



**Arbitration CAS 2014/A/3866 United States Anti-Doping Agency (USADA) v. Mohamed Trafteh, award of 13 August 2015**

Panel: Prof. Matthew Mitten (USA), Sole Arbitrator

*Athletics (long distance)*

*Doping (rEPO)*

*Possibility of the parties to request the review of a part of the appealed decision*

*Justifications for starting the period of ineligibility earlier than the start date of the hearing decision*

1. **A party appealing a decision before the CAS may request the CAS panel to review only a part of the decision appealed against and not seek a de novo review of the entire appealed decision.**
2. **Comment to Article 10.9 of the WADA Code expressly states there are only two justifications for starting the period of ineligibility earlier than the start date of the hearing decision: substantial delays in the hearing process or other aspects of doping control not attributable to the athlete. In accordance with CAS jurisprudence, it is appropriate to consider official comments when interpreting the provisions of the WADC and anti-doping rules based on the WADC.**

**I. PARTIES**

1. The United States Anti-Doping Agency (“USADA” or the “Appellant”) is an independent anti-doping agency in the United States and is responsible for conducting drug testing and adjudicating positive test results pursuant to the USADA Protocol for Olympic and Paralympic Movement Testing (“USADA Protocol”).
2. Mr. Mohamed Trafteh (the “Respondent”) is a Moroccan-born United States citizen and a member of United States Track & Field, which in turn is a member of the International Association of Athletics Federations (“IAAF”).

**II. FACTUAL BACKGROUND AND APPEALED DECISION**

**A. Background Facts**

3. A summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence follows. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the

legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceeding, he refers in his Award only to the submissions and evidence he deems necessary to explain his reasoning.

4. The Respondent is a professional distance runner who has been competing at an elite level of competition for more than five years and has been in USADA's Registered Testing Pool since the fall of 2010. He was drug tested by USADA and other signatories to the World Anti-Doping Code (the "WADC") a total of twenty (20) times without any positive tests. He is an eight-time U.S. road champion and was the 2013 USA Half Marathon champion, the 2013 USA 25K champion, and the USA 25K American record holder.
5. On 8 February 2014, the Respondent was detained by the United States Department of Homeland Security while attempting to smuggle six (6) syringes containing an unknown substance into the United States, which subsequently was tested by the World Anti-doping Agency ("WADA") accredited laboratory in Salt Lake City, Utah and determined to be recombinant human erythropoietin ("EPO"), a Prohibited Substance on WADA's Prohibited List.
6. On 13 February 2014, the Appellant unsuccessfully attempted to obtain an out-of-competition sample collection from Respondent at his residence in Bouskoura, Morocco, which was listed on his 1<sup>st</sup> Quarter, 2014 Whereabouts Filing submitted by the Respondent to the Appellant on 31 December 2013, because he was not at home at this time.
7. On 30 March 2014, the Respondent voluntarily participated in an interview with two representatives of the Appellant during which, after he was confronted with evidence of his possession of EPO, he admitted first purchasing and using EPO in January 2012 to aid his recovery from an injury and to improve his conditioning more rapidly before the track and field competition season. He admitted subsequently purchasing EPO three times thereafter in the summer of 2012, in early 2013, and in January 2014. He also admitted that he and his wife knowingly provided the Appellant with false information concerning his whereabouts from 8-15 February 2014.
8. During the 30 March 2014 interview, the Respondent agreed to provide USADA with detailed information regarding his own past doping activities as well as those of other track and field athletes of which he had knowledge, which possibly could result in a reduction in the otherwise applicable period of ineligibility for his doping offenses. He provided a brief overview of his knowledge of the doping activities of other track and field athletes and support personnel, as well as his suspicions regarding some other athletes. However, he subsequently refused to make himself available to provide full and complete information to USADA prior to May 2014. During the interim, the Respondent apparently competed in the US 10 Mile Championships and planned to compete in a race in China, but withdrew prior thereto due to an injury.
9. On 11 April 2014, the Appellant opened a formal action against the Respondent based on evidence that he committed multiple anti-doping violations.

