

UCI Anti-Doping Tribunal

Judgment

case ADT 02.2021

UCI v. Luis Ricardo Villalobos Hernández

Single Judge:

Helle Qvortrup Bachmann (Denmark)

Aigle, 21 December 2021

I. INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as “the Tribunal”) in application of the UCI Anti-Doping Tribunal Procedural Rules (hereinafter referred to as “the UCI ADT Rules”) in order to decide upon a violation of the UCI Anti-Doping Rules (hereinafter referred to as “the UCI ADR”) committed by Mr Luis Ricardo Villalobos Hernández (hereinafter referred to as “the Rider”) as alleged by the UCI (hereinafter collectively referred to as “the Parties”).

II. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, established based on the submissions of the UCI and not contested by the Rider, who did not participate in the proceedings before the Tribunal. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence filed on the case in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain her reasoning.

A. The Parties

1. The UCI

3. The UCI is the association of national cycling federations and is a non-governmental international association with a non-profit-making purpose of international interest, having legal personality pursuant to Articles 60 ff. of the Swiss Civil Code according to Articles 1.1 and 1.2 of the UCI Constitution.

2. The Rider

4. At the time of the asserted anti-doping rule violation, the Rider was a professional road cyclist affiliated to the Federación Mexicana de Ciclismo (FMC) and a License Holder within the meaning of the UCI ADR.
5. The Rider started his professional cycling career in 2017 with the UCI Continental Team Avelo and rode for that team until 31 July 2019. On 1 August 2019 the Rider joined the UCI WorldTour Team EF Education First. The Rider was contracted to EF Education First until 18 May 2020.

B. The alleged anti-doping rule violation

6. On 25 April 2019, the Rider provided a urine sample during an out-of-competition doping control in Lago de Moreno, Mexico (Sample Number 520993). The doping control was conducted by the Mexican National Anti-Doping Organization (Mexican NADO) and was initially analysed and reported as negative by the World Anti-Doping Agency (WADA) accredited Laboratory in Mexico City (Mexican Laboratory).
7. The Rider confirmed on the relevant Doping Control Form (DCF) that the sample had been taken in accordance with the applicable regulations. He further declared that he had taken only “Ferri Fol, Omega 3 Rx 2” over the seven days preceding the test.
8. On 15 November 2019, the Mexican Laboratory ceased its operations.
9. Following this, WADA ordered the transfer of the Rider’s sample collected on 25 April 2019 (Sample 520993) and of another sample collected from the Rider on 29 June 2019 (Sample

521609) from the Mexican Laboratory to the WADA-accredited Laboratory of Montreal (Montreal Laboratory) for re-analysis on the basis of Article 6.5 of the 2015 World Anti-Doping Code (Code) and Article 4.4.11.3 of the International Standard for Laboratories (ISL).

