

**Independent Anti-Doping Disciplinary Panel – Jamaica**

No. 14 of 2022

**In the Matter of Jamaica Anti-Doping Commission v. Mr. John Campbell**

**Decision on JADCO complaint that athlete breached Article 2.3 of the 2021 Anti-Doping Rules**

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

Represented by Mr. Andre Scheckleford, Attorney-at-law instructed by Hart, Muirhead Fatta

v.

**Mr. John Campbell, athlete, Kingston, Jamaica, W.I. Respondent**

Represented by Ms. Ayanna Thomas and Mr. Mark Cowan, Attorneys-at-law instructed by Nunes, Scholefield Deleon & Company.

**1. The Parties**

1.1 Mr. John Campbell (hereinafter ‘Mr. Campbell’) is a cricketer who competes on the international level for the West Indies Cricket Team.

1.2 The Jamaica Anti-Doping Commission (JADCO) is an Anti-Doping Organisation in Jamaica and is charged with the responsibility to administer the anti-doping programme in Jamaica. It has the necessary authority, in keeping with its core functions, to implement the 2021 World Anti-Doping Code and the International Standards.

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

1.2. JADCO and the IADP derive their respective jurisdictions from the 2021 Anti-Doping Rules ('JADCO rules').

## 2. The Factual background

2.1 In the instant case the complainant alleges that the athlete, Mr. John Campbell, breached Article 2.3 of the JADCO rules.

2.2 Article 2.3 of the JADCO rule reads "The following constitute Anti-Doping Rule Violations: *“Evading, Refusing or Failing to Submit to Sample Collection. Evading Sample collection or, without compelling justification, refusing or failing to submit to Sample collection after notification as authorised under these Rules or other applicable anti-doping rules.”*

2.3 The athlete refutes the complainant's case and counter asserts that he has a compelling justification as a complete defence pursuant to Article 2.3 of the JADCO Rules.

2.4 On the morning of 20<sup>th</sup> April 2022 when the team from JADCO attended upon the athlete's premises to take a blood sample the athlete asserts that after telling persons, one whom he/athlete said he did not recall him/a made individual saying that if he walked away that this would amount to a refusal, or remembering have much interaction with this gentleman (vide Par. 37 of the witness statement), "what if I wasn't here?" to which the gentleman/male individual now accepted by the IADP as being Dr. Aldean Facey, to which quote Dr. Facey said "then it wouldn't be a missed test", and the athlete replied "then I am not here".

2.5 The athlete was duly notified by a letter dated 10<sup>th</sup> May 2022 that he had a case to answer in relation to breaching Article 2.3 of the JADCO Anti-Doping Rules 2021.

2.6 In the aforesaid JADCO letter the athlete was informed of his rights pursuant to the Anti-Doping in Sports Act and the JADCO Rules which included inter alia, the right for the athlete to respond to the assertion that he committed an anti-doping rule violation and that he must deliver an explanation in writing to the Executive Director, Mrs. June Spence Jarrett same to be delivered to JADCO's office, Ballater Multiplex, 1 Ballater Avenue, Kingston no later than 17<sup>th</sup> May 2022 ("JADCO letter").

2.7 The athlete proffered an explanation in a letter dated the 13<sup>th</sup> June 2022 in response to the JADCO letter which he said was in his junk mail inbox. In his letter he stated that on the morning of 20<sup>th</sup> April 2022 he was feeling unwell and disoriented and that he was invoking his right to a fair hearing.

2.8 A letter also dated 13<sup>th</sup> June 2022 was written on the athlete's behalf by the West Indies Players' Association that the athlete would like to invoke his right to a fair hearing and in fact the athlete's letter was appended to this letter from West Indies Players' Association.

2.9 The athlete was then written to by IADP informing him of the disciplinary hearing which was scheduled for a first hearing on the 06<sup>th</sup> July 2022.

