Arbitration CAS 2007/A/1405 & 1418 Nat Cooper & Karl Grant v. British Weightlifting Association (BWLA), award of 15 October 2008

Panel: The Hon. Michael Beloff Q.C. (United Kingdom), Sole Arbitrator

Weightlifting
Doping (testosterone; human chorionic gonadotropin)
Contamination of the sample through using of the doping control room as a changing room
Chain of custody
Sample degradation through high temperature

1. **Even if there is something in the air arising from the use of the doping control room as a changing room, and even if this finds its way into the athlete's sample, is highly unlikely to have any effect whatsoever on the measure of HCG. Further, had some degradation occurred, this would be likely to reduce the level of HCG and not to augment it.**

2. **It is axiomatic that the links in the chain of custody must be robust; there must be no chance that the samples which arrive at the doping control centre were not those taken at the doping control room or that they can have been tampered with en route. So long as the bottles containing the A and B samples arrive at the Doping Control Center with seals unbroken and there are no signs of tampering, and so long as the appealing parties produce no evidence to suggest that it could have – or indeed did – take place en route (any more than before the journey), the links in such chain of custody are considered as robust.**

3. **In general, it is admitted that temperature of the storage and transport environments have no impact on the stability of the sample.**

These two appeals arise out of urine tests taken at the British Weight Lifting Championships on 16th July 2005 ("the event") which proved positive for prohibited substances. The prohibited substance was different in each case but the nature of the challenges have common features and, although each appeal must be decided on its individual merits there has been no objection to them being dealt with at a single hearing.

In each instance the Appellant was found guilty by the British Disciplinary Panel ("the Panel"); and in each instance the two year suspension automatically imposed for a first doping offence has long since expired. Nonetheless the issue is of importance both to the Appellants who seek to cleanse their

reputation and to the Respondent who is resisting a challenge to the propriety and efficacy of its (and UK Sports') drug testing regime.

Both Mr Cooper and Mr Grant are weightlifters who have won various British championships and represented their country in international competition.

BWLA is the governing body for the sport of weightlifting in Great Britain.

The prosecution of Mr Cooper was based upon the allegation that he provided a sample of urine at the event which contained a testosterone: epitestosterone ("T/E") ratio in excess of 4:1 and was inconsistent with normal endogenous production.

In bringing the prosecution, BWLA relied upon the report on Mr Mr Cooper's urine sample A035571 dated 3 August 2005 prepared by the Drug Control Centre at Kings College, London ("the DCC") which stated:

> *"The urine sample coded A035571 was found to contain a ratio of testosterone to epitestosterone greater than the threshold stated in the 2005 Prohibited List of the World Anti-Doping Code".*

Mr Cooper's original defence to the charge contained arguments relating to (*inter alia*):

- an alleged series of departures from WADA International Standards for Laboratories;
- alleged failures in relation to his longitudinal studies;
- alleged failures in relation to incorrect scientific procedures adopted;
- alleged failures in relation to the procedure for the "B-sample" test;
- an alleged series of departures from WADA International Standards for Testing.

However, prior to the hearing of the case by the Panel on 9 August 2007, Mr Cooper prepared a list of issues which remained in dispute, and focussed solely upon an alleged failure by the DCC, namely that it reported an adverse analytical finding even though the concentration of free epitestosterone exceeded 5%.

On the evidence before it (which did not include testimony from Mr Cooper himself) and after hearing Counsel for both parties the Panel was unanimously of the view and comfortably satisfied that Mr Cooper was guilty of a doping offence.

Mr Cooper appealed against this finding to CAS, and on 28th January 2008 filed a "Defence Brief" which indicated that he wished to reinstate various of those matters which he had elected not to pursue before the Disciplinary Committee, and also to raise new allegations.

The prosecution of Mr Grant was based upon an allegation that he provided a sample of urine at the event which contained human chorionic gonadotropin ("HCG") in a concentration that was inconsistent with normal endogenous production.

In bringing the prosecution BWLA relied on a report on Mr Grant's urine sample [035573 dated 3rd August 2005 and prepared by the DCC] which stated:

> *"The urine sample coded A035573 was found to contain human chorionic gonadotropin (HCG) greater than 10 International Units per litre (calibrated against the third International Standard 75/537) as described in the details attached. Such concentration so deviates from the range of values found in humans so as not to be consistent with normal endogenous production".*

The concentration of HCG in Mr Grant's sample was 13.1-15.1 IU/L in one assay and 15.1-19.5 IU/L in another independent assay. The lowest HCG result recorded in Mr Grant's urine sample was 13.0 IU/L The Panel accepted that the normal endogenous HCG urinary concentrations in males is generally less than 3 IU/L.

Mr Grant's original defence to the charge contained arguments relating to (*inter alia*):

- departures from WADA International Standards for Laboratories;
- failures in relation to incorrect scientific procedures adopted;
- failures in relation to the procedure for obtaining B-sample tests;
- departures from WADA International Standards for Testing.

However, prior to the hearing of the case on 9 August 2007 by the Panel, Mr Grant prepared a list of issues which remained in dispute focussing solely on the allegation that the DCC reported an adverse analytical finding in circumstances in which it could not discount the possibility of bacterial sample degradation.

On the evidence before it (which did not include testimony from Mr Grant) and after hearing Counsel for both parties, the Panel were unanimously of the view and comfortably satisfied that Mr Grant was guilty of a doping offence.

Mr Grant has appealed against the Panel's decision, and on 27 May 2008 filed a "Defence Brief" which indicated that he wished to reinstate various of the grounds of complaint which he had elected not to pursue before the Panel and also raised entirely new allegations.

LAW

CAS Jurisdiction

1. The Appellants and BWLA initially agreed that the Appellants could appeal the Panel's decisions to an independent arbitrator chosen by CAS, nominated by the President of the CAS Appeals Arbitration Division.

2. There were objections raised by BWLA relating – in broad terms – as to whether either Appellant had satisfied the conditions as to time for instituting an appeal or otherwise for engaging such arbitration.

3. It is not necessary to consider the substance of such objections nor the interlocutory rulings upon them, since, by the time the matter came before CAS for a hearing it was sensibly agreed that CAS enjoyed jurisdiction.

Admissibility

4. There was objection raised by BWLA to the failure by both Appellants to comply with time limits both in the CAS rules and in the directions that the Arbitrator gave. These objections were mirrored by counter objections by the Appellants that BWLA were guilty of the same type of failure.

