



Arbitration CAS 2017/A/5282 World Anti-Doping Agency (WADA) v. International Ice Hockey Federation (IIHF) & F., award of 9 April 2018

Panel: Prof. Luigi Fumagalli (Italy), President; The Hon. Michael Beloff QC (United Kingdom); Prof. Ulrich Haas (Germany)

Ice hockey

Doping (dehydrochloromethyltestosterone metabolites)

Intent and burden of proof for absence of intent

Reduction of sanction in case of prompt admission of anti-doping rule violation under Article 10.6.3 WADC

Purpose of Article 10.6.3 WADC

No obligation to admit intent

Prompt admission under Article 10.6.3 WADC in Article 2.1 WADC cases

Backdating of starting date of period of ineligibility

1. Under the IIHF Disciplinary Code (“DC”) as well as under the equivalent Anti-Doping Code (“WADC”), the term *“intentional”* requires *“that the Athlete ... engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk”*. Furthermore, under Article 10.2.1.1 WADC, in cases of a positive finding for a specified substance prohibited in- and out-of-competition, the athlete’s intent is presumed and it is the athlete’s burden to prove, by a balance of probability, that he or she did not act intentionally, *i.e.* that he or she did not engage in a conduct which he or she knew constituted an anti-doping rule violation, or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.
2. Article 10.6.3 WADC provides for a possible reduction of the sanction of four years potentially applicable to an athlete for a violation sanctionable under Article 10.2.1 WADC. In order to benefit from the potential reduction the athlete is required to have admitted the asserted anti-doping rule violation promptly after being confronted with it by the Anti-Doping Organization; the reduction further requires the approval of both WADA and the Anti-Doping Organization with results management responsibility. Even in such circumstances, any reduction is dependent on the discretion of those two bodies – the key word in Article 10.6.3 WADC is *“may”*, not *“must”*– and depends upon the severity of the violation and the athlete’s degree of fault.
3. The perceptible purpose of Article 10.6.3 WADC is to avoid (or decrease) the time and costs involved in a contested dispute and its procedural consequences. By means of the reduction foreseen by Article 10.6.3 WADC, the WADC intends to give a benefit to the athlete who, promptly admitting the anti-doping rule violation, in some way *“simplifies”* the disciplinary proceedings.

4. Article 10.6.3 WADC does not require anywhere that an athlete admits intent in order to become potentially eligible for a reduction of the four year sanction therein contemplated. This is because on its face, Article 10.6.3 WADC requires the admission of the anti-doping rule violation, and not the acceptance of its consequences. Furthermore, Article 10.6.3 WADC does neither oblige the athlete him- or herself to pray in aid its application. The relevant disciplinary tribunal or CAS panel can of its own motion consider its applicability to the case before it.
5. The group of violations to which Article 10.6.3 WADC applies is not “homogenous”. Put differently, the commission of a violation under Article 2.1 WADC is simply and sufficiently established by an adverse analytical finding, the accuracy of which is to be presumed unless rebutted in the limited way envisaged by Article 3.2.2 WADC. For other violations, *e.g.* evading, refusing or failing to submit to sample collection (Article 2.3), tampering or attempted tampering with any part of doping control (Article 2.5), more complex evidence can be required in order to satisfy the burden of proof borne by the Anti-Doping Organization, and an admission of the athlete can be an important element to establish an anti-doping rule violation. Having said that, in all Article 10.6.3 WADC cases, an admission constitutes a necessary precondition to bring into play Article 10.6.3 WADC. However, given that to prove an anti-doping rule violation under Article 2.1 WADC, an admission by the athlete of the presence in his/her body of a prohibited substance is not necessary, an admission – whether by way of the simple acknowledgment of the adverse analytical finding or voluntary waiver of the B sample analysis – does not appear to be sufficient for an athlete to obtain any benefits thereunder. Rather, to allow for the meaningful application of all elements of Article 10.6.3 WADC to an Article 2.1 WADC violation, an athlete must describe the factual background of the anti-doping rule violation both fully and truthfully and not merely accept the accuracy of the adverse analytical finding. This enhanced admission would enable the adjudicative body to determine whether the athlete would potentially be subject to a sanction of four years for an intentional violation.
6. Pursuant to Article 10.11 WADC and the equivalent rule of the DC, the “*period of ineligibility shall start on the date of the hearing decision providing for ineligibility*”. However, where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the athlete, the body imposing the sanction may start the period of ineligibility at an earlier date, commencing as early as the date of sample collection or the date on which another anti-doping rule violation last occurred (Article 10.11.1 WADC referred to by Article 7.12 DC). In cases where an Anti-Doping Organization with results management responsibility fails to impose a provisional suspension, this may imply a delay in the application of a sanction; as this delay is not attributable to the athlete it justifies a backdating of the starting date of his or her period of ineligibility.

I. INTRODUCTION

1. This is an appeal by the World Anti-Doping Agency against a decision of the International Ice Hockey Federation dated 22 June 2017, imposing what WADA contends to be an inadequate period of ineligibility on F., an ice hockey player of Slovakian nationality. The questions posed by this appeal concern the commission by F. of an intentional anti-doping rule violation and the possibility to reduce the otherwise applicable period of ineligibility based on prompt admission of the asserted anti-doping rule violation after being confronted with it.

II. THE PARTIES

2. The World Anti-Doping Agency (“WADA” or the “Appellant”) is a Swiss private law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms on the basis of the World Anti-Doping Code (the “WADC”), the core document that harmonizes anti-doping policies, rules and regulations around the world.
3. The International Ice Hockey Federation (“IIHF” or the “First Respondent”) is the governing body of international ice hockey and inline hockey. As such, IIHF has *inter alia* the responsibility to pursue all potential anti-doping rule violations within its jurisdiction according to the IIHF Disciplinary Code (the “DC”) and the IIHF Doping Control Regulations (the “DCR”), adopted to implement IIHF’s responsibilities under the WADC. The IIHF has its seat in Zurich, Switzerland.
4. F. (the “Player” or the “Second Respondent”) is a Slovak ice hockey player born in November 1997. The Player is registered with the Slovak Ice Hockey Federation (the “SIHF”), which in turn is affiliated to the IIHF.
5. WADA, the IIHF and the Player are referred to as the “Parties”. The IIHF and the Player are referred to as the “Respondents”.

III. BACKGROUND FACTS

6. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
7. The Player participated as a member of the national team of Slovakia in the 2017 IIHF World Junior Championship in Canada (the “World Championship”).
8. On 2 January 2017, during the World Championship, the Player underwent an in-competition doping control in Montreal, Canada. In the doping control form (the “DCF”), the Player

declared that, in the 72 hours preceding the sample collection, he had used the following products: “*Vit. C - E. Magnesium, Stilnox*”.

