



Arbitration CAS 2008/A/1470 World Anti-Doping Agency (WADA) v. Fédération Internationale des Luttres Associées (FILA) & Mohamed Ibrahim Abdelfattah, award of 3 September 2008

Panel: Mr Lars Halgreen (Denmark); President; Mr Quentin Byrne-Sutton (Switzerland), Mr Rui Botica Santos (Portugal)

Wrestling

Doping (refusal to submit to an out of competition doping control)

Identification of the entities entitled to conduct out-of-competition testing

Standard of proof under Swiss law

Absence of departure from the applicable standards

1. Based upon the applicable rules of the relevant international federation, WADA as well as the national anti-doping organization of any country where an athlete is present is authorized to conduct out-of-competition testing on any athlete affiliated to the international federation.
2. Swiss law allows for a wide variety of methods of proof, ranging from a magistrate's deductions from presumptions and evidence to direct proof such as written documents, witness statements, confessions, evidence of facts, experts, etc. It is on the basis of the evidence before them that the members of a CAS panel, in full discretion, must come to an opinion – their firm conviction (*"intime conviction"*) – as to facts established. A CAS panel may consider any evidence, even circumstantial evidence. Therefore, based on objective criteria, a panel must be convinced of the occurrence of an alleged fact. However, no absolute assurance is required; it suffices that the tribunal has no serious doubts on a specific fact or that the remaining doubts appear to be light. Those methods of proof are applicable for the evaluation by a CAS panel of an athlete's actual command of the English language. Accordingly, a panel can consider that an athlete was able to understand the statements that were being made to him in English and to answer and to ask questions such that the sample-collection session could take place in a fair manner and that no interpreter was needed.
3. The requirements included in the applicable regulations regarding notification process, identification requirements, sample collection process, information about rights and duties and planning obligations are fully complied with when, based on the facts and evidence submitted by the parties, (i) the alleged deviations by the doping control officer from the anti-doping rules and the International Standard for Testing are not proven and (ii) the panel is convinced beyond reasonable doubt that the doping control officer correctly identified himself to the athlete who was informed of and understood his/her rights and obligations.

The World Anti-Doping Agency (WADA or the “Appellant”) is a Swiss private-law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. The WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms.

The International Federation of Associated Wrestling Styles or Fédération Internationale des Luttres Associées (FILA) is an association having its headquarters in Switzerland and recognized by the International Olympic Committee as the international sports federation governing all forms of wrestling worldwide.

Mr Mohamed Ibrahim Abdelfattah (the “Wrestler” or “Mr Abdelfattah”) is an international-level wrestler of Egyptian nationality affiliated to the Egyptian Wrestling Federation, which in turn is a member of the FILA.

Since June 2007 and because of a knee injury, Mr Abdelfattah stayed in the Southwest Diagnostic Centers in Colorado Springs, USA. He was operated on 11 July 2007.

Afterwards, Mr Abdelfattah was staying at the US Olympic Training Center in Colorado Springs, USA, for rehabilitation training subsequent to his knee surgery. During his whole stay, he was not accompanied by any relative, representative or personal trainer.

On 24 July 2007, at 7:40 a.m., the Wrestler was woken up by the unannounced visit of Mr Richard Brooks, a doping control officer from the United States Anti-Doping Agency (USADA) and Mr Tommy Nevill, a USADA chaperone.

Mr Richard Brooks notified Mr Abdelfattah that he had to undergo an out-of-competition anti-doping test and handed him the following two documents:

a) An international federation letter of authority dated 13 December 2006. The main characteristics of this document are the following ones:

- It is unsigned and its heading had a FILA logo followed by an unintelligible mixture of letters and numbers.
- Mr Raphaël Martinetti, the President of the FILA, is indicated as the author of the letter.
- It reads as follows, where relevant: *“It is hereby confirmed that, in accordance with the requirements of the World Anti-Doping Code, and as a result of co-operation with the International Federation of Associated Wrestling Styles (FILA), the World Anti-Doping Agency (WADA) is authorized to collect samples from athletes in the sport of wrestling. All doping controls shall be conducted in accordance with the provisions of the International Federation of Associated Wrestling Styles (FILA) anti-doping rules and the International Standard for Testing. (...)”*

WADA is authorized by the International Federation of Associated Wrestling Styles (FILA) to appoint any third person it deems appropriate to perform sample collection. WADA has therefore appointed several Authorized Sample Collection Authorities to collect samples on its behalf. It is the responsibility of the Doping Control Officers representing these agencies to provide the appropriate documentation, including this International Federation Letter of Authority (...).”

- b) A copy of a letter of authority issued by the WADA giving to the USADA the ability to conduct out-of competition doping controls for athletes during the year 2007. This document specifies that “*Athletes should verify that the doping control officer holds a letter of authorization from USADA as well as identification (USADA card, driver’s licence, health card, passport or similar)*”.

Mr Abdelfattah was drowsy from sleep, but eventually let the two USADA agents enter his room and asked for permission to freshen up before proceeding with any further formalities. His request was granted and he took a shower under the supervision of Mr Richard Brooks and Mr Tommy Nevill.

