WE REQUEST THE COURT, that in compliance with the provisions of Section R51 of the Arbitration Code, the expert Doctor Mr. Alfredo Cordova Martinez, Professor of Physiology at the Faculty of Medicine of the University of Castilla y Leon (Spain), author of the report provided with this document, is appointed and that this party wishes to be heard by the Panel of Arbitrators, who may be asked to clarify his report and ask questions about the scientific allegations that the UCI may present.

A hearing is requested.

*ALSO, WE REQUEST THE COURT that in compliance with the provisions of paragraph R57 of the Code of Arbitration, the President is requested to ask the UCI for the case file, including the recording of the hearing, which the UCI has refused to hand over to the athlete, as has already been made clear.
[...].”*

2. Summary of the Rider’s submissions

45. The present summary presents the key arguments of the Rider, on a topic-by-topic basis, as opposed to following the sequence of the Statement of Appeal.
46. On procedural complaints: the Rider states in his submissions that he was “defenselessness” before the UCI ADT, and that the imbalance shall cause the nullity of the first instance procedure, which was overall unfair. In support of this complaint, the Rider raises that (i) the Appealed Decision omits to judge certain claims he made and therefore that his right to be heard has been violated, (ii) there was a lack of independence of the judge of the UCI ADT, and (iii) documentation in German was not translated, to his detriment. In addition and in relation to the current proceedings, the Rider complains that the UCI unduly refused to provide him with the recording of the first instance hearing.
47. On burden and standard of proof: the Rider submits that the burden of proof set in Articles 3.1 and 3.2.2 UCI ADR must be reversed. For the Rider, because standard rules and procedures have not been properly applied during sample collections and sample analyses, there has been a misreading of the analyses, and that should reverse the burden of proof.
48. On the existence of numerous departures from various applicable international standards: the Rider contends that several International Standards application to samples and laboratories were violated during the collection, preservation and analyses of his samples.

Accordingly, the Rider claims that each sample affected by an irregularity shall be discarded. Specifically:

- *On the violation of the WADA International Standard for Testing and Investigations* (the “ISTI,” version of 2020), the Rider submits there was (i) a violation of Section K.2.3 of Annex 3 in relation to the preservation of samples, (ii) a violation of Article E.4 of Annex E in relation to the requirements for blood collection that shall always involve two people, (iii) a breach of Article 9.3.1 for not respecting the chain of custody, and (iv) a violation of Section H of Annex H in relation to the requirements to be met by the personnel involved in sample collection, which are not indicated.
- *On the violation of the WADA International Standard for Laboratories* (the “ISL”), the Rider contends (i) Sections 3.2 and 6.2.6.2 were breached in relation to the absence of references regarding the qualification of the personnel involved in analysis of samples, and (ii) Article 6.2.1.3 was breached in relation to the lack of signature of the laboratory representative involved in the collection of some samples.
- *On the violation of WADA Technical Document on Laboratory Documentation* (the “TDLDOC”), the Rider argues that (i) the documentation should have been in English, and (ii) Section 3.1 was breached in the absence of the signature of the documentation by authorised persons.

Due to these serious breaches, the samples numbered 3, 4, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 should be discarded.

49. On the failure to provide explanation for the ADRV: the Rider submits that his ABP profile does not display any abnormalities; according to him, certain factors affecting the results, specifically factors affecting the plasma volume and the variations between the different machines used to analyse the various samples, were not considered by the Expert Panel when examining the ABP and could justify the results found.

B. The UCI’s prayer for relief and submissions

50. The UCI’s prayers for relief (1.) and a summary of its submissions (2.) are set forth below.

1. UCI’s prayers for relief

51. In its Answer to the Rider’s Appeal Brief, the UCI requests the following relief from the CAS:

“[...] *the UCI respectfully requests the Panel to issue an award:*

- (i) *Dismissing Mr. Raul Alarcon Garcia's Appeal and all prayers for relief.*
- (ii) *Upholding the Decision of the Single Judge of 8 March 2021.*
- (iii) *Condemning Mr. Raul Alarcon Garcia to pay a contribution towards the UCI's legal fees and other expenses."*