10. At some point, the Respondent returned to his home in Morocco before providing the foregoing detailed information to USADA.
11. On 28 April 2014, the Appellant charged the Respondent with violating Articles 2.2, 2.3, 2.6, 2.7, 2.8, and 10.6 of the WADC and the corresponding provisions of the IAAF Anti-doping Rules (“IAAF ADR”), which ultimately gave rise to this proceeding.
12. On 26 June 2014, a statement attributed to the Respondent that was reportedly provided by his then attorney Jonathan LaCour was published at [www.LetsRun.com](http://www.LetsRun.com), which announced his retirement from track and field competition as well as admitted his possession of EPO on a single occasion, but he denied ever using it:

*Unfortunately, and as many elite athletes have experienced before me, a number of frustrating and serious injuries have plagued my ability to train, race, and remain competitive over the course of these past eighteen months. Against my better judgment and after hours of discussions, I made an unwise decision to purchase EPO, a USOC banned substance, so that I could train in [an] effort to return to my previous form. During my return trip home after purchasing the EPO, I was stopped by the United States Anti-doping Agency and they discovered the banned substance. Since that time, they have initiated formal proceedings against me and threatened to impose a lifetime ban.*

*I would like to publicly state that since 2008 I have been one of the most sought after targets in our sport and have never failed a drug test. I was stopped before I was able to use EPO. I never previously used EPO and if I had the financial resources to fight this case, I am confident that I would prevail. Unfortunately, our sport does not provide the wealth that some other sports do, and for the financial future of my family, I must simply retire and take whatever steps are necessary to provide a stable and secure life.*

## **B. The Appealed Decision**

13. On 10 November 2014, a hearing was held before a single arbitrator in an American Arbitration Association/North American Court of Arbitration for Sport (“AAA/CAS”) arbitration proceeding during which the Appellant submitted circumstantial or non-analytical positive evidence of the Respondent’s anti-doping violations and aggravating circumstances justifying an enhanced sanction for a first anti-doping offense. Despite being ordered by the arbitrator to testify in this proceeding, the Respondent chose not to do so or to otherwise participate by presenting any evidence on his behalf.
14. On 2 December 2014, the AAA/CAS arbitrator determined that the Appellant established that the Respondent committed several anti-doping rule violations to his comfortable satisfaction bearing in mind the seriousness of the allegations against the Respondent (the “Appealed Decision”):

*In this case:*

1. Respondent has admitted that he purchased EPO prior to the seizure of the drug in February 2014;
2. Respondent had possession and transported a prohibited substance when he transported six syringes containing EPO in his luggage from Morocco to the United States;
3. Respondent admitted to intentionally providing USADA with false or misleading information regarding his whereabouts in order to avoid having to submit to testing;
4. Respondent, even at this late stage, has refused to accept full responsibility for his past doping offense or take redemptive measures to help stem future occurrences of prohibited doping activity in sport, and he refused to participate in these proceedings.

15. Regarding possible sanctions, the AAA/CAS arbitrator stated:

*A finding that the Respondent has only engaged in the Use or Attempted Use or Possession of a prohibited substance, or that Respondent intentionally committed the violation of evading Sample collection warrants the imposition of a two-year period of ineligibility at a minimum. If there are aggravating circumstances that sanction could be increased to four years. The Arbitrator took into consideration the provisions of Article 10.6 Code, effective as of January 1, 2009. The comment to Article 10.6 “Aggravating Circumstances Which May Increase the Period of Ineligibility” states: Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.*

16. The AAA/CAS arbitrator determined:

*The Arbitrator is of the view that aggravating circumstances exist here. In aggravation, the Arbitrator finds that the Athlete committed the anti-doping violation as part of an individual doping scheme involving possession of multiple Prohibited Substances and the Athlete engaged in deceptive and obstructive conduct to avoid the detection of an anti-doping violation.*

17. In his Decision and Award, the AAA/CAS arbitrator concluded:

*On the basis of the foregoing facts and legal aspects, the Arbitrator renders the following decision:*

*11.1 Respondent has committed a doping violation under Code Article 2.2 and IAAF ADR 32.3(b)<sup>1</sup> and Article 2.6 and IAAF ADR 32.2(f). Aggravating circumstances exist here sufficient to impose more than the usual two year ban.*