9. On 27 January 2017, the Anti-Doping Laboratory of Laval, Canada (the “Laboratory”) reported an adverse analytical finding (the “AAF”) for the presence in the A sample of the Player of “*Dehydrochloromethyltestosterone metabolites*”, *i.e.* of an Exogenous Anabolic Androgenic Steroid (AAS), a non-specified substance prohibited in- and out-of-competition under S1.a of the list of prohibited substances and methods published by WADA for 2017 (the “Prohibited List”).
10. On 22 February 2017, the Player was notified of the AAF and of his right to request the analysis of the B sample.
11. On 3 March 2017, the Player writing from the email address “[F.]@gmail.com” informed the IIHF of the following:

“- I do not ask for the B-Sample Test

- I agree that I did ingest a wrong product

My explanation is the following:

After the missed NHL draft pick, which we were counting with and I was working for, I felt some pressure from the people around me, like I am not good enough, I should better go to school instead of playing hockey, and I wanted to show them that I am good and work on it during the summer. In the summer I was gaining up with Synthra 6 and Sitek Jumbo. Then I got in contact with some “specialists” of bodybuilding, and they told me about a product, which the doctors use for rehabilitation after injuries, Turinabol. I was not thinking much about it, and definitely not about consequences; I was not checking the product out, I was just thinking that if that is for rehabilitation after injuries, it must be a legal product. This was my big mistake. I was taking those pills together with the products Synthra 6 and Sitek Jumbo for a while. This was the mistake of my life and it was just stupid. There was never any thinking about doing something illegal or get any advantage, I just did not think at all about what I am doing in that moment.

I hope that I will get another chance after this and I will work hard and be smarter in the future. I know that I am responsible for what I eat and drink myself”.

12. As a result of the AAF, disciplinary proceedings were opened by the IIHF against the Player.
13. On 18 May 2017, the Player, requested by the IIHF Disciplinary Board (the “Disciplinary Board”) to provide the answer to some questions, replied as follows:

“1) When did you start taking the substance Turinabol?

I started to take the substance in June and finished with this in August preceding the Championships and the AAF.

2) Did you take the substance according to a schedule?

No, I did not stick to any schedule.

3) If you answered yes to (2) above, who provided you with information about the schedule of use and the

appropriate dosage?

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4) *Who are the “specialists” which you mention in your email dated March 3, 2017? Please describe their profession and the kind of their function.*

These were just regular guys going to the gym I attended that Summer. I admired their abilities and shape and asked about some recommendations to reach similar results and to improve my own abilities. They told me Turinabol was a substance used for rehabilitation purposes, prescribed also by medical doctors. Due to my eagerness to reach better results I did not inquire more about the substance. Now I am aware this was the worst decision in my life and I feel really sorry about this”.

14. On 22 June 2017, the Disciplinary Board issued a decision (the “Decision”) which provided as follows:

- “1. [F.], Slovakian Ice Hockey Federation, is suspended from the participation in all competitions or activities authorized and organized by IIHF or any IIHF Member National Association.
2. The period of ineligibility amounts to 1 1/2 years, commencing on March 15, 2017, ending on September 14, 2018”.

15. In support of its Decision, the Disciplinary Board stated the following:

- “1. According to World Anti-Doping Code ... Article 2.1, ... the presence of a Prohibited Substance ... in an athlete’s sample constitutes an anti-doping violation. This condition is met by the Player. ... In addition, the Player has admitted that he had taken ‘Turinabol’, a substance that contains the Prohibited Substance
2. The Prohibited Substance found in the Player’s sample is a Non Specified Substance ...; the period of ineligibility to be imposed for the violation of Code Article 2.1 according to Code Article 10.2.1.1. therefore should be four years, unless the Player can establish that the anti-doping rule violation was not intentional.
 - a) ... Accordingly, the Player has to rebut the presumption that the anti-doping rule violation was not intentional in the sense of Code Article 10.2.3.; the standard of proof is by a balance of probability (Code Article 3.1, last sentence). It is, therefore, decisive in the case at hand, that the Player establishes to the comfortable satisfaction of the Deciding Panel that it is equally probable that he knew or did not know that the substance which he had ingested was a Prohibited Substance or that there was a significant risk that he would violate the anti-doping rules. When weighing the pros and cons, the Panel has not to consider whether the Player could have or should have reasonably known or suspected that he uses a Prohibited Substance or that there might be a significant risk
 - b) Code Article 10.2.1 does not apply; the Player did not act intentionally. He has sufficiently explained to the Deciding Panel that he did not know that the ingestion of the substance will constitute an anti-doping rule violation or that there was a significant risk that the ingestion of the substance would constitute an anti-doping rule violation. The explanation of the Player how he happened to use the Prohibited Substance Turinabol at least has the same grade of probability as any other possibility. His description that he had admired the abilities and the shape of the

“guys” in the gym and that he had asked for their recommendations to reach similar results and to improve his own abilities, not untypically, corresponds with the attitude and behavior of an ambitious 18 year old young man (which he was at that time), who admires the physical abilities and looks of other young men and follows their advice without criticism. The Player’s appearance that he relied on the information of the “specialists” and therefore did not think that the ingestion of the substance would constitute an anti-doping violation, or that there would be a significant risk that the ingestion of the substance might constitute an anti-doping rule violation is credible and authentic and does not sound unrealistic or invented; this attitude rather complies with the reality and constitutes a balance of probability which is enough to rebut the presumption of Code Article 10.2.1.1, Article 2.2.1.

- c) *... Considering the circumstances described above and his young age, the Deciding Panel is of the opinion that the Player does not bear Significant Fault or Negligence ..., however, the Player has not established circumstances from which the Panel could conclude that he bears no Fault. The above mentioned circumstances do support the view that the Player did not (positively) know that the substance he had ingested was a Prohibited Substance or, that there was significant risk that the ingestion of the substance might result in an anti-doping rule violation, but there is no doubt that he reasonably could and should have known or suspected that the ingestion of the substance could result in an anti-doping rule violation, if he would have observed the adequate care for which he is responsible as a hockey player ...; he should have taken more caution and should not have blindly followed the example and advice of “regular guys” at the gym. Nevertheless, the Deciding Panel is of the opinion that the influence of these people and the whole milieu at the gym gives reason to assess a minor degree of Fault that justifies to reduce the otherwise applicable period of ineligibility of two years to a period of ineligibility of one and a half years.*

The period of ineligibility starts on March 15, 2017. This date of commencement is justified by Code Article 10.11.1 because the IIHF did not, as it should have, assess a Provisional Suspension according to Article 7.9.1, which otherwise would have been credited to the sanction imposed by the Panel. This fault of the anti-doping organization cannot be blamed on the Player”.