Before responding to the inquiries of the USADA agents, Mr Abdelfattah also expressed the wish to check their qualification to conduct the considered sample collection session. In that relation, he wanted to call his national federation and fax to it the letters of authority. Mr Richard Brooks confirmed that he had no objection with this and the three men walked to lobby of the US Olympic Training Center, which took approximately five minutes.

About 20 minutes after they first met, the three men were in the lobby of the US Olympic Training Center, where they entered into a discussion regarding the possibility for the Wrestler to call his national federation, the content and validity of the letters of authority as well as the right of Mr Richard Brooks and Mr Tommy Nevill to conduct a sample collection session.

At 8:15 a.m., Mr Abdelfattah left the lobby and the USADA agents.

According to the Wrestler, he made sure that Mr Richard Brooks and Mr Tommy Nevill understood that he needed to go back to his room in order to fetch an international telephone card, which was necessary to call Egypt. He submits that they authorised him to fetch the card alone. To his great surprise, upon returning to the lobby, the USADA agents had left the US Olympic Training Center.

The explanation of Mr Richard Brooks and Mr Tommy Nevill with regard to Mr Abdelfattah’s departure of the lobby is summarised in the report attached to the Athlete Refusal Form as follows:

“We had attempted to notify this athlete in his dorm room at the U.S. Olympic Complex. After he acknowledged that he is Mohamad Abdelfatah, I informed him (athlete) that he had been selected for doping control, and showed the Letter of Authority from FILA and WADA. I then asked him to sign the Doping Control Official Record, but, he said that he needed to take a shower and call Egypt before he would do anything, and at that point would not sign the Doping Control Official Record. I told him that he could do what he needed to do, but me and the chaperone would have to stay with him until he provided a sample. We accompanied him the shower, and when he finished, I asked him what his birth date is. He said, “no I need to call Egypt first”. As a precaution, I called Kate Mittlestadt at USADA to inform her about the situation. She explained to me that since the athlete was registered at the USOC Complex then he was subject to doping control. I relayed that information to this athlete, and at this time began complaining that we were rushing him. He complained that “you woke me up out of bed, and you are rushing me! You are doing this to me because I am not American”. I told him that we use the same method with a number of athletes and he was not being singled out. At this point I showed him the Athlete Refusal Form and explained to him that if he were to refuse to provide a sample, then he could be subject to sanctions imposed by his federation. He asked who the test was for, and I told him that it was for the World Anti Doping Agency. He stated again that he had to call Egypt, because he is not on their list to be drug tested. Again I told him that he could do that, but we would stay with him until he provided his

sample. He got dressed and we walked over to the USOC Athlete Center. He sat down in the lobby and I asked him "are you going to make your call?" He asked to see the letter of authority again. I handed it to him and then he asked me to read it to him because he doesn't read English too well. I read the letter and explained it to him. Then he asked me if he could send it to Egypt, and I told him he could. At that point he said that the letter from FILA was not on official letter head and complained that it was not signed, and then he said "you have nothing, I'm not doing this!" Then abruptly got up and left. I contacted Kate again to inform her what had happened then also called, Theresa Reynolds to inform her as well".

On the same day, at 10.49 p.m., Mr Abdelfattah sent to the WADA an email, which had the following content:

"The Reason I am writing this email because this morning something strange happend.

Two guys with USADA t-shirts on came to my room and said they were from WADA and wanted me to give urine test. I asked them if they had any paperwork or identification Card. They could not show any ID card but showed me some paper that I attached on this email.

Those papers were outdated and no signature and didn't look original looked like copied from computeror.somewhere ?and dosen't show any name.

I could not figure it out what they were doing? so i told them let me call Egypt Wrestling Federation and find out what is going on?

they asked me if I am refusing to give urine test and I said I am not refusing just want to find out lowed to do that or are you from WADA ans they didn't say anythink and they left.

Later on around 10 am I called Montreal, Canada at this number (514)9049232 to find out if they were aware of these guys. But they did not know and told me to email this address in 24 hours.

I am sending this email right now because I can not write in English well and I asked a friend to help me write this email.

Usada told US Olympic Training Center Staff that I am not allowed to stay at the Olypic Training Center becausen they say that I refuse to give urine test even though I did not refuse it. I just wanted to find out who they were.

Could you please explain what is going on?"

The following day, the WADA answered that it has the authority to conduct independent out-of-competition testing worldwide. With respect to the results management, the WADA invited Mr Abdelfattah to contact the FILA.

By fax dated 26 July 2007, the FILA informed the Egyptian Wrestling Federation that Mr Abdelfattah refused to provide his urine sample to USADA agents acting as representative of the WADA and confirmed the opening of disciplinary proceedings for an anti-doping rule violation.

By letter of 31 July 2007, Mr Raphaël Martinetti, the FILA President, informed the Egyptian Wrestling Federation as follows:

"On 24th July 2007 your wrestler Mohamed Ibrahim Abdelfattah, who was training in Colorado Springs (USA), refused to provide urine sample to USADA agents acting as representative of WADA.

This constitutes a breach of Anti-Doping rules and consequently we are sanctioning the wrestler Mohamed Ibrahim Abdelfattah with a warning”.

On 17 August 2007, the FILA informed by e-mail the WADA that the decision to inflict a warning to the Wrestler had been adopted by the FILA Executive Committee.

