



**Arbitration CAS 2015/A/4155 World Anti-Doping Agency (WADA) v. Hasan Mohamed Mahmoud abd El-Gawad & Egyptian Anti-Doping Organization, award of 10 November 2015 (operative part of 14 September 2015)**

Panel: Mr Alexander McLin (Switzerland), Sole Arbitrator

*Athletics (hammer throw)*

*Doping (metenolone)*

*Condition for the reduction of a period of ineligibility (substantial assistance)*

*Modification of the start date of the period of ineligibility*

1. **The applicable National Anti-Doping Organization (NADO) rules are particularly clear with respect to the conditions under which a sanction may be reduced. In this respect, after a final appellate decision or the expiration of time to appeal, NADO may only suspend a part of the otherwise applicable period of ineligibility with the approval of WADA and the applicable International Federation. Therefore, a reduction of a sanction in the event of alleged substantial assistance provided by an athlete shall be approved by WADA and the competent IF. Any deviation from a final decision imposing a period of ineligibility, if indeed at all possible, is of an exceptional nature and as a result must be considered as subject to very particular conditions that should be dutifully respected.**
2. **There is no opportunity to modify the start date of a period of ineligibility without valid basis.**

**I. PARTIES**

1. WADA is a Swiss private law foundation with its headquarters in Montreal, Canada, and its seat in Lausanne, Switzerland, whose object is to promote and coordinate the fight against doping in sport in all its forms (“WADA” or the “Appellant”).
2. Mr Hasan Mohamed Mahmoud abd El-Gawad (“Athlete” or the “First Respondent”) is an internationally-ranked Egyptian hammer thrower.
3. The Egyptian Anti-Doping Organization is the sole national anti-doping organization in Egypt (“NADO” or the “Second Respondent”).

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. 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.
5. The Athlete underwent an out-of-competition doping control on 31 July 2013. The resulting sample tested positive for the presence of metenolone, an anabolic androgenic steroid prohibited under the 2013 WADA Prohibited List.

### **B. Proceedings before the Egyptian National Anti-Doping Organization**

6. A hearing before the Egyptian National Anti-Doping Organization ("NADO") took place on 10 November 2013, at which the athlete accepted the results of this test (A-sample), thereby waiving his right to test the B-sample.
7. The NADO's disciplinary committee ruled that the Athlete had breached Section 2.1 of the 2009 World Anti-Doping Code and imposed a two-year ineligibility period starting on 18 October 2013 (the date of receipt of the laboratory results).
8. The Athlete filed an appeal with the NADO disciplinary committee on 17 July 2014. This appeal was rejected.
9. On 29 January 2015, the Athlete petitioned the NADO once again, this time seeking a reduction in the period of ineligibility. The NADO board decided to reduce the period of ineligibility from two years to 18 months, this time referring to a start date of 10 November 2013, and an end date of 9 May 2015.
10. After WADA sought an explanation for this reduction from the NADO, the latter explained that the decision had been based on Art. 10.6.1 and 10.6.4 of the 2015 NADO Anti-Doping Rules ("NADO Rules"), which refer to the possibility of reduction of a period of ineligibility based on substantial assistance provided in discovering or establishing anti-doping rule violations.
11. WADA was provided with the complete case file on 4 July 2015.

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

12. The Appellant filed its Statement of Appeal with the Court of Arbitration for Sport on 24 July 2015 in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”) and requesting that the matter be submitted to a Sole Arbitrator pursuant to Article R50 of the Code. The Appellant designated its statement of appeal as its Appeal Brief in accordance with Article R51 of the Code. The filing of the appeal was notified by the CAS Court Office to the Respondents on 27 July 2015, via the Egyptian Athletics Federation and the Egyptian National Olympic Committee.
13. The Second Respondent responded on 31 July 2015, requesting a hearing and a panel of three arbitrators, and on 5 August 2015, requested that the matter be dealt with expeditiously in light of qualifying rounds to be held in August and September for the 2016 Rio Olympic Games, in which the Athlete was ostensibly planning to take part. No response was provided by the First Respondent.
14. In light of the request for a quick decision, counsel for the Respondents indicated their agreement to a Sole Arbitrator on 7 August 2015, and submitted their Answer / Statement of Defence on 15 August 2015 in accordance with Article R55 of the Code.
15. On 18 August 2015, the Appellant informed the CAS *inter alia* that a hearing was not necessary in this appeal. That same day, however, the Respondents informed the CAS that they insisted on a hearing.
16. On 19 August 2015, the parties were informed that the President of the Appeals Arbitration Division appointed Mr. Alexander McLin, attorney-at-law in Geneva, as Sole Arbitrator.
17. On 21 and 24 August 2015, the Respondents and the Appellant, respectively, signed and returned the Order of Procedure to the CAS Court Office without objection.
18. On 25 August 2015, a hearing was held at the CAS Court Office in Lausanne, Switzerland. The Sole Arbitrator was assisted by Mr. Brent J. Nowicki, CAS Counsel, and joined by Mr. Ross Wenzel (counsel for the Appellant) and Mr. Sami Boussarsar (counsel for the Respondents). Neither party presented any witnesses.
19. On 26 August 2015, the Appellant submitted details of its costs claim. The same day, Respondents were afforded the opportunity to state a claim for costs, which they did not do.
20. On 14 September 2015, further to the Respondents’ request for an urgent decision and with the consent of the Appellant, the CAS notified the parties of the operative part of this award.