10. On 9 February 2020, the Montreal Laboratory reported the Rider's A-Sample from 25 April 2019 as an Adverse Analytical Finding (AAF) for GHRP-6 and as an Atypical Finding (ATF) for the presence of Clenbuterol. The Rider's sample from 29 June 2019 was also reported as an ATF for Clenbuterol.
11. GHRP-6 is a prohibited substance listed under Section S2 of the 2019, 2020 & 2021 Prohibited Lists, which are maintained by WADA and adopted by the UCI.
12. On 18 May 2020, the Rider was notified of the AAF of GHRP-6 pursuant to Article 7.3 of the UCI ADR 2015. As GHRP-6 is not a Specified Substance (as per the Prohibited List), the UCI also informed the Rider that a mandatory provisional suspension had been imposed on him by virtue of Article 7.9.1 of the UCI ADR 2015. Furthermore, the UCI requested the Rider to provide a list of all products he had consumed in the fifteen (15) days preceding the doping controls. Pursuant to Article 7.4.1 of the UCI ADR 2015 and the WADA Stakeholder notice regarding potential meat contamination cases, the UCI asked the rider whether he was recently in Mexico, China or Guatemala and if so, whether he ate meat in order to evaluate whether the ATFs were consistent with the consumption of tainted meat.
13. After having informed the Rider of his AAF and ATF, the UCI notified the Mexican NADO and WADA of same. The FMC, the Rider's current and former Teams (i.e., UCI WorldTour Team EF and UCI Continental Team Aevolo) were also notified of the AAF.
14. On 21 May 2020, the Rider requested the A-Sample 520993 Laboratory Documentation Package (LDP) as well as an extension of deadline to communicate his intention with respect to the opening and analysis of his B-Sample 520993.
15. On 28 May 2020, prior to providing the Rider with the A-Sample 520993 LDP, the UCI requested again a list and the details of use of all the supplements and medications the Rider used in the fifteen (15) days preceding the doping control.
16. On 29 May 2020, the Rider submitted a list of products he allegedly consumed in the fifteen (15) days preceding the AAF and submitted internet pictures of each product. However, he provided only limited information as to the dosage and date of use for each product.
17. On 5 June 2020, the UCI sent the A-Sample 520993 LDP in relation to the AAF for GHRP-6 to the Rider. The UCI also requested the Rider to confirm his intention regarding the B-Sample 520993 opening and analysis. Additionally, the Rider was asked to provide clarification on the supplements and medications he consumed within the fifteen (15) days preceding the AAF.
18. On 9 June 2020, the Rider among others provided clarifications as to his use of supplements and medications. He also requested the chain of custody (COC) documents relating to the Samples from the Mexican Laboratory and an extension of the deadline to communicate his intentions regarding the B-Sample 520993 opening and analysis.
19. On 12 June 2020, the UCI granted the Rider a final deadline to communicate his intentions concerning the B-Sample 520993 opening and analysis.
20. On 25 June 2020, having not heard back from the Rider concerning the B-Sample 520993 opening and analysis, the UCI: (i) informed the Rider that the UCI considered that he had waived his right to the analysis of the B Sample; and consequently (ii) asserted an UCI ADRV in relation to his AAF

for GHRP-6. In the same communication, the Rider was granted a two-week time limit to provide his explanation with respect to the AAF.

21. On 26 June 2020, the Rider suggested that he was waiting for documents related to the chain of custody of the Sample.
22. On the same day, the UCI submitted the chain of custody form and the internal chain of custody of the Sample from the Mexican Laboratory to the Rider. At the same time, the UCI once again requested the Rider to confirm whether he would like to have his B Sample opened and analysed.
23. On 1 July 2020, the Rider informed the UCI that he requested the B-Sample 520993 to be opened and analysed.
24. On 3 July 2020, the UCI requested the Rider to complete and return a document to confirm his intention with respect to the B Sample 520993 opening and analysis.
25. On 6 July 2020, the Rider informed the UCI that he would not attend the opening and analysis of the B-Sample 520993 and that he would not appoint any representative to attend it on his behalf.
26. On 8 July 2020, the UCI informed the Rider that the B-Sample 520993 opening and analysis would take place on 9 July 2020 in the presence of an independent witness.
27. On 9 July 2020, the analysis of the B-Sample 520993 took place at the Montreal Laboratory in the presence of an independent witness. The Montreal Laboratory's analysis of the B-Sample 520993 confirmed the presence of GHRP-6 in the Rider's urine.
28. On 14 July 2020, the UCI informed the Rider of the results of the B-Sample 520993 analysis and of the assertion of the UCI ADRV in relation to his AAF for GHRP-6. In the same communication, the Rider was granted a two-week time limit to provide his explanation of the AAF and/or to provide substantial assistance within the meaning of Article 10.6.1 of the UCI ADR 2015.
29. Having not heard back from the Rider within the relevant deadline, on 3 August 2020, the UCI granted the Rider with a final deadline until 10 August 2020 to provide his explanations concerning the AAF.
30. On 10 August 2020, the UCI reminded the Rider that his deadline to respond would expire on the same day.
31. On 19 August 2020, having not heard back from the Rider, the UCI offered him an Acceptance of Consequences pursuant to Article 8.4 of the UCI ADR 2015. The Rider was advised that he was not obliged to accept the proposed Acceptance of Consequences, however, that if he did not, the UCI would initiate disciplinary proceedings before the UCI Anti-Doping Tribunal in accordance with the UCI ADR.
32. On 28 September 2020, the UCI granted another deadline for the Rider to provide his position concerning the proposed Acceptance of Consequences.
33. On 6 January 2021, the UCI provided the Rider with a final deadline to confirm whether or not he agreed with the proposed Acceptance of Consequences.
34. On 15 January 2021, the Rider informed the UCI that he was investigating *“the process and outcome of where [his] sample was for the 2 months that it isn't accounted for. [He] trust[s] the UCI process but [he] can't do the same for the processes in Mexico. [He] feel[s] that the process in Mexico wasn't fair to [him] because [he] ha[s] a hard time understanding how the laboratory cannot specify where [his] sample was. [He] was tested 1 month before in Colombia and 3 weeks*

after Winston-Salem both test where negative". He stated that he was still investigating the Samples' chain of custody in Mexico together with his lawyer and an investigator and that he would update the UCI of the results of his investigations accordingly.