5. It is not necessary to consider the substance of such objections nor the interlocutory rulings upon them. By the time the matter came before CAS such objections were no longer pursued by either side.

6. I would make two observations only. Firstly the delays in bringing these proceedings, relating as they do to events three years past, are unacceptable. CAS was in no way responsible for such delays, and I make no apology for having sought through various interlocutory directions to bring the proceedings to a head as swiftly as was feasible. Secondly I deemed it to be in the interest of both Appellants and of the BWLA that this long standing dispute should finally be resolved on the basis of all available evidence, and without either side being able to say that it had been deprived of an opportunity to ventilate its case because of some successful, but technical, objection by the other side.

7. An issue was also taken initially by BWLA as to whether either Appellant could raise new grounds not raised before the Panel, *a fortiori* grounds originally raised and abandoned before it.

8. According to Article R57 of the Code, a CAS Panel (or, inferentially, a single arbitrator) shall have full power to review the facts and the law. The CAS Panel will consequently hear the case *de novo* and is not limited to considerations of the evidence that was adduced before a domestic (or international) Panel in the first instance or indeed at any appellate stage. The CAS Panel can consider all new evidence produced before it. See e.g. CAS (*CAS 94/129*, CAS Digest, p.187, 203). Only if it were, in any particular circumstance, unfair to a Respondent to permit an Appellant to advance his full case would I envisage any qualification to this procedure, which is designed to ensure a comprehensive and independent enquiry into sporting disputes by an expert body.

9. In any event I was informed at the hearing that BWLA (sensibly in my view) did not wish to press the point.

10. The Appellants, however, did not pursue the following allegations at the hearing:

    a. The matters set out at para. 4.0 of Mr Cooper's notice of appeal in relation to alleged B Test Violations;

    b. The allegations set out in para. 5.0 in relation to longitudinal studies;

    c. The allegation in relation to non-disclosure of evidence contained in para. 6.0 of Mr Cooper's notice of appeal;

    d. The allegations contained in para. 5.0 of Mr Grant's notice of appeal in relation to alleged B test violations;

    e. The matters set out in para. 6.0 of Mr Grant's notice of appeal in relation to alleged non-disclosure of evidence.

Applicable law

11. Applying the provisions of Rule 58 of CAS, the applicable law was contained in the applicable regulations – the identity of which was a matter in issue – and English law (being the law of domicile of the BWLA).

12. The hearing took place in the Spy Room in Grays Inn in London on July 22nd and 23rd 2008 (although the seat of arbitration remains in Lausanne). The Appellants were represented by Dr Simon Davis. BWLA was represented by Ms Eliza Holmes of Counsel. On this occasion both Appellants chose to give evidence and submit themselves to cross examination. Oral evidence was also given for the Appellants by Mr Greenwood, a former international weightlifter, Mr Purdue, a Welsh international weightlifter and Mr Scott (expert). Oral evidence for BWLA was given by Mr Jones who was in charge of the doping control room, Professor David Cowan in charge of the laboratory and Professor Vivian James (expert).

13. The BWLA Doping Control Rules ("the BWLA Rules") effective at the material time, provided, so far as material as follows:

CHAPTER 1
Overriding Objectives

1. These rules have the following overriding objectives:

1.1 To ensure that the sport of weightlifting and powerlifting and all other related activities throughout the United Kingdom are conducted free of the use of banned substances or methods;

1.2 That anyone found guilty of using a banned substance or method is punished appropriately;

1.3 That competitors who are not using banned substances or methods are able to demonstrate that;

1.4 That any offence is dealt with justly and expeditiously and in a manner which is proportionate to the importance of the case, the complexity of the issues, the financial resources of those involved and the overall interest of the sport and the sportsman involved in having matters determined justly and promptly.

2. ***These Rules must always be interpreted in the light of the overriding objectives.***

CHAPTER 2
Introduction

3. Definitions

3.1 In these rules unless the context otherwise requires the following words shall have the following meanings:

……

Banned Substance	*shall mean any substance referred to in clause 5 or 6 of these Rules*
BWLA	*shall mean the British Weightlifters Association*
Code	*shall mean World Anti-Doping Code 2003 or any modification thereof for the time being in force*
Disciplinary Committee	*shall mean the disciplinary Committee of BWLA appointed by the Clerk to the Disciplinary Committee of BWLA in accordance with the BWLA Disciplinary Code*
Drug Control Officer	*shall mean the person appointed under Rule 65.1*

4. Scope of Competitions and Competitors Covered By These Rules

4.1 The Rules shall apply to:

4.1.1 any competition organised by or with the authority of or under the rules of BWLA;

4.4 A person shall be considered to be subject to the doping control jurisdiction of BWLA or an Affiliated Association if he is

4.4.1 a member of BWLA

4.4.2 taking part in an event organised by the BWLA or an Affiliated Association and is not subject to the jurisdiction of any other National Association in respect of doping control; and/or

4.6 To be eligible for participation in competitions held under BWLA rules, all members must make themselves available for testing when required.

CHAPTER 3
Prohibited Substances and Methods

5 The following substances and methods are prohibited:

5.1 Any substance or method prohibited by WADA and included in the Prohibited List;

5.2 Any substance or method prohibited by the International Weightlifting Federation or the International Powerlifting Federation;

5.3 The metabolite of any substance prohibited under the foregoing sub clauses.

6. Substances above certain concentrations

6.1 Where a prohibition consists of a prohibition of substance above a certain concentration the term "Banned Substance" shall mean the substance above that concentration.

7. Naturally Produced Prohibited Substances

7.1 Where a Prohibited Substance is capable of being produced by the body naturally a sample will be deemed certain to contain such Prohibited Substance where the concentration of the Prohibited Substance or is metabolite or markers and/or any other relevant ratios in the sportsman's sample so deviates form the range of values found in humans so as not to be consistent with normal endogenous production. A Sample shall not be deemed to contain a Prohibited Substance in any such case where the sportsman proves by evidence that the concentration of the Prohibited Substance or its metabolites or markers and/or the relevant ratio(s) in the sample is attributable to a pathological or physiological condition.

CHAPTER 4
Doping Offences

By the Sportsman

12. A doping offence under these Rules is committed when a sportsman:

12.1 has present in his bodily tissues or fluids a Banned Substance;

CHAPTER 6
Sampling Procedures

Authorised Methods

17. Subject to Rules 20 to 22, samples of urine for analysis under these Rules may be taken in accordance with the procedures approved at the time the sample is taken by

17.1.1 WADA

17.1.2 the Sports Council; or

17.1.3 any of the International Authorities; or

17.1.4 any Foreign Association

18. Samples of urine for analysis under these Rules may also be taken in accordance with any other procedure approved from time to time by the BWLA.