*11.2 The following sanctions shall be imposed on Respondent:*

*11.2.1 Respondent shall receive a period of ineligibility (as defined in the Code) of four (4) years commencing January 1, 2012 and ending on December 31, 2015. Respondent shall be disqualified from all sporting events in which he participated from the period January 1, 2012 to the date of this ruling. Furthermore, all benefits, awards, titles, medals, points, or remuneration from his previous participation in sport that flowed to Mr. Trafteh, from the period January 1, 2012 to the date of this ruling shall be deemed forfeited and shall be returned to the relevant body.*

*11.2.2 During his period of ineligibility, in addition to all other penalties or restrictions flowing from his ineligibility, Mr. Trafteh is prohibited from participating in and having access to the training facilities or programs of the USOC and any NGB, or other programs and activities of the USOC and any NGB, including but not limited to, grants, awards, or employment pursuant to the USOC Policies. ....*

18. It is from the Appealed Decision that the Appellant now bring this appeal to the Court of Arbitration for Sport (the “CAS”).

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

19. On 23 December 2014, the Appellant filed an appeal with the CAS against the Respondent in accordance with Article R47 of the Code of Sports-related Arbitration (the “Code”) with respect to the decision rendered by the AAA/CAS arbitrator, AAA No. 01-14-0000-4694, dated 2 December 2014 (i.e. the Appealed Decision). In its Statement of Appeal, the Appellant nominated Maidie E. Oliveau as an arbitrator and selected English as the language of the proceedings.
20. On 19 January 2015, the Appellant filed its appeal brief in accordance with Article R51 of the Code.
21. On 3 February 2015, the CAS Court Office wrote to the parties, stating that because the Respondent did not nominate an arbitrator, an arbitrator would be nominated on his behalf in accordance with Article R54 of the Code. The CAS Court Office also confirmed that this appeal would proceed in English having received no objection from the Respondent.
22. On 11 February 2015, the CAS Court Office confirmed that the Respondent did not file an Answer in accordance with Article R55 of the Code. Within such letter, the parties were asked to state their respective positions regarding whether a hearing should be held in connection with this appeal.

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<sup>1</sup> This appears to be a typographical error because the corresponding provision is *IAAF ADR 32.2(b)*.

23. On 11 February 2015, the Respondent stated that while he would like a hearing to be held, he could not afford the costs associated therewith and inquired as to his options.
24. On 13 February 2015, the Appellant stated that it did not want to proceed with a hearing, and also that it wished to reduce the composition of the Panel to a Sole Arbitrator, namely Ms. Oliveau.
25. On 17 February 2015, the CAS Court Office invited the Respondent to state his position on the reduction of the Panel to a Sole Arbitrator. The CAS Court Office also provided the Respondent with a legal aid application and noted that to the extent legal aid was granted, the Respondent would be provided with financial resources to participate in a hearing, if necessary. No response was ever received from the Respondent on either issue.
26. On 20 March 2015, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division decided to refer this case to Prof. Matthew J. Mitten, Professor of Law, in Milwaukee, Wisconsin, United States of America, as Sole Arbitrator in accordance with Article 50 of the Code.
27. On 7 May 2015, the CAS Court Office, on behalf of the Sole Arbitrator, offered the parties an opportunity to participate in a hearing in person, or alternatively, by video or telephone conference. Each party was requested to affirmatively inform the CAS Court Office within three (3) days whether such party wanted an opportunity to participate in a hearing. Otherwise, the Sole Arbitrator would presume that the parties desired that he render an award based solely on the written submissions.
28. On 11 May 2015, the Appellant reiterated its preference that the Sole Arbitrator render an award without a hearing. The Respondent never responded regarding whether or not he wanted a hearing.
29. On 21 May 2015, the CAS Court Office informed the parties that the Sole Arbitrator considered himself sufficiently well informed based on the written submissions of record to render a decision without the need for a hearing in accordance with Article R57 of the Code.
30. On 22 and 26 May 2015, the Appellant and Respondent, respectively, agreed without objection to the terms of the Order of Procedure, which provided "*the Sole Arbitrator considered himself to be sufficiently well informed to decide this matter without the need for a hearing,*" signed, and returned this order to the CAS Court Office.

