



Arbitration CAS 2014/A/3670 Traves Smikle v. Jamaica Anti-Doping Commission (JADCO), award of 23 February 2015 (operative part of 4 November 2014)

Panel: Prof. Matthew Mitten (USA), President; Mr Jeffrey Benz (USA); Prof. Ulrich Haas (Germany)

Athletics (discus throw)

Doping (hydrochlorothiazide)

International-level athlete

Denial of justice

- 1. An athlete is not an “international-level athlete” under IAAF Rule 35.7 simply because he previously competed in international competitions recognized by the IAAF and was tested as part of the IAAF’s drug testing program in 2009 and was drug tested from 2010-2013 in Jamaica and abroad. If the athlete has been tested positive based on a sample collected during his/her participation in a national track and field competition, which is not one of the international competitions listed in IAAF Rule 35.7, he/she is not to be considered as an “international-level athlete”.**
- 2. A national-level athlete who does not have the right to appeal a decision finding a doping violation and imposing a sanction directly to the CAS must be given the right to appeal to an independent and impartial body that will provide a timely hearing and a timely, written, reasoned decision. If the athlete has a pending appeal before an appeals body, there has been no denial of any procedural justice but this might occur if the appeals body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable time, thereby constituting a denial of justice, opening the way of an appeal to CAS against the absence of a decision.**

I. PARTIES

- 1. Mr. Traves Smikle (“Mr. Smikle” or the “Appellant”) is a 22-year old Jamaican athlete competing in the sport of athletics in the discipline of discus. Among other notable athletics events, Mr. Smikle competed for Jamaica at the 2012 London Olympic Games as well as the 2010 International Association of Athletics Federation (“IAAF”) World Junior Championships and 2009 IAAF World Youth Championships.**
- 2. The Jamaica Anti-Doping Commission (“JADCO” or the “Respondent”) is the independent organization responsible for Jamaica’s anti-doping programme. JADCO is charged with implementing the World Anti-Doping Code (“WADC”), as well as directing the collection of**

samples and conducting results management and hearings at the national level. JADCO is the National Anti-Doping Organization for Jamaica, as defined in the WADC, recognized by WADA, and accepted by JADCO, and as designated by the relevant statutes in Jamaica, The Anti-Doping in Sport Act (2008) (“Anti-Doping in Sport Act”) and the JADCO Anti-Doping Rules (“Anti-Doping Rules”).

II. FACTUAL BACKGROUND

3. On 21-23 June 2013, Mr. Smikle participated in the JAAA National Senior Championships at the National Stadium in Kingston, Jamaica. After competing in the Men’s discus competition on 22 June 2013, Mr. Smikle was subjected to an in-competition doping control test (urine).
4. Mr. Smikle’s urine sample was then forwarded to the INRS-Institut Armand-Frappier, a doping-control laboratory in Laval, Quebec, Canada. The analysis of Mr. Smikle’s urine revealed the presence of hydrochlorothiazide (HCTZ), a prohibited substance under the WADA’s List of Prohibited Substances and in violation of the Anti-Doping Rules.
5. Mr. Smikle immediately denied the anti-doping rule violation (the “ADRV”) and on 23 August 2013, the ADRV was referred to the Jamaica Anti-Doping Disciplinary Panel (the “Disciplinary Panel”) for review and, if necessary, the imposition of a disciplinary sanction.
6. On 20 September 2013, a pre-hearing conference was held, during which Mr. Smikle’s counsel requested a hearing on 16, 18, or 25 October 2013. The Disciplinary Panel set the hearing for 16-17 December 2013.
7. The evidence in the matter before the Disciplinary Panel was heard over two (2) days on 16-17 December 2013 and was adjourned to a later date (originally 31 January 2014) for final oral submissions by the parties.
8. The 31 January 2014 date for final oral submissions by the parties subsequently was cancelled and extended until 2 June 2014 because of the interim unavailability of counsel for JADCO and Mr. Smikle, and all members of the Disciplinary Panel on an earlier date.
9. On 2 June 2014, both parties made their final oral submissions to the Disciplinary Panel, during which Mr. Smikle’s counsel requested that the Disciplinary Panel issue its decision by 6 June 2014, the final date by which invitations to participate in the selection trials for the Commonwealth Games could be issued.
10. On 1 July 2014, the Disciplinary Panel informed Mr. Smikle that he was suspended from competition for two (2) years commencing on 22 June 2013 (the “Decision”). The Decision did not include any reasons supporting the suspension.
11. On 15 July 2014, Mr. Smikle filed an appeal with the Jamaica Anti-Doping Appeals Tribunal (the “Appeals Tribunal”) challenging the Decision (the “Jamaica Appeal”).

