



Arbitration CAS 2018/A/5739 Levi Cadogan v. National Anti-Doping Commission of Barbados (NADCB), award of 20 February 2019

Panel: Mr Jeffrey Benz (USA), Sole Arbitrator

Athletics (sprint)

Doping (furosemide)

Objective fault

Subjective fault

Proportionality of the sanction

1. **There are three possible ranges of fault, 1) significant degree of or considerable fault, 2) normal (medium) degree of fault, and 3) light degree of fault. The ranges that are generally applied under this framework are that significant fault receives a sanction of 16-24 months, medium fault receives a sanction of 8-16 months, and light fault receives a sanction of 0-8 months.**
2. **Once an adjudicating panel determines the objective range of fault, then it is helpful to review the subjective fault so that a determination of where the athlete falls in the applicable objective range can be made to apply a specific sanction.**
3. **The CAS jurisprudence since the entry into effect of the 2015 World Anti-Doping Code (WADC) is not favourable to the introduction of proportionality as a means of reducing yet further the period of ineligibility provided for by the WADC. The WADC has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction.**

I. PARTIES

1. Appellant, Mr Levi Cadogan, is an athlete who participates in the 100m and 200m sprints (“Athlete” or “Mr Cadogan”). He has been competing in the sport for almost six (6) years and is a member of the Athletic Association of Barbados, the International Association of Athletics Federations (“IAAF”) recognized member for the country of Barbados. At seventeen years of age, Mr Cadogan was the youngest ever Barbadian to represent Barbados at the World Championships. Mr. Cadogan is subject to the IAAF Anti-Doping Rules (“IAAF ADR”).
2. Respondent, National Anti-Doping Commission of Barbados, is the World Anti-Doping Agency (“WADA”) recognized national anti-doping organization for the country of Barbados

(“NADCB”). The Barbados Anti-Doping Disciplinary Panel issued the decision that is the subject of this appeal.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced from the Parties’ written submissions. 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 proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. In September 2017, the Athlete relocated from his parent’s home. His friends and acquaintances often frequented his rental home and stayed there from time to time. Some of these acquaintances were jockeys.
5. On 20 October 2017 (the “Collection Date”), the Athlete received a telephone call advising that he had been selected for an out-of-competition test. The Athlete has been drug tested on numerous occasions. All tests prior to 20 October 2017 were negative for prohibited substances.
6. The Athlete made his way to his parent’s home and submitted a urine sample to the Doping Control Officer (“DCO”) there. The DCO reported on his form that the Athlete was very cooperative.
7. The Athlete’s A Sample was sent to the Institute Armand-Frappier, the WADA accredited laboratory in Montreal, Canada. The laboratory returned an adverse analytical finding for furosemide (466 ng/mL).
8. Furosemide is a diuretic and masking agent listed as a prohibited substance under section 5 on the WADA Prohibited List. It is prohibited at all times. It is also considered as a specified substance, in accordance with Article 4.2.2 of the NADCB Anti-Doping Rules (“NADCB ADR”). The Athlete did not have a Therapeutic Use Exemption (“TUE”) for the prohibited substance.
9. The Athlete does not have any previous anti-doping rule violations.