### IV. SUBMISSIONS OF THE PARTIES

21. The Appellant’s submissions, in essence, may be summarized as follows:

- The only basis upon which the NADO's first decision imposing a two-year period of ineligibility (the "Initial Decision") could possibly be reduced is under Art. 10.6.1.1 of the NADO Rules, which provide for the possibility of the NADO to suspend a portion of the ineligibility period in the event of substantial assistance provided by the Athlete, provided it is done "*with the approval of WADA and the applicable International Federation*".
- For this to be the case, formal requirements must be met. These include that (1) full disclosure of all relevant information the Athlete possesses must be included in a signed written statement, and (2) full cooperation with the investigation and adjudication process must be provided.
- The NADO's second decision (the "Appealed Decision"), shortening the period of ineligibility, makes no reference to the substantial assistance provisions of the NADO Rules. Such a basis for the Appealed Decision was only provided when WADA requested one, and the file contains no evidence of any such assistance having been provided.
- Moreover, the Appellant posits that neither WADA nor the applicable International Federation (the IAAF) gave their approval to a suspension of ineligibility, as required by the NADO Rules once a final appellate decision has been rendered or the appeal deadline has expired.
- By virtue of the fact that the NADO did not follow its rules, its decision to reduce the sanction must be set aside, and the Athlete must serve out the remainder of his period of ineligibility.
- Appellant points out, in addition, that the Athlete should not benefit from the existence of the (in its view illegitimate) Appealed Decision to allow for a further backdating of the start of the period of ineligibility, given that the CAS cannot substitute its decision for the NADO's Initial Decision, as this would be beyond the scope of this appeal.
- Appellant contends that the costs associated with this appeal should be borne by the Second Respondent, by virtue of its erroneous Appealed Decision which effectively meant that the Appellant was compelled to file an appeal in order to ensure the respect of the applicable NADO Rules.

22. The Appellant makes the following requests for relief:

*"WADA hereby respectfully requests the Court of Arbitration for Sport to rule that:*

1. *The Appeal of WADA is admissible.*
2. *The Appealed Decision is set aside.*
- 3.1 *Mr. Hasan Mohamed Mahmoud abd El-Gawad is sanctioned with a period of ineligibility of two years commencing on the date of the decision of the Court of Arbitration for Sport. Any period of provisional suspension (whether imposed on, or voluntarily accepted by, Mr. Hasan Mohamed*

*Mahmoud abd El-Gawad) or ineligibility effectively served before the entry into force of such decision shall be credited against the total period of ineligibility.*

3.2.1 *Should the CAS award be rendered after 17 October 2015, Mr Hasan Mohamed Mahmoud abd El-Gawad is sanctioned with a period of ineligibility of five months and seven days, such period of ineligibility to commence on the date on which the CAS award enters into force.*

Or:

3.2.2 *Should the CAS award be rendered on or before 17 October 2015, Mr Hasan Mohamed Mahmoud abd El-Gawad is sanctioned with a period of ineligibility of five months and seven days minus the number of days still to elapse between the date of the CAS award and 17 October 2015, such period of ineligibility to commence on 18 October 2015.*

4. *All competitive results obtained by Mr. Hasan Mohamed Mahmoud abd El-Gawad from and including 31 July 2013 are disqualified, with all resulting consequences (including forfeiture of any medals, points and prizes).*

5. *WADA is granted an award for costs”.*

23. The Respondents' submissions, in essence, may be summarized as follows:
24. By virtue of the Athlete's "average level" of education, it is difficult for him to write in a readily understandable manner. In addition, putting his knowledge in writing would put him and his family at risk, in a time where political instability could not ensure the confidentiality of such written disclosure. As a result, he provided his "revelations" orally.
25. The fact that the Athlete provided substantial assistance is supported by the presence in the case file of three laboratory results showing adverse findings allegedly resulting from the information provided by the Athlete.
26. While acknowledging the NADO board's mistake in not seeking WADA approval for the reduction of the sanction, the Respondents explain that this was not intended, but rather simply overlooked, by virtue of the inexperience of a newly appointed board that is in need of assistance as to the proper application of its rules.
27. These factors, which result from change in leadership at the NADO due to political instability in Egypt at the relevant time, must be considered as mitigating.
28. The Athlete, who had collaborated in the process from the moment he had received the results of the initial test, had participated in NADO seminars and spoken to young athletes about his case and the dangers of doping. The Respondents explain that his admitted use of supplements was due in part to a somewhat difficult schedule resulting from training and fasting during Ramadan.

