



Arbitration CAS 2015/A/4210 Karam Gaber v. United World Wrestling (FILA), award of 28 December 2015

Panel: Mr Romano Subiotto Q.C. (United Kingdom), President; Mr Michele Bernasconi (Switzerland); Mr Andrew de Lotbinière McDougall (France)

Wrestling

Doping (whereabouts filing failure)

Personal responsibility of the athlete for making accurate whereabouts filings and for ensuring availability for testing

Missed test

Out-of-competition testing

Necessity of accurate whereabouts filings

1. According to the International Standard of Testing and Investigations (ISTI), in all cases each athlete in a registered testing pool remains ultimately responsible at all times for making accurate and complete whereabouts filings, whether he makes each filing personally or delegates the task to a third party. It is not a defence to an allegation of a filing failure or a missed test that the athlete delegated such responsibility to a third party and that third party failed to comply with the applicable requirements. The athlete remains personally responsible at all times for ensuring he is available for testing at the whereabouts declared on his whereabouts filings.
2. A case where a Doping Control Officer (DCO) has to first call an athlete who is part of the Registered Testing Pool because the athlete is located in another city, several hours of travel away from where his whereabouts file said he should be in order to conduct an anti-doping test, constitutes a missed test if it is not possible to conduct the test within the 60-minute time slot of availability for testing indicated by the athlete for every day. This is irrespective of the fact that an anti-doping test has ultimately taken place.
3. According to the ISTI, save in exceptional and justifiable circumstances, all out-of-competition testing shall be no advance notice testing. The fact that a DCO has to first call an athlete in order to conduct the anti-doping test, and then the athlete has to travel several hours in order to be where his whereabouts file said he should be constitutes a missed test as advance notice of the test was given to the athlete. Even if an athlete is assisting a close family member in its unforeseen and urgent hospitalization this does not fall under “justifiable and exceptional circumstance” if the athlete has been able to notify a third party – in charge of his whereabouts filing – that he has changed location.
4. Any whereabouts filing must be sufficiently accurate and detailed to enable any anti-doping organization to locate the athlete for testing on any given day in the quarter at the times and locations specified by the athlete in his whereabouts filing for that day, which includes, but is not limited to, the 60-minute time slot. In particular, the athlete

must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the athlete at the location. Indicating a location which the DCO cannot access, such as a restricted-access club, is likely to result in a filing failure.

1. THE PARTIES

- 1.1 The Appellant, Mr. Karam Gaber (“Mr. Gaber”) is a 36 year old Egyptian elite wrestler. He is a member of the Egyptian Wrestling Federation (“EWF”) and has competed at the international level for more than 20 years as part of the Egyptian national team, winning a gold Olympic medal in 2004, a silver Olympic medal in 2012, and several World Championship medals.
- 1.2 The Respondent, United World Wrestling (“UWW”) is the governing body for the sport of amateur wrestling and the head of the National Federations of all wrestling styles. It is based in Corsier-sur-Vevey, Switzerland.

2. THE DECISION ON APPEAL

- 2.1 Mr. Gaber is appealing against a decision rendered on August 27, 2015 by the United World Wrestling’s Sporting Judge (the “Decision”), imposing on Mr. Gaber a sanction for an anti-doping violation of two year’s ineligibility, starting from the date of the Decision.

3. FACTUAL BACKGROUND

- 3.1 Mr. Gaber is an athlete included in UWW’s Registered Testing Pool, his most recent inclusion being from September 1, 2014 (after UWW accepted his return from retirement on May 16, 2014) until the Decision.
- 3.2 According to Article 5.6.1 of UWW’s Anti-Doping Rules, an athlete in the testing pool is required to comply with the whereabouts requirements of Annex I to the International Standard for Testing and Investigations (“ISTI”). It stipulates, in part, that the athlete must make quarterly “*Whereabouts Filings*” using the online filing system ADAMS, providing accurate and complete information about the athlete’s whereabouts during the forthcoming quarter.
- 3.3 The World Anti-Doping Agency (“WADA”) notified UWW on December 1, 2014 of Mr. Gaber’s possible whereabouts filing failure following an attempted out-of-competition control on November 19 and 30, 2014 and incomplete whereabouts filings for that quarter. The EWF and Mr. Gaber were notified of this failure on January 8, 2015 and requested to provide explanations for the failure. Despite the athlete’s explanations by email on January 17, 2015, UWW issued a decision on January 20, 2015 to record a first whereabouts failure against Mr.