On 23 August 2007, the WADA filed with the Court of Arbitration for Sport (CAS) a statement of appeal against the FILA decision dated 31 July 2007.

On 28 September 2007, the FILA Sporting Judge rendered a new decision, sanctioning Mr Abdelfattah with a suspension of six months from all national and international competitions.

On 11 December 2007, the CAS delivered an award in the matter of Mr Abdelfattah (CAS 2007/A/1365). It set aside the FILA decision dated 31 July 2007, as it was *“adopted by a FILA body – the Executive Committee – which clearly did not hold the power and competence to adopt such a disciplinary decision”*. It referred the case back to the FILA, so that its Federal Appeal Commission may adopt a final disciplinary decision with regard to the Wrestler’s case.

On 19 December 2007, the FILA Federal Appeal Commission confirmed *“the sanction of six-month ineligibility, as of 24th July 2007, imposed to the wrestler Mohamed Ibrahim Abdelfattah, by decision of the FILA Sporting Judge, dated 28 September 2007”*.

On 8 January 2008, the Appellant was notified of the decision issued by the FILA Federal Appeal Commission (the “Decision”).

On 28 January 2008, the Appellant filed a statement of appeal with the CAS. It challenged the above-mentioned Decision, submitting the following prayers for relief:

“WADA hereby respectfully requests the CAS to rule that:

- 1. The Appeal of WADA is admissible.*
- 2. The Decision of the FILA Federal Appeal Commission rendered on December 19, 2007 in the matter of Mr. Mohamed Ibrahim Abdelfattah is set aside.*
- 3. Mr Mohamed Ibrahim Abdelfattah is sanctioned with a two-year period of ineligibility starting on the date of the CAS hearing, pursuant to articles 10.2, 10.4.1 and 10.8 of the FILA Anti-Doping Regulations. Any period of suspension (whether imposed to or voluntarily accepted by Mr Mohamed Ibrahim Abdelfattah) before the entry into force of the CAS award shall be credited against the total period of suspension to be served.*
- 4. All competitive results obtained by Mr. Mohamed Ibrahim Abdelfattah from July 24, 2007, through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
- 5. WADA is granted an award for costs”.*

On 4 February 2008 and on 14 May 2008, the Appellant respectively filed its appeal brief and a reply submission, both of which contain a statement of the facts and legal arguments accompanied by supporting documents.

On 16 March 2008, Mr Abdelfattah submitted an answer containing the following prayers for relief:

“Mr. Abdelfattah hereby respectfully requests that the CAS rules that:

- *The Appeal of WADA filed on February 4, 2008, with CAS is dismissed.*
- *Mr. Abdelfattah did not refuse to provide a urine sample on July 24, 2007.*
- *Mr. Abdelfattah did not violate the Anti-Doping Rules on July 24, 2007, in Colorado Springs (USA).*
- *The USADA Doping Control Officer Mr. Brooks and his Chaperonage Mr. Nevill did violate the WADA International Standard for Testing and the FILA Anti-Doping Regulations while testing Mr. Abdelfattah on July 24, 2007, in Colorado Springs (USA) and therefore the testing has to be considered as null and void.*
- *Mr. Abdelfattah is allowed to participate in all competitions with immediate effect and without any limitation.*
- *Mr. Abdelfattah is granted an award of costs”.*

On 30 May 2008, within the deadline set by the CAS Court Office, Mr Abdelfattah filed further submission.

On 20 February 2008, the FILA informed the CAS Court Office that it had nothing to add to the decision delivered by its Federal Appeal Commission and declared that *“FILA is no more concerned”*.

A hearing was held on 18 June 2007 at the CAS premises in Lausanne.

LAW

CAS Jurisdiction

1. It is undisputed that all the legal remedies available were exhausted prior to the appeal filed by the WADA with the CAS. The jurisdiction of the CAS in the present matter derives from article R47 of the CAS Code, together with article 36 of the FILA Constitution, article 14 of the FILA Disciplinary Regulations and article 13.2 of the FILA Anti-Doping Regulations.
2. It is further confirmed by the order of procedure duly signed by the parties. It follows that the CAS has jurisdiction to decide on the present dispute.
3. Under article R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable law

3. Article R58 of the CAS Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
4. In the present matter, there was no agreement among the parties regarding the application of any particular law. In their respective submissions, the parties refer exclusively to the FILA applicable regulations.
5. As a result, subject to the primacy of the applicable FILA regulations, Swiss law shall apply complementarily.

Admissibility

6. Based on article 13.2 of the FILA Anti-Doping Regulations, the WADA has standing to file an appeal with the CAS against the decision issued by the FILA Federal Appeal Commission (the “Decision”).
7. The appeal was filed within the deadline provided by article 13.5 of the FILA Anti-Doping Regulations. Furthermore, it complied with all other requirements of article R48 of the Code.
8. It follows that the appeal is admissible.