35. On 25 January 2021, the UCI informed the Rider that should he not provide any additional information, the matter would be referred to the Tribunal.
36. On 28 June 2021, the UCI requested the Rider to update it in relation to the investigations he referred to in his correspondence from 15 January 2021. The UCI also informed the Rider that if it did not receive a response to the matter by 2 July 2021 at the latest, the matter would be submitted without further notice to the Tribunal.
37. Having not heard back from the Rider, the UCI referred the Rider's case to the Tribunal pursuant to Article 8.3 of the UCI ADR 2021 and Article 13 of the UCI ADT Rules.

III. PROCEDURE BEFORE THE TRIBUNAL

38. In accordance with Article 13.1 UCI ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of a petition to the Secretariat on 16 August 2021.
39. In the UCI Petition the UCI requested the following relief:
 - *Declaring that the Rider has committed an Anti-Doping Rule Violation;*
 - *Imposing on the Rider a Period of Ineligibility of 4 years starting on the date of notification of the Tribunal's decision;*
 - *Holding that the period of provisional suspension served by the Rider since 18 May 2020 shall be credited against the period of ineligibility imposed by the Tribunal;*
 - *Disqualifying all the results obtained by the Rider between 25 April 2019 and 18 May 2020;*
 - *Ordering the Rider to pay a fine of [REDACTED]; and*
 - *Ordering the Rider to pay the costs of results management by the UCI (2'500.- CHF), the costs of the B Sample analysis (USD 350.-) and the costs of the Laboratory Documentation Package (USD 400.-).*
40. On 17 August 2021, the Secretariat of the Tribunal appointed Ms Helle Qvortrup Bachmann to act as Single Judge in the present proceedings in application of Article 14.1 UCI ADT Rules.
41. On 19 August 2021, in application of Article 14.4 UCI ADT Rules, the Tribunal informed the Rider that disciplinary proceedings had been initiated against him before the Tribunal and that Ms Helle Qvortrup Bachmann had been appointed as Single Judge of the Tribunal. Furthermore, the Rider was informed that any challenge to the appointment of the Single Judge and any objection to the jurisdiction of the Tribunal should be brought to the Secretariat within 7 days of the receipt of the correspondence, and that he was granted a deadline of 3 September 2021 to submit his answer in conformity with Articles 16.1 and 18 of the UCI ADT Rules.
42. The Rider did not submit an Answer to the Petition within the stated deadline, nor respond in any way to the Tribunals communication of 19 August 2021.
43. On 7 September 2021, in light of the Rider's failure to submit an Answer, the Single Judge exceptionally granted the Rider additional time to submit an Answer by setting a new deadline on 22 September 2021 for the Rider to submit his Answer. In the same communication, the Rider was informed that if the Rider should fail to submit his Answer, the Single Judge would render her Judgment based on the documents on file.

44. The Rider, again, did not submit an Answer, nor respond to the communication.
45. On 27 September 2021, the Single Judge declared the proceedings closed and confirmed that she would render her Judgment based on the documents on file in accordance with Article 16.2 UCI ADT Rules.
46. On 28 September 2021, the Rider submitted an email to the Tribunal. The email was written in Spanish, which is not the language of the proceedings in accordance with the UCI ADT Rules Article 8. The communication was a short email, and the communication was not an answer to the substantive part of the case at hand.
47. As a response to the Rider's communication of 28 September 2021, the Tribunal informed the Rider on 1 October 2021, that since the Tribunal had received no answer to the UCI's petition from the Rider within the stated deadline, the Single Judge would render her Judgment based on the documents on file.