12. On 22 July 2014, Mr. Smikle also filed an appeal with the Court of Arbitration for Sport (the “CAS Appeal”) challenging the Decision.
13. On 26 August 2014, more than one (1) year after the matter was first referred to it, and more than six weeks after issuing its Decision, the Disciplinary Panel issued written reasons in support of the Decision.
14. On 29 August 2014, the Appeals Tribunal requested that Mr. Smikle file his written submissions pertinent to the appeal within seven days after receipt of the Disciplinary Panel’s decision, to which he had not responded as of the 29 October 2014 telephonic hearing/conference in connection with this proceeding on jurisdiction.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 22 July 2014, the Appellant filed his statement of appeal and appeal brief with the CAS against the Respondent with respect to the Decision pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). In his submission, the Appellant requested that a three-member panel resolve this dispute and nominated Mr. Jeffrey G. Benz, Attorney-at-Law in Los Angeles, California, USA and London, United Kingdom as arbitrator.
16. On 30 July 2014, the Appellant filed an amended appeal brief.
17. On 18 August 2014, the Respondent nominated Prof. Ulrich G. Haas, Law Professor in Zurich, Switzerland, as arbitrator in accordance with Article R53 of the Code.
18. On that same date, the Respondent challenged the Appellant’s nomination of Mr. Benz as arbitrator.
19. On 27 August 2014, the Respondent filed a request to terminate this proceeding on the basis that the CAS lacked jurisdiction over this appeal and requested suspension of the deadline for filing its answer.
20. On 28 August 2014, the deadline for the Respondent’s answer was suspended in accordance with Article R55 of the Code.
21. On 5 September 2014, the Appellant filed his response to the Respondent’s request to terminate the appeal.
22. On 25 September 2014, following an exchange of submissions between the parties and Mr. Benz on the Respondent’s challenge, the board of the International Council of Arbitration for Sport denied the Respondent’s challenge to Mr. Benz and his appointment was confirmed.
23. On 28 September 2014, the Respondent filed an unsolicited reply in support of its request to terminate the appeal.

24. On 9 October 2014, the parties were informed that the Panel appointed to decide this appeal was as follows:

President: Prof. Matthew J. Mitten, Law Professor in Milwaukee, Wisconsin, USA

Arbitrators: Mr. Jeffery G. Benz, Attorney-at-Law in Los Angeles, California, USA and London, United Kingdom

Prof. Ulrich G. Haas, Attorney-at-Law in Zurich, Switzerland

25. On 9 October 2014, the Respondent sought leave from the Panel to file its unsolicited reply in support of its request to terminate the appeal.
26. On 13 October 2014, the CAS Court Office informed the parties, *inter alia*, that the Panel agreed to accept the Respondent's unsolicited reply submission and the Appellant was invited to file a response thereto. The parties were also informed that the Panel had decided to conduct a 29 October 2014 telephone hearing/conference on the Respondent's objection to jurisdiction.
27. On 14 October 2014, the CAS Court Office confirmed the parties' mutual preference that the Panel render a preliminary award on the Respondent's request to terminate this appeal on the basis of the parties' written submissions only. The parties were reminded, however, that in accordance with Article R57 of the Code, a decision on whether a hearing would take place remained with the Panel (in accordance with the CAS Court Office letter dated 13 October 2014).
28. On 22 October 2014, the Appellant filed his response to Respondent's reply submission.
29. On 29 October 2014, a telephonic hearing/conference on the issue of jurisdiction was held during which Mr. William Panton, Counsel for the Appellant, and Mr. Lackston Robinson, Counsel of the Respondent, participated and presented arguments on behalf of their respective clients. The Panel was assisted during the hearing/conference by Mr. Brent J. Nowicki, Counsel to the CAS. At the conclusion of the hearing, the parties mutually agreed that the right to be heard on the issue of jurisdiction had been fully respected.

IV. ADMISSIBILITY

30. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

31. The Jamaica Anti-Doping in Sport Act does not set a time limit to file an appeal with CAS; therefore, Article R49 of the Code applies. The Decision is dated 27 June 2014, and was

delivered to the Appellant on 1 July 2014. The Statement of Appeal was filed on 22 July 2014. The appeal is timely, and is therefore, to that extent only, admissible.