Procedural Motions

A. Ms Theresa Reynolds’ written statement

9. The WADA filed Ms Theresa Reynolds’ written statement together with its appeal brief. Although she was called to give evidence, Ms Theresa Reynolds was unable to appear as a witness. Mr Abdelfattah expressly disagreed with the production of her written testimony, as this document is not signed, nor dated and as there is no indication that Ms Reynolds is actually the author of the said statement. Furthermore, Ms Reynolds is only an indirect witness since she was not present at the moment of Mr Abdelfattah’s notification of his selection for an unannounced out-of-competition doping control.
10. For the reasons raised by Mr Abdelfattah, Ms Reynolds’ testimony is not admitted on record.

B. *The written statements of Mr Richard Brooks and Mr Tommy Nevill*

11. Article R51 par. 2 of the CAS Code states that *"In his written submissions, the Appellant shall specify any witnesses and experts whom he intends to call and state any other evidentiary measure which he requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise"*.
12. In the case at hand, the WADA announced the USADA agents' written statements in its appeal brief, but was unable to file them until later.
13. However, the written testimonies were available to the Respondents well before the hearing. Furthermore, Mr Richard Brooks and Mr Tommy Nevill confirmed their witness statements at the hearing and Mr Abdelfattah was offered the opportunity to cross-examine them. Thus, the Respondents' right to be heard was respected and the Panel decided that the two statements should be admitted into evidence.

C. *Confidentiality*

14. At the hearing, Mr Abdelfattah submitted the request that confidential treatment be afforded to the present arbitration proceedings and award.
15. Article R59 par. 6 of the Code provides that *"The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by the CAS, unless both parties agree that they should remain confidential"*.
16. In the case at hand, the WADA did not agree with Mr Abdelfattah's petition. As a consequence, the requirements of article R59 par. 6 are not met and the CAS is entitled to publish the award.

Merits

17. In their introduction, under the heading "Scope", the FILA Anti-Doping Regulations (ADR) provide that *"These Anti-Doping Regulations shall apply to FILA, each affiliated National Federation of FILA, and each Participant in the activities of FILA or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in FILA, its National Federations, or their activities or Events. (...). The National Federation must guarantee that all wrestlers registered for a FILA License accept the Rules of the FILA, including these FILA Anti-Doping Regulations compiled in accordance with the World Anti-Doping Code"*.
18. The FILA is among the international federations which accepted the World Anti-Doping Code. The International Standard for Testing (IST) is mandatory for all signatories of the Code. In this regard, Article 5.2 of the WADA code states that *"Anti-Doping Organizations conducting testing shall conduct such testing in conformity with the International Standard for testing"*. Pursuant to article 5.3

ADR *“Testing conducted by FILA and its National Federations shall be in substantial conformity with the International Standard for Testing in force at the time of Testing”.*

19. In his submissions, Mr Abdelfattah alleged that departures from the ADR and from the IST occurred and that several of his personal rights were violated, notably because of his lack of ability in English. Consequently, according to the Athlete, *“... the testing has to be considered as null and void”.*
20. In the view of the above, the main issues to be resolved by the Panel are:
 - a) Had USADA the authority to conduct the out-of-competition urine sample collection session on Mr Abdelfattah?
 - b) What is Mr Abdelfattah’s actual command of the English language?
 - c) Has a significant deviation from the ADR and from the IST occurred?
 - d) Did Mr Abdelfattah refuse to provide a urine sample?
 - e) What is the sanction and how should it be calculated?

A Had USADA the authority to conduct the out-of-competition urine sample collection session on Mr Abdelfattah

21. Article 9 par. 4 of the FILA Constitution states that *“Doping controls may be carried out at FILA’s request on athletes several times a year, in or out of competitions, by the World Anti-Doping Agency (WADA), according to the agreement signed by FILA and WADA, at any time and in any country”.*
22. According to article 5.1 ADR, *“All Wrestlers affiliated with a National Federation shall be subject to In-Competition Testing by FILA, the Wrestler’s National Federation, and any other Anti-Doping Organization responsible for Testing at a Competition or Event in which they participate. All Wrestlers affiliated with a National Federation shall also be subject to Out-of-Competition Testing at any time or place, with or without advance notice, by FILA, WADA, the Wrestler’s National Federation, the National Anti-Doping Organization of any country where the Wrestler is present, the IOC during the Olympic Games”.*
23. Based upon the above provisions, WADA as well as the *“National Anti-Doping Organization of any country where the Wrestler is present”* is authorized to conduct out-of-competition testing on any athlete affiliated to FILA.
24. At the moment of his notification, Mr Abdelfattah was in the US Olympic Training Center in Colorado Springs, USA. In the present case, the *“National Anti-Doping Organization of any country where the Wrestler is present”* was the USADA, which is a non-governmental agency responsible for implementation of the World Anti-Doping Code in the United States.
25. In other words and based on the applicable FILA regulations alone, the USADA already had the ability to collect Mr Abdelfattah’s samples. This capacity was moreover confirmed by the letters of authority handed to Mr Abdelfattah at the time of notification. Those documents

establish that the FILA authorized the WADA to appoint the USADA to perform sample collections during the year 2007.