IV. JURISDICTION OF THE TRIBUNAL

48. The jurisdiction of the Tribunal follows from Article 8.2 UCI ADR and Article 3.1 UCI ADT Rules according to which *"the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 UCI ADR"*.
49. Article 3.2 UCI ADT Rules provides that *"Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction"*.
50. In this case, the UCI asserted the anti-doping rule violation following a results management/investigation process under Article 7 UCI ADR; the Rider is a license-holder within the meaning of the UCI ADR and is bound by the UCI ADR; and neither of the Parties raised any objection to the jurisdiction of the Tribunal within said deadline.
51. Therefore it follows that the Tribunal has jurisdiction to decide on this matter.

V. APPLICABLE RULES

52. Article 27 of the UCI ADR 2021 provides the transitional provisions with respect to the application of the respective version of the UCI ADR. Article 27.1 UCI ADR 2021 provides that *"These Anti-Doping Rules shall apply in full as of 1 January 2021 (the "Effective Date")"*.
53. Article 27.2 UCI ADR 2021 states the following:

*"Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date shall be governed by **the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in these Anti-Doping Rules or the Code, unless the panel hearing the case determines the principle of "lex mitior" appropriately applies under the circumstances of the case [...]"***

54. Based on Article 27.1 and 27.2 UCI ADR 2021, the case at hand shall be governed by the substantive rules applicable at the time of the alleged anti-doping rule violation, because there is no “lex mitior” issue in the case at hand.
55. The relevant sample was collected on 25 April 2019.
56. Article 25.1 UCI ADR provides that the effective date of the 2015 edition of the UCI ADR is 1 January 2015. Since the relevant doping control was carried out after this date, and before the effective date of the 2021 edition of the UCI ADR, the Single Judge shall apply the 2015 edition of the UCI ADR.
57. Article 26 UCI ADT Rules provides that “*the Single Judge shall apply the [UCI] UCI ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law*”.
58. As to the other “*standards referenced therein*” the Tribunal notes that part E of the introduction of the UCI ADR provides as follows:

“Under the World Anti-Doping Program, WADA may release various types of documents, including (a) International Standards and related Technical Documents, and (b) Guidelines and Models of Best Practices.

The UCI may, consistent with its responsibilities under the Code, choose to (a) directly incorporate some of these documents by reference into these Anti-Doping Rules, and/or (b) adopt Regulations implementing all or certain aspects of these documents for the sport of cycling.

Compliance with an International Standard incorporated in these Anti-Doping Rules or with UCI Regulations (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard or UCI Regulations were performed properly.

All documents binding upon Riders or other Persons subject to these Anti-Doping Rules are made available on the UCI Website, in their version effective and as amended from time to time.”

A. The relevant legal framework

59. Article 2.1. and 2.2 UCI ADR defines the relevant anti-doping rule violation as follows:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample

- 2.1.1. *It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to a Rider’s Fault. This rule has been referred to in various CAS decisions as “Strict Liability”. A Rider’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]

- 2.1.2. *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider’s A Sample; or, where the Rider’s B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its*

Metabolites or Markers found in the first bottle.

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

2.1.3 *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation.*

2.1.4 *As an exception to the general rule of Article 2.1, the Prohibited List or other International Standards or UCI Regulations incorporated in these Anti-Doping Rules may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.*

2.2 Use or Attempted Use by a Rider of a Prohibited Substance or Prohibited Method

2.2.1 *It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

2.2.2 *The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*

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

B. Burdens and Standards of proof

60. As to the burden and standard of proof, Article 3.1 UCI ADR reads as follows:

"The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.[...]"

61. As to the methods of establishing facts and presumptions, Article 3.2 UCI ADR provides:

"Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

[Comment to Article 3.2: For example, the UCI may establish an anti-doping rule violation under Article 2.2 based on the Rider's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete Biological Passport.]

- 3.2.1 *Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge.*

CAS on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear amicus curiae, or otherwise provide evidence in such proceeding

- 3.2.2 *WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*

If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

[Comment to Article 3.2.2: The burden is on the Rider or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. If the Rider or other Person does so, the burden shifts to the UCI to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]

- 3.2.3 *Departures from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Rider or other Person establishes a departure from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which could reasonably have caused an antidoping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the UCI shall have the burden to establish that such departure did not cause 11 the Adverse Analytical Finding or the factual basis for the anti-doping rule violation. [...]"*

C. Sanctions and Consequences

62. The UCI ADR provide for different types of consequences in case of an UCI ADRV.
63. The UCI is requesting the Tribunal to impose the sanctions of ineligibility, disqualification of results and monetary fine.