Departures From Procedures

19. Any departure from any of the procedures mentioned in Rule 17 shall not invalidate the programme unless this departure was such as to cast real doubt on the reliability of the sampling procedure

CHAPTER 7
Analytical Procedures

Laboratories

23. The samples taken under the procedures mentioned in Rules 17 and 18 shall be analysed in such laboratories as the body taking the sample shall select.

Procedure

24. The analysis of the sample shall be undertaken at such laboratory in accordance with the procedures for such analysis published by WADA at the time the analysis was undertaken.

Certification of Laboratories

25. If it is a condition of the procedure that the analysis shall be undertaken at a laboratory approved by WADA, the BWLA shall be entitled to rely on a certificate of WADA that the laboratory at which the analysis was undertaken was approved for that purpose by WADA.

Certificate of Results

26. Where the laboratory issues a certificate or statement of the results of the analysis of any sample, such certificate shall be conclusive proof of the matters stated therein unless the sportsman concerned can show that on the balance of probabilities the certificate is incorrect.

CHAPTER 8
Processing of Results

On Receipt of Analysis of A Sample

27. If the Laboratory shall delivery an analysis of the A sample that shows there are no Banned Substances present and no evidence of the use of Banned Methods in the sample, the Drug Control Officer shall (provided he has an address for the sportsman) notify the sportsman. If the Laboratory shall deliver an analysis that shows the presence of a Banned Substance or evidence of the use of a Banned Method in the sample then the provisions of Chapter 9 shall apply.

CHAPTER 9
Procedure on Adverse Finding

Initial Steps

28. If the Laboratory shall deliver an analysis that shows the presence of a Banned Substance in the sample then the Drug Control Officer shall:

28.1 satisfy himself that prima facie the chain of custody for the sample from the time it was taken until it reached the laboratory is in order;

28.2 satisfy himself that prima facie the analysis shows the presence of a Banned Substance;

28.3 satisfy himself that no clearance was given under Rule 15 which allowed the use of the Banned Substances.

29. If the Drug Control Officer is satisfied in accordance with Rule 28, he shall:

29.1 notify the sportsman giving the sample in writing that the laboratory has reported the presence of a Banned Substance in the sample provided, invite the sportsman to decide whether he wishes to attend the analysis of the B sample and if he does to invite him to attend for that purpose at a date and time to be agreed between the sportsman, the Drug Control Officer and the laboratory and in default of agreement to be a date and time to be agreed between the sportsman, the Drug Control Officer and the laboratory and in default of agreement to be a date and time of which not less than seven days notice has been given by the Chief of the Laboratory to the sportsman and the Drug Control Officer.

Power to Suspend on Adverse A Sample Finding

30. If the Chief Executive is informed under Rule 29 of an adverse finding in an A sample then subject to rule 7.6 he may be written notice to the sportsman concerned suspend the sportsman from participating in competition until the results of the B sample analysis are known.

CHAPTER 11
Power to Suspend Pending Outcome of Disciplinary Hearing

37. The Drug Control Officer shall inform the Chief Executive that in the Drug Control Officer's view there is evidence that a doping offence may have been committed or as a result of the decision of the Drug Control Officer under Rule 36.

38. If the Chief Executive is informed under Rule 37 of evidence to suggest that a doping offence may have been committed then subject to rule 7.6 he may by written notice to the sportsman concerned:

38.1 if the offence to which the evidence points is a failure or refusal to submit to doping control after having requested to do so suspend the sportsman from participating in competition until the decision of the Disciplinary Committee has been made; or

38.2 if the offence to which the evidence points is any other doping offence suspend the sportsman from participating in competition or team sessions or both or attending any event organised by or under the jurisdiction of the BWLA or any Affiliated Association under the decision of the Disciplinary Committee has been made.

Departures from Procedure

45. A departure from the procedures set out or referred to in these rules shall not invalidate the finding that a Banned Substance was present in a sample or that a Banned Method has been used or that a doping offence has been committed unless this departure was such as to cast real doubt on the reliability of such a finding.

Disciplinary Proceedings

46. If proceedings are started before the Disciplinary Committee they shall be conducted in accordance with the rules of BWLA relating to such proceedings.

Penalty

47. In the event that the Disciplinary Committee shall find the sportsman guilty of a doping offence they shall decide on the appropriate penalty in accordance with Chapter 14 of these Rules. Any suspension will take effect from the date of the decision of the Disciplinary Committee. Any suspension ordered by the Disciplinary Committee. The event in which the sportsman was competing when the sample was requested shall be rescored on the basis that he had not taken part but no other events between that event and the date of the hearing by the Disciplinary Committee shall be affected unless the Disciplinary Committee otherwise decides.

CHAPTER 14
Penalties

Penalties for Using Banned Substances or Banned Methods

48. If a sportsman or other person commits a doping offence then he will receive the punishment for such offence provided in the Code.

14. The British Weightlifter's Association Disciplinary Code 2002 provided, so far as material, as follows:

CHAPTER 2
Definitions

5. In this Code the following words and phrases shall (unless the context otherwise requires) have the following meaning:

"BWLA"	*Shall mean the British Weightlifters Association Ltd*
"Disciplinary Committee"	*Shall mean any Disciplinary Committee established under para. 16*
"Disciplinary Panel"	*Shall mean the Disciplinary Panel established under para. 7*
"Rules"	*Shall mean the rules for the time being in force of BWLA and shall include general and special bye-laws and any other regulation howsoever named for the regulation of the conduct of members of BWLA.*

CHAPTER 3
Formation of Disciplinary Panel and appointment of Clerks

8. BWLA shall appoint and maintain a permanent Disciplinary Panel.

9. BWLA shall appoint a single Clerk to all its Disciplinary Committees. The Clerk shall hold no other office in BWLA.

CHAPTER 4
Initial Work on Allegation

12. If it shall appear to BWLA that there is evidence of an offence against the Rules, they shall make further enquiries (if any) as they think fit to ascertain the position. In making such enquiries they shall be under no obligation to consult the person who may have broken the Rules although they may do so if they wish. They may delegate such enquiries to anyone who they think is able to carry them out. Such person shall report back to BWLA the result of his investigations.