V. JURISDICTION

32. 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 him prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

33. CAS jurisprudence is clear:

According to CAS case law, the three conditions of Article R47 are the following (cf. CAS 2004/A/748 no. 83):

- *there must be a ‘decision’ of a federation, association or another sports-related body,*
- *the parties must have agreed to the competence of the CAS and*
- *the (internal) legal remedies available must have been exhausted prior to appealing to CAS.*

See CAS 2009/A/1781, ¶5.4.

34. In this case, the Decision clearly satisfies the first condition of Article R47’s jurisdiction requirements. Regarding the third condition, Appellant filed a pending appeal of this Decision with the Appeals Tribunal, which Respondent’s counsel acknowledged during the hearing could be appealed to the CAS after it is decided. The parties dispute whether the Appellant has the right to appeal the Disciplinary Panel’s decision directly to the CAS, which would enable the second and third conditions to be met.

A. Submissions of the Parties

35. The Appellant’s submissions on jurisdiction are summarized as follows:

Appellant contends he is an international-level athlete pursuant to Section 2 of the Anti-Doping in Sport Act and the “Definitions” of the Anti-Doping Rules, which provides him with the right to appeal the Disciplinary Panel’s decision directly to the CAS under Section 23 of the Anti-Doping in Sport Act and Article 13.2.1 of the Anti-Doping Rules. In particular, Appellant asserts he is an international-level athlete under the IAAF’s Competition Rules, specifically Rule 35.7, because he has competed in international competitions recognized by the IAAF such as the 2009 IAAF World Youth Championships, 2010 IAAF World Junior Championships, and

2012 Olympic Games and was tested as part of the IAAF's drug testing program in 2009 and was drug tested from 2010-2013 in Jamaica and abroad. Thus, in accordance with Section 6 (1) (d) of the Anti-Doping in Sport Act, JADCO should have included him in its registered testing pool of international-level athletes. In addition, while conceding he has a right of appeal to the Appeals Tribunal, Appellant asserts the Disciplinary Panel breached the fairness and time requirements of Sections 3 and 20 (2) of the Anti-Doping in Sport Act and Article 8 of the WADC, thereby depriving him of his rights to a fair and timely determination of his alleged doping violation. According to Appellant, "*Respondent's failure to arrange a timely hearing and provide timely written reasons has resulted in [him] suffering a real injustice,*" which makes this matter "*urgent because there is a real risk that if he waited until he had exhausted the local legal remedy, he would have served most if not all of the 2 years period of ineligibility before any further appeal to the CAS could be determined*". See Appellant's Response to the Application to Terminate the Appeal, p. 3-4. Therefore, he "*is justified in resorting to CAS so as to obtain an expeditious determination of his appeal*". See Appellant's Response to the Respondent's Reply to Terminate the Appeal, p. 8.

36. The Respondent's submissions on jurisdiction are summarized as follows:

Respondent contends that Appellant is a national-level athlete pursuant to Section 2 of the Anti-Doping in Sport Act and the "Definitions" of the Anti-doping Rules who tested positive for a banned substance while competing in a Jamaican national competition. Pursuant to Article 13.2.2 of the Anti-Doping Rules, Appellant has the right to appeal the Disciplinary Panel's decision only to the Appeals Tribunal. Because he is not an international-level athlete, Appellant does not have the right to appeal the Disciplinary Panel's decision directly to the CAS under Section 23 of the Anti-Doping in Sport Act. Respondent contends that Article 8.3.7 of the Anti-Doping Rules permits the parties to modify the deadlines in connection with the Disciplinary Panel proceeding by agreement (which they did), Appellant did not demonstrate any urgency in having the Disciplinary Panel resolve this matter, and responsibility for any delay by the Disciplinary Panel in issuing a timely determination "*rests unequivocally with the Appellant*". See Respondent's Reply to the Appellant's Response to the Application to Terminate the Appeal, pp. 13-14. Respondent asserts that any delay was not "*deliberate*" or "*significant enough to prejudice the Appellant's access to the Appeal Tribunal*" (*Id.* at p.12) and that, pursuant to Section 13.3 of the Anti-Doping Rules and WADC, only WADA has the right to appeal directly to the CAS if "*JADCO fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline set by WADA*" (which did not occur). Moreover, Respondent contends that the Disciplinary Panel's 1 July 2014 decision finding that Appellant committed a doping violation and imposing a sanction was immediately subject to appeal by Appellant to the Appeals Tribunal pursuant to Articles 8.5.3 and 13.1 of the Anti-Doping Rules, although the Disciplinary Panel did not provide written reasons until 26 August 2014.