1. Period of Ineligibility

64. As for the standard period of Ineligibility Article 10.2 UCI ADR provides as follows:

“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 *The period of Ineligibility shall be four years where:*

10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.*

10.2.1.2 *The anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was intentional.*

10.2.2 *If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

10.2.3 *As used in Articles 10.2 and 10.3, the term ‘intentional’ is meant to identify those Riders who cheat. The term therefore requires that the Rider or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”*

65. As for the possibilities to reduce the aforementioned periods of Ineligibility based on fault, Articles 10.4 and 10.5 of the UCI ADR state as follows:

“10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

*If a Rider or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.
[...]*

**10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence
[...]**

10.5.2 *Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1*

If a Rider or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Rider or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years. [...]

2. Disqualification of results

66. In relation to the Disqualification of results in competitions subsequent to sample collection or commission of an anti-doping rule violation Article 10.8 UCI ADR provides as follows:

“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider

obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.[...]"

67. In relation to the commencement of the period of Ineligibility Article 10.11 UCI ADR provides as follows:

"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed. [...]"

10.11.3.1 If a Provisional Suspension is imposed and respected by the Rider or other Person, then the Rider or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Rider or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal. [...]"

3. Mandatory fine and costs

68. In relation to the Financial Consequences, Article 10.10.1 UCI ADR provides as follows:

"In addition to the Consequences provided for in Article 10.1-10.9, violation under these Anti-Doping Rules shall be sanctioned with a fine as follows.

10.10.1.1 A fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3.

[Comments: 1. A member of a Team registered with the UCI shall be considered as exercising a professional activity in cycling. 2: Suspension of part of a period of Ineligibility has no influence on the application of this Article].

The amount of the fine shall be equal to the net annual income from cycling that the Rider or other Person was entitled to for the whole year in which the anti-doping violation occurred. In the Event that the anti-doping violation relates to more than one year, the amount of the fine shall be equal to the average of the net annual income from cycling that the Rider or other Person was entitled to during each year covered by the anti-doping rule violation.

[Comment: Income from cycling includes the earnings from all the contracts with the Team and the income from image rights, amongst others.]

The net income shall be deemed to be 70 (seventy) % of the corresponding gross income. The Rider or other Person shall have the burden of proof to establish that the applicable national income tax legislation provides otherwise. Bearing in mind the seriousness of the offence, the quantum of the fine may be reduced where the circumstances so justify, including:

- 1. Nature of anti-doping rule violation and circumstances giving rise to it;*
- 2. Timing of the commission of the anti-doping rule violation;*
- 3. Rider or other Person's financial situation;*
- 4. Cost of living in the Rider or other Person's place of residence;*
- 5. Rider or other Person's Cooperation during the proceedings and/or Substantial Assistance as per article 10.6.1.*

In all cases, no fine may exceed CHF 1,500,000.

For the purpose of this article, the UCI shall have the right to receive a copy of the full contracts and other related documents from the Rider or other Person, the auditor or relevant National Federation.

[Comment: No fine may be considered a basis for reducing the period of Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules].”

69. As for the liability for costs of the procedures, Article 10.10.2 UCI ADR provides as follows:

“If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Tribunal determines otherwise:

- 1. The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
- 2. The cost of the result management by the UCI; the amount of this cost shall be CHF 2’500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
- 3. The cost of the B Sample analysis, where applicable.*
- 4. The cost incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1’500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
- 5. The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*
- 6. The cost for the documentation package of Samples analyzed for the Biological Passport, where applicable. [...]”.*

70. As for the liability for costs of the proceedings, Article 28 UCI ADT Rules provides as follows:

- “1. The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.10.2 para. 1 UCI ADR.*
- 2. As a matter of principle the Judgment is rendered without costs.*
- 3. Notwithstanding para. 1 above, the Tribunal may order the Defendant to pay a contribution toward the costs of the Tribunal. Whenever the hearing is held by videoconference, the maximum participation is CHF 7’500.*
- 4. The Tribunal may also order the unsuccessful Party to pay a contribution toward the prevailing Party’s costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts. If the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.”*

VI. THE FINDINGS OF THE TRIBUNAL

71. The case at hand presents the following main issues:

- A. Does the Rider’s non-participation in those proceedings pose a problem?
- B. Has the UCI successfully established that the Rider committed a violation of Article 2.1 and/or 2.2 UCI ADR?
- C. If so, what are the consequences of such anti-doping rule violation?