B. Proceedings Before the First Instance Tribunal

10. On 11 December 2017, the Athlete was heard by the Barbados Anti-Doping Disciplinary Panel (“Disciplinary Panel”).

11. By written decision dated 20 March 2018 (the “Decision”), which was received by the Athlete by an e-mail on 19 April 2018, the Disciplinary Panel determined that while it was within their authority to impose a four (4) year ban, the Athlete should be sanctioned with a period of ineligibility of two (2) years (the “Sanction”) based on the guidance from CAS 2102/A/3037. The Disciplinary Panel determined that the Sanction should commence on 28 November 2017 and end on 27 November 2019.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 10 May 2018, the Athlete filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the “Code”), seeking the appointment of a sole arbitrator and to submit the present proceedings to an expedited procedure.
13. On 17 March 2018, the CAS Court Office confirmed receipt of the Statement of Appeal and invited the Respondent to advise whether it agrees with an expedited procedure. No response was provided to that invitation.
14. On 20 May 2018, Appellant filed his Appeal Brief pursuant to Article R51 of the Code.
15. On 25 May 2018, the CAS Court Office confirmed the receipt of the Appellant’s Appeal Brief and informed the Respondent it had until 20 days after receipt of that letter to submit an Answer, and advised the effects of failing to file an Answer. Respondent was also invited to advise whether it agreed with the expedited procedure proposed by Appellant.
16. On 29 May 2018, Respondent acknowledged receipt of the 17 May and 25 May, 2018 letters and advised that it agrees to the appointment of a sole arbitrator.
17. No Answer was filed by Respondent.
18. On 6 June 2018, the CAS Court Office advised that having not heard from Respondent on the application for an expedited procedure it had been determined to not use an expedited procedure.
19. On 13 June 2018, the CAS Court Office advised that the CAS had determined to submit this case to a sole arbitrator.
20. On 29 June 2018, the CAS Court Office invited the Parties, among other things, to advise on whether they prefer a hearing or for the sole arbitrator to issue an award based solely on the Parties’ written submissions.
21. On 4 July 2018, Appellant advised that he did not wish for a hearing to be held but preferred that the sole arbitrator issue an award based solely on the Parties written submissions.
22. On 15 August 2018, the CAS Court Office advised the Parties that Jeffrey G. Benz had been appointed as the Sole Arbitrator.

23. On 27 August 2018, the CAS Court Office issued, on behalf of the Sole Arbitrator, an Order of Procedure. Such Order was signed by the Appellant on the same date and by the Respondent on 3 September 2018.
24. This Award followed on the date signed below.

IV. SUBMISSIONS OF THE PARTIES

25. The Athlete's submissions, in essence, may be summarized as follows:
- That he consumed furosemide, a prohibited diuretic on the WADA Prohibited List, albeit a specified substance, by mistake, thinking it was headache relief medicine.
 - That he established the source of the furosemide and the Decision makes a finding on the level of furosemide as not being relatively low, which was never discussed at the hearing and no submissions were made on that point.
 - That the furosemide was not intended to enhance the Athlete's performance because not only did he not intend to take but if he had taken it intentionally it would have been counterproductive to the nutritional supplements the Athlete was taking.
 - That the Decision failed to recognize that this was a specified substance which gave them discretion to review fault and sanction between 0 and 2 years and that 4 years was disproportionate and outside the range of possible sanctions.
 - The Athlete was not training at or immediately prior to the Collection Date. The Athlete intended to begin his training in January 2018. His last competition was the World Championships during August 2017. The Athlete's performances during the 2017 athletic season were consistent with his prior performance and modest, given the fact that the Athlete suffered several minor strains to his hamstrings during the 2017 athletic season.
 - The Athlete was not aware of the substance furosemide prior to receiving the notice of charge from the NADCB dated 28 November 2017 (the "Notice of Charge").
 - NADCB informed the Athlete in the Notice of Charge of the violation of Article 2.1 of the Rules for the National Anti-Doping Commission of Barbados (the "ADR"), namely *Presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's Sample*. The Athlete was informed in the Notice of Charge that he would be provisionally suspended pursuant to Article 7.9.1 of the ADR.
 - The Athlete responded to the Notice of Charge by letter dated 6 December 2017 (the "Athlete's Response"). In the Athlete's Response he waived his right to have the B sample analysis performed.
 - As stated in the Athlete's Response, following receipt of the Notice of Charge by the Athlete, the Athlete was informed by his physician that furosemide is a substance

customarily used by jockeys for weight-loss. In 2016, the Athlete purchased two (2) racehorses and spent a considerable amount of time at his parent's home (and later, at his rental home) with racehorse owners, trainers and jockeys.