B. Issues

37. The issues that must be determined by the CAS Panel are:

- a) whether the Appellant is an international-level athlete who has the right to appeal the Disciplinary Panel's decision directly to the CAS?
- b) if Appellant is not an international-level athlete, does he nevertheless have the right to appeal the Disciplinary Panel's decision directly to the CAS because the Jamaican adjudicatory proceedings have deprived him of his rights to a fair and timely determination of his alleged doping violation and sanction?

C. Relevant Code, Rules, and Statute Provisions

38. The relevant provisions of the 2012-2013 IAAF Competition Rules, Anti-Doping in Sport Act, and Anti-Doping Rules for purposes of determining whether the CAS Panel has jurisdiction mirror the language in the 2009 edition of the WADC as follows:

39. Article 8.1 (Fair Hearings) of the WADC provides:

Each Anti-Doping Organization with responsibility for results management shall provide a hearing process for any Person who is asserted to have committed an anti-doping rule violation (...). The hearing process shall respect the following principles:

- *a timely hearing (...)*
- *a timely, written, reasoned decision, specifically including an explanation of the reason(s) for any period of Ineligibility.*

40. Article 13 (Appeals) of the WADC provides:

13.1 (Decisions Subject to Appeal)

Decisions made under the Code or rules adopted pursuant to the Code may be appealed as set forth below in Articles 13.2 through 13.4 or as otherwise provided in the Code. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, any post-decision review provided in the Anti-doping Organization's rules must be exhausted, provided that such review respects the principles set forth in Article 13.2.2 below (...).

13.2 (Appeals from Decisions Regarding Anti-doping Rule Violations, Consequences, and Provisional Suspensions)

A decision that an anti-doping rule violation was committed, a decision imposing Consequences for an anti-doping rule violation (...) may be appealed exclusively as provided in this Article 13.2.

13.2.1 (Appeals Involving International-Level Athletes)

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

13.2.2 (*Appeals Involving National-Level Athletes*)

In cases involving national-level Athletes, as defined by each National Anti-doping Organization, who do not have a right to appeal under Article 13.2.1, the decision may be appealed to an independent and impartial body in accordance with the rules established by the National Anti-doping Organization. The rules for such appeal shall respect the following principles:

- *a timely hearing (...)*
- *a timely, written, reasoned decision.*

[The Comment to Article 13.2.2. provides that, “An Anti-doping Organization may elect to comply with this Article by giving its national-level Athletes the right to appeal directly to CAS”].

13.2.3 (*Persons Entitled to Appeal*)

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the Athlete (...) who is the subject of the decision being appealed (...).

In cases under Article 13.2.2, the parties having the right to appeal to the national-level reviewing body shall be as provided in the National Anti-doping Organization’s rules but, at a minimum, shall include the following parties: (a) the Athlete (...) who is the subject of the decision being appealed (...).

13.3 (*Failure to Render a Timely Decision by an Anti-doping Organization*)

Where, in a particular case, an Anti-doping Organization fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline set by WADA, WADA may elect to appeal directly to CAS as if the Anti-doping Organization had rendered a decision finding no anti-doping rule violation. (...).

41. Appendix One of the WADC (Definitions) provides the following definitions:

Athlete: *Any Person who participates in sport at the international level [as defined by each International Federation], the national level [as defined by each National Anti-doping Organization, including but not limited to those Persons in its Registered Testing Pool] (...)*

International Event: *An Event where the International Olympic Committee, the International Paralympic Committee, an International Federation, a Major Event Organization, or another international sport organization is the ruling body for the Event or appoints the technical officials for the Event.*

International-Level Athlete: *Athletes designated by one or more International Federations as being within the Registered Testing Pool for an International Federation.*

Major Event Organizations: *The continental associations of National Olympic Committees and other international multi-sport organizations that function as the ruling body for a continental, regional, or other International Event.*

National Event: *A sport Event involving international- or national-level Athletes that is not an International Event.*

Registered Testing Pool: *The pool of top-level Athletes established separately by each International Federation and National Anti-Doping Organization who are subject to both In-Competition and Out-of-Competition Testing as part of that International Federation’s or National Anti-Doping Organization’s test distribution plan.*