#### **IV. JURISDICTION**

31. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

32. Section 15b and Article 13 of Annex A to the USADA Protocol provide that a final award rendered by the AAA/CAS in accordance with the USADA Protocol may be appealed to the CAS by either the Appellant or Respondent. Section 15b provides that the “CAS shall conduct a review of the matter on appeal, which among other things, shall include the power to increase, decrease, or void the sanctions imposed by the previous AAA/CAS Panel regardless of which party initiated the appeal”. Article 13.2 provides that “[a] decision that an anti-doping rule violation was committed” or “a decision imposing Consequences for an anti-doping rule violation” may be appealed to the CAS.
33. Both parties signed the Order of Procedure without any objections, thereby consenting to CAS jurisdiction. In para. 1 of the Order of Procedure, the Respondent expressly acknowledged that “the jurisdiction of the CAS is not contested ... and is confirmed by [his] signature”.
34. Consequently, the Sole Arbitrator determines and confirms that he has jurisdiction to hear this appeal.

## V. ADMISSIBILITY

35. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

36. Pursuant to Article 15(b) of the USADA Protocol, a “final award by the AAA/CAS arbitrator(s) may be appealed to the CAS within twenty-one (21) days of issuance of the final reasoned award [...]”.
37. The Sole Arbitrator notes that the Appealed Decision is dated 2 December 2014. He acknowledges the arguments made by the Appellant in Section I(C) of its appeal brief, which support and confirm that the Appealed Decision was issued and transmitted to the parties on 2 December 2014. The Respondent has not submitted any evidence establishing that the Appealed Decision was rendered on an earlier date.
38. Consequently, the Sole Arbitrator finds that the AAA/CAS entered and served the Appealed Decision upon the parties on 2 December 2014. On 23 December 2014, the Appellant duly filed its statement of appeal with the CAS in accordance with Article R47 of the Code. Accordingly, the Sole Arbitrator confirms that this appeal is admissible.

## VI. APPLICABLE LAW

39. Article R58 of the Code provides as follows:

*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.*

40. In its appeal brief, the Appellant relies upon the 2009 WADC, as well as the corresponding IAAF ADR. The Respondent has not made any contrary assertions or otherwise objected to their applicability. Accordingly, the Sole Arbitrator will apply the WADC and the IAAF ADR in assessing its merits.

## **VII. SCOPE OF REVIEW**

41. Article R57 of the CAS Code provides:

*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance....*

42. Thus, the Sole Arbitrator has the authority to provide *de novo* review of the issues determined by the AAA/CAS, which is consistent with the jurisdiction of the CAS to resolve this appeal pursuant to Section 15b and Article 13 of Annex A to the USADA Protocol.

## **VIII. SUBMISSIONS OF THE PARTIES**

43. The Appellant submits that it “*is seeking to appeal only the start date of Mr. Trafteh’s period of ineligibility*” and asserts:

- The Appealed Decision “*erroneously imposed on Mr. Trafteh a period of ineligibility beginning on January 1, 2012, which start date is not permitted under [WADC] Article 10.9 and IAAF ADR 40.9*”<sup>2</sup>.

The Appealed Decision “*erroneously failed to impose on Mr. Trafteh a period of ineligibility beginning on December 2, 2014, the date of the hearing decision as required by [WADC] Article 10.9 and IAAF ADR 40.9*”.

44. In its Appeal Brief, the Appellant makes the following request for relief:

*For the foregoing reasons, the United States Anti-Doping Agency, by counsel, respectfully requests that its appeal be upheld and that the CAS Panel find that the Respondent should be sanctioned with the disqualification of all competitive results from 1 January 2012 (as previously provided in the AAA Award) and that Respondent should be sanctioned with a four (4) year period of ineligibility as provided for in the Code and IAAF from the 2 December 2014 date of the AAA hearing decision through and including 1 December 2018.*

45. The Respondent did not file an Answer or make any other submission in his defence or on his behalf. Thus, despite having a full opportunity to do so in this proceeding (including by

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<sup>2</sup> This appears to be a typographical error because the corresponding provision is *IAAF ADR 40.10*.

video or telephone conference), Respondent does not contest any of the Appealed Decision's factual findings or legal conclusions, including the AAA/CAS determination that he committed multiple anti-doping rule violations, aggravated circumstances exist to justify imposing an enhanced sanction of four (4) years of ineligibility, and that "*all benefits, awards, titles, medals, points, or remuneration from his participation in sport*" earned by him from 1 January 2012 through 2 December 2014 are forfeited and shall be returned to the IAAF".