- Based on the Athlete's investigations following receipt of the Notice of Charge, the Athlete believes that he unknowingly and inadvertently ingested a Lasix tablet which contained furosemide, having mistaken same to be an over-the-counter pain killer. The Athlete recalls waking with a headache in the early morning hours at some time prior to the Collection Date. The Athlete would have made his way to the kitchen to the medicine basket and popped out a tablet from a blister-pack which he believed to be paracetamol/panadol.
- In the Athlete's view, based on his investigations following receipt of the Notice of Appeal, Lasix tablets may be similar to paracetamol/panadol tablets in size, shape and color. It appears to the Athlete that he could have easily mistaken one pill for the other and any ingestion of a pill containing furosemide was therefore unintentional.
- The Athlete believes that such a tablet may have unknowingly become mixed with his medications when visitors spent time in his rental home. A housekeeper would have been engaged to clean the Athlete's rental home at specific times, and would have been aware that all medications found by her in the Athlete's home were to be placed in a designated area i.e. a basket in the kitchen.
- On the date of the Athlete's Response, the Athlete would have weighed approximately 177 lbs. The Athlete and his coach previously determined that he performs at an optimum level when he weighs approximately 175 lbs. The Athlete's weight usually naturally decreases towards the end of his pre-competition phase in November/December and the beginning of his competition phase around January.
- The Athlete did not and has never had an issue with losing weight. At the Collection Date, the Athlete would have been supplementing his diet with protein powder to assist with the development of muscle mass. The Athlete would also have been using creatine for muscle mass and this was disclosed on the Doping Control Form ("DCF"). The Athlete is of the view that any substance that could result in weight-loss e.g. furosemide, would be counter-productive to the supplements he was taking at the Collection Date.

26. The Athlete seeks the following relief, requesting the Arbitrator to determine the following:

- “1. The appeal of Mr. Levi Cadogan is admissible.*
- 2. The decision rendered by the Barbados National Doping Commission Disciplinary Committee in the matter of Mr. Levi Cadogan on March 20, 2018 (received by Levi Cadogan on April 19, 2018) is set aside.*
- 3. Mr. Levi Cadogan's period of ineligibility, as determined by the Barbados National Doping Commission Disciplinary Committee, be reduced or set aside.*
- 4. Mr. Levi Cadogan is granted an award for costs”.*

27. The Respondent did not make any jurisdictional or substantive submissions despite being invited to do so.

V. JURISDICTION

28. 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”.

29. Article 13.2.1 of the NADCB ADR provides in pertinent part as follows:

“Appeals Involving International-Level Athletes

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS”.

30. Based on the facts supplied and described above, so far as the Sole Arbitrator can determine, the Athlete is an International-Level Athlete.
31. There was no objection to jurisdiction from the Respondent’s side.
32. In light of the foregoing, the Sole Arbitrator finds that the CAS has jurisdiction in this procedure. In addition, the jurisdiction was not contested by the Respondent.

VI. ADMISSIBILITY

33. 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”.

34. The Decision was received by the Athlete on 19 April 2018. This appeal was filed by email on 9 May 2018, and by facsimile on 10 May 2018, within the time required by Article R49 of the Code.
35. There was no objection to admissibility.
36. Accordingly, the Sole Arbitrator finds that this appeal is admissible.

VII. APPLICABLE LAW

37. 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”.

38. In the present case, the “applicable regulations” for the purposes of Article R58 of the Code are, indisputably, those contained in the NADCB ADR, because the appeal was directed against a decision issued by the NADCB, which was rendered applying the NADCB ADR.

39. The Athlete and the NADCB are resident in Barbados and the decision of the Disciplinary Panel was issued in Barbados, so the Athlete requests that the appeal be governed by the laws of Barbados.

40. As a result, the Sole Arbitrator finds that the NADCB regulations shall apply primarily. The law of Barbados, being the law in which the NADCB is domiciled, applies subsidiarily.

VIII. MERITS

41. Article 2.1 of the NADCB ADR provides that the following constitutes an anti-doping rule violation:

“Presence of a Prohibited Substance of its Metabolites or Markers in an Athlete’s Sample”

42. The Athlete does not contest the presence of a prohibited substance in his A Sample taken on the Collection Date and the Athlete waived analysis of the B Sample.