2. Summary of UCI's submissions

52. The present summary presents the key arguments of UCI, on a topic-by-topic basis, as opposed to following the sequence of the Statement of Appeal.
53. On the Rider's procedural complaints: regarding allegations concerning the UCI ADT procedure, the UCI denies that there has been difficulties and underlines that, even if true, these breaches would be cured by the *de novo* review by the current CAS Panel, as provided for in Article R57 of the CAS Code. Regarding other procedural complaints made by the Rider, the UCI contends those allegations are unfounded and have had no impact on the legal assessment of the Rider's defence.
54. On burden and standard of proof: the UCI submits that Articles 3.2.2 and 3.2.3 of the UCI ADR apply, set a presumption favorable that WADA-accredited laboratories have properly performed the doping collection and analyses. Accordingly, two steps are required for the Rider to oppose this presumption, i.e. "[t]he Rider is required to establish to the required degree of balance of probabilities that:
- (i) *A departure from the relevant International Standard or other UCI Regulation occurred; [and]*
 - (ii) *Such departure could reasonably have caused the ADRV."*
55. Thus, the specimen results are to be considered valid unless the Rider establishes that these two cumulative requirements are met.
56. On the various departures from the International Standards: according to the UCI, the alleged departures from the relevant International Standards are not always established and could not have reasonably caused the abnormalities in the Rider's ABP. The UCI also highlights that the APB is a reliable means to establish the existence or use of a prohibited substance within Article 2.2 of the UCI ADR and that the Rider, if he were serious, should have challenged the method itself under Article 3.2.1 UCI ADR; as he failed to do so, his allegations in that respect must be discarded.
57. Specifically:
- *On the departures from Article K.2.3 of the Athlete Biological Passport Guidelines*, the UCI denies any violation. Generally, all claims in relation to the temperature of

the samples fail as the Rider does not establish that there were departures from the relevant International Standards and other UCI Regulations, let alone departures that could have caused the ADRV.

- *On the alleged departures from Article 6.2.1.3 of the ISL*, the UCI underlines the Rider’s misunderstanding of the documents: it is incorrect to state that there was no record of who received those samples as initials are mentioned on the documentation.
- *On the departure from the TDLDOC*, while the UCI accepts that the Laboratory Documentation of Sample 15 was not formally signed, this had no impact on the validity of the results of the sample.

58. On the Rider’s failure to provide any explanation for the ADRV: according to Respondent, the Rider failed to provide any explanation for his ADRV and his ABP shows clear abnormalities. The Rider’s arguments have been closely examined by the Expert Panel in their second report and have been discarded. The UCI concludes that the use of a Prohibited Substance or Prohibited Method remains the most plausible explanation for the abnormalities identified in the Rider’s ABP.

59. In conclusion, the UCI submits that the Appellant’s profile displays clear abnormalities and that none of the Rider’s explanations or attempts to establish that there are no such abnormalities are convincing.

V. JURISDICTION

60. It follows from Article R47 CAS Code that:

“[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”

61. Pursuant to Article 13.2.1 UCI ADR, “[i]n cases arising from participation in an International Event or in cases involving International-Level Riders, the decision may be appealed exclusively to CAS.” [emphasis added]

62. Article 13.2.3 UCI ADR provides that “[i]n cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: a) the Rider or other Person who is the subject of the decision being appealed.”

63. The Rider is the subject of the decision being appealed and was participating in an event in Portugal, an International Event.
64. Moreover, Article 72 of the UCI Statutes confirms that the CAS is the competent authority to adjudicate appeals against sporting, disciplinary and administrative decisions taken in accordance with UCI rules.
65. The Panel therefore finds that the CAS has jurisdiction to decide the present dispute. The Panel also notes that the jurisdiction of the CAS is not disputed by the Parties and was confirmed by the signature of the Order of Procedure.

VI. ADMISSIBILITY

66. Article R49 CAS Code provides that the time limit for appeal is twenty-one days from the receipt of the appealed decision. This time limit applies only if the statutes or regulations of the relevant federation do not contain a time limit of their own.
67. In this case, Article 13.2.5.1 UCI ADR provides for a different time limit in the following terms: *“appeals under Article 13.2.1 and 13.2.2 from decisions made by the UCI Anti-Doping Tribunal [...] shall be filed before the CAS within 1 (one) month from the day the appealing party receives notice of the decision appealed”*.
68. The Rider submitted his Statement of Appeal on 6 April 2021, *i.e.*, within one month of the notification of the Appealed Decision dated 8 March 2021, and thus within the one month’s time limit set out at Article 13.2.5.1 UCI ADR. The admissibility of the Rider’s Appeal is not challenged by the UCI.
69. Therefore, the Panel confirms that the Appeal was timely filed and admissible.

VII. APPLICABLE LAW

70. According to Article R58 CAS Code:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.” [emphasis added]

71. In accordance with Article R58 CAS Code, the provisions of the UCI rules and regulations which could be relevant to this case are as follows:

- The UCI Anti-Doping Rules effective 1 January 2015;
- The UCI Anti-Doping Tribunal Procedural Rules effective 1 January 2015;
- The UCI Testing & Investigations Regulations.

72. WADA Documents referred to in the UCI regulations may also be relevant, in particular:

- The WADA International Standard for Laboratories;
- The WADA Prohibited Substance List 2020, effective 1 January 2020;
- The WADA Athlete Biological Passport Operating Guidelines.