2.10 The athlete then had subsequent disciplinary hearings on the following days 19<sup>th</sup> July 2022, 25<sup>th</sup> July 2022, 02<sup>nd</sup> August 2022, 17<sup>th</sup> August 2022, 18<sup>th</sup> August 2022 and 05<sup>th</sup> September 2022. The testimonies were given mostly by face to face and by ZOOM and were from the following in this order:- (1) Mr. Michael Brown, (2) Mrs. June Spence Jarrett, (3) Dr. Aldean Facey<sup>1</sup> (4) Ms. Nordia Williams (5) Ms. Christina Brown (6) Dr. Israel Dowlet<sup>2</sup> and (7) Mr. John Campbell.

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<sup>1</sup>Via Zoom

<sup>2</sup>Via Zoom

2.11 In addition to these verbal testimonies witness statements were given by the following individuals namely Ms. Tricia Yearwood, Wavel Hinds, Junior Bennett and Joan Beecher.

2.12 The IADP also had the following to consider, (i) a bundle and submissions prepared by JADCO, (ii) Closing Submissions on behalf of the athlete, (iii) Index to Expert Medical Reports, (iv) Reply to Authorities Raised and Relied on by the Respondent, (v) Further submissions on behalf of John Campbell on issue of “letter of authority” and in reply to Complainant’s Submissions dated September 1, 2022, (vi) Bundle prepared by the Respondent and (vii) a video of the athlete’s residence, surroundings of the athlete’s residence and the wrought iron gate to the athlete’s residence.

### **3. The issues for determination**

3.1. The main issue for the IADP to determine is whether there was compliance with the International Standard Testing and Investigations of WADA (‘ISTP’ and adopted by Jamaica Anti-Doping Act as per rule 5.1 to wit 5.0 Notification of Athletes.

3.2. Whether the athlete failed to comply with the Article 2.3 of the Anti-Doping Rules.

### **4. The Complainant’s evidence**

4.1 The Complainant’s main witnesses, Dr. Aldean Facey, as Doping Control Officer (DCO) and Miss Nordia Williams as Chaperone, both testified that they arrived at the athlete’s premises at **approximately 05:47am**. This is supported by the driver of the JADCO vehicle, Mr. Michael Brown, who transported them to the athlete’s premises, where he said the JADCO personnel arrived at the athlete’s residence at approximately 06:00am.

4.2 The Complainant has asserted that they (DCO and Chaperone) called out several times to the athlete, after he was called by his Landlady, Miss Joan Beecher, and remained at the athlete's residence outside a huge wrought iron gate, for some 53 minutes. This evidence was supported again by the driver of the JADCO vehicle and Miss Christina Brown, Blood Collection Officer, who both testified that they stayed for about an hour at the athlete's residence.

4.3 The Landlady, Miss Joan Beecher has stated in her witness statement that the JADCO team arrived at the athlete's residence at about 05:00am. This is contradicted however by the athlete himself who stated that the JADCO team arrived at quote "I looked at my phone and realised it was around 05:50am". The landlady stated that it took John at least 5 minutes to go outside which would be approximately 5:55am. IADP is more inclined to believe that the JADCO team arrived at approximately 05:47am and the athlete came out from his residence at approximately 06:00am.

4.4 JADCO has asserted that the most cogent evidence on the time the JADCO team arrived was after a complete notification after at or 06:00am.

4.5 Mrs. June Spence Jarrett testified that JADCO can test outside the athlete's designated time slot. JADCO has relied on ISTI 5.2.2<sup>3</sup> that they may require any athlete over whom it has testing authority...to provide a sample at any time and at any place.

4.6 The Complainant cited the case of Arbitration CAS 2-16/A/4631 William Brothers v Federation Internationale de Natation (FINA) award of 21 March 2017 in support of their submissions. In this case the athlete posited that he had a panic attack and so for health reasons he

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<sup>3</sup>The comment to Article 5.2.2 is that JADCO may obtain additional authority to conduct testing by means of bilateral or multilateral agreements with other signatories. Unless the athlete has identified a sixty (60) minute Testing window between the hours of 11:00pm and 06:00 am or has otherwise consented to Testing during that period, Jamaica Anti-Doping Commission will not test an Athlete during that period unless it has a serious and specific suspicion that the Athlete may be engaged in doping. A challenge to whether Jamaica Anti-Doping Commission had sufficient suspicion for testing during this time shall not be a defence to an anti-doping rule violation based on such test or attempted test.

could not take the test. Being confronted with the Appellant's refusal to submit to the blood test, the visit having lasted 20 to 30 minutes, the DCO and the BCO departed the residence.