43. Article 4.2.2 of the NADCB ADR provides that for the purposes of application of Article 10 of the NADCB ADR, all prohibited substances i.e. any substance, or class of substances so described on the WADA Prohibited List, shall be specified substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the WADA Prohibited List.

44. The WADA Prohibited List provides that in accordance with Article 4.2.2 of the World Anti-Doping Code (“WADC”), all prohibited substances shall be considered as ‘specified substances’ except substances in classes S1, S2, S4.4, S4.5, S6.A and prohibited methods M1, M2 and M3.

45. Furosemide falls within class S5 of the WADA Prohibited List and has to be considered as a specified substance.

46. Article 10.2 of the NADCB ADR provides that a period of ineligibility for a violation of Article 2.1, among others, shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the NADCB ADR:

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

10.2.1.1 *The anti-doping violation does not involve a specified substance, unless the athlete or other person can establish that the anti-doping rule violation was not intentional.*

10.2.1.2 *The anti-doping violation involves a specified substance and NADC can establish that the anti-doping rule violation was intentional.*

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

47. In the comment to Article 4.2.2 of the NADCB ADR, it is acknowledged that specified substances are more likely to have been consumed by an athlete for a purpose other than enhancement of sport.

A. Intention

48. Though this appeal is heard *de novo*, and not with deference to the Decision of the Disciplinary Panel, in accordance with Article R57 of the Code, the Sole Arbitrator notes that the Disciplinary Panel did not establish in the Decision that the Athlete's anti-doping violation was intentional. Under the NADCB ADR, the burden was on the Respondent to prove that the consumption was intentional. In fact, this issue was not even discussed in the Decision.

49. The Decision suggests that the level of furosemide in the Athlete's sample was not relatively low, but it provides no basis for making that assertion and none was presented in this Appeal. As a result, the Sole Arbitrator is unable independently to evaluate that suggestion and therefore must disregard it.

50. Since the Respondent did not appear here, there was no evidence presented that the Athlete acted in an intentional manner with respect to the anti-doping rule violation.

51. Accordingly, the Sole Arbitrator finds that it was not established that the anti-doping rule violation was intentional.

B. Reduction Based on Fault

52. Article 10.4 of the NADCB ADR provides that if an athlete or other person establishes in an individual case that he bears No Fault or Negligence (as defined in the NADCB ADR), then the otherwise applicable period of ineligibility shall be eliminated.

53. Article 10.5.1 of the NADCB ADR provides that where the anti-doping rule violation involves a specified substance, and the athlete or other person can establish No Significant Fault or Negligence (as defined in the NADCB ADR), then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two (2) years of ineligibility, depending on the athlete's degree of fault.

54. There was no record in the Decision of evidence suggesting there was any dispute as to the source of the substance, with the Disciplinary Panel seemingly accepting that the substance arrived in the Athlete's specimen as he said, through accidental ingestion.
55. Accordingly, with the only evidence before the Sole Arbitrator on ingestion being undisputed, the Sole Arbitrator finds that the Athlete ingested the furosemide by mistakenly ingesting a pill that contained the substance, thinking it was something else that he had intended to ingest.
56. As a result, and with no evidence in this proceeding of intentional ingestion, the Athlete's period of ineligibility will necessarily have to be bounded at two (2) years, in accordance with Article 10.2.2 of the NADCB ADR, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the NADCB ADR (as indicated in Article 2.1 of the NADCB ADR). The Sole Arbitrator notes that the Athlete did not make any submission on the application of Article 10.6 of the NADCB ADR, so the Sole Arbitrator is not considering that Article.
57. The next step of the analysis, therefore, is one based on fault pursuant to Articles 10.4 and 10.5 of the NADCB ADR.