13. If after making such enquiries, BWLA consider that there is evidence of a breach of the Rules, they shall forward to the Clerk of the Disciplinary Committee details of the allegations and the name and address of the person(s) alleged to have broken the Rules. They may appoint someone (who need not be a member of BWLA) to prosecute. If they do, they must notify the Clerk of the name and address of the prosecutor.

Duties of Clerk on receipt of Allegation

14. On receipt of an allegation, the Clerk shall verify that the allegation, if proved, would arguably constitute a breach of at least one of the Rules.

16. If the Clerk is satisfied that the allegation, if proved, would arguably constitute a breach of at least one of the Rules, he shall:

16.1 Notify the Defendant in writing of the allegation; and

16.2 Appoint a Disciplinary Committee of at least three independent people from the Disciplinary Panel to hear the allegation. The Disciplinary Committee shall appoint one of their number as Chairman.

CHAPTER 7
Preparation for Hearings

40. If the Defendant asks for a hearing the provisions of this Chapter shall apply.

CHAPTER 8
The Hearing

49. The Disciplinary Committee in conducting the hearing must apply the following principles:

49.1 Each side must have a fair opportunity to put their own case and to challenge that of the other side;

49.2 Each side must be allowed to place before the Committee any relevant evidence that they wish to have considered.

49.3 Where a witness gives evidence orally, the other side must be allowed to test that evidence. The Committee should restrain any cross-examination that is not relevant to the issues or which is designed to humiliate or distress the witness.

53. The Disciplinary Committee shall on the basis of the evidence and submissions made to it decide whether the allegations have been made out against the Defendant (unless the rules alleged to have been broken specify some other burden of proof) on the balance of probabilities.

56. The Disciplinary Committee find the allegations proved, they shall in respect of any offence for which there is a mandatory penalty in the Rules, impose such penalty and in respect of any other offence impose such penalty from those provided in the Rules as they consider appropriate.

CHAPTER 9
Matters incidental to a Hearing

59. Any party may place before the Disciplinary Committee evidence in any form that is relevant to the matters in issue. The Disciplinary Committee may decide how much weight (if any) may be given to such evidence.

60. The Disciplinary Committee may draw such inference as they consider justified from any absence of evidence which they consider material but shall invite the party whom they consider should have produced such evince to explain its absence.

61. Where a party requires to prove some fact that may be attested to by a certificate from the appropriate proper authority, the certificate of such authority shall be taken to be true until the contrary is proved on the balance of probabilities.

CHAPTER 10
Preparation for Hearings

67. Any party who is aggrieved by the decision of the BWLA Disciplinary Committee may appeal to an independent arbitrator. He shall give notice in writing of his desire to appeal to the Clerk to the BWLA Disciplinary Committee within 14 days of receiving the reasoned decision appealed against. A cheque in favour of BWLA for £250 shall accompany the notice.

68. Within 21 days of receipt of such an appeal, the Clerk shall contact the appellant or his representative and both parties shall use their best endeavours to agree upon an arbitrator who will be independent within the meaning of para. 6.

69. The arbitration shall be subject to English law and shall exclude the right of appeal to the High Court of England under Sections 1 and 2 of the Arbitration Act 1979 and the parties shall before the appointment of the arbitrator is made agree in writing to that effect.

70. The Arbitrator in conducting the hearing must apply the following principles:

70.1 Each side must have a fair opportunity to put their own case and to challenge that of the other side;

70.2 Each side must be allowed to place before the Arbitrator any relevant evidence that they wish to have considered.

70.3 Where a witness gives evidence orally, the other side must be allowed to test that evidence. The Arbitrator should restrain any cross-examination that is not relevant to the issues or which is designed to humiliate or distress the witness.

70.4 The overriding objectives of this Code should be met.

71. Subject to para. 70, the Arbitrary may adopt any method of proceeding at a hearing that he considers to be fair.

72. The Arbitrator shall have power to:

72.1.1 set aside any finding that an offence has been committed; or

72.1.2 remit any penalty or substitute a lesser penalty for any penalty for that imposed by the Disciplinary Committee.

Provided that the Arbitrator shall have no power to impose a lesser penalty than any minimum penalty provided by the Rules.

73. The decision of the arbitrator shall be final and binding on the parties.

CHAPTER 11
Minor Deviations From Procedure

75. A departure from the procedures set out in this Code or anything derived from this Code shall not invalidate any finding by any Disciplinary Committee unless that departure was such as to cast a real doubt on the reliability of such decision.

15. The World Anti Doping Code provided, so far as material

"3.2.1 WADA –accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis. The Athlete may rebut this presumption by establishing that a departure form the International Standard occurred. If the Athlete rebuts the preceding presumption by showing that a departure from the International Standard occurred, then IWF or its National Federation shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

3.2. 2 Departures from the International Standard for Testing which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete establishes that departures from the International Standard occurred during testing then IWF or its National Federation shall have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation"

(IWF 2005 Anti doping code).

16. The 2005 Prohibited List of WADC valid from 1 January 2005 provided, so far as material, as follows:

SUBSTANCES AND METHODS PROHIBITED AT ALL TIMES
(IN – AND OUT-OF-COMPETITION)

PROHIBITED SUBSTANCES

S1. ANABOLIC AGENTS

Anabolic agents are prohibited

1. Anabolic Androgenic Steroids (AAS)

…

(B) ENDOGENOUS (AAS)

…

Testosterone

Where a Prohibited Substance (as listed above) is capable of being produced by the body naturally, a Sample will be deemed to contain such Prohibited Substance where the concentration of the Prohibited Substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete's Sample so deviates from the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production.

…

S2. HORMONES AND RELATED SUBSTANCES

The following substances, including other substances with a similar chemical structure or similar biological effect(s), and their releasing factors, are prohibited:

…

3. Gonadotrophins (LH, HCG);

…

Unless the Athlete can demonstrate that the concentration was due to a physiological or pathological condition, a Sample will be deemed to contain a Prohibited Substance (as listed above) where the concentration of the Prohibited Substance or its metabolites and/or relevant ratios or markers in the Athlete's Sample so exceeds the range of values normally found in humans so that it is unlikely to be consistent with normal endogenous production.

Analysis

17. A threshold question was which rules constituted the relevant doping regime. Dr Davis contended for the WADA rules (and/or the rules of the IWF which I have found it unnecessary to cite) Ms Holmes for the BWLA's own rules. The debate was not merely an academic one. WADA rules are in ways potentially material to the outcome of the present appeal more athlete-friendly than those of the BWLA. Whereas, at any rate according to BWLA, their rules impose on the athlete the obligation of showing that the departure did have such effect, it is undisputed that WADA reverses the burden of proof and imposes on the regulator the obligation to show that any departure from the procedures for sample taking, sample protection and sample testing did not have the effect.