73. As a clear choice-of-law clause is included in Article 76 UCI Statutes and the seat of the UCI is in Switzerland, the Panel shall decide the matter according to UCI constitution and regulations, and, subsidiarily, Swiss law.

74. The Panel therefore finds that the law applicable to the present dispute shall be the UCI rules, the WADA International Standards and, subsidiarily, the laws of Switzerland.

VIII. MERITS

75. The Panel sets out below the scope and sequence of its review (**A.**) followed by its decision on the Appeal of the Rider (**B.**).

A. Scope and sequence of the Panel's review

76. According to Article R57 CAS Code, “[t]he Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”. [emphasis added]

77. The Panel will thus conduct a *de novo* review of the present dispute within the scope set out below of the Rider's Appeal. As the Rider indicated in his Appeal Brief that his Appeal is directed at the UCI Anti-Doping Tribunal's Appealed Decision of 8 March 2021, which he seeks to annul, the Panel will accordingly review in full the facts and legal arguments of the Parties, as presented before it.

78. The Panel concurs with the UCI and confirms, in line with constant CAS case law (CAS 2017/A/5086), that the *de novo* review cures all potential defects in the first instance procedure.

79. Hence, whether the difficulties referred by the Rider regarding the conduct of the UCI ADT proceeding are established or not is irrelevant in the present proceeding and the Panel does not need to rule on them.

B. The Panel's Decision

80. The Panel first recalls the specific context and debates over the finding of an ADRV based on abnormalities identified in an ABP and the applicable burden of proof (1.). The Panel then sets out the burden and standard of proof applicable in determining whether departures from certain applicable standards in sample collection, preservation and analyses are performed (2.) and goes through said alleged departures to determine whether they have been characterized, and, if so, whether they had an impact over the finding of an ADRV (3.), before determining the justifications of the abnormalities debated between the Parties and (4.) and the corresponding sanction (5.).

1. Context and debates over an ADRV based on abnormalities identified in an ABP

81. With respect to the Rider's ABP, the Expert Panel reached the following conclusion in its First Expert Opinion:

“In our view, the data of the athlete bears as main abnormal features typical OFF constellations with previous stimulation in samples 16-20 and, to a lesser extent, in samples 11/12 and ¾, all obtained prior and during the Volta a Portugal in 2018, 2017 and 2015.

A high OFF score is typically observed when the red cell mass of the organism has been supraphysiologically increased (high haemoglobin) and the body's own red cell production was reduced (low reticulocytes) as a consequence to downregulate the excess in red blood cells. This constellation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulating agent (ESA) or the application of a blood transfusion. In the profile, it is clearly visible that the constellation develops further over the samples 16-19 (taken over 12 days) and goes from a mild erythropoietic stimulation with elevated reticulocytes into suppression with low reticulocytes. It has to be highlighted that the haemoglobin values measured during the race (in competition, samples 4, 7, 11, 17, 18, 19) are likely “falsely” low due to exercise induced haemodilution. Thus, the OFF score calculation in these tests is likely very much underestimated and therefore in favour of the athlete.

[...]

In summary, the profile bears features of blood manipulations on several occasions, coinciding with the Volta a Portugal from 2015, 2017 and 2018.

We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause.”

82. On 8 March 2021, referring to the Expert Panel First and Second Opinions, the Appealed Decision determined that the Rider committed an ADRV pursuant to Article 2.2 UCI ADR. Under this Article, the Use or Attempted Use of a Prohibited Substance or Prohibited Method constituting an ADRV may be established by any reliable means, such as conclusions drawn from data collected as part of the Rider’s ABP.
 83. Although the Rider did not spell out any specific criticism in its Appeal Brief on his ADRV based on data collected from ABP, criticisms for such finding of an ADRV were expressed in the Cordova Report, which is an “*inseparable document*” from the Appeal Brief.
 84. The Panel therefore finds it necessary to recall, at the outset of its analysis, that WADA has approved the use of the ABP as a basis for the finding of ADRVs, and that this possibility has been codified in the current UCI ADR. This circumstantial evidence has also been considered reliable by constant CAS jurisprudence (see, *inter alia*, CAS 2010/A/2235, para. 80 and CAS 2016/O/4463, paras. 89-91). The ABP analytical method is therefore, as a matter of principle, valid. This is acknowledged by the Rider’s Expert, Prof. Cordova, who recognized that the “*Biological Passport is a strong tool to detect doping cases*”, although levelling some criticism at the way in which it is implemented.
 85. The Panel further underlines that, even if it determines that the Rider fails to justify with a credible explanation the abnormal values in his ABP, doping is not automatically the explanation. As such, and in application of Article 3.1 UCI ADR, the standard of proof for determining the existence of an ADRV characterized under Article 2.2 UCI ADR is the comfortable satisfaction of the Panel. This standard is greater than balance of probability but less than proof beyond reasonable doubt. Accordingly, the Panel needs to be comfortably satisfied that the abnormal values are caused by a doping scenario to confirm the finding of an ADRV. This will be further discussed in section 4 below.
- 2. Burden and standard of proof when departures from guidelines have been characterized**
86. In the case at hand, the Rider’s principal argument focuses on the existence of various deficiencies in the way the samples part of the Rider’s ABP have been collected, transported and analysed. According to the Rider, these multiple departures from