A. Does the Rider’s non-participation in these proceedings pose a problem?

72. The Rider did not make any submissions to the Tribunal during the current proceedings. The Rider did though send an e-mail to the Tribunal on 28 September 2021 (para 53). The e-mail was written

in Spanish. The e-mail contained a communication from the Rider which was not an answer to the substantive part of the case at hand, as the communication did not bring an explanation from the Rider as regards the Rider's view on the case at hand.

73. The UCI ADT Rules do not require a response from a Rider in order to issue a decision. According to Article 16.2 UCI ADT Rules, the Tribunal may proceed with the case and render a Judgment if a Defendant fails to submit an Answer. Thus, the Rider's failure to participate in the proceedings before the Tribunal does not prevent the Single Judge from resolving this case, so long as the proceedings were conducted in a way which ensures due process, and in particular the Rider's right to be heard (Article 10.1 UCI ADT Rules).
74. The UCI ADR also do not require a response from the Rider in order to pursue an anti-doping rule violation. Instead, it provides specific rules to ensure proper notification. According to Article 14.1.1 UCI ADR, the UCI may provide notice inter alia to the Rider by "*registered or ordinary mail by post*" or by "*electronic mail*". In addition, Article 6.3 UCI ADT Rules provides that "*notifications and communications shall be sent to the email address indicated by the Parties*" and Article 9.4 UCI ADT Rules further provides that "*Notice shall be deemed to have occurred when sent by email to the addressee. The burden of proof that the addressee was, without his fault, not in a position to have knowledge of such notice shall be on the addressee.*" The Tribunal respected these specific rules throughout the course of the proceedings by sending the communication to the Rider by both electronic and registered mail.
75. While proper notification need not necessarily comprise actual knowledge¹ the Rider did have actual knowledge of the proceedings during the UCI's results management process. Indeed, the Rider corresponded to the UCI via e-mail in the period between 21 May 2020 to 15 January 2021.
76. After the UCI filed its Petition to the Tribunal, the Rider however ceased all communication until the day after the Single Judge declared the proceedings closed (para 52).
77. During the hearing phase, the Tribunal also granted the Rider additional time to submit his Answer.
78. Thus, in view of the above and the evidence before her, the Single Judge concludes that the Rider's procedural rights were not breached, including the right to be heard. The Rider had knowledge of the proceedings before the Tribunal, and the Rider corresponded with the UCI during the UCI's results management process. Furthermore the Rider has been enabled by both the UCI and the Tribunal to defend himself and his legal interests, including the chance to express his views on all relevant facts, to submit written explanations to the Tribunal and to present his own evidence. Instead, the Single Judge considers that the Rider voluntarily waived his right to present his position regarding the alleged anti-doping rule violations and its consequences.
79. The Single Judge remains obliged to ensure that the Judgment is both factually and legally well-founded. In doing so, the Single Judge will limit herself to the case file, having in mind that she is not in any case bound by the Parties' prayers for relief (Article 26 UCI ADT Rules).

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

80. The UCI submits that the Rider committed an anti-doping rule violation within the meaning of Article 2.1 and/or 2.2 UCI ADR, which conclusion the UCI derives from the fact that the analysis of

¹ Article 14.1.1 UCI ADR, see also for a confirmation of this a recent CAS award, CAS 2017/A/4996, IAAF v. Guerfi, Award of 20 October 2017, para. 14, which (like the UCI ADR) considered that notification is properly given once it enters the "sphere of control" of the recipient, giving the recipient possibility to become aware of the contents of the notice.

both the A and B Sample collected from the Rider on 25 April 2019 revealed the presence of GHRP-6.

81. The Single Judge has evaluated all the facts, allegations, arguments and evidence put in front of her.
82. A violation of Article 2.1 UCI ADR is evaluated according to the principle of Strict Liability. According to the definition of Strict Liability in Appendix 1 UCI ADR, this principle provides that *“it is not necessary that intent, Fault, Negligence, or knowing Use on the Rider’s part be demonstrated by the Anti-Doping Organization in order to establish an anti-doping rule violation”*. In particular, the UCI ADR instructs that sufficient proof of an anti-doping rule violation is established – inter alia – by the *“presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives the analysis of the B sample and the B Sample is not analysed; or, where the Rider’s B Sample is analysed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider’s A Sample”*. The analysis must be conducted by a WADA-accredited laboratory (or a laboratory otherwise approved by WADA) (Article 6.1 UCI ADR).