4.7 The Appellant in the cited case submitted that he was "incapacitated by the panic attack to the point of being unable to make a clear and rational decision, thus making his actions and response completely involuntary and without intent". He had no control over the onset of the attack. It was unavoidable and beyond his control.

4.8 At paragraph 84 of the cited case the Panel held the view that the Appellant's decision to refuse the test (alternatively, his decision to acquiesce in his father's decision to refuse the test) were made under mounting stress, perhaps under extreme stress. It is even possible that the Appellant experienced the onset of "panic" in the classical sense of that term. But the panel is unwilling to find a situation in which the Appellant experienced a complete loss of his cognitive senses, being unable to think and to rationalize with a concomitant loss of control.

4.9 The Athlete's female friend and witness in the instant case Miss Tricia Yearwood stated that they were awakened around 05:30am. This contradicts the time that the Athlete himself and his landlady stated he was awakened and the time the JADCO team arrived respectively. She went on to say quote "About 4 minutes later, John returned to the room. He didn't say much except that the people came to do testing but came at the wrong time" unquote.

4.10 The Complainant in their submissions posit that the Athlete has not demonstrated, on a balance of probabilities, that he was so cognitively or otherwise impaired so as to make it "physically, hygienically and morally" impossible for a sample to be collected, and as such no compelling justification can be argued.

4.11 The Complainant has submitted that the Athlete was notified by the LETTER OF AUTHORITY (undated) by Ms. Nordia Williams (Chaperone) signed by Mrs. June Spence Jarrett, Executive Director.

4.12 In the case of Arbitration CAS 2013/A/3279 Viktor Troicki v International Tennis Federation (ITF) award of 5 November 2013 which treated with the issue of an athlete failing to provide a blood sample blood collection after being notified by the chaperone that he/she has been randomly selected to provide one. At paragraph 8.54 of this cited case the ITF argues there is no requirement, in the Code, the Programme, the International Standard for Testing (IST), or otherwise, that a DCO do everything he or she can do to persuade the athlete to provide a sample. **To the contrary, as long as the DCO notifies the athlete properly, and makes it clear that the athlete is required to provide a sample, and that a failure to do so may be treated as an anti-doping rule violation, then the DCO has complied with all of the requirements of the IST. It is the athlete's responsibility to comply with his obligations under the Programme.**

4.13 At paragraph 9.15 of the Troicki case it was reported...Notwithstanding the reasons for the misunderstanding which the Panel has set out, the Panel finds that whether the Athlete had a compelling justification for failing to provide a blood sample needs to be determined objectively. The question is not whether the Athlete was acting in good faith, but, whether objectively, he was justified by compelling reasons to forego the test.

4.14 At paragraph 9.16 of the Troicki case it was reported further, the Panel has found that the Athlete was informed by E. that he could face sanctions if he did not take the test and was told by her that it was not DCO's decision as to whether there would be consequences if he failed to provide a blood sample. Objectively, therefore in the circumstances, the Athlete did not have a

compelling justification to forego the test and his subjective interpretation of the events which led to the misunderstanding cannot amount to a compelling justification.

4.15 At paragraph 9.25 of the Troicki case it was reported that the athlete's fault is measured against his fundamental duty to comply with the Programme and the WADC.

4.16 In the case of Arbitration CAS A4/2016 Sarah Klein v Australian Sports Anti-Doping Authority and Athletics Australia it was reported at paragraph 122 that the CAS decisions referred to by ASADA support the view that the onus is on the Athlete to demonstrate what she contends to be the "compelling justification" for her violation. The Sole Arbitrator accepts the submission by ASADA that the onus lies on the Athlete to establish a compelling justification for her actions.