42. The IAAF Rules define an “**International-Level Athlete**” as “[a]n athlete who is in the Registered Testing Pool (as defined in Chapter 3) or who is competing in an International Competition under Rule 35.7”¹.
43. Chapter 3 of the IAAF Rules (Anti-Doping and Medical) provides the following definitions and has the following provisions²:

International Competition: *For the purposes of these Anti-doping Rules, the international competitions under Rule 35.7, as published annually on the IAAF website (...)*

Registered Testing Pool: *The pool of Athletes established by the IAAF who are subject to both In-Competition and Out-of-Competition Testing as part of the IAAF’s Testing programme. The IAAF shall publish a list which identifies the Athletes included in its Registered Testing Pool (...)*

Rule 35 (Testing)

35.1 Every Athlete under these Anti-doping Rules is subject to In-Competition Testing at the Competitions at which he competes and to Out-of-Competition Testing at any time or place. (...)

In-Competition Testing

35.7 The IAAF shall have responsibility for initiating and directing In-Competition Testing at the following International Competitions:

- (a) World Championships;*
- (b) World Athletics Series Competitions;*
- (c) International Invitation Meetings in accordance with Rule 1.1;*
- (d) IAAF Permit Meetings;*
- (e) IAAF Road Races (including IAAF Marathons); and*
- (f) at such other International Competitions as the Council may determine on the recommendation of the Medical and Anti-Doping Commission. The full list of International Competitions under this Rule shall be published annually on the IAAF website.*

¹ The IAAF Competition Rules 2014-2015 do not provide a definition for “International-Level Athlete”.

² These definitions and provisions are identical to those in the IAAF Competition Rules 2014-2015.

44. Rule 42 (**Appeals**) provides³:

Decisions subject to Appeal

1. Unless specifically stated otherwise, all decisions made under these Anti-doping Rules may be appealed in accordance with the provisions set out below. (...)

3. Appeals Involving International-Level Athletes: in cases involving International-Level Athletes (...), the first instance decision of the relevant body of the Member shall not be subject to further review or appeal at national level and shall be appealed only to CAS in accordance with the provisions set out below.

4. Appeals which do not Involve International-Level Athletes: in cases which do not involve International-Level Athletes (...), the decision of the relevant body of the Member may (...) be appealed to an independent and impartial body in accordance with the rules established by the Member. The rules of such appeal shall respect the following principles:

- *a timely hearing (...)*
- *a timely, written, reasoned decision.*

45. Section 2 of the Anti-Doping in Sport Act (2008) provides:

In this Act, unless the context requires otherwise –

“athlete” means –

(a) *any person who participates in a sport –*

(i) *as an international-level athlete;*

(ii) *as a national-level athlete (as determined by the Commission), including but not limited to any person in the Registered Testing Pool who is otherwise subject to the jurisdiction of this Act; (...)*

“Commission” or **“JADCO”** means the Jamaica Anti-Doping Commission established under section 5;

“international event” or **“international competition”** means, as the case may be, an event or competition where the International Olympic Committee, the International Paralympic Committee, an international sporting federation, a major event organization or another international sporting organization is the ruling body for the event or competition or appoints the technical officials for the event or competition;

“international-level athlete” means an athlete designated by one or more international sporting federations as being within the Registered Testing Pool for an international sporting federation;

“national-level athlete” means an athlete, other than an international level athlete, who is designated by the Commission or the National Anti-Doping Organization to which he is subject, as being within the Commission’s or organization’s Registered Testing Pool;

³ These definitions and provisions are identical to those in the IAAF Competition Rules 2014-2015.

“Registered Testing Pool” means the pool of athletes established separately by each international sporting federation or National Anti-Doping Organization, as the case may be, who are subject to both in-competition and out-of-competition testing as part of that federation’s or organization’s test distribution planning.

46. Section 3 provides:

The objects of this Act are to –

(...)

(c) respect the rights of individuals and national sporting organizations by the application of fair procedures for, and means to oversee, doping control, determination of Anti-Doping Rules Violations and their consequences, and other decisions made in the interest of drug-free sports.

47. Section 6 (1) (d) provides:

The Commission shall perform such functions as are necessary to facilitate the control and prevention of doping in sports, including (...) (d) establishing a register for the Registered Testing Pool of national-level and international-level Jamaica athletes who are citizens or residents of, and notifying such athletes and relevant national sporting organizations of entries made in the register.

48. Section 20 provides:

(1) The functions of the Disciplinary Panel shall be to –

(...)

