



Arbitration CAS anti-doping Division (OG Rio) AD 16/008 International Olympic Committee (IOC) v. Chagnaadorj Usukhbayar, award of 20 August 2016

Panel: Justice Hugh Fraser (Canada), Sole Arbitrator

Weightlifting
Doping (testosterone)

I. FACTS

1. The elements set out below are a summary of the primary relevant facts as established by the Sole Arbitrator on the basis of the materials supplied by the parties. Additional facts may be set out where relevant and to the extent necessary, in the other chapters of the present award.
2. Mr. Chagnaadorj Usukhbayar (the “Athlete”) is a weightlifting competitor and a representative of the Mongolian National Olympic Committee (“NOC”). He competed at 10h00 (all times in the award mean time of Rio de Janeiro) on 7 August 2016, in the 56 kg, weightlifting event at the 2016 Rio Olympic Games (the “Rio Games”). On the same day, 7 August 2016, the Athlete underwent an out-of-competition doping control.
3. On 16 August 2016, the International Olympic Committee (the “IOC”) informed the Athlete through his NOC that the results of the analysis of his A Sample revealed the presence of exogenous Testosterone, which is a non-specified substance and an endogenous anabolic steroid, prohibited under S1.1b of the WADA Prohibited List.
4. The Athlete did not request an analysis of his B Sample and is deemed to have waived his rights accordingly.
5. On 18 August 2016 at 12h57, the IOC filed an application with the Anti-Doping Division of the Court of Arbitration for Sport (“CAS ADD”) asserting an anti-doping rule violation and seeking various sanctions against the Athlete including the enforcement of a provisional suspension with immediate effect. In particular, the IOC asserted that the prohibited substance in question, testosterone, is a non-specified substance and the presence of such substance in the Athlete’s sample mandated the immediate provisional suspension of the Athlete in accordance with Article 7.61 of the IOC Anti-Doping Rules.
6. In addition to the request for a provisional suspension the IOC sought the following relief:
 - (a) The Application of the International Olympic Committee is admissible.
 - (b) The Athlete be found guilty of an anti-doping violation in accordance with Article 2.1 of the IOC ADR.

- (a) All results obtained by the Athlete in the Rio Games (if any) be disqualified with all consequences, including forfeiture of all medal, points and prizes.
 - (b) The Athlete be declared ineligible to compete in all Competitions in which he has not yet participated at the Rio Games.
 - (c) The Athlete be excluded from the Rio Games.
 - (d) The Athlete's accreditation (number 1141787) be withdrawn.
 - (e) The matter of the Athlete be referred to the International Weightlifting Federation to impose consequences that extend beyond the Rio Games upon the Athlete.
7. On 18 August 2016 at 18h53, the CAS ADD confirmed the appointment of Hon. Justice Hugh Fraser as Sole Arbitrator and invited the Athlete to file written comments on the IOC's requests for provisional measures. Such response was to be filed by 19 August 2016 at 9h00. No response was received. Separately, the Sole Arbitrator invited the parties to state their position on whether a hearing was required to resolve the merits of this application. A party's silence was deemed confirmation that no hearing was necessary. No party responded and the Sole Arbitrator deemed himself sufficiently well informed such that no hearing was necessary to determine the merits of the application.
 8. On 19 August 2016 at 10h15, the Parties were notified of an Order on Application of a Provisional Suspension issued by the Sole Arbitrator. The Athlete was suspended from further competition based on Art. 14 of the CAS ADD rules read together with Art. 7.6.2 of the IOC ADR.
 9. On 19 August 2016 at 11h34, the IOC provided the Athlete through his NOC with the laboratory documentation package associated with the Athlete's A Sample.
 10. None of the parties filed written submissions by the set deadline of 20 August 2016, at 9h00. The Sole Arbitrator has therefore arrived at his decision on the merits of this Application based on the materials available for his consideration.

II. LEGAL ASPECTS

A. Jurisdiction

11. Pursuant to Article 8.1.1 of the IOC ADR:

"Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules".

12. Pursuant to Article 1 of the Arbitration Rules applicable to the CAS ADD:

"The CAS ADD shall be the first instance authority for doping-related matters, responsible for the conduct of the proceedings and the issuance of decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR".

13. The parties do not contest the jurisdiction of the CAS ADD to decide the dispute.
14. It follows that the CAS ADD is competent and has jurisdiction over the Application.

B. Applicable Law

15. Article 17 CAS ADD Rules reads as follows:

“The Panel shall rule on the dispute pursuant to the IOC ADR, the applicable regulations, Swiss Law and general principles of law”.

16. The Introduction to the IOC ADR refers *inter alia* to the scope of the Rules and stipulates the following:

“These Rules apply in connection with the Olympic Games Rio 2016. They shall, without limitation, apply to all Doping Controls over which the IOC has jurisdiction in connection with the Olympic Games Rio 2016... These Rules shall, without limitation, apply automatically to (a) the IOC; (b) Athletes entered in the Olympic Games Rio 2016 ... athletes entered in the Olympic Games Rio 2016 or who have otherwise been made subject to the authority of IOC in connection with the Olympic Games Rio 2016 are bound by these Rules as condition of eligibility to participate in the Olympic Games Rio 2016...”.