4.17 At paragraph 126 of the Klein case it was held with respect to interpreting "compelling justification" that if the position were otherwise and the Athlete's subjective evidence could carry the day the Athlete would in effect become the sole judge of the question and the obvious purpose of Article 2.3 would be circumvented.

4.18 In the case of Arbitration CAS 2015/A/4063 World Anti-Doping Agency (WADA) v Czech Anti-Doping Committee (CADC) & Remigius Machura Jr. award of 5 November 2015 it was held that a refusal to submit to sample collection is presumed to have been committed intentionally and the burden of proving that the violation was not committed intentionally lies with the athlete.

4.19 In the case of Arbitration CAS 2008/A/1744 Union Cycliste Internationale (UCI) v Monika Schachl & Osterreichischer Radsport Verband (ORV), award of 27 July 2009 it was held in that case that the International Federation (IF) is obligated to demonstrate that the doping control testing was conducted in a manner consistent with the requirements in the anti-doping rules of the IF. However,

the IF's burden does not include the obligation to prove that there was compelling justification for failing to submit to the anti-doping test. A "compelling justification" is a defence that it is for athletes to raise and substantiate if and after the IF has successfully discharged its burden of proof under its rules.

4.20 In the case of Arbitration CAS 2008/A/1744 Union Cycliste Internationale (UCI) v Monika Schachl & Osterreichischer Radsport Verband (ORV) at paragraph 13 it was held that the UCI's obligation to prove that doping control was organized and administered in a manner consistent with the UCI Rules extends only to a showing of facts that demonstrate that doping control was conducted in a way that did not compromise the athlete's rights.

4.21 At paragraph 14 of the Schachl case aforementioned it was held that the UCI's burden does not include the obligation to prove that there was no compelling justification for failing to submit to the anti-doping test. A "compelling justification" is a defence that is for athletes to raise and substantiate if and after the UCI has successfully discharged its burden of proof under Article 15 (3) of the UCI Rules.

## **5 The Respondent's evidence**

5.1 The Respondent has refuted the Complainant's case to answer by raising two key points<sup>4</sup>, one being that there was no charge letter issued to the athlete and so he was not formally charged pursuant to Article 7 of the International Standards for Results Management (ISRM) which is mandatory for JADCO to comply. In essence he was not properly notified pursuant to the WADA Code and the International Standards for Testing and Investigation (ISTI).

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<sup>4</sup>The Respondent did lay out at paragraph 27 of their Closing Submissions 6 central issues for the panel to determine but this was distilled to this one key point.

5.2 The second key point they argue is that the Respondent had a defence of compelling justification in failing to submit to the blood sample collection process.

5.3 The Respondent referred and relied on the case CAS 2019/A/6148 World Anti-Doping Agency v Mr. Sun Yang & Federation Internationale de Natation (FINA) in support of their submissions. This case had to consider whether the athlete had violated Article 2.3 (Refusing or Failing to Submit) with respect to a blood sample collection. In this cited case “Sample Collection Personnel” as per the ISTI includes the Doping Control Officer and Blood Collection Officer and Chaperone. The Athlete Sun Yang questioned the DCA<sup>5</sup>'s credentials.

5.4 Article 5.3.3 ISTI requires Sample Collection Personnel to provide “official documentation...evidencing their authority to collect a Sample from the Athlete”. Article 5.4.1 (b) further requires that athletes be informed “of the authority under which the Sample collection is to be conducted”. Finally, Article 5.4.2 (b) requires the DCO or Chaperone to “[identify themselves to the Athlete using the documentation referred to” in Article 5.3.3]. Read together these provisions mean that the IDTM team was obligated to provide two pieces of evidence: first, a Letter of Authority” for the Sample Collection Personnel on an individual level confirming that they are agents of IDTM and have delegated authority (and qualifications) to test the (*visi*) Mr. Sun Yang specifically.