(b) conduct disciplinary hearings related to Anti-Doping Rules violations referred to it by the Commission (...)

(2) The Disciplinary Panel shall consequent on receiving a written reference from the Commission asserting an Anti-Doping rules violation –

(a) within fourteen days of the date of receipt of the reference, commence a hearing;

(b) within twenty days of the date of receipt of the reference, issue a written decision;

(c) within thirty days of the date of receipt of the reference, issue a written reasons for the decision given in paragraph (b).

49. Section 21 (1) provides:

Subject to section 23, where – (a) any athlete (...) who is the subject of the decision being appealed (...) is aggrieved by a decision of the Disciplinary Panel that person (...) may (...) file an appeal with the Appeals Tribunal (...).

50. Section 22 provides:

- (1) *For purposes of an appeal under section 21, there is hereby established an Appeals Tribunal to be called the Jamaica Anti-doping Appeals Tribunal (...)*
- (2) *The functions of the Appeals Tribunal shall be –*
 - (a) *to hear and determine issues arising from a decision of the Disciplinary Panel-*
 - (i) *that an Anti-Doping Rules violation was committed;*
 - (ii) *imposing consequences of an Anti-Doping Rules violation (...)*
- (3) *The Appeals Tribunal shall, consequent on the lodging of an appeal under subsection (1) –*
 - (a) *within twenty-one days of lodging, receive, hear and examine the evidence relating to the appeal;*
 - (b) *within thirty days of the date of lodging, issue a written decision;*
 - (c) *within sixty day of the date of lodging, issue written reasons for the decision.*

51. Section 23 provides:

Where an appeal is in respect of an international event or a case involving an international-level athlete, the decision of the Disciplinary Panel may be appealed directly to the Court of Arbitration.

52. Article 8.3 of the JADCO Anti-Doping Rules (Hearings Before the Jamaica *Anti-Doping Disciplinary Panel*) provides:

8.3.7 Hearings pursuant to this Article should be completed expeditiously and in all cases within three (3) months of the completion of the results management process described in Article 7 (Results Management), save where exceptional circumstances apply.

8.3.8 Unless otherwise agreed between the parties, the Jamaica Anti-Doping Disciplinary Panel shall:

8.3.8.1 commence the hearing within fourteen (14) days of the notification date;

8.3.8.2 issue a written decision within twenty (20) days of the notification date; and

8.3.8.3 issue written reasons for the decision within thirty (30) days of the notification date.

53. Article 8.5 (Decisions of the Jamaica Anti-Doping Disciplinary Panel) provides:

8.5.3 The decision of the hearing panel shall be written, dated and signed. In order to expedite the finalization of the hearing, the decision may be handed down without written reasons in accordance with the time schedule outlined in Article 8.3.8.

54. Article 13 (Appeals), which is substantially the same as the corresponding provision of the WADC, provides:

13.1 Decisions Subject to Appeal

Decisions made under these Anti-Doping Rules may be appealed as set forth in this Article 13 or as otherwise provided in the Code. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.

13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, and Provisional Suspensions

A decision that an anti-doping rule violation was committed, a decision imposing Consequences for an anti-doping rule violation (...) may be appealed exclusively as provided in this Article 13.2.

13.2.1 In cases arising from Competition in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to the CAS in accordance with the provisions applicable before such court.

13.2.2 In cases involving national-level Athletes, as defined by JADCO, that do not have a right to appeal under Article 13.2.1, the decision may be appealed to the Jamaica Anti-Doping Appeals Tribunal.

13.3 Failure to Render a Timely Decision by JADCO

Where, in a particular case, JADCO fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline set by WADA, WADA may elect to appeal directly to CAS as if JADCO had rendered a decision finding no anti-doping rule violation. (...)

55. Article 13.5 (Jurisdiction of the *Jamaica Anti-Doping Appeals Tribunal*) provides:

13.5.1 The Jamaica Anti-Doping Appeals Tribunal has the power to hear and determine all issues arising from any matter which is appealed to it pursuant to these Anti-Doping Rules.

56. “National-Level Athlete” is defined as “An Athlete, other than an International-Level Athlete, who is designated by the [NADO] as being within the [NADO] Registered Testing Pool”. The definitions of “Athlete”, “International Event”, “International-Level Athlete,” “Major Event Organizations”, “National Event”, and “Registered Testing Pool” are identical to the WADC’s definition of these terms.