C. No Fault or Negligence

58. Article 10.4 of the NADCB ADR provides that if an athlete or other person establishes in an individual case that he bears No Fault or Negligence (as defined in the NADCB ADR), then the otherwise applicable period of ineligibility shall be eliminated. Article 10.4 of the NADCB ADR only applies in exceptional circumstances, e.g., sabotage by a competitor.
59. Appendix 1 of the NADCB ADR provides that "No Fault or Negligence" means the athlete or other person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she has used or been administered the prohibited substance or prohibited method or otherwise violated an anti-doping rule. Except in the case of a minor, for any violation of Article 2.1 of the NADCB ADR, the athlete must also establish how the prohibited substance entered his or her system.
60. There is an oft-referenced maxim in these cases arising under similar provisions to Article 10.5 of the NADCB ADR that no fault cases are truly exceptional and rare, and indeed the relative lack of cases finding an athlete without any fault bear that out.
61. Here, the Athlete acknowledges that his consumption of the prohibited substance, mistaking it for paracetamol/panadol, does not constitute an exercise of utmost caution. The Athlete, therefore, acknowledges that he bears some degree of fault and would therefore not be entitled to a complete elimination of the Sanction under Article 10.4 of the ADR. The Sole Arbitrator finds that this is not a No Fault case.

D. No Significant Fault or Negligence

62. Article 10.5.1 of the NADCB ADR provides that where the anti-doping rule violation involves a specified substance, and the athlete or other person can establish No Significant Fault or Negligence (as defined in the NADCB ADR), then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two (2) years of ineligibility, depending on the degree of fault.
63. Appendix 1 of the NADCB ADR provides that ‘No Significant Fault or Negligence’ means the athlete or other person’s establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a minor, for any violation of Article 2.1 of the ADR, the athlete must also establish how the prohibited substance entered his or her system.
64. The Athlete relies on paragraph 8.13 of CAS 2012/A/2756, where the panel noted that *“if the requirements of ‘no fault or negligence’ are not met, the panel has to evaluate, in order to prove the entitlement to an elimination or reduction of the period of ineligibility ... [that] the Appellant has established: (a) how the specified substance entered the appellant’s body . . .; and (b) that the specified substance was not intended to enhance his sporting performance or mask the use of performance enhancing substances”*. This paragraph is simply a recitation of the then-existing WADC and the relevant cases.
65. The facts of the CAS 2012/A/2756 case are instructive. The athlete there received a reduction to six (6) months based primarily on the fact that he was undergoing relatively significant emotional distress caused by the death of his spouse and recent move from the west coast to Ontario, Canada, which led him to store his own medication of the same size, shape and color in a storage container that contained his wife’s medication that was a specified substance.
66. Here, the Athlete does not claim any emotional distress. He simply ingested the wrong pill without taking steps to ensure that it was the correct pill.
67. The Athlete challenges the Decision’s reliance on CAS 2012/A/3037 as inapplicable for various reasons. The Sole Arbitrator agrees that CAS 2012/A/3037 is factually different, arising from an in-competition test that predates the 2015 WADC and that does not reflect (because it pre-dates) the helpful analytical framework for dealing with fault that has developed under the CAS 2013/A/3327 case (discussed below)
68. In other words, neither case, the one relied upon by the Athlete nor the one relied upon by the Decision, is instructive or helpful to the Sole Arbitrator.
69. Rather, in CAS 2013/A/3327, the Panel outlined the basic fault analysis that should be undertaken in respect of cases where athletes are seeking exoneration on the basis of the fault-based ameliorating provisions of the WADC under the equivalent to Section 10.4 of the ADR.
70. While the analytical framework of the CAS 2013/A/3327 case is helpful it does not need to be slavishly adhered to; but it does provide assistance that has withstood revision to the 2015

WADC as the basic fault-based framework that is commonly understood to be a basis for reducing an athlete sanction on the basis of no significant fault or negligence.