applicable standards shall lead the Panel to conclude that most of these samples shall be discarded, and accordingly that the conclusions reached by the Expert Panel in its First and Second Opinions shall be discarded.

87. Specifically, the Rider submits that because numerous rules and standards were severely violated, it is certainly more than reasonable and credible that there had been a misreading of the analyses, the result of which is to “reverse” the burden of proof against the UCI itself. In other words, the Rider claims that “*it is up to the UCI to prove by direct means the existence of doping,*” and the burden of proof had been “*reversed, in terms of provisions of Articles 3.1 and 3.2.2 UCI ADR*”.
88. Contrary to the Rider’s position, the UCI contends that the rules regarding the burden of proof if and when departures from guidelines are found, are set out in Articles 3.2.2 and 3.2.3 UCI ADR and must be followed. The UCI also refers to an award recently rendered by in CAS 2019/A/6226, itself referring to CAS 2013/A/3112:

“even if the Athlete were to prove a departure from the guidelines, this would, in and in itself, not be capable of invalidating the results: “[t]herefore, 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, [...] 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 organisation, which may then show, to the Panel’s comfortable satisfaction, that the departure did not cause a misreading of the analysis.””

89. Accordingly, the UCI’s argument is that the presumptions set in Articles 3.2.2 and 3.2.3 UCI ADR remain in effect and the results are considered valid unless the Rider establishes that these two cumulative requirements – a deviation and a likely impact on the analysis – are met on a balance of probabilities. Thereafter, it is the UCI’s responsibility to establish that said departure(s) did not cause a misreading of the analyses.
90. The Panel confirms that under UCI ADR 3.2.2, WADA accredited laboratories are presumed to have conducted sample analyses in accordance with the ISL. UCI ADR also provide that the Athlete has to establish, on a balance of probabilities (which means that something is more likely than not to have occurred) (i) the departures from the applicable standards and that (ii) these departures have reasonably, and thus credibly, caused a misreading of the analyses. The Panel will therefore apply this two-step analysis to review the Rider’s case.

91. Specifically, the Panel will go through, one by one, the several alleged violations of the international standards argued by the Rider, in order to determine whether the latter succeeded in establishing, on the balance of probabilities, said violations and, if so, whether they have caused, credibly and reasonably, a misreading of the analyses.

3. On the alleged departures from various international standards and their consequences over the analyses of the Rider's samples

92. *As regards the alleged violation of the TDLDOC*, the Rider contends the documentation was to be in English, although it was, for the samples 13, 16 and 20, in German. UCI pleads the dismissal of the claim since the documentation in German only concerned working documents of the concerned laboratory, which is perfectly admissible under the applicable version of the TDLDOC. According to the UCI, all the relevant documents are in English, in particular the analyses of the blood samples.

93. The Rider further argues the documentation for the sample 15 was not signed by the Laboratory Director or an authorised person, as required under Section 3.1 of the TDLDOC. While the UCI accepts that the documentation of Sample 15 was not formally signed, this has no impact on the validity of the results of the sample since, as the Respondent points out, Appendix E of the TDLDOC in relation to blood ABP documentation packages expressly states that “[d]eviations from this TD Appendix shall not invalidate the blood APF”, meaning that any divergence from some formal standards related to the mere documentation (and not to the samples as such) does not affect the blood values which have caused an adverse passport finding or APF.

94. The Panel rejects the Rider's claim regarding the language of the documents, first because the Rider did not characterize the departure from any applicable standards on the language (German/English), and second, because it has no relation to the samples themselves. Regarding the absence of a signature, the Panel concurs with both Parties that this signature is missing but notes that the Rider fails to establish how the absence of said signature affects the validity of the collection of the sample 15. Overall, the Panel highlights that the TDDLOC document itself provides that departure from its Appendix E, dedicated to the documentation related to “Blood ABP”, does not invalidate the blood APF, which thus puts an end to the Rider's argument based on alleged departures from this Appendix.