D. Analysis

1. *Is Appellant an International-Level Athlete Who Has the Right to Appeal the Disciplinary Panel’s decision directly to the CAS?*
57. Consistent with the WADC and IAAF Rules, Section 23 of the Anti-Doping in Sport Act and Article 13.2.1 of the Anti-Doping Rules provide that the Disciplinary Panel’s decision may be appealed directly to the CAS only if the alleged anti-doping violation arises out of an athlete’s participation in an international event or involves an international-level athlete.

58. It is undisputed that Appellant's positive test for HCTZ on 22 June 2013 occurred during the JAAA National Senior Championships, for which the Jamaica Athletics Administrative Association (the national governing body for athletics in Jamaica) was the ruling body. This event was not an international event as defined by the WADC, IAAF Rules, the Anti-Doping in Sport Act, or the Anti-Doping Rules.
59. Consistent with the WADC, Section 2 of the Anti-Doping in Sport Act and the Anti-Doping Rules define an "international-level athlete" as "*an athlete designated by one or more international sporting federations as being within the Registered Testing Pool for an international sporting federation*". Appellant does not satisfy this definition because, according to the IAAF, "*Mr. Traves Smikle is not and has never been a member of the IAAF Registered Testing Pool*" and he "*cannot be considered as an international-level athlete for the purposes of IAAF Anti-Doping Rules*". See 20 August 2014 Letter from Thomas Capdevielle, IAAF Results Manager, to Carey Brown, Executive Director, Jamaican Anti-Doping Agency, which is an attached exhibit to Respondent's Request for the Termination of the Appeal.
60. Contrary to Appellant's contention, he is not an "international-level athlete" under IAAF Rule 35.7 simply because he previously competed in international competitions recognized by the IAAF (e.g., 2009 IAAF World Youth Championships, 2010 IAAF World Junior Championships, and 2012 Olympic Games) and was tested as part of the IAAF's drug testing program in 2009 and was drug tested from 2010-2013 in Jamaica and abroad. All of these international competitions and drug tests occurred in years prior to his 22 June 2013 positive test for HCTZ in his sample taken in a Jamaican national track and field competition. In this case, Appellant's positive test for HCTZ is based on a 22 June 2013 sample collected during his participation in a Jamaican national track and field competition, which is not one of the international competitions listed in Rule 35.7 of the IAAF's 2012-2013 Competition Rules.
61. The Panel rejects Appellant's assertion that Respondent should have included him in its registered pool of international-level athletes pursuant to Section 6(d)(1) of the Anti-Doping in Sport Act. This statutory provision requires Respondent to establish "*a register for the Registered Testing Pool of national-level and international-level Jamaica athletes*", which it has done. Since 10 May 2011, Appellant has been included in Respondent's National Registered Testing Pool as a "national-level athlete," which is defined by Section 2 of the Anti-Doping in Sport Act as "*an athlete, other than an international level athlete, who is designated by [JADCO] as being within [its] Registered Testing Pool*".
62. For the foregoing reasons, the Panel concludes that Appellant is not an "*international-level athlete*" who has the right to appeal the Disciplinary Panel's Decision directly to the CAS. Unless Appellant was deprived of his rights to a fair and timely determination of his alleged doping violation and sanction, Sections 21 (1) and 22 of the Anti-Doping in Sport Act and Article 13.2.2 of the Anti-Doping Rules require him to appeal the Disciplinary Panel's Decision to the Appeals Tribunal, whose decision subsequently could be appealed to the CAS.