Gaber.

- 3.4 WADA notified UWW on April 17, 2015 of a second possible whereabouts failure by Mr. Gaber due to incomplete whereabouts filings for that quarter. UWW notified the athlete and EWF of this failure on April 29, 2015 and requested explanations regarding the failure by May 9, 2015. UWW issued a further notice to Mr. Gaber informing him of their intent to record a second whereabouts filing failure, and his right to review such a decision within 7 days. No such review was sought and a second whereabouts filing failure was notified to Mr. Gaber and the EWF on June 24, 2015.
- 3.5 WADA notified UWW on June 23, 2015 of a third possible whereabouts failure by Mr. Gaber due to inaccurate whereabouts information which did not allow the Doping Control Officer (“DCO”) to properly locate Mr. Gaber on June 22, 2015. In fact, Mr. Gaber was located in Alexandria (rather than Cairo, as was submitted by the athlete in his whereabouts file), and was contacted over the phone by the WADA agents, after which Mr. Gaber travelled from Alexandria to Cairo for the test. UWW notified the EWF and the athlete of this whereabouts filing failure on July 7, 2015. An explanation was provided to UWW by the athlete on July 21, 2015 in which Mr. Gaber states that his wife was urgently hospitalized in Alexandria and that his change in whereabouts had not properly been updated by the third party in charge of whereabouts filings. Despite the explanation, UWW gave notice on July 31, 2015 of their intent to record a third filing failure against Mr. Gaber. However this notice was for a “*Missed Test*” rather than a “*Filing Failure*”. No administrative review of the decision was sought by the athlete, and a third whereabouts failure was notified on August 13, 2015.
- 3.6 WADA notified UWW on August 3, 2015 of a possible fourth filing failure by Mr. Gaber due to two unsuccessful test attempts in New York on August 1 and 2, 2015, where the DCO was unable to locate Mr. Gaber. WADA submitted mission reports for the attempted tests on each day respectively. The athlete and EWF were notified of this failure on August 5, 2015. An explanation was provided by a third party on August 16, 2015 stating that the training plans of the athlete had changed and that he had failed to update the location of his accommodation. The UWW notified the athlete and EWF on August 17, 2015 of their intention to record a fourth whereabouts failure against Mr. Gaber. The athlete did not seek administrative review of this decision and was notified of his fourth whereabouts failure on August 25, 2015.
- 3.7 As a result of the third whereabouts failure, on August 17, 2015 Mr. Gaber was also notified by UWW of his violation of Article 2.4 of UWW’s Anti-Doping Rules. Article 2.4 states that any combination of three missed tests and/or filing failures constitutes an anti-doping rule violation. The UWW Sporting Judge then rendered the Decision on August 27, 2015.

4. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 4.1 On September 10, 2015, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”), the Appellant filed his statement of appeal.