71. The Athlete has acknowledged that he bears fault for ingesting the substance, so it cannot be possible to eliminate entirely the period of Ineligibility altogether under Article 10.5 of the NADCB ADR.
72. In the CAS 2013/A/3327 case, the Panel recognized there are three possible ranges of fault, 1) significant degree of or considerable fault, 2) normal (medium) degree of fault, and 3) light degree of fault. The ranges that are generally applied under this framework are that significant fault receives a sanction of 16-24 months, medium fault receives a sanction of 8-16 months, and light fault receives a sanction of 0-8 months.
73. The facts that assist the Athlete in determining his objective fault here (and thereby the range of fault into which he should fall) are few and far between. The Athlete admits that he took the pill in question without checking to see that it was what he thought it was and that he had a headache at the time. But he did nothing to confirm that he was taking the substance he intended to take.
74. By his own actions, or lack thereof, the Athlete deprived the Sole Arbitrator of any significant basis to find that he should be in any category of objective fault other than that of significant fault under the CAS 2013/A/3327 case framework.
75. Under the CAS 2013/A/3327 case framework, once an arbitrator determines the objective range of fault, then it is helpful for the arbitrator to review the subjective fault so that a determination of where the athlete falls in the 16 to 24-month range applicable here can be made to apply a specific sanction.
76. In evaluation the subjective level of the Athlete's fault, the Sole Arbitrator notes the following:
 - i. The Athlete admitted below that he knew that his roommate, a jockey, was taking Lasix, a brand name for a pill that contained furosemide. The Athlete did not know that Lasix contained furosemide. The Athlete appears to have been confused by the size, shape and color of the pill that contained furosemide that the house cleaner had mixed into the same basket where he kept his own medications. The Sole Arbitrator, having been provided with evidence of the similarity of the two medications, finds that they were similar.
 - ii. The Athlete admits he removed what he thought was the paracetamol/panadol from a blister pack, which would mean that there would have been produce identifying information on the blister pack that, had he checked, would have alerted him to the fact that he was taking the incorrect medication. There is no evidence he was under significant emotional distress or that his headache or other factors prevented him from being able to determine he was taking the wrong pill. In addition, the Athlete has been tested multiple times and has taken anti-doping education courses throughout his career.

iii. It does appear to the Sole Arbitrator, however, that his level of awareness was reduced by a careless mistake insofar as he did not know that his housekeeper had mixed the medicine together or that he was unaware of his obligations under the NADCB ADR to exercise utmost caution when ingesting medicines.

77. The Sole Arbitrator finds that there are few mitigating factors in the Athlete's favour with respect to the subjective fault analysis, which means that the period of ineligibility should not be as high as 2 years but still in the upper end of the 16 to 24-month range.

78. Accordingly, the Sole Arbitrator determines that the Athlete's degree of fault is significant under the CAS 2013/A/3327 case analysis and that he should be subject to a sanction of twenty (20) months.

E. Proportionality

79. The CAS jurisprudence since the entry into effect of the 2015 WADC is not favourable to the introduction of proportionality as a means of reducing yet further the period of ineligibility provided for by the WADC (and there is only one example of its being applied under the previous version of the WADC). In CAS 2016/A/4534, when addressing the issue of proportionality, the Panel stated:

80. *"The WADC 2015 was the product of wide consultation and represented the best consensus of sporting authorities as to what was needed to achieve as far as possible the desired end. It sought itself to fashion in a detailed and sophisticated way a proportionate response in pursuit of a legitimate aim"* (para. 51).

81. In CAS 2017/A/5015 & CAS 2017/A/5110, the CAS Panel, with a further reference to CAS 2016/A/4643, confirmed the well-established view that the WADC *"has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction"* (emphasis added), (para. 227) as was vouched for by an opinion of a previous President of the European Court of Human Rights there referred to see <https://www.wada-ama.org/en/resources/legal/legal-opinion-on-the-draft-2015-world-anti-doping-code>.

82. Accordingly, the Sole Arbitrator declines to find here that the prescribed punishment violates the principle of proportionality. The Athlete made a mistake and the rules require, for him and all other athletes, that he bear the same or similar consequences to which other athletes have been held.

83. As a result, the sanctions prescribed in paragraph 78 herein should stand.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Levi Cadogan on 9 May 2018 against the decision rendered on 20 March 2018 by the National Anti-Doping Commission of Barbados is partially upheld.
2. Mr Levi Cadogan is sanctioned with a twenty (20) months period of ineligibility starting from 28 November 2017.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.