18. Since much of Dr Davis argument (although not all of it) could be summarised in the propositions

(i) the relevant rules must be imposed for some purpose, presumably the protection of athletes,

(ii) in consequence any departure from them must be presumed to have deprived athletes of their rights,

(iii) accordingly, for that reason alone, the positive test results must be ignored,

it was particularly important at the outset to identify which regime was in play.

19. In my view the resolution of this threshold issue depended on the proper construction of the BWLA rules, to whose jurisdiction the Appellants were indisputably subject. [Both Appellants were members of BWLA (Rule 4.4.1) and that the event was a BWLA event (4.1.1.1)] (*Modahl v. BAF*, 2002 1 WLR p. 1192). The fact that BWLA may have agreed to incorporate the rules of another organisation into their own rules by reason of their signature to UK Sports National Anti Doping Policy or otherwise would not avail the Appellants if BWLA had not done so. In principle such failure might give rise to a suit for breach of contract by WADA against BWLA; whether it would in fact or law do so or not is outside the realm of my inquiry in disposing of the present appeal. I cannot accept as a matter of construction or otherwise Dr Davis' ingenious submission that either the WADA Code (or the IWF Rules) confer third party rights on the athletes which are directly enforceable, (although they are undoubtedly intended to benefit athletes). Furthermore the Appellants had no legal basis on which to challenge any failure by BWLA to apply the WADA or IWF Rules. BWLA is not a body bound by principles of public

law, and in any event the Appellants have not sought to judicially review any decision of the Board.

20. The *TAS 2006/A/1119* decision relied on by Mr Grant is irrelevant, since it was not a case concerned with the application of the governing body's rules. Similarly, the decision of the *CAS 2007/A/1364* is clearly distinguishable, since the FAW Rules explicitly provided that *"those Rules must be read and construed in conjunction with FIFA Statutes and Regulations, and in case of a conflict, the FIFA rules shall prevail"*. Further, Article 1.8(a) of the FAW Rules provided that *"the Members of FAW must comply fully with FIFA Statutes and Regulations and ensure that these are also respected by their members"*.

21. In relation to the taking of samples, Rule 17 of the BWLA Rules explicitly states that samples may be taken in accordance with a number of possible procedures. Rule 18 of the BWA Rules explicitly states that samples may be taken in accordance with any other procedure approved from time to time by the BWLA. Such a procedure is set out in the DCO Handbook.

22. On the basis, as I have found, that the Appellants were bound by the BWLA Doping Control Rules ("the Rules"). UK Sport's DCO Handbook ("the DCO Handbook") constitutes "another procedure" for the purposes of Rule 18. The evidence of Mr Jones, which I accept, was that the DCO Handbook contained the procedure to be and actually followed by Doping Control Officers ("DCOs"). Additionally, Mr Purdue remembered that at some stage BWLA's weightlifters were provided with a copy of the DCO Handbook, no doubt to inform them of the procedure to be applied.

23. As a consequence of the application of the BWLA Rules, in my view, whereas the Board must establish pursuant to Rule 12 of the Rules the presence of a banned substance in the bodily tissues or fluids of a weightlifter the Appellants have the burden of showing not only that there has been a departure from these authorised testing and collection procedures, but also that any alleged departure was such as to cast real doubt on the reliability of the sampling procedure or finding. I cannot accept Dr Davis' submission that *"Rules 19 and 45 make no mention of who bears the burden, they state merely that real doubt must exist"*. The proviso introduced with the word *"unless"* clearly obliges the weightlifter to establish the consequences of the departure referred to and it is the weightlifter who has already been obliged, before even that stage is reached, to establish the facts to undermine the presumption of regularity in relation to either sampling or testing. Further, in relation to the test results recorded by the Drug Control Centre ("DCC"), the BWLA was entitled to rely upon statements of the results provided by the DCC, unless the Appellants could show on the balance of probabilities that those reported results were incorrect. In any case, as will appear hereinafter, this initial dispute on burden of proof, even if resolved in the Appellants' favour, would not have affected the outcome of the appeal.

23. Challenges in doping cases to positive findings are based conventionally on one or more of the following contentions:

    (i) the sample taking was imperfect so that it is uncertain that the sample tested was that of the athlete charged or that if it was, it was uncontaminated; ("sampling")

(ii) the links in the chain of custody were unsound with the same consequence; ("chain of custody").

(iii) The samples were not properly preserved until testing so that they degraded ("degradation").

(iv) the testing was imperfect so that the results, even of the athlete's uncontaminated sample, were unreliable ("testing").

24. Dr Davis eschewed none of these contentions. There is always a danger that if an advocate indiscriminately raises every possible point, the Tribunal may suspect that this is a camouflage for the absence of any point. But while some of Dr Davis's points were in my view more substantial than others I have sought nonetheless to give proper consideration to all of them

25. It is also necessary to note that, Mr Scott apart, no expert evidence was led on behalf of the Appellants. Dr Davis, on the basis of his own expertise, made submissions, in particular in relation to laboratory procedure and administration, which depended upon his construction and explanation of certain technical documents but without supporting scientific material. While I extended to him every latitude, I could not allow myself to ignore this vacuum. Unless he was able to elicit admissions rather than denials in cross-examination from the BWLA experts, I was in consequence, [unless the documents were unambiguously supportive of his points], all but compelled, if acting judicially, to accept the BWLA version.

A. Sampling

26. The case advanced by Dr Davis on sampling was essentially this; the doping control room was, contrary to WADA imperatives and best practice not secure; it was used at one and the same time for weighing in and doping control; the entry and exit log (produced only at the hearing itself) was incomplete; and such departures from proper procedure involved a risk that somehow the samples taken were not those bottled, or that, if they were, they might be in some way contaminated (the precise way in which this occurred was never spelt out but the overall assertion was clear enough).

27. It is necessary to set this case in context. The DCO Handbook refers to *"ideal (SIC) conditions for Doping Control Station"* and merely requires that a DC *"should meet the following criteria as closely as possible"*. Further, it recognises that it is not always possible to meet the specifications and *"where ideal facilities are not available to lead DCO should use appropriate discretion"*.