B. *What is Mr Abdelfattah's actual command of the English language?*

26. At the hearing held on 18 June 2008, Mr Abdelfattah exclusively expressed himself in Arabic. All his statements were translated by Ms Karara Delbar, the interpreter. The Wrestler claimed that he could not speak nor understand English at all. When the President of the Panel addressed him in English with very simple and distinct words (*"Do / you / understand / me?"*), Mr Abdelfattah did not try to answer. Once the question was translated to him, he asserted that he had figured out what was being asked by the President of the Panel, but only thanks to the context in which the discussion was taking place.
27. Consequently, the Panel was not in a position to assess by interaction with him in English what his actual knowledge of English is.
28. Swiss law allows for a wide variety of methods of proof, ranging from a magistrate's deductions from presumptions and evidence to direct proof such as written documents, witness statements, confessions, evidence of facts, experts, etc. It is on the basis of the evidence before them that the members of the Panel, in full discretion, must come to an opinion – their firm conviction [*"intime conviction"*] – as to facts established. The Panel may consider any evidence, even circumstantial evidence (ATF 115 IV 267; ATF 103 IV 300). Therefore, based on objective criteria, the Panel must be convinced of the occurrence of an alleged fact. However, according to the jurisprudence of the Swiss Supreme Court, no absolute assurance is required; it suffices that the Tribunal has no serious doubts on a specific fact or that the remaining doubts appear to be light (ATF 127 I 38 consid. 2a p. 41; 124 IV 86 consid. 2a p. 88; 120 Ia 31 consid. 2c p. 37).
29. At the hearing, both Mr Richard Brooks and Mr Tommy Nevill fully confirmed their witness statements about the skills in English of the Wrestler. According to them, in a scale ranging from very poor, poor, good, reasonably good/pretty good, excellent, Mr Abdelfattah's English was reasonably good (Mr Richard Brooks) and pretty good (Mr Tommy Nevill). In any case, they were of the opinion that the Wrestler's English was good enough that there was no need to arrange for the services of an interpreter.
30. The Panel found the testimonies of Mr Richard Brooks and of Mr Tommy Nevill both credible and compelling. Mr Abdelfattah did not offer any evidence or any reason which could explain why the USADA agents would lie about his English skills. On the contrary, it results from the undisputed facts that, at the moment of the Wrestler's notification of his selection for an unannounced out-of-competition doping control, the three men engaged in a discussion about the identification of the doping control officer and the latter's authority to conduct a sample collection session. In the report attached to the Athlete Refusal Form, it is stated that Mr Richard Brooks called his superior, because there was a situation related to the Wrestler's doubts with regard to his eligibility to be tested by the USADA. Nothing is said about a potential

problem when communicating with Mr Abdelfattah. The latter must have been able to carry at least simple dialogs and communication in English as he made several requests: He asked to take a shower, to see the identification of the USADA agents, to make phone calls and send faxes to Egypt. He even requested Mr Richard Brooks to read out loud the letters of authority, which implies that he is familiar with spoken English. Mr Abdelfattah's English was obviously good enough for him to understand what was going on. Otherwise, the Panel does not see how he could have let two unknown men walk into his bedroom and stay nearby while he was taking a shower.

31. Moreover, the Panel cannot ignore the fact that Mr Abdelfattah is a highly educated athlete as he graduated from college with a bachelor's degree in business, for which at least some command of English would most likely be required or at least be habitual. In addition, the Wrestler is a world class athlete with an extensive international experience. He took part in many championships throughout the world, was in the Athens and Sydney Olympic Games and followed training camps in several countries, including with coaches of non-Egyptian nationality.
32. Mr Abdelfattah also explained to the Panel that he had been in the United States by himself for more than 6 weeks before the unannounced out-of-competition test procedure.
33. Based upon the evaluation of the foregoing facts and circumstances, the Panel finds beyond any reasonable doubt that Mr Abdelfattah's level of English must have been sufficient to permit him to understand the statements that were being made to him in English as well as to answer and to ask questions such that the sample-collection session could take place in a fair manner.

C. *Has a significant deviation from the ADR and from the IST occurred?*

a) Introduction

34. Mr Abdelfattah submitted that considering his poor English, the USADA agents should have been assisted by an interpreter, as required by article 5.3.10 IST. The Wrestler alleged that he could not understand what Mr Richard Brooks and Mr Tommy Nevill were telling him and therefore he was not informed of his rights and obligations, in violation of article 5.4.1 d) and e) IST. In addition, he claimed that the international federation letter of authority dated 13 December 2006 does not comply with article 5.4.1 b) IST. Likewise, the Wrestler asserted that Mr Richard Brooks did not show him any piece of identification, irrespective of articles 5.3.3, 5.4.1 b) and 5.4.2 b) IST. Mr Abdelfattah is also of the opinion that the specific circumstances of his particular situation were not taken into consideration in the planning of the notification, as provided by article 5.3.5 IST.

b) The applicable regulations

35. Pursuant to article 5.3.3 IST *"Sample Collection personnel shall have official identification that is provided and controlled by the ADO. The minimum identification requirement is an official card/ document naming the*

ADO through which they have been authorised. For DCOs, additional Identification requirements shall include their name, their photograph and the card's/ document's expiry date (...)". Similarly, article 5.4.2 b) IST states that *"When in-person contact is made, the DCO/Chaperone shall: (...) b) Identify themselves to the Athlete using their official ADO identification card/document"*.