- 4.2 On September 22, 2015, in accordance with Article R51 of the Code, the Appellant indicated that his statement of appeal would serve as his appeal brief.
- 4.3 On October 12, 2015, in accordance with Article R55 of the Code, the Respondent filed its answer.
- 4.4 On October 23, 2015, the Appellant requested to have a further round of submissions.
- 4.5 On October 28, 2015, the Respondent objected to the Appellant's request for a further round of submissions.
- 4.6 On November 2, 2015, the parties were informed that the Panel had been constituted as follows: Mr. Romano Subiotto Q.C. (President); Mr. Michele A.R. Bernasconi and Mr. Andrew de Lotbinière McDougall (arbitrators).
- 4.7 On November 9, 2015, the Panel decided to hold a hearing in the present matter. Therefore, the Appellant's request for a further round of submissions was denied.
- 4.8 On November 17, 2015, the CAS Court Office, on behalf of the President of the Panel, issued an Order of Procedure, which was accepted and countersigned by the parties.
- 4.9 On December 14, 2015, in accordance with Article R57 of the Code, an oral hearing was conducted at the Court of Arbitration for Sport ("CAS") Headquarters located in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. William Sternheimer, Managing Counsel & Head of Arbitration at CAS and by Mr. Magnus Wallsten as ad hoc clerk. The following persons attended the hearing:
 - i. for the Appellant: Mr Sami Boussarsar, counsel;
 - ii. for the Respondent: Mr Carlos Roy, General Counsel.
- 4.10 At the opening of the hearing, both parties confirmed that they had no objections to the composition of the Panel. At the conclusion of the hearing, the parties expressly stated that their right to be heard and to be treated equally in the proceedings had been fully respected.

5. JURISDICTION OF CAS AND ADMISSIBILITY

A. Admissibility of the Appeal

- 5.1 According to Articles 13.2 and 13.2.1 of the UWW Anti-Doping Rules, in cases arising from a participation in an International Competition or in cases involving International-Level Athletes, a decision that an anti-doping rule violation was committed and/or a decision imposing consequences for an anti-doping rule violation may be appealed exclusively to the CAS in

accordance with the provisions applicable before such court. According to Article 13.7 of the UWW Anti-Doping Rules, the deadline to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party.

- 5.2 The Appellant is an International-Level Athlete in accordance with the UWW Anti-Doping Rules. The Decision recognizes the existence of a violation of the anti-doping rules and imposes consequences on the Appellant. The Appellant was notified of the Decision on August 28, 2015 and filed his statement of appeal on September 10, 2015. The CAS therefore has jurisdiction to hear the present appeal, which is admissible.

B. Applicable Law and Regulations

- 5.3 The UWW Anti-Doping Rules, in their 2015 version, apply to the present proceedings in accordance with the scope of applicability laid out in the aforementioned regulations. The ISTI is a mandatory International Standard developed as part of the World Anti-Doping Program. Its current version came into effect on January 1, 2015.
- 5.4 According to Article 5.6 of the UWW Anti-Doping Rules, UWW shall identify a registered testing pool of those athletes who are required to comply with the whereabouts requirements of Annex I to the ISTI, and shall make through ADAMS, a list which identifies those athletes included in its registered testing pool either by name or by clearly defined, specific criteria.
- 5.5 It is the obligation of each athlete in the registered testing pool to comply with requirements found in Annex I to the ISTI. Article I.3 of Annex I to the ISTI stipulates that an athlete in the registered testing pool must file a whereabouts filing, prior to the first day of each quarter. Article I.3.2 further states that the whereabouts filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the athlete will be available and accessible for testing at a specific location. It is the athlete's responsibility to ensure that he provides all the information required in a whereabouts filing accurately and in sufficient detail to enable any anti-doping organization wishing to do so to locate the athlete for testing on any given day in the quarter at the times and locations specified by the athlete in his whereabouts filing for that day, including but not limited to during the 60-minute time slot specified for that day in the whereabouts filing (see ISTI Annex I, Article I.3.4).
- 5.6 According to Article 2.4 of the UWW Anti-Doping Rules, any combination of three missed tests and/or filing failure, as defined in the ISTI, within a twelve-month (12) period by an athlete in the registered testing pool shall amount to an anti-doping violation.
- 5.7 Article I.3.6 of Annex I to the ISTI states that an athlete may only be declared to have committed a filing failure where the results management authority establishes each of the following:

- a) that the athlete was duly notified (i) that he had been designated for inclusion in a registered testing pool; (ii) of the consequent requirement to make whereabouts filings; and (iii) of the consequences of any failure to comply with that requirement;
- b) that the athlete failed to comply with that requirement by the applicable deadline;
- c) (in the case of a second or third filing failure in the same quarter) that he was given notice, in accordance with Article I.5.2(d), of the previous filing failure, and (if that filing failure revealed deficiencies in the whereabouts filing that would lead to further filing failures if not rectified) was advised in the notice that in order to avoid a further filing failure he must file the required whereabouts filing (or update) by the deadline specified in the notice (which must be no less than 24 hours after receipt of the notice and no later than the end of the month in which the notice is received) and yet failed to rectify that filing failure by the deadline specified in the notice; and
- d) that the athlete's failure to comply was at least negligent. For these purposes, the athlete will be presumed to have committed the failure negligently upon proof that he was notified of the requirements yet failed to comply with them. That presumption may only be rebutted by the athlete establishing that no negligent behaviour on his part caused or contributed to the failure.

5.8 Additionally, in accordance with Article I.6.4 of Annex I to the ISTI, in all cases each athlete in a registered testing pool remains ultimately responsible at all times for making accurate and complete whereabouts filings, whether he makes each filing personally or delegates the task to a third party. It is not a defence to an allegation of a filing failure that the athlete delegated such responsibility to a third party and that third party failed to comply with the applicable requirements. The athlete remains personally responsible at all times for ensuring he is available for testing at the whereabouts declared on his whereabouts filings. It is not a defence to an allegation of a missed test that the athlete delegated responsibility for filing his whereabouts information for the relevant period to a third party and that third party failed to file the correct information or failed to update previously-filed information so as to ensure that the information in the whereabouts filing for the day in questions was current and accurate.

5.9 With regards to a missed test, Article I.4.3 states that an athlete may only be declared to have committed a missed test where the authority can establish each of the following:

- a) that when the athlete was given notice that he had been designated for inclusion in the registered testing pool, he was advised that he would be liable for a missed test if he was unavailable for testing during the 60-minute time slot specified in his whereabouts filing at the location specified for that time slot;
- b) that a DCO attempted to test the athlete on a given day in the quarter, during the 60-minute time slot specified in the athlete's whereabouts filing for that day, by visiting the location specified for that time slot;
- c) that during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the athlete, short of giving the athlete advance notice of the test;

- d) that Article I.4.2 does not apply or - if it applies - was complied with; and
- e) that the athlete's failure to be available for testing at the specified location during the 60-minute time slot was at least negligent. For these purposes, the athlete will be presumed to have been negligent upon proof of the matters set out at sub-Article I.4.3 (a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his part caused or contributed to his failure (i) to be available for testing at such location during such time slot, and (ii) to update his most recent whereabouts filing to give notice of a different location where he would instead be available for testing during a specified 60-minute time slot on the relevant day.

6. SCOPE OF THE PANEL'S REVIEW

- 6.1 According to Article R57 of the Code, the Panel shall have 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.

7. SUBMISSIONS OF THE PARTIES

A. Appellant's Submissions and Requests for Relief

- 7.1 Mr. Gaber requests the Panel to rule that:

7.1.1 *"The appeal of Mr. Karam Gaber is admissible".*

7.1.2 *"The appealed decision of United World Wrestling dated 27 August 2015 is cancelled in all its provisions".*

7.1.3 *"In the alternative, that the CAS cancels the two-year suspension period fixed in the decision being appealed".*

7.1.4 *"In the further alternative that the CAS reduces the period of suspension to a short-term suspension".*

- 7.2 Mr. Gaber contends that the current case falls under Article 10.4 of the WADA Code (mirrored in Article 10.4 of UWW's Anti-Doping Rules) whereby:

"If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated".

- 7.3 In support of this claim, Mr. Gaber submits that UWW's third notification of a whereabouts failure relating to the events of June 22, 2015 was incorrect.