1. Standard of proof

83. It follows from UCI ADR Article 3.1, that the standard of proof shall be *“whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt”*.

2. Conclusion

84. In the present case, the analysis of both the A and B Sample collected from the Rider revealed the presence of GHRP-6, and the analysis was conducted by a WADA-accredited laboratory (Montreal Laboratory).
85. Article 2.1.2 UCI ADR provides, that sufficient proof of an anti-doping rule violation under Article 2.1 can be established by the *“presence of a Prohibited Substance or its Metabolites [...] in the Rider’s A Sample [...] or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites [...] found in the Rider’s A Sample [...]”*.
86. In evaluating all the facts, allegations, arguments and evidence before her, and applying said standard of proof in the context of the assessment of evidence before her, the Single Judge is comfortably satisfied that the Rider committed an anti-doping rule violation of Article 2.1 UCI ADR in the form of Presence of a Prohibited Substance.
87. The Single Judge also notes that the UCI contends that an anti-doping rule violation of Use under Article 2.2 of the UCI ADR is also established. However, in light of the fact that the Single Judge has already held that the Rider committed a violation of Article 2.1 of the UCI ADR, the question of whether the Rider also committed a violation of Article 2.2 of the UCI ADR is of no practical consequence, since both bear the same consequences. Thus, it is considered unnecessary to address the issue of whether the Rider also committed a violation of Article 2.2 of the UCI ADR.
88. In the same vein, it is unnecessary to address whether both ATFs for clenbuterol shall be considered as AAFs considering that according to Article 10.7.4.1 of the UCI ADR, the Rider’s AAF

for GHRP-6 and ATFs for Clenbuterol would to be considered as one single ADRV for the purposes of sanctioning.²

C. Consequences of the anti-doping rule violation

89. Comfortably satisfied that the Rider committed an anti-doping rule violation, the Tribunal must decide upon the consequences of the violation.

1. Period of Ineligibility

90. The UCI submitted that the Tribunal must impose a four year period of Ineligibility on the Rider.

91. For first time violations of Article 2.1 UCI ADR, the starting point in determining the sanction is Article 10.2 UCI ADR. According to Article 10.2.1.1 UCI ADR, the period of Ineligibility to be imposed shall be four years where the anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.

92. Since the Rider did not submit an Answer in these proceedings, the Single Judge concludes that the Rider failed to discharge his burden of proof to convince this Tribunal, on a balance of probability, that the violation was not intentional.

93. Furthermore, since the Rider did not submit an Answer in these proceedings, the Single Judge concludes that the Rider did not establish that any of the Fault-related reductions in Articles 10.4 or 10.5 should apply to the case at hand, or that any other reductions or suspensions of the period of Ineligibility for reasons other than Fault as set forth in Article 10.6 UCI ADR are available in the case at hand.

94. In conclusion, the Single Judge finds that a period of Ineligibility of four years shall be imposed on the Rider.

a) Commencement of the period of Ineligibility

95. A period of Ineligibility of four years is imposed on the Rider. The Tribunal has to determine the commencement of the period of Ineligibility.

96. Article 10.11 UCI ADR provides that the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility and that if a Provisional Suspension has been imposed and respected by the Rider, then the Rider shall receive a credit for such period of Provisional Suspension.

97. It is undisputed between the Parties that the Rider respected the Provisional Suspension. Therefore the Rider shall receive a credit for the period of the Provisional Suspension pursuant to Article 10.11.3.1 UCI ADR.

98. Therefore, the period of Ineligibility shall commence on the date of the decision, i.e., 21 December 2021. The Provisional Suspension already served by the Rider, starting from 18 May 2020 until the date of the present Judgement, shall be credited against the four-year period of Ineligibility.