## IX. RELEVANT 2009 WADC AND IAAF ADR PROVISIONS

46. Article 10.8 of the WADC provides:

### **Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation**

*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.*

47. Article 10.9 of the WADC provides:

### **Commencement of Ineligibility Period**

*Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed.*

#### *10.9.1 Delays Not Attributable to the Athlete or other Person.*

*Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred.*

#### *10.9.2 Timely Admission*

*Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the Anti-Doping Organization, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction or the date the sanction is otherwise imposed.*

10.9.3 *If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of ineligibility which may ultimately be imposed.*

10.9.4 *If an Athlete voluntarily accepts a Provisional Suspension in writing from an Anti-Doping Organization with results management authority and thereafter refrains from competing, the Athlete shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Athlete's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of a potential anti-doping rule violation under Article 14.1<sup>3</sup>.*

10.9.5 *No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Athlete elected not to compete or was not selected to compete.*

The Comment to Article 10.9 states:

*The text of Article 10.9 has been revised to make clear that delays not attributable to the Athlete, timely admission by the Athlete and Provisional Suspension are the only justifications for starting the period of Ineligibility earlier than the start date of the hearing decision. This amendment corrects inconsistent interpretation and application of the previous text.*

48. IAAF ADR 40.8 provides:

**Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation**

*In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money.*

49. IAAF ADR 40.10 provides:

**Commencement of Period of Ineligibility**

*Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served.*

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<sup>3</sup> In relevant part, Article 10.11 of the 2015 WADC, the successor to Article 10.9 of the 2009 WADC, is substantially similar and provides Respondent with no greater rights; therefore, there are no issues of *lex mitior* to consider.

*(a) Timely Admission: where the Athlete promptly admits the anti-doping rule violation in writing after being confronted (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again), the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction or the date the sanction is otherwise imposed.*

*(b) If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed.*

*(c) If an Athlete voluntarily accepts a Provisional Suspension in writing (pursuant to Rule 38.2) and thereafter refrains from competing, the Athlete shall receive credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. In accordance with Rule 38.3, a voluntary suspension is effective upon the date of its receipt by the IAAF.*

*(d) No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Athlete elected not to compete or was not selected to compete<sup>4</sup>.*

## X. MERITS

50. The Sole Arbitrator acknowledges that the Appellant (1) is appealing only the AAA/CAS determination of the start date of Respondent’s period of ineligibility; (2) “*is satisfied with the other decisions made concerning Respondent’s sanction as set forth in the [Appealed Decision] and does not seek to appeal any other aspect of [it]*”; and (3) “*is not seeking a de novo review in this case and respectfully requests [only] that the single issue raised by [it] in this appeal be decided on the papers by the CAS panel*”. (emphasis original.) The Respondent does not challenge any aspect of the Appealed Decision and therefore, the Sole Arbitrator’s review on appeal, while *de novo*, is limited to the Appellant’s foregoing request for relief and underlying issues. Consequently, the Sole Arbitrator conducts his review on the premise that the Respondent did commit multiple anti-doping violations in breach of Articles 2.2 (use or attempted use of a prohibited substance) and 2.6 (possession of a prohibited substance) of the WADC and that aggravated circumstances exist pursuant to Article 10.6 of the WADC to justify imposing an enhanced sanction of four (4) years of ineligibility on Respondent.
51. As set forth above, IAAF ADR 40.10, which is identical to Article 10.9 of the WADC, mandates that the Respondent’s four (4) year period of ineligibility shall begin on 2 December 2014 unless there is evidence to support one of the following two justifications for doing so: 1) “*there have been substantial delays in the hearing process or other aspects of Doping*

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<sup>4</sup> In relevant part, IAAF ADR 40.11, which became effective on 1 January 2015 and is the successor to IAAF ADR 40.10, is substantially similar and provides Respondent with no greater rights; therefore, there are no issues of *lex mitior* to consider.