28. The WADA Standard for Testing says *"the DCO shall use a Doping Control Station which … ensures the Athlete's privacy and is used solely as a Doping Control Station for the duration of the Sample Collection Session. The DCO shall record any significant deviations from these criteria"*. So the former set targets rather than imposing duties: the latter was concerned with privacy.

29. A particular obstacle in the Appellant's path was the fact that each had signed a standard declaration on the standards Sample Collection Form (Urine*) "I declare that I am satisfied with the sample collection procedure and that the samples collected have been sealed and numbered as above"*. The only

qualification was on Grant's form where, under the rubric *"COLLECTION PROCEDURE"* he wrote *"No proof at the time of producing the sample that the collection jar was sterile"* an assertion to which I shall return. It could be argued that the Appellants were estopped from challenging from the satisfaction recorded in that declaration: but on any view the declaration required that only subsequent contradictory challenge to be assessed with care.

30. Three years after the event anyone who gave evidence could be forgiven for lacking perfect recollection of what took place. The BWLA denies that the DLS was used as a changing room at all. The evidence of Mr Jones was clear that he never allows DCSs to be used as a weigh-in location or as changing rooms, or for any other purpose, while doping control is being undertaken. Whilst Mr Greenwood and Mr Purdue insisted that they used the room for these purposes while testing was going on, the BWLA submits this is highly implausible, given that the room used was the women's changing rooms, and immediately next to the entrance to these rooms was the entrance to the men's toilets and changing rooms. Further, the Appellant's lay witness statements were in fact written by Dr Davis, which somewhat devalues them (Mr Purdue candidly accepted that his statement contained some factual errors).

31. Another allegation relates to the alleged failure to use sealed (and therefore sterile) equipment for urine sample collection: cf: the qualification on Grant, DCF. The evidence of Mr Jones was clear that he received the collection vessels in a box, and each one of them is independently sealed and tamper proof. Kittiwake, the supplier, states that their collection vessels are sterile at source. I accept this evidence. Regularity in this area and can be presumed: and Mr Jones would certainly have noticed any departure from the norm, and would not sensibly have used non-sterile vessels.

32. A further allegation from Mr Grant was that something in the air might have contaminated his sample. Evidence from Professor Cowan and Professor James was clear that even if there was something in the air arising from the use of the room as a changing room, and even if that something found its way into Mr Grant's sample, is highly unlikely to have any effect whatsoever on the measure of HCG. Further, had some degradation occurred, this would be likely to reduce the level of HCG. Finally Mr Grant's sample was not degraded, since none of the signs of degradation were present.

33. Mr Grant also maintained that he could not say whether some of the testing equipment might not have been interfered with prior to the start of the collection procedure. Dr Davis conceded that such a contention was fanciful, although he refused to discount it as a possibility. BWLA submit that the Appellants cannot seriously maintain, in the absence of any evidence whatsoever, that the equipment used for Mr Grant's urine was in fact tampered with. There were of course four positive and four negative tests arising from samples on the day. Mr Jones' evidence (not challenged in this respect by the Appellants) is clear that each athlete was given a choice of vessels at each step. Each item was, I repeat, tamper-proof. Further, Mr Jones was clear that he did not leave the DCS following his arrival at 11am until his departure from the venue. Again, this conjecture should be disregarded.

34. Mr Grant also alleged that the responses to certain questions in the Lead Independent Sampling Officer's Report were incorrect. There is no allegation of a breach of any of the rules in this respect, and in any event, it is impossible to determine any potential consequence, and reverse to Mr Grant of any incorrect answers. In any event, the answers were, in the BWLA's submissions correct.

35. I am prepared to accept for present purposes that not only the competitors tested (with their chaperones) and officials were allowed into the doping control room – and thus that the Entry/Exit Log was not comprehensive – although not the bizarre proposition that female competitors were being weighed while male competitors were urinating into containers (an unlikely scene that no one actually witnessed); but the Appellants eventually, as I understood their evidence, accepted that – consistent indeed with their signed declarations on the doping control forms – that any risk of the kind described did not in fact eventuate, and that no one could in fact have mixed up or manipulated the samples that they gave.

36. Having evaluated all these allegations and the evidence adduced by reference to them, I am entirely confident that the samples produced by the Appellants were the samples properly taken and duly bottled of which Jones took custody.

B. Chain of Custody

37. The next major issue related to the chain of custody. It is axiomatic that the links in such chain must be robust; there must be no chance that the samples which arrive at the doping control centre were not those taken at the doping control room or that they can have been tampered with *en route*. On the facts of these cases, the second matter can be swiftly disposed of. The bottles containing the A and B samples arrived at the DCC with seals unbroken: there were no signs of tampering, and the Appellants produced no evidence to suggest that it could have – or indeed did – take place *en route* (any more than before the journey).

C. Transportation of samples to the DCC

38. Once the urine samples were collected on the 16th July 2005, they were sealed into bags and transported by the lead DCO to Mr Jones; home in North Wales.

39. It was alleged that Mr Jones did not regularly monitor the security of the samples while they were kept at his house in a safe, pursuant to paragraph 6.4.2 of the DCO Handbook. Mr Jones was clear that he did in fact monitor the samples and in any event they were locked in a safe to which no one had access. I accept again that Mr Jones was a reliable witness, experienced in the relevant procedures. In any event the samples arrived at the DCC sealed and secure.

40. Dr Davis made a number of ancillary allegations, in relation to the chain of custody based on a number of documents scattered throughout the bundles. It seemed to me that the exercise was designed to raise questions rather than able to provide answers. The only positive point made

seemed to be that at some stage the samples found themselves in Liverpool, being neither their point of departure, nor their point of arrival, nor any designated interim location. I found the exercise unconvincing and ultimately insubstantial. Imperfection, if any, in the documentation did not establish deviation from the planned transport, still less did any obscurity in it.

41. Dr Davis was able to identify an instance where the final two numbers had apparently been left out of a DCC document completed on receipt of the sample although included in another document completed by the DCC. However, whatever the reason for this omission, it is clear that the reference is to the same sample.

42. Dr Davis was cross examined on another document to the effect that the marking in the bottom right hand corner was a signature. On re examination it appeared a reference, and not a signature, and was likely to stand for *"North Wales …",* by way of reference to the branch of DHL which collected the samples. Nothing inconsistent with the BWLA version or the chain of custody could be devised from this exercise.