16. On 29 June 2017, the Decision was notified to WADA and transmitted by the IIHF to the SIHF for communication to the Player.

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 9 August 2017, pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), WADA filed with the Court of Arbitration for Sport (“CAS”) a statement of appeal against the Decision. The statement of appeal named the IIHF and the Player as respondents and contained, *inter alia*, the appointment of The Hon. Michael J. Beloff M.A. Q.C. as an arbitrator. In addition, in the statement of appeal, the Appellant indicated, for the purposes of Article R48, first bullet point of the Code, the address of the SIHF as the address of the Player.
18. On 15 August 2017, the CAS Court Office transmitted to the Respondents the statement of appeal filed by WADA. For the Player, such correspondence was sent to the SIHF’s address, as per the Appellant’s indication.

19. On 21 August 2017, WADA filed its appeal brief pursuant to Article R51 of the Code.
20. On 25 August 2017, the IIHF informed the CAS Court Office that the IIHF and the Player jointly appointed Professor Ulrich Haas as an arbitrator.
21. On 7 September 2017, the IIHF sent a letter to the CAS Court Office also on behalf of the Player, requesting an extension of the time limit for both Respondents to file an answer to the appeal. In such letter, the IIHF wrote *inter alia* that the agent of the Player “*who is not familiar with CAS proceedings, recently indicated that [F.]’s original attorney is no longer representing him and that [F.] is in the process of attempting to find a new attorney*”.
22. On 8 September 2017, the CAS Court Office invited the IIHF to provide “*a written confirmation of its power of representation of the Second Respondent*”, because “*a request for an extension of the time limit for the filing of the Second Respondent’s answer can indeed be validly submitted only directly by him or by an authorized representative*”. For the Player, such correspondence was sent by DHL to the SIHF’s address.
23. On 12 September 2017, the IIHF sent a further letter to the CAS Court Office, also on behalf of the Player, repeating its request for such an extension, noting that:

“... the IIHF filed the original request for an extension of time on behalf of [F.] after receiving a confirmation from [F.]’s agent, [L.], supporting IIHF’s efforts in requesting an extension of time on behalf of [F.] Second, at this time, based on the email correspondence from [F.], the IIHF does not think [F.] understands the CAS procedures in that he must submit either an Answer or a request for an extension to file an Answer by today, 12 September 2017 Therefore, because [F.]’s agent supports the extension of time and because the IIHF is unsure as to whether [F.] understands that he must file either an Answer or a request for an extension of time to file an Answer with the CAS today, in an effort to ensure that [F.] has the opportunity to be heard, the IIHF, on behalf of [F.], once again requests an extension of time for [F.] to file an Answer.

... while the IIHF acknowledges that it is not submitting a Power of Attorney and/ or other document signed by [F.], the IIHF understands that it is common practice in CAS proceedings for an international federation to represent the interests of an athlete when he/ she might not otherwise have the ability to represent him/ herself. The IIHF would like to stress that not only is it not attempting to represent [F.] in accordance CAS Art. R30 in this case; rather merely requesting an extension of time for [F.] to file an Answer, but also it is not requesting and/ or submitting any documentation that is to the detriment of [F.]. IIHF is strictly submitting a request that will hopefully provide [F.] the opportunity to be heard ...”.

24. The letter of the IIHF had attached to it the printout of a train of emails containing:
 - i. a message sent by Ms Ashley Ehlert (IIHF) to Maria Obusekova of the SIHF and L., a players’ agent, on 7 September 2017, at 19:16:

“Dear Maria and [L.],

please note that as I have not yet heard from the Player’s attorney, the IIHF is uncertain as to the Player’s defense in the CAS proceedings. As a result, in the name of both the Player and the IIHF, the IIHF intends to request a deadline extension to file an Answer to the CAS. The IIHF will file the deadline extension tomorrow ... if it does not hear otherwise from the Player, [L.] or the Slovakian Federation.

As long as the CAS grants the deadline extension, the Player will have until 18 September to file his Answer with the CAS”;

- ii. a message sent by L. to Ms Ehlert and the Player on 7 September 2017, at 19:20:
*“Dear Ashley,
It would be very helpful to get a Extension till 18.
The Lawyer which was taking care of it is sitting in America till January.
My personal Lawyer I asked, is on the Arbitrage List of the CAS, I can not use him.
We have to fix it with a other Lawyer”;*
 - iii. a message sent by the Player (“[F.]@gmail.com”) to Ms Ehlert (and copied to Ms Obusekova and L.) on 11 September 2017, at 22:21:
*“Dear Ashley,
I am going to cooperate with the same lawyer I had before”;*
 - iv. a message sent by Ms Ehlert to the Player on 12 September 2017, at 08:09:
*“Dear [F.],
your deadline to file an Answer with the CAS is today. Will your attorney file an Answer or an Extension with the CAS today?
If not, please send me the attached power of Attorney today so that the IIHF requested deadline extension will be applicable”;*
 - v. a message sent by the Player to Ms Ehlert on 12 September 2017, at 09:00:
*“Dear Ashley,
I am going to work with [T.] like in the matter before”.*
25. On 13 September 2017, the CAS Court Office in a letter to the Parties (for the Player sent to the SIHF’s address) noted again that only a duly authorized representative of the Player could request an extension of the deadline to file an answer to the appeal. In addition, the CAS Court Office requested the SIHF to provide contact details for the Player, as well as proof that all the CAS Court Office correspondence had been forwarded to the Player.
 26. On 18 September 2017, the IIHF filed by email its answer to the appeal, pursuant to Article R55 of the Code.
 27. On 21 September 2017, the CAS Court Office advised the IIHF that its answer would be notified to the other Parties upon receipt of the originals filed by courier, pursuant to Article R31 of the Code. Such communication was also sent to the Player to the email address [F.]@gmail.com, and the Player was invited to confirm whether such email address could be used for any further communication regarding the arbitration.
 28. On 21 September 2017, the IIHF informed the CAS Court Office that *“thinking that an electronic filing of the IIHF’s Answer sufficed ... the IIHF did not file the answer by courier within the prescribed time limit”*. It therefore admitted its mistake and requested the CAS *“to still consider the Answer submitted*

by the IIHF”.