95. *As regards the alleged violation of the ISTI*, the Rider submits first that there was a breach of Article E.4 of Annex H containing the requirements for the collection of blood samples, according to which two persons at least shall be involved: the blood collection officer and the doping control officer. According to the Rider, this requirement was not met for the collection of several samples. However, Respondent argues the Rider failed to point out to any of the 17 sub-articles of Article E.4 that would require the intervention of two

different persons for the collection of blood samples. In fact, UCI notes that, according to Article H.5.5 of Annex H of the ISTI, “*DCOs may personally perform any activities involved in the Sample Collection Session, with the exception of blood collection unless particularly qualified, or they may direct a Chaperone to perform specified activities that fall within the scope of the Chaperone’s authorized duties*”. Furthermore, the UCI contends that the Rider confirmed at the time that the sample collections were conducted in accordance with the relevant procedures when he signed the concerned Doping Control Forms of all of the litigious samples without making any reservations.

96. The Panel rejects the Rider’s argument regarding the alleged mandatory presence of two people for any sample collection. While there is indeed a reference to blood collection officer and a doping control officer in Annex H of the ISTI, there is no indication that the same person could not perform the two roles. There is also no causal relationship between this fact and a potential impact over the blood samples and their results. Finally, as an additional but decisive argument, the Panel notes that the Rider waived his right to complain about such matters by signing the DC forms without any reservation or comment when samples were collected.

97. Second, the Rider argues that “*the samples were not properly preserved from the time they were collected and until they were analysed*” and that “[i]t has been proved that the temperature variations of the samples affect the analytical results”, in breach of Section K.2.3 of Annex 3 of the ISTI which requires that a blood sample “*be refrigerated from its collection to its analysis*” and be transported and stored at a “*cool temperature*”. Meanwhile, the UCI denies any violation and underlines that the Rider fails to establish that there were departures from the Standards or UCI Regulations, since:

- the Samples were refrigerated as they should have pursuant to Article K.2.3 of Annex K of the WADA Athlete Biological Passport Operating Guidelines; indeed, the integrity of markers is guaranteed when the Blood Stability Scores (“BBS”) is under 85, which was the case of all samples except sample 18 (but which is in reality under 85 due a miscalculation);
- the Rider did not even allege, nor establish, that the temperature recording not started on time could have reasonably caused the abnormalities in the Rider’s ABP;
- the Rider’s allegations in relation to an excessive transportation time should be dismissed as he fails to identify any provision in any WADA documentation or other UCI regulations that requires a biological passport sample to be analysed within a specific time after its collection;
- the Rider’s claims in relation to the BSS (in connection with the temperature claims) should be dismissed; the UCI does not see why the BSS formula should not be used to determine the integrity of those samples. In this regard, Respondent argues there was nothing “incomprehensible” in the Expert Panel’s decision to invalidate sample 12 but to consider sample 18 as valid, and explained that the sample 12 was

invalidated because its BSS was above 85 and showed signs of poor sample storage, whereas sample 18's BSS was in reality below 85: indeed, if the ABP Documentation Package indicated, at first, that sample 18 had a BSS above 85, it appeared, upon scrutiny of the temperature logger file, that taking into account the correct temperature at collection, the BSS was actually below 85.

98. The Panel rejects the Rider's argument regarding the inadequacy of the preservation of samples. First, for the Panel, the UCI has established that the BSS formula is convincing evidence that samples have not been affected by any potential variations in temperature if the figure is below 85, considering also that compliance with this threshold shows that no excessive time passed between sample collection and analysis (in fact, the BSS formula takes time into account and makes it more difficult to stay below the required threshold of 85 if the passage of time is excessive). Second, the Panel agrees that the relevant standard regarding temperature is Article K.2.3 of Annex K of ISTI. Following this standard, the samples shall be refrigerated from collection until analysis, blood samples shall be kept "cool" during storage and blood samples shall not be allowed to freeze at any time. Here, the Rider fails to characterize a breach of these indications. Overall, the Panel is comfortable with the temperatures of the samples following the relevant provisions, as the BSS for the samples were acceptable, i.e. below 85, including for sample 18, for which the miscalculation of a score over 85 has been justified.
99. Third, the Rider contends the chain of custody was not always respected, particularly for sample 11, in clear breach of Article 9.3.1 of the ISL which requires "*a transport system that ensures that the Samples and documentation are transported in a manner that protects their integrity, identity and security*". According to the Rider, this sample 11 was manipulated before arriving at the laboratory, affecting its validity. The Rider refers to the seal number of the bag of sample 11 (031857), which does not match the one indicated on the Sample Advice Document (031832). Accordingly, it cannot be guaranteed that this sample was taken from the Rider. Respondent disagrees with the Rider's position and explains that, according to the DCF, the code number of sample 11 is "238058", a number which is expressly noted on the first page of the Laboratory Document Package of said sample. Hence, there is no doubt that it is the Rider's sample 11 that arrived and was analyzed at the laboratory. The UCI further relies on CAS jurisprudence (CAS 2011/A/2612) to submit that the WADA TDLDOC distinguishes between internal and external chain of custody and actually does not set any prerequisites or conditions for the latter.
100. The Panel rejects the Rider's argument since, first, as highlighted by Respondent and CAS jurisprudence (*inter alia*, CAS 2011/A/2612), there is no express requirement for external chain of custody in the applicable WADA documentation. Second, the Panel concurs with the UCI that, based notably on the Rider's sample code, sample 11 can

unequivocally be linked to the Rider. Third, the Panel finds that the Rider fails to prove that there would have been a defect in the chain of custody.