5.5 The Respondent relies on the Sun Yang case in support of their case that the JADCO Blood Sample Collection team had no identification or Authorization Letter and so the Athlete had no way of knowing he had been specifically selected to undergo testing. Consequently, the IDTM's failure to observe the mandatory ISTI rules is that the sample collection attempt was null and void because IDTM could not validly assume jurisdiction over the Athlete given that (1) Sample Collection

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<sup>5</sup>DCA in IDTM's usage is referred to as the Chaperone

Personnel were unable to show their authority to test the Athlete on that date, (ii) two out of three members of the Sample Collection Personnel were unable to prove their affiliation with IDTM and (iii) the BCA was not qualified to collect blood samples.

5.6 At paragraph 314 of the Sun Yang case it was held that the Panel rather doubts that Article 5.4.2 (b) has much to say on the central question of what “official documentation” in Article 5.3.3 really means. Notably, Article 5.4.2 (b) does not impose obligations on the entire sampling team. Indeed it addresses one person only: either the DCO **or the Chaperone** (hence the phrasing “DCO/Chaperone”), depending on which one of them notifies the athlete during the initial contact.

5.7 All that Article 5.4.2 (b) accomplishes, therefore is to reiterate that certain documentation must be shown, and to clarify that the DCO (or the Chaperone) must be the one to show it. Article 5.4.2 (b) in short answers the question of *who*, not *what*.

5.8 At paragraph 337 of the Sun Yang case it was held because the ISTI only require the Letter of Authority and proof of a DCO’s identity in order to notify athletes, it follows that there was no requirement for the BCA to “produce unequivocal evidence” of her qualifications to draw blood, or indeed of any other evidence. It was enough that her qualifications (e.g. the PNC and the BCA’s Statement of Confidentiality) in fact exist, be kept on file, and be affirmed by the DCO.

5.9 At paragraph 369 of the Sun Yang case it was held, But nothing in Annex A.3.3 (a) requires the DCO, on the spot, to [proclaim a definitive anti-doping rule violation....It is enough for Sample Collection Personnel to tell an athlete, in a language he can understand, the consequences of a possible failure to comply. As to whether an actual violation has occurred, this is for the Testing Authority to determine and prosecute; such a proclamation is not within any DCO’s competence].

5.10 At paragraph 370 of the Sun Yang case it was held that the DCO appears to have tried, on several occasions, to inform the Athlete of the potential consequences of his refusal to submit to the

Sample Collection. It appears that the only reason there was no metaphorical bang to borrow the Doping Panel's phraseology, is because the Athlete and his entourage themselves prevented the DCO from finishing. *Ex injuria jus non oritur*<sup>6</sup>.

5.11 At paragraph 373 of the Sun Yang case it was held that the Sample Collection of 4-5 September 2018 was not pristine. Neither, however was it of a kind whose illegitimacy was so manifest that the Athlete's dramatic conduct could find compelling justification in the World Anti-Doping Code. The FINA Doping Panel correctly diagnosed the Athlete's conduct as a "gamble". It was the wrong gamble.

5.12 In the case of Mumtaz Properties Ltd; Wetton (as Liquidator of Mumtaz Properties Ltd) v Ahmed and others reported at [2011] EWCA Civ 610 which the Respondent relied on, which was an appeal, on whether proceedings brought by the Liquidator of the Company pursuant to s. 212 of the Insolvency Act 1986 for, among other matters, a declaration that the Respondents to the proceedings were liable to repay the amount of the directors' loan accounts and compensation for misfeasance and breach of fiduciary duty.

5.13 It appears that the Respondent is relying on a small point in this cited case, although not specifically spelt out as such, that contemporary documents are always of utmost importance viz-a-viz a version of events which is to be preferred. The IADP Panel agrees.

5.14 The Respondent placed in their bundle List of Authorities the case of Cunliffe v Goodman Vol.1 AER (commencing at page 721) with Cohen, L.J. This case had to consider keeping premises in good and sufficient repair during the term of a lease. This case was of no assistance to the Respondent's case.

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<sup>6</sup>Latin for "law (or right) does not arise from injustice. The phrase implies that "illegal acts do not create law".