29. The Respondents argue that even though the Initial Decision suspended the Athlete for two years from 18 October 2013, he was “nevertheless” and effectively suspended since he had not participated in a sports event since August 2013, nor received any money in connection with such participation. This meant that in August of 2015, despite not having served his entire period of ineligibility, he had effectively not competed for two years. As a result, the conditions for application of Art. 10.11.2 of the NADO Rules, which provide that the period of ineligibility can start as early as the date of sample collection, should be considered applicable.
30. The Respondents make the following requests for relief:
- “We propose to the CAS to meet a settlement agreement on the 2 points below:*
- A- We agree with the appellant to set aside the decision of NADO to reduce the period of ineligibility because the conditions of the article 10.6.1.1 were not fully respected.*
- B- The sanction of 2 years of ineligibility will be considered as starting from the date of the sample collection, in accordance with article 10.11.2, i.e. starting 31 july 2013 and ending 31 july 2015 (sic)”.*

## V. 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. Art. 13 of the NADO Rules that bind the parties grants WADA a direct right of appeal to CAS from a NADO decision.
33. The CAS therefore has jurisdiction, as acknowledged by the parties in the signed Order of Procedure.

## VI. ADMISSIBILITY.

34. Art. 13.7 of the 2015 NADO Rules provides that *“the filing deadline for an appeal filed by WADA shall be the later of:*
- (a) Twenty-one days after the last day on which any other party in the case could have appealed, or*
- (b) Twenty-one days after WADA’s receipt of the complete file relating to the decision”.*

35. WADA received the complete file on 4 July 2015, and filed its Statement of Appeal / Appeal Brief on 24 July 2015. The time limit is therefore respected.

## VII. APPLICABLE LAW

36. 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”.*

37. The applicable regulations are the NADO Rules. In the event of relevant gaps in the NADO Rules, Egyptian law applies as the domicile of both Respondents (that having issued the Appealed decision, and the Athlete, its subject).

## VIII. MERITS

38. The central issue at hand is whether the NADO had the ability, under its rules, to reduce the Athlete’s period of ineligibility in the manner that it did. In addressing this, it is relevant to consider the Respondents’ arguments with respect to mitigation and whether their failure to obtain the approval of WADA and the IAAF with respect to the Appealed Decision was of such a nature that the latter cannot be upheld, or rather a formal requirement of lesser significance.
39. The NADO Rules are particularly clear with respect to the conditions under which a sanction may be reduced. Art. 10.6.1.1 provides that *“After a final appellate decision under Article 13 or the expiration of time to appeal, EGY-NADO may only suspend a part of the otherwise applicable period of Ineligibility with the approval of WADA and the applicable International Federation”*. The petition for suspension of the remainder of the period of ineligibility filed by the Athlete with the NADO was manifestly after the expiration of the time limit for appeal (Art. 13.7.2 NADO Rules), additionally demonstrated by the fact that the Athlete had previously filed an appeal that had been rejected by the NADO. The ability of the NADO to suspend a part of the remaining period of ineligibility was therefore clearly and explicitly conditioned upon approval not only by WADA, but also and additionally by the IAAF. Neither of which gave such approval, nor were they asked.
40. The Respondents refer to the lack of experience at the NADO in the application of the NADO Rules in order to explain the fact that approval of WADA and IAAF was not sought. This is difficult to accept, as the NADO Rules are unambiguous in this regard, and a reasonable administrator reading them for the first time would not fail to miss the condition of approval.

41. As illustrated in CAS 2014/A/3472 cited by Appellants, there is clearly little room for a national anti-doping organization or federation to review its decisions and lessen a previously final decision imposing a period of ineligibility. While this decision dealt with a reduction that was ostensibly based on the rationale that the athlete who was the subject of suspension bore no or no significant fault or negligence (rather than having allegedly provided substantial assistance as in the instant case), it nevertheless supports the notion that any deviation from a final decision imposing a period of ineligibility, if indeed at all possible, is of an exceptional nature and as a result must be considered as subject to very particular conditions that should be dutifully respected.
42. While the Respondents seek a modification of the start date of the period of ineligibility, there does not appear to be a valid basis for this. Indeed, were it not for flawed Appealed Decision which itself was not made in compliance with the NADO Rules, there would have not been grounds for the present appeal, and therefore no opportunity to revisit the issue of the start date of suspension which was validly decided in the NADO's Initial Decision.

## **ON THESE GROUNDS**

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

1. The appeal filed by the World Anti-Doping Agency on 24 July 2015 is upheld.
2. The undated decision of the board members of the Egyptian Anti-Doping Organization reducing Mr. Hasan Mohamed Mahmoud abd El-Gawad's period of ineligibility from two years to 18 months is set aside.
3. Mr. Hasan Mohamed Mahmoud abd El-Gawad is sanctioned with a two-year period of ineligibility commencing on the date of this award with credit given for the time already served by Mr. Mahmoud abd El-Gawad between 18 October 2013 and 9 May 2015.
4. (...)
5. (...)
6. All other motions or prayers for relief are dismissed.