² The Single Judge can only note that the present case involved a Mexican rider and both his sample which were reported as ATF for clenbuterol were collected in Mexico, a country where it is acknowledged that clenbuterol is used as a growth promoter for cattle, lamb, poultry, and swine according to the WADA Stakeholder notice regarding potential meat contamination cases,

2. Disqualification

99. The UCI in its Petition requests the Tribunal to disqualify *“all results obtained by [the Rider] between 25 April 2019 and 18 May 2020”*.
100. The Single Judge takes note of the request in the UCI’s Petition, but also acknowledges that according to Article 26.2 UCI ADT Rules *“[t]he Single Judge is not bound by the Parties’ prayers for relief”*.
101. From Article 10.8 UCI ADR it follows, that in addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.
102. The positive sample was collected on 25 April 2019.
103. Article 10.8 UCI ADR requires Disqualification of all results following this date up to the date the Provisional Suspension was imposed, unless *“fairness requires otherwise”*.
104. The Rider’s adverse analytical finding for GHRP-6 dates from 25 April 2019, and he was provisionally suspended on 18 May 2020.
105. The Single Judge, in exercising her discretion, finds that all competitive results obtained by the Rider from 25 April 2019 until the date of the Provisional Suspension (i.e., 18 May 2020) shall be disqualified.

3. Mandatory fine and costs

a) Application of the mandatory fine

106. According to Article 10.10.1.1 UCI ADR, a fine shall be imposed in case a Rider exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3. This prerequisite is fulfilled in the case at hand.
107. With respect to the calculation of the fine, the UCI submits that the Rider was entitled to an average annual gross income from cycling in 2019 of ██████████.
108. Therefore, according to the UCI, a mandatory fine of ██████████ should be imposed unless the Rider can establish that a reduction of the fine would be justified in application of the criteria set out in Article 10.10.1.1 UCI ADR.
109. The Rider has not contested the above figures and not put forward any arguments for reduction of the fine.
110. The Single Judge therefore confirms that a monetary fine in the amount of ██████████ shall be payable by the Rider to the UCI.

b) Liability for Costs of the Procedures

111. In application of Article 10.10.2 UCI ADR, the Single Judge holds that the Rider shall reimburse to the UCI the following amounts:

- CHF 2'500 for the costs of the results management by the UCI (Article 10.10.2.2 UCI ADR);
- USD 350 for the costs of the B Sample analysis; and
- USD 400 for the costs of the Laboratory documentation package.

VII. COSTS OF THE PROCEEDINGS

112. In application of Article 28.2 UCI ADT Rules, the Tribunal decides that the present Judgment is rendered without costs.
113. Notwithstanding the above, the Tribunal may order the unsuccessful Party to pay a contribution toward the prevailing Party's costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts (Article 28.4 UCI ADT Rules). The provision states that if the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.
114. The Single Judge notes that the Rider did not submit an Answer to the Petition and furthermore no hearing was held in this case.
115. In light of the circumstances of this case, the Single Judge finds it appropriate to not order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VIII. RULING

116. In light of the above, the Tribunal decides as follows:
- 1. Mr Luis Ricardo Villalobos Hernández has committed an Anti-Doping Rule Violation (Article 2.1 UCI ADR).**
 - 2. Mr Luis Ricardo Villalobos Hernández 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. 21 December 2021. However, considering the credit for the period of provisional suspension already served by Mr Luis Ricardo Villalobos Hernández, starting from 18 May 2020, Mr Luis Ricardo Villalobos Hernández's period of ineligibility effectively began on 18 May 2020, and shall end four years from this date, i.e., 17 May 2024.**
 - 3. The results obtained by Mr Luis Ricardo Villalobos Hernández between 25 April 2019 and 18 May 2020 are disqualified.**
 - 4. The results obtained by Mr Luis Ricardo Villalobos Hernández between 25 April 2019 and 18 May 2020 are disqualified.**
 - 5. Mr Luis Ricardo Villalobos Hernández is ordered to pay to the UCI the amount of [REDACTED] as monetary fine.**
 - 6. Mr Luis Ricardo Villalobos Hernández is ordered to pay to the UCI:**
 - a) the amount of CHF 2'500 for the costs of the results management;**
 - b) the amount of USD 350 for the costs of the B Sample analysis; and**
 - c) the amount of USD 400 for the costs of the Laboratory documentation package.**
 - 8. All other and/or further reaching requests are dismissed.**
 - 9. This Judgment is final and will be notified to:**
 - a) Mr Luis Ricardo Villalobos Hernández;**
 - b) Comité Nacional Antidopaje de México**

- c) UCI; and
- d) WADA.

117. This Judgment may be appealed before the CAS pursuant to Article 30.2 UCI ADT Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 UCI ADR.

Helle Qvortrup Bachmann
Single Judge