5.15 The Respondent's medical witnesses, Dr. Israel Dowlat and Dr. Winston De La Haye attempted to explain the athlete's own explanation of his interaction with the JADCO Blood Sample Collection Team on the 20<sup>th</sup> April 2022 as "not thinking clearly and in a disoriented state"<sup>7</sup>.

5.16 Dr. Winston De La Haye's witness statement reported inter alia, that the Athlete had a very stressful and physically demanding period of extensive training the week leading up to April 20, 2022, combined with food that resulted in an upset stomach and diarrhoea the night before April 20, 2022. He suggested that his "confusion" in the early morning of 20 April 2022 was similar to previous experiences he has had since he first became Covid positive.

5.17 Dr. Winston De La Haye's witness statement also reported that he had a long period of sadness, shame, guilt, upsetting nightmares, reliving the traumatic event, expecting the worst to happen, being hypervigilant and having a very negative view of himself since his traumatic event at age 13. Prior to April 20, 2022 there was no reported evidence as far as the IADP can ascertain of any traumatic event of the Athlete and this was being raised formally for the first time in a written medical document.

5.18 Dr. Winston De La Haye diagnosed the Athlete on his second virtual visit of July 18, 2022 with Post Traumatic Stress Disorder (PTSD) with Depression as listed in the DSM-5-TR. The same condition is listed as Complex PTSD in the ICD-11.

5.19 Dr. Winston De La Haye went on to report that a Specialist in Neurology/Infectious Diseases/Neuropsychology would be in a better position to assess Mr. Campbell for these conditions (treating with Cognitive Symptoms of Long Covid). Dr. De La Haye concluded that Mr. Campbell experienced traumatic abuse as a teenager which was not addressed professionally. Without treatment (Pharmacotherapy, combined with Psychotherapy) it is unlikely that he will

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<sup>7</sup>See paragraph 35 of the Witness Statement of John Campbell

escape further impairment in his personal, family, social, and occupational areas of life). As it relates to drug testing, he is very clear that even while we work on his condition, he must be prepared to comply with the “Doping Control Team” as that (*sic*) they see fit to get a sample for testing from him.

5.20 Commander Dr. Israel Dowlat submitted a medical report on behalf of the athlete and Cricket West Indies that gave a dissertation of sorts on Covid 19 and Mental Function citing several references such as one on ‘Cognitive and Neuropsychiatric Manifestations of Covid-19 and Effects on Elderly Individuals with Dementia’ and ‘Exercise and sports after Covid-19 guidance from a clinical perspective’.

5.21 Dr. Dowlat testified that he didn’t assess the patient<sup>8</sup> meaning the Athlete. He testified further quote “All I did was to present the research on the literature that was available”.

5.22 The witness statements of Miss Tricia Yearwood, Miss Joan Beecher and Mr. Wavel Hinds (Exhibits 7,8 and 9 respectively) have also been considered.

## **6. Analysis of the evidence**

6.1 If it is that the athlete was so disoriented and so has asserted the defence of “compelling justification” how is it that he was able to inform Miss Tricia Yearwood, his ‘contemporaneous witness’ coherently that they (JADCO Sample Collection Team) came at the wrong time? As the Panel found in the Williams’ case on a consideration of the objective facts and circumstances of the Athlete’s refusal to submit to a blood sample collection these do not permit a finding of “compelling justification”.

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<sup>8</sup>See page 103 of 173 Verbatim Notes of Evidence

6.2 The gist of the *Machuracase*<sup>9</sup> cited by the complainant was that the Athlete was notified by the DCO that he had to submit to sample collection. The Respondent argues that on an interpretation of the provisions of Article 5.4 of the ISTI none of these was complied with. The IADP Panel disagrees for the following reasons, firstly when the athlete was informed by the DCO, Dr. Facey, after the athlete asked<sup>10</sup> “what if I was not here?”, “then it would not amount to a missed test”, meant that the Athlete was fully in control of his cognitive faculties and just chose to ‘gamble’ by walking away rather than having his blood sample taken. To adopt the finding of the Panel in the Sun Yang case that was the wrong gamble.