43. Dr Davis referred another document which was a print out from DHL's website which customers can access to track their packages No evidence was adduced from DHL in relation to the document and it did not (in my view) purport to be an accurate indicator of whereabouts of any package. In any event, the heading on the relevant columns *"location service area"*, was an internal DHL reference and referred to a general area, as to the meaning of which I was unenlightened.

44. Therefore in conclusion, no document before me suggests any break in the chain of custody and now contains any indication of any impact upon the integrity of the Appellants' samples. I remain utterly unpersuaded that Dr Davis was able to demonstrate a case of any plausibility that these miniscule oddities could conceivably cast doubt on the soundness of the chain of custody, every other indicator – sample numbers etc – being otherwise probative that at no stage had the samples gone astray.

D. Laboratory Chain

45. Dr Davis essayed a similar exercise in relation to the internal chain of custody at the DCC. In particular Dr Davis seemed concerned with the whereabouts of the sample between the 19th and 25th July 2005. Here (like Professor Cowan) I found the submission not easy to follow. Professor Cowan was himself able to give a complete explanation with reference to the documents of the chain of custody of the sample.

As Professor Cowan explained, it is clear from the document of that on the 19th July, the A sample bottles were stored in freezer number 62f, and waliquots were stored in fridge/freezer number 1 & 2. Removal from this temporary storage was carried out by the analysts, as indicated on that form, to carry out the screening. There is, therefore, no break in the chain of custody recorded by the DCC as alleged by the Appellant.

46. The documents produced seem to me to establish quite clearly that when not in store the samples were in the laboratory, and when not in the laboratory they were in store.

E. Degradation

47. Dr Davis next suggested that the samples were exposed to excessive temperatures.

It was of course admitted by Mr Jones, that the sample was not kept at 4 degrees after collection and before arrival at the DCC, inconsistently, it appears (I accept), with manufacturer's instructions, although not in this instance in violation of any International or other standard.

48. However, Professor Cowan's expert and unchallenged evidence was that the effect of excessive temperature would be potential degradation of the sample. But in fact in respect of these samples as I have already mentioned none of the indicators for degradation were apparent, [and, in any event, the effect of any such degradation would be to reduce the concentration of HCG, not to elevate it.] Professor James agreed with this evidence, and stated that he has never seen a case of the temperature of the storage and transport environments having an impact on the stability of the sample. There is nothing in this point either.

E. Testing

49. The most important part of Dr Davis's attack focussed on the testing process itself. Here different issues arose in the case of each Appellant.

50. Before condescending to detail, I draw attention initially to Professor Cowan's unchallenged evidence of the examination of the DCC by bodies including WADA and UKS, specifically for the purposes of ensuring that its procedures meet the required standards and are appropriate for its function as a WADA and UKAS accredited doping control laboratory. These bodies enjoy the authority and expertise to monitor the DCC's processes, and their endorsement puts a heavy burden on the part of persons such as the Appellants who seek to challenge the efficacy of those procedures.

51. The Appellants adduced scientific or expert evidence in relation to only one of the grounds of appeal, particular to Mr Cooper, and none particular to Mr Grant.

52. The following matters were explored in relation to Mr Cooper:

(i) The alleged absence of three diagnostic ions used in the testing procedure applied to Mr Cooper's sample ("three ions");

(ii) The concentration of free epi-testosterone in Mr Cooper's sample test results ("free e");

i) Three Ions

53. To identify a substance, such as Tor E, a chemical finger print is used. This relies on a series of charged particles known as ions. The mass and distribution of these ions can then be used to identify the compound looked at. The more ions are monitored, the greater the confidence that the compound(s) in question has or have been correctly identified.

54. WADA technical document TD2003IDCR, states that 3 ions must be monitored in order for an adverse analytical finding to be reported. This is a mandatory requirement. On page 2 of this document, it is stated that: *"When selected ions are monitored, at least three diagnostic ions must be acquired".*

55. The issue of whether or not there were three diagnostic ions used in the analysis of Mr Cooper's sample was a matter in relation to which Mr Scott, who was the expert witness for Mr Cooper, and Professors Cowan and James initially disagreed.

56. In respect of Mr Cooper the test seemingly indeed made use of three ions (nos. 417, 432 and 433). However Dr Scott originally suggested that the figures under the rubric (specify) for one of the ions [433] was a false figure – the product of either faulty analysis or imperfect machinery. Professor Cowan disputed this.

57. As Dr James himself pointed out some confidence would be derived from the analysis in that both the standard and the sample figures were equivalent. Dr James himself found nothing implausible in the results.

58. Professor Cowan said in evidence without challenge, the use of 433 as a diagnostic ion has formed part of a procedure specifically assessed and approved by WADA. Furthermore, the same ion has been used for several years, and has produced results consistent with other leading laboratories.]

59. I would have also considered it unlikely that in a WADA accredited laboratory with the reputation enjoyed by the DCC, instrument malfunction, if it ever occurred, would not be swiftly detected.

60. But I am in the event mercifully spared the need to resolve or indeed analyse the dispute more deeply because since the hearing the two scientists were (helpfully) able to settle their differences. To quote Dr Scott's e-mail of July 26th 2008

"As I see it, translating the highs into the language of TD2003IDC, we now both agree that 433 is an ion in the same isotopic cluster as the molecular ion 432 and 29Si is 4.7% and that the abundance of 29Si relative to 28Si is 5.1%. While I would still take issue with the allowed range of 433/432 extending out to over 48%, the relative abundances actually measured here are all at apx. 40% and that is reasonable, so I would view whatever the range was to be immaterial to this case (I will note additionally that however unreasonable that I may find the upper limits of the allowed range to be, it is consistent with TD20031DCR".

ii) Free E

61. Dr Davis observed that within the WADA code there is only one reference to disregarding E concentrations which states:

"In the case high T/E values, the concentration of epitestosterone is frequently low and it may not always be possible to measure epitestosterone precisely. In such cases, only the concentration of testosterone (equivalent to the glucuronide) is to be determined".

62. This posed the question as to what is meant by high T/E values, which is nowhere defined. During initial cross examination Professor Cowan was unclear as to what signified a high T/E ratio and stated at one point that this would be around 100 to 1. However an e-mail from Victoria Ivanova, Scientific Project Manager of WADA, dated 22nd July stated that a ratio of 4 to 1 or greater represents high T/E ratio.

63. While I accept that the evidence in Ms Ivanova's e-mail was not subject to cross-examination, and approach it with caution, I see no reason to doubt its accuracy, given that Ms Ivanova was a neutral, objective and expert commentator.

64. It is further not without significance that Professor Cowan was surprised by the suggestion which contradicted his long standing practice.