- 7.4 Mr. Gaber states that he did not lie regarding his whereabouts and was not present in Cairo, as he should have been according to his whereabouts filings, due to his wife's emergency

hospitalization which he describes as a “*force majeure*”. Furthermore, Mr. Gaber alleges that he was ultimately tested, having travelled from Alexandria to Cairo, and that this cannot be characterized as a missed test by UWW.

7.5 Additionally, Mr. Gaber submits that UWW’s fourth notification of a whereabouts failure relating to the events of August 1, 2015 was also incorrect.

7.6 Mr. Gaber alleges that the DCO designated by UWW did not respect the ISTI requirements according to the 2015 WADA Code. Mr. Gaber argues:

- The day chosen for the test, a Saturday, was not appropriate due to the reduced likelihood to find the athlete and completing a successful test;
- The DCO misread the one-hour slot location where Mr. Gaber could be found, which was the “club” and not his “overnight accommodation”;
- The DCO did not arrive two hours before the beginning of the test;
- The DCO should have left the club once refused access or help by staff, and instead changed their agenda to a location with higher chances of success at locating Mr. Gaber;
- The DCO should have made further attempts to find Mr. Gaber beyond the one-hour slot for testing, including calling him or other athletes or his coaches.

7.7 Moreover, Mr. Gaber questions whether UWW received a report by the DCO as to the events of August 2, 2015 or that any such report was done orally, and if so, whether it is within acceptable standards. Mr. Gaber contests the UWW testing attempt taking place due to lack of proof. The Appellant, during the course of the Oral Hearing, relied upon the statements made by Dr. Khadija Jelliti who stated that she believed the DCO did not do his best to avoid an unsuccessful test on August 1 and 2, 2015, but agreed that an athlete must submit accurate information in the whereabouts filings and remains ultimately responsible for such filings. Dr. Jelliti also raised the notion of coordination between International Federations and National Anti-Doping Organizations for the identification of athletes in the registered testing pool and the collection of their whereabouts information as shown in Article 5.6 of the 2015 WADA Code.

7.8 Concerning the whereabouts failure recorded on January 20, 2015, the Appellant concedes that the whereabouts filing for the months of November and December 2014 were not filled in. However, Mr. Gaber argues that the EWF was responsible for updating Mr. Gaber’s whereabouts as “*it’s unbelievable to think that an athlete could be able to fulfil such whereabouts*”, and that National Federations are responsible to forward the whereabouts information to the relevant authority. Mr. Gaber submits that he should not be sanctioned as any error as to his whereabouts filing was committed by the EWF.

B. Respondent's Submissions and Requests for Relief

7.9 UWW requests the panel that:

7.9.1 *"The appeal filed by Mr Karam Gaber is dismissed".*

7.9.2 *"The decision dated 27 August 2015 is upheld".*

7.10 UWW raises several arguments supporting its contention that the Decision should be upheld.

7.11 As concerns the first whereabouts failure by Mr. Gaber notified on January 20, 2015, UWW submits WADA's report on their inability to complete two out-of-competition tests on November 19 and 30, 2014 as well as the whereabouts information provided by the athlete in the ADAMS system. The evidence shows calendar entries with little to no information for the months of November and December 2014. UWW asserts that these whereabouts filings were insufficient and inadequate to allow a DCO to locate Mr. Gaber. Additionally, UWW refers to the athlete's non-compliance with the ISTI which requires an athlete to submit whereabouts information for each day of the quarter before the beginning of said quarter.

7.12 Regarding the second whereabouts failure, notified on April 17, 2015, UWW supports its finding with evidence as to the non-submitted whereabouts filings of the athlete for the second quarter of 2015.