6.3 The medical reports and viva- voce testimony of Dr. Dowlat after the facts do permit the defence of “compelling justification” pursuant to Article 2.3 JADCO Anti-Doping Rules 2021. Nor was the interaction of the JADCO Blood Sample Collection Team with the Athlete on the day in question one that the IADP finds was a situation in which the Athlete experienced a complete loss of his cognitive senses, being unable to think and to rationalize with a concomitant loss of control<sup>11</sup>.

6.4 The Complainant’s witnesses’ version of events are to be preferred as their testimonies have been consistent while that of the respondent’s witnesses are inconsistent and uncandid.

6.5 The IADP upon reading the contemporaneous documents exhibited to the complaint is of the view that the letter of authority was on the person of the Chaperone on the 20<sup>th</sup> April 2022 and was to have been handed to the Athlete for whom they specifically went to do a blood sample collection

6.6 However the actions of the Athlete prevented the Chaperone from showing him the Letter of Authority is satisfied to the requisite degree that the Chaperone had same on her person on the

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<sup>9</sup>See paragraph 4.18 herein

<sup>10</sup>See paragraph 37 of Witness Statement of John Campbell

<sup>11</sup>See paragraph 84 of the Williams Brothers case, *supra*. paragraph 4.6

20<sup>th</sup> April 2022. The insinuations that this Letter of Authority was produced after the fact is not supported by fact.

6.7 The IADP is also satisfied that the DCO did warn the Athlete of the consequences of a failure to comply with their directions.

## 7. Legal Analysis

7.1 It is worth repeating that at paragraph 8.54 of the Troicki case the ITF argues there is no requirement, in the Code, the Programme, the International Standard for Testing (IST), or otherwise, that a DCO do everything he or she can do to persuade the athlete to provide a sample. To the contrary, **as long as the DCO notifies the athlete properly, and makes it clear that the athlete is required to provide a sample, and that a failure to do so may be treated as an anti-doping rule violation, then the DCO has complied with all of the requirements of the IST.** It is the athlete's responsibility to comply with his obligations under the Programme. On the facts of the instant case the JADCO Team on the morning in question complied with JADCO Rule 5.0.

7.2 As long as the athlete is notified properly and the IADP finds that **the Chaperone can also notify the athlete of the request for a blood sample collection pursuant to ITSI 5.4.1** the athlete must comply with such a request unless the athlete can raise the defence of "compelling justification".

7.3 JADCO Rule 5.2.2 and the comment to this Article has stated that testing must take place between 6 a.m. and 11 p.m but the fundamental principle remains that an Athlete may be required to provide a sample at any time and at any place by any Anti-Doping Organization with authority to conduct testing, whether or not the selection of the Athlete for Testing is in accordance with such

criteria. Accordingly, an Athlete may not refuse to submit to a blood sample collection on the basis that such testing is not provided for in the Anti-Doping Organization's test Distribution plan and/or is not being conducted between 6 a.m. and 11 p.m. and /or that the Athlete does not meet the relevant selection criteria for Testing or otherwise should not have been selected for Testing.

## **8 Orders-**

### **The Independent Anti-Doping Panel finds as follows:-**

8.1 The Independent Anti-Doping Disciplinary Panel is persuaded to a comfortable degree of satisfaction that the athlete committed an anti-doping rule violation namely breach of JADCO Rule 2.3

8.2 The Independent Anti-Doping Disciplinary Panel does not find on the evidence presented that the athlete's anti-doping rule violation was not intentional.

8.3 In the circumstances of this case the athlete is ineligible for a period of four (4) years, as per JADCO Rule 10.3.1, and the time will be counted from the date of the Athlete's notification of the anti-doping rule violation that is from the 10<sup>th</sup> day of May 2022.

Dated this 06<sup>th</sup> day of October 2022

  
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**Kent P. Gammon – Chairman IADP**

  
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**Dr. Marjorie Vassell – Member of the IADP**

  
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**Dean Martin – Member of the IADP**