65. Dr Davis had a further weapon in his armoury. He suggested that according to WADA rules the adverse report on Mr Mr Cooper should not have been made because the figure for epitestosterone was above the safe threshold.

66. WADA rules state that:

"To report an Adverse Analytical Finding of an elevated T/E value, the concentration of free testosterone and/or epitestosterone in the specimen is not to exceed 5% of the representative glucuroconjugates" (WADA TD2004EAAS).

67. On its literal wording if either free T or free E in the sample exceeds 5% of the conjugate an Adverse Analytical Finding cannot be reported by the laboratory.

68. Prof. James in his statement dated the 1st of April 2008, said:

"I have calculated the percentage of free testosterone in the sample as 1.35% and the percentage of free epitestosterone of 9.36%"

[and there was other documentary evidence to the same effect].

This places the level of free E above the 5% threshold at which, according to such literal wording, the laboratory cannot declare an Adverse Analytical Finding.

69. The meaning of that often discussed conjunction *"and/or"* in the WADA code was clarified in this context by the same e-mail dated the 22nd of July 2000 from Victoria Ivanova,

"…the concentration of free testosterone and or epitestosterone in the specimen…" – means the concentration of either testosterone, or epitestosterone, or both. In the situation, when the concentration of epitestosterone is such a value that 5% could be below LOQ and, therefore, cannot be measured reliably, the concentration of free testosterone only is measured and should not exceed 5% of its glucuroconjugate".

Once this was explained, the force of Dr Davis' attack was blunted.

70. In short although WADA rules on their face gave some support to Dr Davis' argument, the matter was clarified by the responses that WADA gave to the very questions upon which I had myself sought an answer.

F. Misuse of Equipment

71. As to Mr Grant the DCC's use of HCG MAIAclone reagent was challenged either on the basis that its use was inappropriate or that the DCC did not follow the manufacturer's instructions. Essentially Dr Davis' argument was that the manufacturer's equipment was authorised for plasma and serum but not for urine.

72. Professor Cowan's response was that he had himself validated its use for urine with access to the manufacturer's own equipment; that he had published the results of such validation in a learned journal "Drug Monitoring and Toxicology", that the manufacturer was comfortable with the use of the assay for testing urine samples, and indeed had assisted with the published validation study, and that his technique was WADA and UKA approved. Given the absence of any contradictory expert evidence I could see no basis for rejecting Professor Cowan's evidence.

G. Laboratory Conditions

73. Professor Cowan was also cross-examined by Dr Davis on behalf of Mr Grant in relation to the application of ISO 17025. In particular, it was put to him that the DCC did not comply with paragraph 5.3.1 which requires that:

"Laboratory facilities for testing and/or calibration, including but not limited energy sources, lighting and environmental conditions, shall be such as to facilitate correct performance of the tests and/or calibrations.

The laboratory shall ensure that the environmental conditions do not invalidate the results or adversely affect the required quality of any measurement.

Particular care shall be taken when sampling and tests and/or calibrations are undertaken at sites other than a permanent laboratory facility. The technical requirements for accommodation and environmental conditions that can affect the results of tests and calibrations shall be documented".

74. For this purpose, Dr Davis alleged that the DCC failed to comply with its responsibilities pursuant to the ISO requirement because it did not ensure that the environmental conditions in the Doping Control Station ("DCS") at the Championships were satisfactory.

75. However as both Professor Cowan and Professor James said in evidence, the requirement clearly relates to activities undertaken by the laboratory itself, not at the doping control station.

H. Worksheet

76. Professor Cowan was next cross-examined about the alleged absence of worksheets setting out the screening or confirmation assay procedures.

77. Whether or not such worksheets found their way into the disorderly bundles, Professor Cowan's evidence was first that such a worksheet is always produced, and second in any event, the worksheet operates merely as a check to ensure all procedures were in fact carried out. An experienced analyst would not in fact rely on the existence of such a worksheet in order to carry out his or her procedures correctly.

78. Professor Cowan explained in evidence the two assay procedures used, the products used for each procedure and how they differed. The fact that both the screening procedure and the confirmation procedure were carried out according to the relevant requirements was clear from the documents, and this itself was not challenged by the Appellants.

79. In my judgment the Appellants have not succeeded in sustaining any of the allegations made in relation to the DCC's procedure for analysis. In any event the Appellants adduced no evidence whatsoever that even if any of their allegations had any foundation, the relevant error caused the positive test results. Professor Cowan and Professor James, on the other hand, explicitly stated that none of the errors alleged even if established would alone or in conjunction cast doubt on the reliability of the certified results. This evidence was not challenged and must, therefore stand. It matters not, in these circumstances, who bears the burden of proof.

80. BWLA fairly submits that the Appellants have not succeeded in establishing a violation in relation to any of the litany of complaints made in the two notices of appeal. The Appellants either abandoned or at least did not pursue the majority of these complaints. Indeed, 26 out of a combined total of 32 allegations in relation to the laboratory procedure was pursued at all, and only one, or two at most, of those allegations were pursued with any degree of seriousness. The Appellants only saw fit to adduce expert evidence, or indeed any evidence at all, in relation to the diagnostic ion point the Appellants adduced no evidence of its own as to the free epitestosterone point. In both respects, the BWLA, and specifically Professors Cowan and James, left no room for doubt in my mind that the DCC's approach was correct and in compliance with the Standard for Laboratories.

81. There were also allegations that neither Appellant was properly charged. Given the state reached in the proceedings, this allegation appeared particularly counter intuitive but it emerged that the substance of the allegation was that in neither case was it spelled out in evidence that the concentration of the prohibited substance found exceeded innocent leaks. This seems, with respect, a vacuous allegation. The Panel's findings shows that there was clear evidence before them that if the test results were correct, the offences were made out. [See paras 6 and 12 above]

82. The Appellants each gave oral evidence, and effectively denied their guilt for the first time since being charged. [Neither of them had given evidence in the Disciplinary Proceedings, and neither of them had had their B Sample tests as they were entitled to.] It is not necessary for me, given the terms of the Rule 12 of the BWLA rules to assess their denials: but as I have said on another occasion, such denials have become devalued because they are the conventional currency of the guilty as well as of the innocent. It is sufficient to conclude that in my view the charges were properly brought, properly proved and there are no grounds for allowing either appeal.

The Court of Arbitration for Sport rules:

1. The appeals of Nat Cooper and Karl Grant are dismissed.

(…).