2. *Does Appellant Have the Right to Appeal the Disciplinary Panel's Decision Directly to the CAS Because the Jamaican Anti-Doping Proceedings Violated His Rights to a Fair and Timely Determination of His Alleged Doping Violation and Sanction?*
63. Article 8.1 of the WADC requires an Anti-Doping Organization such as Respondent to provide a hearing process for any athlete alleged to have committed a doping violation that, *inter alia*, provides “a timely hearing” and “a timely, written, reasoned decision”. Article 13.2.2 requires that a national-level athlete such as Appellant who does not have the right to appeal a decision finding a doping violation and imposing a sanction directly to the CAS must be given the right to appeal to “an independent and impartial body” that will provide “a timely hearing” and “a timely, written, reasoned decision”. Rule 42 of the IAAF Competition Rules imposes the same requirements on its member national governing bodies such as the Jamaica Athletics Administrative Association.
64. Section 20(2) of the Anti-Doping in Sport Act requires the Disciplinary Panel to commence a hearing within fourteen days after JADCO refers an alleged anti-doping rule violation to it, issue a written decision within twenty days, and to provide written reasons within thirty days. Section 3(c) provides: “The objects of this Act are to (...) respect the rights of individuals and national sporting organizations by the application of fair procedures for (...) determination of Anti-Doping Rules Violations and their consequences”.
65. Article 8.3 of the Anti-Doping Rules requires that a hearing before the Disciplinary Panel “should be completed expeditiously and in all cases within three (3) months of the completion of the results management process (...) save where exceptional circumstances apply”. Article 8.3.8 requires the Disciplinary Panel to comply with the time requirements established by Section 20(2) of the Anti-Doping in Sport Act “[u]nless otherwise agreed by the parties”. Article 8.5.3 permits the Disciplinary Panel’s written decision to be “handed down without written reasons” for expediency, but it is unclear whether and when its written reasons must be provided to the parties.
66. On 22 June 2013, Appellant provided a urine sample for an in-competition doping control test conducted by Respondent. On 23 August 2013, Respondent referred Appellant’s alleged anti-doping rule violation to the Disciplinary Panel. A hearing was held on 16-17 December 2013, which ultimately was continued until 2 June 2014 when both parties made their final oral submissions. Although Appellant requested that the Disciplinary Panel render a decision by 6 June 2014 (the final date by which invitations to participate in the selection trials for the Commonwealth Games could be issued), it did not inform him until 1 July 2014 of its Decision finding he committed a doping violation and that he was suspended competition for two (2) years commencing on 22 June 2013. The Disciplinary Panel did not provide written reasons in support of the Decision until 26 August 2014.
67. The Appellant contends that the Disciplinary Panel violated the WADC’s general timeliness requirements as well as the specific time requirements established by the Anti-Doping in Sport Act and Anti-Doping Rules. Appellant asserts that its failure to comply with these requirements deprived him of a fair process for resolving his alleged doping violation because “there is a real risk” he will have served “most if not all of the 2 years period of ineligibility before any further appeal to the

CAS” could be made; therefore, *“he is justified in resorting to CAS so as to obtain an expeditious determination of his appeal”*.

68. Although the completion of the hearing process before the Disciplinary Panel significantly exceeded the Anti-Doping in Sport Act’s time requirements⁴ and the Anti-Doping Rules’ requirement that the hearing before the Disciplinary Panel *“should be completed (...) within three (3) months of the completion of the results management process”*, the Panel has no authority to assume jurisdiction prior to the resolution of his pending appeal before the Appeals Tribunal, which Appellant does not contend is not an independent and impartial body. Neither the WADC⁵ nor the IAAF Competition Rules authorize the Panel to do so. *See* CAS 2009/A/1767, para. 5.34 - 5.36, vacated on other grounds, 4A_456/2009 (First Civil Law Court, May 3, 2010) (rejecting national-level athlete’s assertion that national body’s failure to provide a hearing within specified time period provides an *“independent and immediate”* right to appeal its decision to CAS under IAAF Rules, which CAS Panel construes as providing this remedy only *“against ‘a denial of justice’ by a member towards an athlete”* that has refused to provide a fair and timely hearing to an athlete). Because the Appellant has a pending appeal before the Appeals Tribunal, there has been no denial of any procedural justice but the CAS Panel notes this might occur if the Appeals Tribunal *“refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable time”*, thereby constituting a *“denial of justice, opening the way of an appeal [to CAS] against the absence of a decision”* (CAS 2005/A/899, para. 62).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. Based on the record presented, it lacks jurisdiction to hear the appeal filed by Mr. Traves Smikle on 22 July 2014 against the decision of the Jamaica Anti-Doping Commission Disciplinary Panel of 27 June 2014.
- (...)
4. All other motions or prayers for relief are dismissed.

⁴ However, Article 8.3.8 permits these time requirements to be extended by agreement of the parties, which voluntarily occurred at least to some extent. The Panel is unable to resolve the parties’ conflicting contentions regarding which of them is primarily responsible for the hearing not being completed for more than nine months after it was referred to the Disciplinary Panel, but it is clear that the process was not completed within three months.

⁵ Pursuant to Article 13.3 of the WADC, WADA may appeal directly to CAS if *“an Anti-doping Organization fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline set by WADA”*, but this circumstance did not occur in this case and this provision does not provide an athlete such as Appellant with the right to appeal directly to CAS.