36. Article 5.3.5 IST states that *"The ADO, DCO, or Chaperone, as applicable, shall establish the location of the selected Athlete and plan the approach and timing of notification, taking into consideration the specific circumstances of the sport/Competition and the situation in question"*.

37. According to article 5.3.10 IST, *"The ADO/DCO/Chaperone, as applicable, shall consider whether a third party is required to be notified prior to notification of the Athlete when the Athlete is a Minor, where required by an Athlete's disability as provided for in Annex B - Modifications for Athletes with disabilities, or in situations where an interpreter is required for the notification"*.

38. Article 5.4.1 IST reads as follows where relevant:

"When initial contact is made, the ADO, DCO or Chaperone, as applicable, shall ensure that the Athlete and/or a third party if required in accordance with 5.3.10, is informed (...):

a) That the Athlete is required to undergo a Sample collection;

b) Of the authority under which the Sample collection is to be conducted;

c) Of the type of Sample collection and any conditions that need to be adhered to prior to the Sample collection;

d) Of the Athlete's rights, including the right to:

i. Have a representative and, if required, an Interpreter;

ii. Ask for additional information about the Sample collection process;

iii. Request a delay in reporting to the Doping Control Station for valid reasons; and

iv. Request modifications as provided for in Annex B – Modifications for Athletes with disabilities.

e) Of the Athlete's responsibilities, (...)".

c) Need of an interpreter

39. As already indicated, the Panel finds that Mr Abdelfattah's English skills must have been sufficient for him to understand and respond to the USADA agents. Furthermore, he is not a minor or a disabled athlete as provided under the IST. As a consequence Mr Richard Brooks rightfully considered that there was no need for an interpreter. Articles 5.3.10 and 5.4.1 d) IST have thus not been violated.

d) Identification requirements and information about rights and duties

40. Mr Richard Brooks and Mr Tommy Nevill both testified that they informed Mr Abdelfattah of his rights and obligations as set forth under article 5.4.1 IST and properly identified themselves

in accordance with articles 5.3.3 and 5.4.2 b) IST. In addition, and as explained by Mr Richard Brooks to the Panel, his identification card was constantly visible as it was displayed on his clipboard.

41. The Panel does not see any reason to doubt their testimonies as they are both experienced USADA agents and showing the ID is logically the first and simplest action an agent would normally take. According to their testimonies, Mr Richard Brooks has been working for the USADA as a doping control officer since 2001 and has conducted more than 20 sample collection sessions, while Mr Tommy Nevill has been a USADA chaperon since 2005. With such backgrounds, they no doubt have a routine in place whereby they introduce themselves and tell the notified athlete of his rights and duties. Additionally, it is undisputed that Mr Richard Brooks and Mr Tommy Nevill were wearing T-shirts printed with “USADA” when they met Mr Abdelfattah and it would seem natural that, at the moment of the notification, the USADA agents would want to begin by asserting their authority and function by means of dress (USADA T-shirts), badges and official titles, which are usually perceived to have value. It seems to the Panel that it would very difficult to say the least to convince an athlete to submit to sample testing without the presentation of official identification. Consequently, it would seem very doubtful that experienced agents, or any agent for that matter, would try to do so.
42. Furthermore, Mr Abdelfattah was obviously aware of what he could do and what was going on:
 - He let the USADA agents enter his room and accepted to be under their observation as he was taking a shower. The Panel does not see how he would have let two men be so intrusive, without having controlled their identity and without knowledge of his obligation to remain within sight of the DCO/Chaperons at all times from the first moment of in-person notification until the completion of the sample collection procedure (article 5.4.1 e) I. IST).
 - During the whole notification process, he exclusively questioned the authority of the USADA to conduct the sample collection session. Mr Abdelfattah has never brought up any evidence that he challenged the fact the Mr Richard Brooks and Mr Tommy Nevill were certified USADA agents. On several occasions, he asked the USADA agents to show him their letters of authority. He even requested them to read the said documents out loud. Mr Richard Brooks had to call his superior to make sure that the USADA had the authority to test the athlete. The fact that the Wrestler focused attention on the letters of authority is also a further indication that he had checked the identity of Mr Richard Brooks and Mr Tommy Nevill and had to come to the conclusion that they were official doping-control officer and chaperon.
 - He is an experienced world-class Athlete who has been tested many times, including out-of-competition. Under such circumstances, he cannot have ignored his rights and obligations. There is no evidence that he tried to request or that he needed the assistance of a representative. In that respect it is relevant that he actually insisted to call Egypt, which – in the end - he renounced doing, despite Mr Richard Brooks’ authorisation.
 - The Panel, after careful analysis of the facts and evidence submitted to it by the parties, is convinced beyond reasonable doubt that the USADA agents correctly identified themselves and that Mr Abdelfattah was informed of and understood his rights and

obligations. As a consequence, articles 5.3.3, 5.4.1 b) and 5.4.2 b) IST were fully complied with.

- e) Despite article 5.4.1 b) IST the Wrestler was not validly informed *“of the authority under which the sample collection is to be conducted”*

- 43. According to Mr Abdelfattah, the international federation letter of authority dated 13 December 2006 is an unsigned copy, with an inappropriate heading and therefore does not comply with article 5.4.1 b) IST.