101. Fourth, the Rider alleges a violation of Section H of Annex H of the ISTI in relation to the requirements to be met by the personnel involved in sample collection. According to him, these requirements were not on the record, which proves that the required procedure had not been followed. In this regard, the UCI notes the Rider failed, again, to identify the specific provision of Annex H he considers having been breached, which is enough reason to dismiss the claim. The UCI further raises that, according to Article H.5.4 of the 2017 ISTI, “[o]nly Sample Collection Personnel who have an accreditation recognised by the Sample Collection Authority shall be authorised by the Sample Collection Authority to conduct Sample collection activities on behalf of the Sample Collection Authority”. This Article, nor any other in Annex H of the ISTI, requires the UCI to provide the Rider with the relevant accreditations. Again, the UCI recalls that, according to constant CAS jurisprudence (CAS 2013/A/3112), to meet his burden of proof the Rider should establish that (i) there is a specific departure from the applicable standards and (ii) such departure could have reasonably, and thus credibly, caused a misreading of the analysis.
102. The Panel rejects the Rider’s argument in relation to Section H of Annex H of the ISTI, as indeed the Rider failed to demonstrate the breach of a specific provision and, obviously, that such breach could have reasonably and credibly caused a misreading of the analyses. In the Panel’s view, the Rider only speculates about a violation of Section H of Annex H of the ISTI and there is no credible link between any such violation and the resulting Adverse Passport Finding.
103. *As regards the alleged violation of the ISL*, the Rider submits that there were no references about the qualification of the persons involved in the analysis of samples 13, 15, 16 and 20, in contravention with Article 6.2.6.2 of the ISL which provides that “*each step of Analytical Testing shall be traceable to the staff member who performed that step.*” He further refers to Section 3.2 of the TDLDOC, which states that a “*List of Laboratory staff involved in the analysis of the Sample, including signatures and/or initials and position title(s) [...]*” shall be included in the Laboratory Documentation Packages. He notes that there was no record of the job title/qualification of the persons involved in the analysis of said samples, although it is a guarantee for the Rider to know which persons were involved in the analysis and their position held in the procedure. In response, the UCI refers to the introduction to Appendix E of the TD2017LDOC which states that “[d]eviations from this TD Appendix shall not invalidate the blood APF”, noting that ISL are referred to in such Appendix E. Moreover, considering the Rider fails to establish to what extent these alleged failures could have reasonably caused the ADRV, the UCI submits the Rider’s claims can only be dismissed.

104. The Panel agrees that there appear to be deficiencies in the identification and position of the people involved in the chain of custody of certain samples. The Panel is however sensitive to the indication in Appendix E of the TDLDOC that these sorts of deviations do not invalidate the blood APF. As the Rider fails to establish why these departures would create an impact on the analyses of the samples concerned, his argument is rejected.
105. The Rider also claims that there was a breach of Article 6.2.1.3 of the ISL (*“The transfer of the Samples from the courier or other person delivering the Samples shall be documented including at a minimum, the date, the time of receipt, and the name and signature of the Laboratory representative receiving the Sample(s). This information shall be included into the Laboratory Internal Chain of Custody record(s)”*) in relation to the collection of samples 13, 15, 16 and 20, and worse, that his allegation in that respect was not even examined in the Appealed Decision. The Rider argues that this provision provides for the documentation of the samples’ transfer into the Laboratory International Chain of Custody records and requires mentioning the name of the Laboratory representative receiving the samples. The Rider further submits samples 11 and 19 were not received by a “chain of custody technician”. According to the UCI, the Rider’s position is misconceived: although the persons’ full name might not be known from the said documentation, it was clearly wrong to state that there was no record of who received those samples as their initials were mentioned. Furthermore, the UCI notes there is no definition of “chain of custody technician”, either in the ABP Guidelines or the ISL and, as such, no requirement that samples be received by a laboratory personnel with this title.
106. The Panel rejects the Rider’s argument and concurs with the UCI that the initials of the Laboratory representative are sufficient to identify a person, if need be, and that there is no definition of a so-called “chain of custody technician” that could give rise to a challenge. Overall, the Panel finds that the Rider fails to demonstrate a breach of Article 6.2.1.3 of the ISL or any other standard, that could have reasonably and credibly caused the ADRV.