29. On 21 September 2017, the CAS Court Office, in a letter also sent to [F.]@gmail.com, invited WADA and the Player to state their position on the IIHF’s request to consider the answer filed only by email within the prescribed deadline.
30. On 21 September 2017, WADA, in an email to the CAS Court Office, deferred to the Panel “*as to whether the Answer of the First Respondent may be admitted*”.
31. On 27 September 2017, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute between the Parties was constituted as follows: Professor Luigi Fumagalli, President; The Hon. Michael J. Beloff M.A. Q.C. and Professor Ulrich Haas, Arbitrators. Such communication was sent to the Player by email to the address [F.]@gmail.com.
32. On 2 October 2017, the CAS Court Office informed the Parties (including the Player, by email to [F.]@gmail.com) that the Panel had decided to admit the IIHF’s answer.
33. On 3 November 2017, the CAS Court Office, writing on behalf of the Panel *inter alia* to the email address [F.]@gmail.com, emphasised that the Panel was inquiring whether the Player wished a hearing to be held in his case before CAS. Therefore, it granted the Player a new deadline to provide an answer to the Panel’s inquiry, with the indication that a failure to react would be deemed a waiver of the hearing. At the same time, the SIHF was invited to inform the CAS Court Office of the date on which that letter was handed over/forwarded to the Player.
34. On 7 November 2017, the SIHF informed the CAS Court Office that the CAS correspondence of 3 November 2017 had been forwarded to the Player and to L. by email and sent by registered mail to the Player’s postal address.
35. On 20 November 2017, the SIHF advised the CAS that a message from the Player had been received on 17 November 2017 that he wished no personal hearing in his case.
36. On 22 November 2017, the CAS Court Office informed the Parties (including the Player, by email to [F.]@gmail.com) that the Panel had decided to grant the Player another opportunity to answer the appeal filed by WADA. Therefore, the entire case file was sent by DHL to the Player’s personal address and a new deadline was given with effect from the date of the receipt of the file. At the same time, all Parties were invited to state their positions as to whether they had contemplated the application of Article 10.6 of the WADC, read in connection with Article 7.6 of the DC to the present case.
37. On 24 November 2017, the documents sent by the CAS Court Office were delivered to the Player’s personal address.
38. On 6 December 2017, WADA, in an email to the CAS Court Office, informed the Panel that, “*further to the CAS letter dated 22 November 2017, the parties have liaised with respect to a possible application of article 10.6 and, more particularly, article 10.6.3 of the 2015 World Anti-Doping Code*”, but that “*no agreement has been reached with respect to the application of such provision*”.

39. On 18 December 2017, the CAS Court Office in a letter to the Parties, sent also to the email address [F.]@gmail.com, noted that the Player had not filed any answer within the deadline granted on 22 November 2017, and that the Panel would proceed nonetheless. The letter had attached to it a copy of the email sent by WADA on 6 December 2017.
40. On 12 January 2018, the CAS Court Office informed the Parties that the Panel had noted that it is undisputed that there has been a prompt admission by the Player within the meaning of Article 10.6.3 of the WADC, and that, on the Panel's reading of such provision, there is no need for an agreement between WADA and the IIHF on the precise amount of the sanction. Therefore, WADA and the IIHF had to contemplate independently whether, and if so to what extent, a reduction is warranted. As a result, WADA and the IIHF were invited to provide reasons for whatever solutions on the reduction they proposed, so that the Panel could scrutinize the discretion of the Parties so as to determine whether it has been exercised in an arbitrary or grossly disproportionate manner or otherwise improperly.
41. On such basis, the respective positions on the applicability to the case of the Player of Article 10.6.3 of the WADC were submitted to the Panel:
- i. on 19 January 2018, 23 January 2018 and 26 January 2018, by WADA; and
 - ii. on 19 January 2018 and 26 January 2018, by the IIHF.
42. On 17 January 2018, the CAS Court Office issued on behalf of the Panel an Order of Procedure (the "Order of Procedure"), which was accepted and signed by WADA on 22 January 2018 and by the IIHF on 18 January 2018. The Player did not return a signed Order of Procedure but made no objections to its contents. In the Order of Procedure the Parties were advised that the Panel, deeming itself sufficiently informed, had decided to issue an award without a hearing.

V. THE POSITION OF THE PARTIES

43. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellant

44. In its statement of appeal and in the appeal brief, WADA requested the following relief:
1. *The Appeal of WADA is admissible.*
 2. *The decision dated 22 June 2017 rendered by the IIHF Disciplinary Board in the matter of [F.] is set aside.*
 3. *[F.] is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility effectively served by [F.] before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*

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

45. The position of WADA in support of its several requests can be summarized as follows:

- i. there is no doubt that the Player breached Article 2.1 of the DCR: the analysis of his A sample conducted by the Laboratory revealed the presence of a prohibited substance, and the Player did not request that the B sample be analysed or otherwise challenged the AAF. Therefore, the anti-doping rule violation is established;
- ii. there is no evidence supporting the explanation offered by the Player of the use of Turinabol. In particular, *“there is no evidence of use of the product, no testimony from the other bodybuilders who recommended the use, no proof of purchase, no information as to when the substance was used, for how long, in what dosage”*. In addition, the use of the product containing Turinabol was not disclosed on the DCF. Therefore, the explanations offered by the Player rely only on his own word;
- iii. in any case, even accepting the Player’s explanations, his violation would be intentional and fall within the second limb of Article 7.2.3 of the DC: the Player knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation and he manifestly disregarded that risk. In fact, contrary to the findings of the Disciplinary Board, the following has to be underscored:
 - the Player admitted in a note to the IIHF Disciplinary Board that he *“ingested a dubious product”*;
 - the advice given to the Player came from bodybuilders in a gym. Bodybuilding is notorious for being associated with doping. The risk of taking an unknown substance recommended by a bodybuilder is therefore particularly high;
 - the reason why the Player took the substance was because he *“admired the shape”* of some bodybuilders and wanted *“to reach similar results and to improve my own abilities”*. In other words, the Player was specifically asking for a way to artificially improve his physical attributes and performance;
 - it is evident that the Player did not do any diligence at all to prevent the risk from materializing. He even admitted that he took the product from June until August 2016, without ever asking the opinion of a doctor or simply checking on the Internet whether the product was prohibited. A simple Google search would have been sufficient to realise that Turinabol contains a prohibited anabolic steroid;
 - the fact that the Player was 19 at the time of the violation is irrelevant: he was a professional ice hockey player, who was a candidate for the NHL draft and participated in the U20 World Championships for Slovakia.

46. In summary, the Player, responsible for an anti-doping rule violation under Article 2.1 of the DCR, has not discharged the burden of establishing a lack of intention. Therefore, he must be sanctioned with the period of ineligibility of four years contemplated by Article 7.2.1 of the DC for intentional doping.