7.13 The third whereabouts failure, notified on August 13, 2015, relates to the events of June 22, 2015 which are described in WADA's *"Unsuccessful Mission Report"*. The DCO was unable to locate the athlete with the information provided in his whereabouts filings, as he was located in another city, and had to phone the athlete in order to conduct the test. UWW points to Article 4.6.2 subparagraph b of the ISTI whereby:

"All Out-of-Competition Testing shall be No Advance Notice Testing save in exceptional and justifiable circumstances".

7.14 The athlete's justification for his whereabouts failure, that his wife had been urgently hospitalized in Alexandria and the change in whereabouts had not been updated by a third party in charge of such changes, was taken into account by UWW. Nonetheless, it supports its finding of failure with ISTI Annex I, Article I.6.4 which states:

"each Athlete in a Registered Testing Pool remains ultimately responsible at all times for making accurate and complete Whereabouts Filings, whether he/she makes each filing personally or delegates the task to a third party. It shall not be a defence to an allegation of a Filing Failure that the Athlete delegated such responsibility to a third party and that third party failed to comply with the applicable requirements".

7.15 UWW notes, however, that the notice sent to Mr. Gaber and EWF stating UWW's intent to record a whereabouts failure stipulates a *"missed test"* rather than a *"filing failure"*, arguing that the

wrong template was used for this communication.

- 7.16 The fourth whereabouts failure, notified on August 25, 2105, concerns the events which took place on August 1 and 2, 2015 where the DCO was unable to locate Mr. Gaber on two consecutive days to conduct a test, and was actively denied entrance to the “club” in which Mr. Gaber had submitted as his whereabouts location. UWW refers to the ISTI Annex I, Article I.3.4 which stipulates:

“It is the Athlete’s responsibility to ensure that he/she provides all of the information required in a Whereabouts Filing accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in his/her Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing. More specifically, the Athlete must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Athlete at the location. A failure to do so may be pursued as a Filing Failure”.

- 7.17 In addition, UWW also refers to the comment attached to Article I.3.4 which offers supplemental guidance on its application:

“Similarly, specifying a location that the DCO cannot access (e.g., a ‘restricted-access’ building or area) is likely to result in a Filing Failure”.

- 7.18 UWW affirms that not only was the whereabouts submitted by the athlete inaccessible by the DCO but Mr. Graber had also failed to update his whereabouts when his coach changed his program. These were circumstances sufficient to justify a whereabouts failure.
- 7.19 UWW further remarks that “according to the ISTI, testing may take place any day of the week and not from Monday to Friday as suggested by the appellant”, that all missions attempted which ultimately lead to a whereabouts failure were ordered and authorized by WADA, and that the athlete has been negligent towards his whereabouts obligations taking into account his experience as an elite wrestler for over 20 years.

8. MERITS OF THE APPEAL

- 8.1 The Appellant, Mr. Gaber, is appealing against the Decision, which has found him to have committed four filing failures within a twelve-month period. Mr. Gaber is contesting the Decision with regards to three of these failures. Each shall be addressed in turn.
- 8.2 The first filing failure was duly notified to the Appellant on January 20, 2015 in accordance with Article I.3.6 of Annex I of the ISTI. Mr. Gaber did not dispute this filing failure in his written submissions, but submitted during the oral hearing that Mr. Gaber had not been included in the 2014 registered testing pool and, in any case, the EWF were responsible for the inadequate whereabouts filing. However, Mr. Gaber was notified and included in the registered testing pool when his request to return to competition from retirement was granted by UWW on May 16,

2014. Furthermore, as stated in Article I.6.4, the athlete is ultimately responsible for the accuracy and completeness of a whereabouts filing. As such, the first filing failure was correctly recorded.