4. On the existence of an ADRV based on abnormalities in the Rider’s ABP

On the standard of proof

107. The Rider submits that his ABP profile did not display any abnormalities.
108. According to Respondent, the Rider fails to provide an explanation for his ADRV. The Rider’s ABP constituted a reliable means of establishment of a “Use” violation within the meaning of Article 2.2 UCI ADR and he failed to formally challenge the method underlying the ABP. Moreover, his ABP displayed clear abnormalities. Finally, Respondent argues the existence of a doping scenario, which remains unchallenged by

the Rider. The use of a Prohibited Substance or Prohibited Method is most certainly a plausible explanation for the abnormalities identified in the Rider's ABP. The UCI concludes that the Appellant's profile displays clear abnormalities and that none of the Rider's explanations or attempts to establish that there are no such abnormalities are convincing.

109. The Panel concurs, as stated at the outset of this award and as previously recalled in subsection 1 above, that abnormalities are not sufficient to conclude to an ADRV; one must establish that doping is the plausible cause of the abnormality, to the comfortable satisfaction of the Panel. The Panel also agrees that the Rider must make his best efforts to provide alternative scenarios for the abnormality.

On the Rider's explanations for the abnormalities

The Rider claims his ABP profile does not display any abnormalities. In particular, he first submits certain factors affecting the plasma volume have not been taken into account by the Expert Panel when examining his ABP. Second, he contends the Expert Panel failed to take into consideration the coefficient of variation of the various machines used to analyze his samples. The Panel will address both explanations successively.

Variation in plasma volume

110. The Rider contends there are various factors that affect plasma volume and have an influence on hematological parameters, which are not related to doping practices. Recent studies would show that these factors can induce changes in plasma volume by more than 10% and in some cases up to 20%. These factors were not assessed by the Expert Panel when they made their conclusions, as they considered that they were already taken into account in the ABP. However, there is no record that these factors are taken into account in the ABP, for both the existence of the correction and the result of application of said correction. Changes in plasma volume have a great influence on the ABP, since they produce variations that affect the interpretation of blood profiles. In that regard, the Rider refers to the Second Cordova Report, in which Professor Cordova Martinez corrects the Rider's results based on plasma volume variations, concluding that, taking these factors into account the results then show a "*normal physiological response of the organism, which excludes doping*". In response, the UCI relies on the Third Expert Opinion, in which the Expert Panel discarded Prof. Cordova Martinez's corrections for the following reasons: first, the corrections are not necessary as most of the factors are already considered by the adaptative model or the evaluation process; second, the Expert Panel noted that the corrections operated by Prof. Cordova Martinez all lead to lower values in the Rider's results, which is not possible, as variations could be present in both directions, i.e. plasma volume expansion and plasma volume contraction; the Expert Panel remarked that, for example, samples 17, 18 and 19 were all taken after several days of racing, which,

following Prof. Cordova Martinez's logic, should be corrected for their plasma volume expansion, not contraction as it is the case.

111. The Panel is satisfied with the adaptative model approach, which is meant to apply automated adjustments and further submits the profile to expert review that considers the individual situation of the athlete at the time of sampling. The Panel notes the Expert Panel reviewed the Rider's individual situation and rejected the Rider's claim in that regard.
112. The Panel is not convinced by the corrections of Prof. Cordova Martinez, which, as raised by the Expert Panel and the UCI, do not include corrections for variation in both directions, but solely incorporates plasma volume contractions, a scenario that the Panel finds highly unlikely. The Panel concludes that the Rider did not establish that, on the balance of probabilities, the finding of an ADRV might be explained by variations in plasma volume.

Coefficient of machine variations between laboratories

113. The Rider submits, considering the various laboratories involved in the analyses, that there is a significant variability between the results of a machine in one laboratory and the results of another machine (same model) in another laboratory. Hence, "[w]hen the coefficient of variation is applied, normality prevails in the analytical results". Respondent opposes this conclusion relying on the Third Expert Report, in which the Expert Panel underlined: "*Between-laboratory harmonization is ensured through the External Quality Control, carried out with the participation in the WADA-approved program CSCQ, documented in the LDPs for each sample*". Regarding the Sysmex machine used, the Expert Panel raised that "*the Sysmex technology for reticulocytes is one of the most reproducible among the top-level automated counters [...] this is the reason why it was initially selected to measure one of the two primary markers of the ABP*", concluding "*there is unanimity in the recent scientific literature that the automated measurement of HB and reticulocytes are precise, reproducible and accurate*".
114. The Panel rejects the Rider's argument in relation to the coefficient of variation between laboratories. First, the Panel is comfortable with between-laboratory harmonization that is ensured through quality control. Second, the Panel is not convinced by the argument of the Rider that the Sysmex machine, used in the context of the ABP, is the machine with the highest coefficient of variation. This technology is used precisely because it is currently the most precise and accurate on the market. Third, irrespective of this, the Panel understands the variability is already taken into account in the ABP.