- 44. In his statement of defence (par. 6), the Wrestler admits that *“On July 24th, 2007, at 7.40 AM Mr. Abdelfattah woke up from someone knocking on his door. When he opened the door two men with USADA T-Shirts appeared and said they were from the WADA and wanted him to give a doping test”*.

- 45. The panel observes that article 5.4.1 b) IST does not require any specific form for the required communication to be made. It is regrettable that the presentation of the letter was awkward and could raise doubts. However, this cannot put into question the fact that Mr Richard Brooks and Mr Tommy Nevill passed the information that they were acting on behalf of WADA, which is not disputed. Consequently, Mr Abdelfattah was informed. Furthermore, and for the reasons already exposed, article 5.1 ADR authorizes the USADA and the WADA to collect Mr Abdelfattah’s urine samples. Once Mr Richard Brooks and Mr Tommy Nevill validly identified themselves as official USADA agents, the Wrestler had no ground to refuse to submit to the sample collection session. In this regard, had Mr Richard Brooks not handed the said letters of authority to the Wrestler, the latter would have had no excuse for not accepting to be tested. In other words, the said documents must be considered as complementary information made available to the athlete. The form of the said letter does not in the opinion of the Panel violate any right of the Wrestler.

- 46. The fact that his own national federation allegedly did not know about the authority of the USADA or of the WADA to conduct out-of-competition doping control is irrelevant. In his quality of member of the Egyptian Wrestling Federation, which in turn is affiliated to the FILA, Mr Abdelfattah has received and had the opportunity to review the ADR – and its article 5.1 (see *“Scope”* of the ADR and the form *“Acknowledgement And Agreement by the Wrestler”* attached of the ADR). In practice, as a very experienced world-class wrestler, he also had additional reason to be well informed.

- 47. Mr Abdelfattah contended that the unusual heading of the international federation letter of authority dated 13 December 2006 made him become *“mistrustful about the competence of the two men to test him”* and *“was afraid that his urine sample would be manipulated, substituted, contaminated or otherwise tampered with in any way”*. He is suggesting that he rightfully thought that he could have been the victim of a conspiracy. However, Mr Abdelfattah offered no explanation or evidence to support his assertion. In particular, the Wrestler did not mention the eventual motive or a possible author of such alleged conspiracy. The Appellant adduced no evidence to ascertain a plausible plot against him.

48. Based upon the evaluation of the foregoing, the Panel is of the opinion that the presentation of the international federation letter of authority dated 13 December 2006 does not breach the requirement of article 5.4.1 b IST and does not call into question the validity of the notification process or the sample collection process.

f) Planning of the notification

49. In his submissions, the Wrestler claimed that *“The circumstances Mr. Abdelfattah had, taking the time (7:40 am) and his injury in consideration is absolutely against all ethics and indicates therefore, that the DCO’s never planned a proper doping test”* as required by article 5.3.5 IST.
50. The notification process occurred 13 days after Mr Abdelfattah’s knee surgery. At the hearing, the latter explained to the Panel that he was not taking any medication whatsoever at the time of the notification. In other words, it does not appear that the Wrestler’s condition was such that the planning of the notification had to be adjusted in a specific manner. At least, Mr Abdelfattah has not substantiated the facts on which he relies with respect to the so-called unethical nature of the planning.
51. Concerning the time of the notification, it complies in full with the WADA *“Guideline for Out-of-Competition Testing”*, according to which *“The DCO shall attempt to locate the Athlete between the hours of 7:00am and 10:00pm”*. Such an *“early”* notification is not unusual and has already been seen in previous CAS precedents without being an issue (see for instance CAS 98/211, Digest of CAS Awards II, 1998-2000, Matthieu Reeb, ed. 2002; p. 255).
52. As a result, the planning obligations deriving from article 5.3.5 IST were fulfilled.

g) Conclusion

53. For all those reasons, the Panel considers as groundless or inadmissible the complaints of Mr Abdelfattah in connection with the alleged deviations by the USADA agents from the ADR and the IST.

D. *Did Mr Abdelfattah refuse to provide a urine sample?*

54. Given the fact that the Panel came to the conclusion that Mr Abdelfattah’s English speaking ability was sufficient to permit him to understand and to express himself, there is no reason to question the statement of Mr Richard Brooks and Mr Tommy Nevill or their report attached to the Athlete Refusal Form, according to which the Wrestler said *“you have nothing, I’m not doing this!” Then abruptly got up and left”*.