47. With respect, however, to a possible application of Article 10.6.3 of the WADC, WADA

submits that:

- i. the Player failed to admit an intentional violation and expressed no willingness to accept a reduction of the sanction to a measure between two and four years;
- ii. in addition, such provision is intended to be applied before the onset of the disciplinary proceedings, in order to avoid or at least curtail them: and *“it cannot be right that an athlete can have all of his arguments in mitigation of sanction heard by a tribunal and for article 10.6.3 to be applied on a subsidiary basis at the very end of the disciplinary process in the event those arguments are rejected”*;
- iii. accordingly, the preconditions for any reduction under Article 10.6.3 of the WADC are not satisfied;
- iv. (alternatively to iii, if those preconditions were held to be satisfied), the facts of the Player’s case would attract a reduction in the range of three to six months.

B. The Position of the Respondents

1. The Position of the IIHF

48. In its answer, the IIHF requested the CAS to rule as follows:

- “1. *The decision of the IIHF Disciplinary Board rendered on 22 June 2017 in the matter of [F.] is upheld.*
2. *WADA is not granted an award for costs”.*

49. In support of its several requests, the IIHF underlines the following:

- i. the IIHF mistakenly did not impose a mandatory provisional suspension on the Player pursuant to Article 10 of the DCR. As the Player is not to blame for the IIHF’s action, he should not bear the consequences thereof. The Decision was therefore correct, when it set the starting date of the ineligibility retroactively to 15 March 2017;
- ii. the case of the Player does not involve spiking or contamination, for which mere speculation is not sufficient evidence of their occurrence. The Player promptly admitted his mistake and the Disciplinary Board was therefore entitled to find his explanation credible and authentic. As a result, the fact that the Player did not provide actual evidence as to how the substance entered his body did not prevent the Disciplinary Board from taking the Player’s explanation into consideration when assessing whether or not the violation was intentional;
- iii. it is not necessary for an athlete to establish the origin of a prohibited substance to satisfy the burden that the violation was not intentional;
- iv. it can be admitted that the Player’s explanations with respect to the use of the prohibited substance rely only on his own word. However, this is not surprising, because of the Player’s:
 - lack of familiarity with the doping procedures, and with the need to provide

- further evidence of use, notwithstanding the prompt admission;
- lack of financial measures, which prevented him from further investigating and providing additional evidence;
- v. the Player did not act with “*indirect*” intent, given the peculiar circumstances specific to this case, and WADA is confusing indirect intent with a form of negligence. The behaviour of the Player, given his age and lack of experience, was only “*oblivious*” and not “*reckless*”. In addition, “*there was no positive determination grounded on knowledge on the part of the Player*”, bearing in mind “*the Player’s trust in the bodybuilders which he considered as specialists, his belief in these specialists when they told him he was not taking a prohibited substance and his belief that Turinabol was strictly used for rehabilitation*”.
50. In summary, the Decision must be confirmed.
51. With respect, however, to a possible application of Article 10.6.3 of the WADC, the IIHF submits that:
- i. on 22 February 2017, the Athlete promptly admitted the anti-doping rule violation, after being confronted with the notification of the AAF. In addition, he did not request the B sample analysis, and facilitated the disciplinary proceedings;
 - ii. the conditions for a reduction of the period of ineligibility are therefore satisfied. In particular, the approval of the Player is not required for a reduction of the sanction pursuant to Article 10.6.3 of the WADC nor does the Article require the Player to accept that the anti-doping rule violation which he admits was intentional;
 - iii. in the determination of the measure of the reduction, for the Player, the following elements have to be taken into account: his young age at the moment he committed the anti-doping rule violation, his lack of experience in doping matters, the absence of anti-doping education, the strong trust he had in the bodybuilders, whom he regarded as “*specialists*”;
 - iv. taking into consideration all the above a reduction of six to nine months of the Player’s period of ineligibility would be justified.
2. The Position of the Player
52. On 24 November 2017, at the latest, the Player was personally notified of the statement of appeal and the subsequent proceedings in front of CAS, received the entire case file, including the submissions filed and the correspondence exchanged by the Parties and was invited to submit an answer. In the course of the arbitration, and even before that date, a number of communications were sent to an email address ([F.]@gmail.com) he had used in the past.
53. Despite the foregoing, the Player did not lodge any answer and expressed no position on the claims submitted by WADA.
54. However, by reason of Article R55 of the Code, if (as in this case) a respondent fails to submit its answer, the Panel may nevertheless proceed with the arbitration and deliver an award.

VI. JURISDICTION

55. 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 if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

56. The jurisdiction of CAS is established by Article 61 of the IIHF Statutes as follows:

“Any decision taken by an IIHF Judicial Body may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, only after all IIHF internal procedures and remedies have been exhausted and to the exclusion of an ordinary court or any other court of arbitration, and shall be resolved in accordance with the Code of Sport Related Arbitration.

Only parties directly affected by a decision may appeal to the CAS. However, where anti-doping related decisions are concerned, the World Anti-Doping Agency (WADA) may appeal to the CAS.

An appeal shall not have any suspensory effect as a stay of execution of a disciplinary sanction, subject to the power of the CAS to order that any disciplinary measure be stayed pending the arbitration”.

57. Under Articles 57 and 58 of the IIHF Statutes, the Disciplinary Board is a “Judicial Body” within the IIHF system, and, according to Article 12.4.4 of the DC, its decisions “may be appealed exclusively to the Court of Arbitration for Sport (CAS)”.

58. Accordingly, this CAS Panel has jurisdiction over the appeal.

VII. ADMISSIBILITY

59. The statement of appeal was filed by WADA within the deadline set in Article 12.4.4 of the DC and complied with the requirements of Article R48 of the Code. The admissibility of the appeal is not challenged by any party.

60. Accordingly, the appeal is admissible.

VIII. SCOPE OF THE PANEL’S REVIEW

61. According to Article R57, first paragraph of the Code,

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

IX. APPLICABLE LAW

62. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

63. Article R58 of the Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

64. In the present case the “*applicable regulations*” for the purposes of Article R58 of the Code are, indisputably, those contained in the IIHF rules, because the appeal is directed against a decision issued by the Disciplinary Board, in application of those Rules.

65. As a result, the IIHF rules apply primarily. Swiss law, being the law of the country in which the IIHF is domiciled, applies subsidiarily.