*Control not attributable to [him]; or 2) [he] promptly (which, in all events, for an Athlete means before the Athlete competes again) admit[ted] the anti-doping rule violation after being confronted with the anti-doping rule violation by [Respondent]. If the arbitrator determines that either justification exists, he may start the period of Ineligibility at an earlier date commencing as early as ... the date on which another anti-doping rule violation last occurred.*

52. The Comment to Article 10.9 expressly states these two justifications “*are the only justifications for starting the period of Ineligibility earlier than the start date of the hearing decision*”. In accordance with CAS jurisprudence, it is appropriate for the Sole Arbitrator to consider official comments when interpreting the provisions of the WADC and anti-doping rules based on the WADC (CAS 2005/A/847).
53. Without any explanation of his reasoning, the AAA/CAS arbitrator determined that Respondent’s four (4) year period of ineligibility should begin on 1 January 1, 2012 (the date of his first anti-doping rule violation) and end on 31 December 2015. The arbitrator did not find any substantial delays in the AAA/CAS arbitration process or in any other aspects of USADA’s doping control process not attributable to Respondent, or that he promptly admitted his anti-doping rule violations after being confronted with evidence of their occurrence by USADA. The decision to start the period of ineligibility on 1 January 2012 is inconsistent with IAAF ADR 40.10 and Article 10.9 of the WADC and without any legal justification.
54. Applying the mandatory language of Article 10.9, which states *the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility*, the Sole Arbitrator determines that Respondent’s four (4) year period of ineligibility should begin on 2 December 2014 and continue through 1 December 2018. There is no evidence that any “*substantial delays*” necessarily attributable to the Appellant occurred during the AAA/CAS arbitration process, which began on 28 April 2014 when Appellant charged Respondent with multiple anti-doping violations and concluded slightly more than seven months later on 2 December 2014. Nor were there any substantial delays regarding other aspects of USADA’s doping control process in relation to Respondent, which originated less than two months before Appellant opened an 11 April 2014 formal action against Respondent based on evidence that he committed the anti-doping violations giving rise to this proceeding.
55. There is no evidence establishing that the Respondent promptly and unequivocally admitted his anti-doping rule violations after being confronted with evidence of their occurrence by USADA. The Respondent could have raised this issue as well as any other potential defenses by participating and testifying in this proceeding by video or telephone conference, but he choose not to do so. Nevertheless, even if the Respondent had done so, pursuant to Article 10.9.2 of the WADC (*the period of Ineligibility may start as early as the date on which another anti-doping rule violation last occurred*), the latest possible start date of his period of ineligibility would be 1 January 2014 based on credible and undisputed evidence he admitted purchasing EPO in January 2014.
56. Furthermore, because the Appellant did not impose a Provisional Suspension on the Respondent, the Respondent is not entitled to receive any credit for any period of

Provisional Suspension against his four (4) year period of ineligibility pursuant to Articles 10.9.3 or 10.9.4 of the WADC.

57. Thus, there is no justification to start Respondent's four (4) year period of ineligibility any earlier than the AAA/CAS arbitrator's 2 December 2014 award.
58. Based on the foregoing, the Sole Arbitrator determines that all benefits, awards, titles, medals, points, or remuneration earned by the Respondent from the date of the anti-doping rule violation occurred (i.e. 1 January 2012 - the date of his initial anti-doping rule violation) through the conclusion of his period of ineligibility are hereby forfeited and disqualified in accordance with IAAF ADR 40.8 and Article 10.8 of the WADC. There is no record evidence to conclude that fairness requires otherwise.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by the United States Anti-Doping Agency on 23 December 2014 is upheld.
2. The 2 December 2014 decision by the American Arbitration Association/North American Court of Arbitration for Sport (the "Appealed Decision") determining that Mr. Mohamed Trafeh committed multiple anti-doping rule violations; aggravated circumstances exist justifying an enhanced period of ineligibility of four (4) years; and all benefits, awards, titles, medals, points, or remuneration from his participation in sport from 1 January 2012 through and including 2 December 2014 are invalidated is affirmed.
3. The Appealed Decision's determination that the start date for Mr. Mohammed Trafeh's four (4) year period of ineligibility is 1 January 2012 is vacated, and its start date is amended to 2 December 2014.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.