17. The Sole Arbitrator hereby confirms that he will apply primarily the IOC ADR, and complementary, as far as needed, Swiss Law and general principles of law. The Sole Arbitrator further confirms that these proceedings are governed by the CAS ADD Rules. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS ADD Rules and as a result, the choice of Lausanne, Switzerland as the seat of the CAS ADD and the Panel, pursuant to Article 7 of the CAS ADD Rules.

C. Legal Framework

18. The relevant articles of the Applicable Law for the discussion on the merits of this Application are the following:

19. Art. 2 IOC ADR reads as follows:

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

2.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*

(...)

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

20. Art. 3.1 IOC ADR reads as follows:

3.1 Burdens and Standards of Proof

The IOC shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IOC has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made.

This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

21. Art. 8.2 IOC ADR reads as follows:

8.2 Hearings and disciplinary procedures of the CAS Anti-Doping Division

8.2.1 *In all procedures relating to any alleged anti-doping rule violation pursuant to these Anti-Doping Rules, the right of any Person to be heard pursuant to paragraph 3 to the Bye-law to Rule 59 of the Olympic Charter will be exercised solely before the CAS Anti-Doping Division.*

22. Art. 10 IOC ADR reads as follows:

10.1 Disqualification of Results in the Olympic Games Rio 2016

An anti-doping rule violation occurring during or in connection with the Olympic Games Rio 2016 may, upon the decision of the CAS Anti-Doping Division, lead to Disqualification of all of the Athlete's individual results obtained in the Olympic Games Rio 2016 (or in one or more Events or Competitions) with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

Factors to be included in considering whether to Disqualify other results in the Olympic Games Rio 2016 might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative further to Testing conducted after other Competitions.

10.1.1. *If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified, unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.*

10.2 Ineligibility and other consequences

10.2.1 *Should an Athlete or other Person be found to have committed an anti-doping rule violation, the CAS Anti-Doping Division may declare the Athlete or other Person ineligible for such Competitions at the Olympic Games Rio 2016 in which he/she has not yet participated, along with other sanctions and measures which may follow, such as exclusion of the Athlete and other Persons concerned from the Olympic Games Rio 2016 and the loss of accreditation.*

No Person who has been declared ineligible may, during the period of ineligibility, participate in any capacity in the Olympic Games Rio 2016.

10.2.2 *In accordance with Article 7.1.2, responsibility for results management in terms of sanctions beyond the Olympic Games Rio 2016 itself shall be referred to the applicable International Federation.*

10.3 Automatic Publication of Sanction

A mandatory part of each sanction shall include automatic publication, as provided in Article 13.3.

III. MERITS

23. The results of the analysis of the Athlete's A Sample revealed the presence of Testosterone, a non-specified endogenous anabolic androgenic steroid. The Athlete expressly waived any right to test the B Sample.
24. Given that the substance is prohibited under S1.1b of the WADA Prohibited List and considering that the Athlete did not challenge the result of the analysis or make any other submission to the effect that he is not guilty of an anti-doping rule violation, the Sole Arbitrator determines that an anti-doping rule violation has been committed.

IV. CONCLUSION

25. In view of the above considerations, the Sole Arbitrator finds that the IOC has met its burden of proof under Art. 3.1 IOC ADR. The documents adduced by the IOC establish sufficient proof, to the comfortable satisfaction of the Sole Arbitrator, that the Athlete committed an anti-doping rule violation under Art. 2 IOC ADR.
26. As the Athlete committed an anti-doping rule violation in connection with the Rio Games, the Sole Arbitrator finds it appropriate to impose on the Athlete the following consequences:
 1. The Athlete committed an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Rio Games.
 2. All results obtained by the Athlete in the Rio Games are disqualified with all consequences, including forfeiture of all medals, points and prizes.
 3. The Athlete is excluded from the Rio Games.
 4. The Athlete's Accreditation (number 1141787) is withdrawn.
 5. The responsibility for the Athlete's results management in terms of sanction beyond the Rio Games is referred to the International Weightlifting Federation being the applicable International Federation.

The anti-doping Division of the Court of Arbitration for Sport renders the following decision:

On the basis of the facts and legal arguments set forth above, the application is granted.

1. The Athlete has committed an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games Rio 2016.
2. All results obtained by the Athlete in the Olympic Games Rio 2016 are disqualified with all consequences, including forfeiture of all medals, points and prizes.
3. The Athlete is excluded from the Olympic Games Rio 2016.
4. The Athlete's Accreditation (number 1141787) is withdrawn.
5. The responsibility for the Athlete's results management in terms of sanction beyond the Olympic Games Rio 2016 is referred to the International Weightlifting Federation being the applicable International Federation.