66. The IIHF rules based on the WADC, which are relevant in this case are the following:

i. from the DCR:

Article 2 “Anti-Doping Rule Violations”

... The following constitute anti-doping rule violations:

2.1 Presence of a prohibited substance or its metabolites or markers in a player’s sample ...

Article 10 “Provisional Suspensions”

10.1 Mandatory Provisional Suspension: If analysis of an A Sample has resulted in an adverse analytical finding for a prohibited substance that is not a specified substance, or for a prohibited method, and a review in accordance with WADA Code Article 7.2.2 does not reveal an applicable TUE or departure from the International Standard for Testing and Investigations or the International Standard for Laboratories that caused the Adverse Analytical Finding, a Provisional Suspension shall be imposed prior to Notice as indicated in IIHF Doping Control Regulation 8.4 and 8.14. When a B Sample does not confirm the A Sample relating to a provisional suspension, the Players shall immediately be released to continue playing.

ii. from the DC:

Article 7 “Sanctions for Doping”

A. Sanctions on Players and other Individuals

7.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The Period of Ineligibility for a violation of IIHF Doping Regulation 2.1, 2.2 or 2.6 (WADA Code Articles 2.1, 2.2 or 2.6), unless the conditions provided in Disciplinary Code Article 7.4, 7.5 or 7.6 (WADA Code Article 10.4, 10.5 or 10.6) are met:

7.2.1 *shall be four years where:*

- a) *the anti-doping rule violation does not involve a Specified Substance, unless the player or other person can establish that the anti-doping rule violation was not intentional; or*
- b) *the anti-doping rule violation involves a Specified Substance and the IIHF can establish that the anti-doping rule violation was intentional.*

7.2.2 *If Article 7.2.1 does not apply, the period of ineligibility shall be two years.*

7.2.3 *As used in Disciplinary Code Article 7.2 and 7.3 (WADA Code Article 10.2 and 10.3), the term “intentional” is meant to identify those players who cheat and, therefore, requires a player or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.*

An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the player can establish that the Prohibited Substance was used Out-of-Competition.

An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was used Out-of-Competition in a context unrelated to sport performance.

7.4 *Elimination of the Period of Ineligibility where there is No Fault or Negligence*

If a player or other person establishes in an individual case that he bears no fault or negligence, then the otherwise applicable period of ineligibility shall be eliminated.

7.5 *Reduction of the Period of Ineligibility based on No Significant Fault or Negligence*

7.5.1 *Reduction for Specified Substances or Contaminated Products for Violations of IIHF Doping Control Regulation 2.1, 2.2 or 2.6 (WADA Code Article 2.1, 2.2 or 2.6)*

- a) *Specified Substances: where an anti-doping rule violation involves a Specified Substance and the player or other person can establish No Significant Fault or Negligence, the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years of ineligibility, depending on the player’s or other person’s degree of fault; and*
- b) *Contaminated Products: where a player or other person can establish No Significant Fault or Negligence and that the detected Prohibited Substances came from a Contaminated Product, the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years ineligibility, depending on the player’s or other person’s degree of fault.*

7.5.2 *Beyond the application of 7.5.1 above, if a player or other person establishes that he bears*

No Significant Fault or Negligence, then subject to further reduction or elimination provided in IIHF Disciplinary Code Article 7.6 (WADA Code Article 10.6), the otherwise applicable period of ineligibility may be reduced based on the player's or other person's degree of Fault, but the reduced period of ineligibility may not be less than one-half the period of ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

7.6 *Elimination, Reduction, or Suspension of Period of Ineligibility shall be handled in accordance with WADA Code Article 10.6 for:*

- a) *Substantial assistance in discovering or establishing an anti-doping rule violation (WADA Code Article 10.6.1);*
- b) *Admission of an anti-doping rule violation in the absence of other evidence (WADA Code Article 10.6.2);*
- c) *Prompt Admission of an anti-doping rule violation after being confronted with a violation sanction-able under WADA Code Article 10.2.1 or 10.3.1 (WADA Code Article 10.6.3); and*
- c)[sic] *Application of multiple grounds for reduction of sanction (WADA Code Article 10.6.4).*

67. In addition, and as a result of the reference contained in Article 7.6 DC, the following provision of the WADC is also potentially relevant to this case.

Article 10.6.3 *“Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1”*

An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or tampering with Sample Collection), by promptly admitting the asserted anti-doping rule violation after being confronted by an anti-doping organization, and also upon the approval and at the discretion of both Wada and the anti-doping organization with results management responsibility, may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the athlete or other Person's degree of fault.

X. MERITS

A. The issues

68. The object of this arbitration is the Decision, which found the Player responsible for the ADRV contemplated by Article 2.1 of the DCR and imposed on him an ineligibility period of 1 year and 6 months under Article 7.5.2 of the DC: the Player's violation was found to be not “intentional”, within the meaning of Article 7.2.3 of the DC, and, in addition, the Player was considered to be entitled to a fault-related reduction of the period of ineligibility. WADA disputes this conclusion and requests this Panel to find that the anti-doping rule violation was “intentional”, and therefore to impose on the Player a sanction of four years of ineligibility pursuant to Article 7.2.1 of the DC. The IIHF, for its part requests the Panel to dismiss the

appeal brought by WADA and to confirm the Decision.

69. The commission by the Player of the ADRV contemplated by Article 2.1 of the DCR is itself undisputed because it is common ground that (i) the analysis of the A sample provided by the Player on 2 January 2017 resulted in the AAF for the presence in the Player's body of a non-specified substance prohibited in- and out-of-competition under the Prohibited List, (ii) the Player had no Therapeutic Use Exception to justify such presence, and (iii) the Player admitted the use of a product containing the prohibited substance (Turinabol) found in his sample.
70. As a result, the main issue to be examined in this arbitration relates to the measure of the sanction to be imposed on the Player for such violation.

B. The determination of the sanction for the Player

71. According to Article 7.2.1 of the DC, the sanction provided for the violation committed by the athlete is a suspension for four years. Such sanction, however, can be replaced with a suspension of two years, if it is proven by the Player that the violation was not intentional (Article 7.2.2 of the DC). Thereafter, it can be eliminated or reduced if the Player proves that he bears "*no fault or negligence*" (Article 7.4 of the DC) or "*no significant fault or negligence*" (Article 7.5 of the DC), or the presence is established of other "non-fault" related circumstances (Article 7.6 of the DC).
72. The Disciplinary Board held in its Decision that the anti-doping rule violation was not intentional and that the Player was entitled to a reduction, because he was found to bear "*no significant fault or negligence*". This conclusion is challenged before the CAS by WADA, which submits that the Player has not proved that the anti-doping rule violation was not intentional.
73. As a result, the first question that the Panel has to examine is whether the violation is to be considered intentional for the purposes of Article 7.2.1 of the DC. Indeed, only in the event that the anti-doping rule violation is held to be not intentional, is there any warrant for an examination of the Player's fault or negligence.
74. As already mentioned, pursuant to Article 7.2.3 of the DC, in the portion applicable to the anti-doping rule violation committed by the Player, relating to the presence of a substance prohibited in- and out-of-competition, "*the term "intentional" is meant to identify those players who cheat*". It requires, therefore "*that the player ... engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*". In the Player's case, as a result of the burden of proof placed on him by Article 7.2.1(a) of the DC, it is therefore for the Player to prove by a balance of probability that he did not engage in a conduct which he knew constituted an anti-doping rule violation, or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.
75. The Panel, as explained in the next paragraph, does not need in the context of the present award to address the issue, considered in decisions rendered by other CAS Panels (*e.g.* in CAS 2016/A/4534; CAS 2016/A/4676; CAS 2016/A/4919), as to whether establishment of the source of the prohibited substance in an athlete's sample is always required to prove an absence

of intent.