55. Mr Abdelfattah cannot reasonably assert that his departure from the lobby was the result of a misunderstanding or miscommunication between him and the USADA agents. First, Mr Richard Brooks and Mr Tommy Nevill heard him express clearly his refusal to submit to the sample collection session. Second, as an experienced athlete, he could not plausibly believe that the USADA agents would let him leave the room unaccompanied in order to fetch an international telephone card. He was well aware of the fact that, *"When in-person contact is made, the DCO/Chaperone shall from this time until the Athlete leaves the Doping Control Station at the end of his/her Sample Collection, keep the athlete under observation at all times"* (Article 5.4.2 a) IST). As a matter of fact, a few minutes earlier, he had taken a shower under the supervision of Mr Richard Brooks and Mr Tommy Nevill. Third, the fact that the DCO/Chaperone shall ensure that the Athlete is escorted from the place of notification to the doping control station under constant supervision is such a basic principle that the Panel cannot conceive that experienced USADA agents such as Mr Richard Brooks and Tommy Nevill would both simply forget to comply with it.
 56. Consequently, the Panel is convinced that Mr Abdelfattah refused to sign any form in order to evade notification. As it results from his statement and his report attached to the Athlete Refusal Form, Mr Richard Brooks made several attempts to persuade the Wrestler to comply, including informing the latter that failure to comply may result in sanction for an anti-doping rule violation. As Mr Abdelfattah left the lobby, Mr Brooks immediately reported the refusal to his superior by phone and documented the facts, including the reasons for refusal given by the Athlete in a declaration attached to the Athlete Refusal Form.
 57. As Mr Abdelfattah refused to provide a sample and left the lobby of his own will, the Panel considers it needs not address the assertion that *"35 minutes is no adequate time frame for a proper doping test"*.
- E. *What is the sanction and how should it be calculated?*
58. It has been established that the USADA agents were authorised to test Mr Abdelfattah, who unduly refused to provide his urine sample. Furthermore, no departure from the applicable regulations occurred during the notification process.
 59. According to article 2.3 ADR, *"The following constitute anti-doping rule violations: (...) Refusing, or failing without compelling justification, to submit to Sample collection after notification as authorized in these Anti-Doping Regulations or otherwise evading Sample collection"*.
 60. Article 10.4.1 ADR states that *"For violations of Article 2.3 (refusing or failing to submit to Sample collection) or Article 2.5 (Tampering with Doping Control), the Ineligibility periods set forth in Article 10.2 shall apply"*.
 61. It is the first time that Mr Abdelfattah is found guilty of an anti-doping rule violation. Therefore and pursuant to article 10.2 ADR, the violation is sanctioned with a two-year period of ineligibility.

62. Article 10.5.2 ADR rules the elimination or reduction of period of ineligibility based on exceptional circumstances in case of failure to submit to sample collection under article 2.3. This provision states that *“If a Wrestler establishes in an individual case involving such violations that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable”*.
63. Mr Abdelfattah did not establish that he bears no significant fault or negligence for his doping offence.
64. Consequently and for all the above reasons, the Panel finds that the appeal of the WADA must be allowed and the Decision rendered on 19 December 2007 by the FILA Federal Appeal Commission must be set aside. Hence, the Panel finds Mr Abdelfattah guilty of a doping offence under article 2.3 of the FILA Anti-Doping Regulations.
65. Accordingly, the Panel concludes that the Wrestler is declared ineligible for a two-year period, pursuant to article 10.2 ADR, with credit for suspension time already served. As a matter of fact, the FILA Federal Appeal Commission suspended Mr Abdelfattah as of 24 July 2007 for a period of six months.
66. On 23 April 2008, the FILA requested the CAS to settle the case urgently *“as for FILA the sanction period of the wrestler Mohamed Ibrahim Abdelfattah is now ended and the next qualifying events for the 2008 Beijing Olympic Games are”* in May 2008.
67. On 29 April 2008 the CAS Court Office answered FILA that *“In the event the suspension period currently imposed on the athlete has expired at the time of the Olympic qualification tournaments held in May 2008, the Panel cannot prevent the athlete from participating in those events pending the final adjudication of the matter in dispute. However, any participation of the athlete is without prejudice to the fact that his results in those events may be disqualified and any prizes forfeited as a consequence of the final award”*.
68. The Panel infers from the FILA letter dated 23 April 2008 that Mr Abdelfattah was effectively suspended during the six months following 24 July 2007. However, it has not been established that the Wrestler voluntarily refrained from competing after the end of his 6-month period of ineligibility imposed upon him by the FILA Federal Appeal Commission, although he was aware of the appeal filed by the WADA, which was requesting the CAS to sanction him with a two-year period of ineligibility.
69. Accordingly, the Panel finds that a period of 6 months of already served suspension needs to be deducted from the total period of ineligibility of 2 years. As a consequence, the period of ineligibility still to be served represents 18 months starting from the date of the hearing (18 June 2008).
70. Furthermore in accordance with article 10.7 of the FILA Anti-Doping Regulations, any and all results achieved by Mr Abdelfattah between the date when the FILA Appeal Commission’s six-month sanction lapsed, i.e. on 24 January 2008, and the date from which the remaining part of

the ineligibility is being served, i.e. 18 June 2008, are disqualified and any medals, points and prizes obtained during such period are forfeited.

The Court of Arbitration for Sport rules:

1. The Appeal of the WADA against the decision rendered on 19 December 2007 by the FILA Federal Appeal Commission is admissible.
2. The decision rendered on 19 December 2007 by the FILA Federal Appeal Commission is set aside.
3. Mr Mohamed Ibrahim Abdelfattah is declared ineligible for a period of 24 months running from 18 June 2008, less a period of 6 months which has already been served by the athlete.
4. All results achieved between 24 January 2008 and 17 June 2008 are disqualified and any medals, points and prizes obtained during such period are forfeited.
5. (...).
6. All other motions or prayers for relief are dismissed.