115. The Panel concludes the Appellant failed to establish, on the balance of probabilities, that the abnormalities in the Rider's ABP could be explained by the coefficient of variation between laboratories.

On the existence of a doping scenario

116. The Respondent relies on the First and Third Expert Opinions to sustain that the use of a Prohibited Substance or Prohibited Method is most certainly a "plausible explanation" for the abnormalities identified in the Rider's ABP. Specifically, the UCI notes that the Rider's ABP presents a high OFF-score, which indicates that blood manipulation is highly likely. Moreover, the Rider's alternative explanations have been considered and ruled out by the Expert Panel, which adds greater force to this conclusion. The UCI further notes that, around the time of the presumed ADRV, the Rider was preparing and/or competing in the Volta a Portugal 2015, 2017 and 2018.
117. The Panel recalls that the Rider did not provide credible explanations for the abnormalities in his ABP, but that such failure cannot automatically induce that an ADRV has been committed. That said, the Panel is comfortably satisfied that the cause for the abnormalities is most certainly the use of a Prohibited Method, i.e. blood transfer. The Panel considers the Rider's profile shows a high possibility of blood manipulations, the timing of which reinforces this conclusion, as these abnormalities coincided with the Volta a Portugal 2015, 2017 and 2018.

5. Sanction, start date and fine

118. The Rider has not made any submission on this regard and merely requests the Appealed Decision be annulled.
119. *On the sanction*, Respondent submits the four-year period of ineligibility imposed by the UCI ADT shall be confirmed, pursuant to Article 10.2.1.1 UCI ADR.
120. The Panel agrees with the UCI and sees no reason to reduce or eliminate the ineligibility period of four years, considering that the Rider did not even ask for a reduction on a subordinate basis.
121. *On the start date*, Respondent contends, according to Article 10.8 UCI ADR, that all competitive results obtained from the date the ADRV occurred shall, unless fairness requires otherwise, be disqualified. In the present case, the UCI contends that the UCI ADT rightly considered the date of collection of Sample 3 as the date the ADRV occurred. Therefore, Respondent submits that all competitive results obtained from 28 July 2015 until the date the Rider was provisionally suspended, i.e. 21 October 2019, shall be disqualified.

122. The Panel concurs with the UCI and, after examining the fairness of said start date, confirms the Appealed Decision in this regard.
123. *On the fine*, the UCI notes that, in the absence of any submission by the Rider on the topic, the UCI ADT's decision shall be upheld. Accordingly, pursuant to Article 10.10.1.1 UCI ADR, the fine of EUR 10,325 shall be confirmed.
124. The Panel confirms this sum as it sees no reason to modify the sanction decided by the UCI ADT, considering that the Rider did not even ask for a reduction on a subordinate basis.

IX. COSTS

125. Article R65 CAS Code pertaining to costs states as follows:

“R65.1 This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. [...]

R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000. – without which CAS shall not proceed and the appeal shall be deemed withdrawn. [...]

R65.3 Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.”

126. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the Parties beyond the Court Office fee of CHF 1,000 paid by the Appellant with the filing of his Statement of Appeal, which is in any event retained by CAS.
127. The Rider did not submit on legal fees or other expenses. The UCI notes, in accordance with R65.3 CAS Code, it has spent a considerable amount of time and funds on these proceedings, in order to address the Rider's unsubstantiated claims.

128. Taking into consideration the outcome of this arbitration and R65.3 CAS Code, the Panel finds the Appellant, i.e. the unsuccessful party, shall reimburse the amount of CHF 2,500 to the Respondent.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

- 1) The appeal filed by Mr. Raúl Alarcón García on 6 April 2021 against the decision rendered by the UCI Anti-Doping Tribunal dated 8 March 2021 is rejected.
- 2) The decision rendered by the UCI Anti-Doping Tribunal dated 8 March 2021 is confirmed.
- 3) The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr. Raúl Alarcón García, which is retained by the Court of Arbitration for Sport.
- 4) Mr. Raúl Alarcón García is ordered to pay CHF 2,500 (two thousand and five hundred Swiss Francs) as a contribution towards the legal fees and other expenses incurred by the UCI in connection with this procedure.
- 5) All other or further requests or motions for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 28 January 2022

THE COURT OF ARBITRATION FOR SPORT



Carine Dupeyron
President of the Panel