76. The Panel observes that, even on the assumption that the Player ingested the prohibited substance in the way he declared, his violation would in any event be considered intentional for the purposes of Article 7.2.1 of the DC. The Panel, therefore, holds, contrary to the conclusion reached in the Decision, that, in the light of his own explanation for the AAF, the Player failed to establish that he did not engage in a conduct which he knew constituted an anti-doping rule violation, or which he knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation, and that he did not manifestly disregard that risk.
77. The Panel is compelled to this conclusion by a number of factors:
- i. according to his declarations, the Player ingested the product containing the prohibited substance on the basis of the advice given by some bodybuilders he had met in a gym. He requested their advice because he “*admired their abilities and shape*” and wanted to reach similar results and to improve his own abilities;
 - ii. the Player was therefore, without any medical or therapeutic justification, expressly and purposefully engaging in a way to improve his physical attributes and performance, on the basis of a suggestion given by those bodybuilders;
 - iii. the Player declared that he followed the advice received because he had been told that the product was used for rehabilitation purposes, and therefore thought that it was safe. However, he took it for several months without ever asking the opinion of a doctor, or making any Internet research about its properties.
78. In summary, the Player knowingly ingested a product designed to enhance the performance and used for rehabilitation purposes and in a context in which the presence in it of prohibited substances was particularly likely. Thus, from the standpoint of a reasonable man there was a significant risk that the Player’s conduct might result in an ADRV violation. In the view of the Panel the Player manifestly disregarded this obvious risk, in that he made no effort at all to prevent it materializing.
79. Accordingly, the Panel must find that the Player has not discharged the burden which lies upon him to establish, by a balance of probability, non-intentional use of a prohibited substance.
80. The sanction for an intentional violation of Article 2.1 of the DCR would be the suspension for four years (Article 7.2.1 of the DC), with no space left for a fault-related reduction under Articles 7.4 and 7.5 of the DC, unless the conditions, unrelated to fault, are met for the imposition of a shorter period of suspension pursuant to Article 7.6 of the DC.
81. In that regard, an issue which arose in the course of this arbitration is whether the Player, potentially subject to a four-year sanction, is entitled in accordance with Article 10.6.3 of the WADC (referred to by Article 7.6(c) of the DC) to receive a reduction in the period of ineligibility down to a minimum of two years.
82. Article 10.6.3 of the WADC provides for a possible reduction (to between two and four years)

of the sanction of four years that would be potentially applicable to an athlete for a violation sanctionable under Article 10.2.1 of the WADC (i.e., for violations under Article 2.1 (Presence), Article 2.2 (Use), and Article 2.6 (Possession) – all of a Prohibited Substance), or under Article 10.3.1 of the WADC (i.e., for violations under Article 2.3 (Evading, Refusing or Failing to Submit to Sample Collection) and under Article 2.5 (Tampering)). As a result, reduction is possible for all violations under Article 2 of the WADC, except for those contemplated by Articles 2.4, 2.7, 2.8 and 2.9.

83. The Panel considers first the interpretation of Article 10.6.3 of the WADC (as referred to by the DC) and second its application to the present case.
84. To trigger the possibility of a reduction from what would otherwise be a four-year sanction, a player must have admitted the asserted anti-doping rule violation promptly after being confronted with it by the IIHF; and have the approval of both WADA and IIHF. Even in such circumstances, his receipt of such reduction is dependent on the discretion of those two bodies – the key word in the Article is “*may*” not “*must*” – and depends upon the severity of the violation and the player’s degree of fault (CAS 2016/A/4534, para. 48).
85. “*The perceptible purpose of the provision is to avoid the time and cost involved in a contested dispute and its procedural consequences*” (ditto) – or, this Panel would add, to decrease such time and cost (cf. for the analogous problem under Article 10.9.2 WADC 2009, VOGEL/BOCCUCCI, “Timely Admission” nach Art. 10.9.2 WADC/NADC, insbesondere bei Verstößen gegen “Whereabouts Information”, Jusletter 16 July 2012, para. 6). By such reduction, the WADC intended to give a benefit to the athlete who, promptly admitting the anti-doping rule violation, in either way “simplifies” the disciplinary proceedings. It also opens the door to responsible “plea bargaining” in pursuit of the same objective.
86. This Panel notes that, contrary to WADA’s submission, Article 10.6.3 of the WADC nowhere requires that an athlete admits intent in order to become potentially eligible for a reduction of the four year sanction therein contemplated. Nor does such provision, again contrary to WADA’s submission, require the Athlete himself or herself to pray in aid its application. The relevant disciplinary tribunal or CAS Panel can of its own motion consider its applicability to the case before it.
87. A problem, germane to the present appeal (and which, in the Panel’s view, may require attention when the next revision of the WADC is embarked upon), arises from the fact that the group of violations for which Article 10.6.3 of the WADC applies is not “homogenous”. While for all violations the burden to establish their commission lies with the Anti-doping organization, for the violation under Article 2.1 of the WADC the commission is simply and sufficiently established by an adverse analytical finding itself; to prove such anti-doping rule violation admission by the Athlete is therefore not necessary. For other violations, e.g. evading, refusing or failing to submit to sample collection (Article 2.3), tampering or attempted tampering with any part of doping control (Article 2.5), more complex evidence can be required in order to satisfy the burden of proof borne by the anti-doping organization. In such context, admission of the athlete can be an important element to reach the conclusion that an anti-doping rule violation has been committed (see also Article 3.2 of the WADC, Methods of Establishing Facts

and Presumptions).