- 8.3 The Appellant has not called the second whereabouts filing issued by UWW into question. In any case, the notification was made appropriately by UWW on June 24, 2015 in accordance with the requirements of Article I.3.6 which informed the athlete of his previous filing failure, the deficiencies found in the whereabouts filing failure that would lead to further filing failures if not rectified, and that such deficiencies had to be addressed within the notified time period. Therefore, the second filing failure was correctly recorded against Mr. Gaber.
- 8.4 Mr. Gaber disputes the third filing failure, which was notified to him on August 13, 2015. The Respondent has conceded that the notice sent to the athlete was labelled a “missed test” rather than a “filing failure”. In this instance, when the DCO was attempting to conduct a test on the athlete, he was located in Alexandria rather than Cairo (as was indicated in his whereabouts filing). Mr. Gaber submits that the inaccuracy of his whereabouts was due to his wife’s hospitalization in Alexandria. However, Mr. Gaber also admits that he had notified the third party in charge of his whereabouts filing that he had changed location but the third party had failed to update his whereabouts accordingly. Under Article I.6.4, this constitutes a whereabouts failure.
- 8.5 The Appellant raises the point that the doping test actually took place on June 22, 2015, and thus cannot be considered a missed test. Due to the fact that the DCO had to call the athlete who was located in another city, several hours of travel away from where his whereabouts file said he should be in order to conduct the test, constitutes a missed test as the DCO was unable to conduct the test within the specified 60-minute period. Additionally, the distance and time between the phone call of the DCO in Cairo, and the athlete in Alexandria, also constitutes a missed test as advance notice of the test was given to the athlete in contravention of Article 4.6.2(b) of the ISTI. This requires that save in exceptional and justifiable circumstances, all out-of-competition testing shall be no advance notice testing. Even if Mr. Gaber was assisting his wife in her hospitalization between the June 21 and 22, 2015, this would not fall under a justifiable and exceptional circumstance, taking into account the fact that Mr. Gaber was able to notify the third party in charge of his whereabouts filing that he had changed location. Therefore, whether it be recorded as a missed test or filing failure, Mr. Gaber has satisfied the requirement for both. The third filing failure was recorded correctly.
- 8.6 The Appellant also contests the fourth filing failure against him which was notified on August 25, 2015. Mr. Gaber submits that the DCO committed multiple errors in attempting to conduct the test and that the events of August 2, 2015 were not recorded in a mission report. However, from the evidence on file and the submissions of the parties, it is clear that Mr. Gaber did not meet the standards required under Article I.3.4 of a whereabouts filing. Mr. Gaber did not provide sufficient information in his whereabouts filing to enable the DCO to locate him at the private club where he was supposedly staying, and failed to change his whereabouts information once his coach made him prolong his stay in New York at a different accommodation.

8.7 The DCO followed established testing procedure as required by ISTI as seen in the mission reports submitted by UWW for August 1 and 2, 2015. A whereabouts filing must be sufficiently accurate and detailed to enable any anti-doping organization to locate the athlete for testing on any given day in the quarter at the times and locations specified by the athlete in his whereabouts filing for that day, which includes but is not limited to, the 60-minute time slot. In particular, the athlete must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the athlete at the location. Indicating a location which the DCO cannot access, such as a restricted-access club, is likely to result in a filing failure. Therefore, the Panel is satisfied that the UWW was correct in recording the above as a filing failure by Mr. Gaber.

9. SANCTION

9.1 In conclusion, the Panel finds that the Appellant has committed at least three whereabouts failures within a period of twelve months. This is considered an anti-doping violation under Article 2.4 of the WADA Code and the UWW Anti-Doping Rules, and warrants a period of ineligibility of two years, subject to a reduction down to a minimum of one year, depending on the athlete's degree of fault.

9.2 Having taken into account the nature of the multiple whereabouts filing failures committed by Mr. Gaber, the Panel finds that the Decision was correct in applying a two year period of ineligibility from the date of the Decision. The Panel does not see any reason to grant to Mr. Gaber a reduction of the period of ineligibility.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Gaber on 10 September 2015 against the decision of United World Wrestling's Sporting Judge of 27 August 2015 is dismissed;
 2. The decision of United World Wrestling's Sporting Judge of 27 August 2015 is upheld;
- (...).