88. The Panel considers that a prompt admission of a violation under Article 2.1 (whether by way of the simple acknowledgment of the adverse analytical finding or voluntary waiver of the B sample analysis), while – as in all cases – a necessary precondition of bringing into play of Article 10.6.3 of the WADC, does not appear to be sufficient for an athlete to obtain any benefits thereunder. It concedes nothing that is not already vouched for by the adverse analytical finding, whose accuracy is to be presumed unless rebutted in the limited way envisaged by Article 3.2.2 of the WADC. In order to obtain such benefits an athlete charged under Article 2.1 of the WADC must, in the Panel’s view, do more than merely admit the presence in his/her body of a prohibited substance; were it not so, all athletes, albeit the fact that they failed to engage with the presumption of intent under Article 10.2.1.1 of the WADC, could become eligible to a reduction – a result clearly inconsistent with the perceptible purpose of Article 10.6.3 of the WADC.
89. The question therefore to be posed is what is the nature of the “positive” behaviour required? As the Panel has already stated, an admission of the intent to cheat is not required, both because on its face Article 10.6.3 of the WADC requires the admission of the anti-doping rule violation and not the acceptance of its consequences and because the introduction of such requirement would render the last part of Article 10.6.3 of the WADC in effect inapplicable: the level of fault in a case of intent (even assuming the scope for co-existence under the WADC of the concepts of fault and intent) would be by definition always very high, and therefore exclude a reduction in the period of ineligibility (for instance) to two years – which is expressly contemplated by the Article.
90. The Panel concludes that to allow for the meaningful application of all elements of Article 10.6.3 to an Article 2.1 of the WADC violation, an athlete must describe the factual background of the anti-doping rule violation both fully and truthfully and not merely, accept the accuracy(s), of the adverse analytical finding. This enhanced admission would enable the adjudicative body seized of his/her case to determine whether he/she would potentially be subject to a sanction of four years for an intentional violation. Such conclusion is consistent with the indication in RIGOZZI/HAAS/WISNOSKY/VIRET, *Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code*, in *Int Sports LJ* (2015) 15:3-48, 10, that Article 10.6.3 of the WADC applies to intentional violations.
91. Turning, in the context of the foregoing analysis of the meaning and purposes of Article 10.6.3 of the WADC, to its potential application to the Player’s case, in the Panel’s opinion, the behaviour of the Player, who never disputed the AAF, amounted to a prompt and enhanced admission of the asserted anti-doping rule violation after being confronted with it by the IIHF, for the following reasons:
 - i. on 3 March 2017, the Player, notified on 22 February 2017 of the AAF, renounced to the B sample analysis, agreed that he had ingested “a wrong product”, took responsibility for “what I eat and drink”, admitted his lack of care, and explained the factual circumstances in which he took the product containing the prohibited substance. Such circumstances were also confirmed by the Player without reservation when requested to do so by the

Disciplinary Board;

- ii. the very circumstances described by the Player have been acknowledged and assumed by WADA as the factual basis for its conclusion that the Player committed an (at least indirectly) intentional violation. This Panel itself has noted (paras. 76-77 above) that the Player's violation is to be considered intentional for the purposes of Article 7.2.1 of the DC on the basis of his declarations and the circumstances he described.
92. In the Panel's view, the application of Article 10.6.3 of the WADC to the Player's case is not foreclosed by the late stage of these proceedings at which it was raised for the following reasons:
- i. after his prompt admission, the Player did not advance before the Disciplinary Board or before CAS any other such justification or plea as amounting to a retraction of or withdrawal from such admission;
 - ii. the issue of the application of Article 10.6.3 of the WADC arose before CAS only because an appeal was brought by WADA, in which it was argued that the Player could be subject to a four-year sanction for an intentional violation. Therefore, the Player cannot be blamed for the duration of the proceedings or the fact that they were neither avoided nor curtailed.
93. In light of the foregoing, in the Panel's opinion the Player is eligible for a reduction, subject to the approval of WADA and the IIHF.
94. In this respect the Panel notes that WADA would, if contrary to its primary submission Article 10.6.3 of the WADC was engaged at all, allow for a reduction in a range between three and six months. The IIHF for its part proposed a reduction between six and nine months. On this basis, the Panel notes that WADA and the IIHF would agree that a reduction in the measure of six months was appropriate as the maximum (for WADA) or minimum (for the IIHF) reduction acceptable to both.
95. The Panel notes that the exercise of a discretion, pursuant to Article 10.6.3 of the WADC, by WADA and the anti-doping organization having the case management responsibility is subject to CAS scrutiny and control, as also noted in CAS 2016/A/4919, para. 87, and must be subject to review to ensure that it is not exercised in an arbitrary or otherwise unlawful manner. The Panel finds in the Player's case that, taking into consideration all the relevant circumstances discussed above, a reduction in the measure of six months is proportionate to the seriousness of his violation and his degree of fault.
96. As a result, a suspension for three years and six months is to be imposed on the Player. The Decision has to be modified accordingly.

C. The starting date of the ineligibility period

97. Pursuant to Article 7.12 of the DC, the "*period of ineligibility shall start on the date of the hearing decision providing for ineligibility*". However, where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the player, the body imposing the sanction

may start the period of ineligibility at an earlier date, commencing as early as the date of sample collection or the date on which another anti-doping rule violation last occurred (Article 10.11.1 of the WADC referred to by Article 7.12 of the DC). At the same time, credit is to be given for any period of provisional suspension served (Article 10.11.3 of the WADC also referred to by Article 7.12 of the DC).

98. The Disciplinary Board set 15 March 2017 as the starting date of the ineligibility period imposed by the Decision issued on 22 June 2017. The Disciplinary Board decided to start the period of ineligibility at a date earlier than the date of the Decision noting that the IIHF had not, as it should have, imposed a provisional suspension on the Player under Article 10.1 of the DCR, which otherwise would have been credited to the sanction imposed on the Player. In the opinion of the Disciplinary Board, the failure of the IIHF to impose a provisional suspension implied a delay, not attributable to the Player, in the application of a sanction, justifying a backdating of its starting date.
99. This conclusion has not been specifically challenged by the Appellant in this arbitration: even though a sanction “*starting on the date on which the CAS award enters into force*” was requested, WADA conceded that “*any period of ineligibility effectively served ... before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served*”.
100. The Panel finds it therefore right to confirm the Decision on the point of the starting date of the sanction. In fact, the reasons offered by the Disciplinary Board to reach the conclusion contained in the Decision appear convincing and can properly be upheld.
101. Therefore, the ineligibility period imposed on the Player is set to start on 15 March 2017.

D. Conclusion

102. As a result of the foregoing, the Panel finds that the Player is to be declared ineligible for a period of three years and six months starting from 15 March 2017, date on which the ineligibility period was set to start by the Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency (WADA) on 20 March 2017 against the decision rendered on 9 February 2017 by the Disciplinary Board of the International Ice Hockey Federation (IIHF) is partially upheld.
 2. The decision rendered on 9 February 2017 by the Disciplinary Board of the International Ice Hockey Federation (IIHF) is overturned.
 3. F. is declared ineligible for a period of three years and six months from 15 March 2017.
- (...)
6. All other motions or prayers for relief are dismissed.