



**Arbitration CAS 2018/A/5796 Ahmed Abdelhak v. International Handball Federation (IHF),
award of 27 December 2018**

Panel: Mr Alexander McLin (Switzerland), Sole Arbitrator

Handball

Doping (19-norandrosterone; 19-noretiocholanolone)

Burden of proof for absence of intent in case of non-specified substance

Intent

Burden of proof for source of prohibited substance

1. In case of an adverse analytical finding (AAF) in an athlete's sample of a prohibited substance not classified as a "Specified Substance" by the 2017 WADA Prohibited List (e.g. nandrolone and its metabolites), the athlete does not have the benefit of the doubt when it comes to whether or not his/her anti-doping rule violation (ADRV) was intentional in nature. Consequentially, the athlete must establish that s/he did not commit the ADRV intentionally; the standard of proof applicable to the athlete's discharge of his/her burden in this respect is a balance of probability.
2. The requirement of '*intent*' is satisfied by a situation in which there was a significant risk that an athlete's conduct might constitute or result in an anti-doping rule violation and the athlete manifestly disregarded that risk.
3. In order to establish the source of the prohibited substance it is not sufficient for the athlete to protest innocence and to suggest that the substance must have entered his/her body inadvertently from some contaminated food or water. Rather, the athlete must adduce concrete, actual and credible evidence to prove the origin of a prohibited substance. While the CAS has on occasion held that it may be possible to disprove intent without proving the manner in which the substance entered an athlete's body, it has also stressed that this would likely occur only in the rarest of cases. Furthermore, to accept mere speculation that the substance is present as a result of hypothetical contamination would be to lower the bar well below the threshold of the athlete's duty to ensure that no prohibited substances enter his/her body.

I. PARTIES

1. Ahmed Abdelhak (also “the Player” or the “Appellant”), born on 14 February 1988 in Egypt, is a professional handballer of Qatari nationality, member of the Qatari Club Al-Gharafa.
2. The International Handball Federation (“IHF” or the “Respondent”) is the international governing body for the sport of handball, based in Basel, Switzerland.

II. FACTUAL BACKGROUND AND IHF PROCEEDINGS

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 24 January 2017, in the context of the World Handball Championships held in France, in which the Player was competing for Qatar, the Player was the subject of an anti-doping test which led to a positive finding for a prohibited substance. At the time, the Player was also playing for the Al-Gharafa club (the “Club”) in the Qatar handball league.
5. The WADA-accredited laboratory in Paris, France reported, upon analysis, the presence of two nandrolone metabolites in the Player’s A-sample: 19-norandrostenone (“19-NA”) at an estimated concentration of 60-62 ng/mL and 19-noretiocholanolone (“19-NE”) at an estimated concentration of 20-22 ng/mL.
6. This formed the basis for a notice of charge for an Adverse Analytical Finding (“AAF”) sent by the IHF to the Player on 30 May 2017. Nandrolone is listed under class S1.1b (Endogenous Anabolic Androgenic Steroids) of the 2017 WADA Prohibited List, which prohibits the presence of both 19-NA and 19-NE when administered exogenously. At the time of the Player’s AAF, 19-NA was a threshold substance, with a threshold limit set at 2.0 ng/mL and a decision limit of 2.5 ng/mL.
7. The B-sample analysis, carried out on 19 July 2017 in the presence of an independent witness appointed by the Player, confirmed the findings of the A-sample analysis.
8. The Player suggested that contaminated supplements may have been at the origin of the AAF and he provided a number of supplements for testing by the WADA-accredited laboratory in Cologne. According to the IHF Anti-Doping Disciplinary Panel Decision dated 13 April 2018 (the “Appealed Decision”), and not contested by the Player, the supplements provided for testing did not entirely correspond with those provided in his written explanations, nor had they been disclosed on the doping control form (“DCF”). In the latter, the Player only declared that he had only taken “paracetamol” and “ibuprofen” in the seven days prior to sample collection.

9. On 8 December 2017, the Cologne laboratory reported that the supplements provided by the Player did not contain nandrolone or nandrolone prohormones.
10. In light of this, and in application of the IHF Anti-Doping Rules, Ed. 1 January 2015 (the “ADR”), the IHF Disciplinary Panel ruled as follows in the Appealed Decision:
 - a. *The Player has committed a violation of Art. 2.1 ADRs.*
 - b. *The Player is suspended for a period of ineligibility of four years.*
 - c. *The Player receives no credit (under Art. 11.11.3.1 ADRs) for the provisional suspension imposed on him on 30 May 2017, because he failed to respect the terms of that provisional suspension. However, in accordance with Art. 11.11.1 ADRs (delays not attributable to the Player), the Player’s period of ineligibility shall commence on the date of the sample collection, i.e. 24 January 2017, and expire at midnight on 23 January 2021.*
 - d. *All competitive results (if any) obtained by the Player from 24 January 2017 to 30 May 2017, are disqualified, with all resulting consequences including forfeiture of any medals, points and prizes, in accordance with Arts. 9 and 11.8 ADRs. ...”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 3 May 2018, the Appellant filed his Statement of Appeal, considered as his Appeal Brief (in French) in accordance with Articles R47, R48 and R51 of the Code of Sports-related Arbitration (“Code”), and in which he requested that the case be submitted to a sole arbitrator.
12. On 29 June 2018, the Respondent indicated that it did not object to the referral of the matter to a sole arbitrator.
13. On 13 July 2018, the Respondent filed its Answer (in English) on 13 July 2018.
14. On 20 July 2018, the Appellant informed the CAS Court Office that he wished for a hearing to be held.
15. On 23 July 2018, the Respondent informed the CAS Court Office that it did not consider it necessary for a hearing to be held.
16. On 25 July 2018, in light of a disagreement between the Parties on the language of the proceedings and further to an exchange of correspondence between the CAS Court Office and the Parties on the issue in which the Respondent agreed to a bilingual procedure, the Deputy President of the Appeals Arbitration Division of CAS rendered an Order on Language which determined that:
 - “1. *The language of the arbitral procedure CAS 2018/A/5796 Ahmed Abdelhak v. International Handball Federation (IHF), in accordance with Article R29 of the Code of Sports-related Arbitration, is English;*

2. *The Appellant's statement of appeal serving as appeal brief, and any accompanying exhibit, shall only be translated into English if the Panel deems it necessary;*
 3. *The costs of the present order shall be determined in the final award or in any final disposition of this arbitration".*
17. On 23 August 2018, the CAS Court Office informed the Parties of the appointment of Mr Alexander McLin, attorney-at-law in Geneva, as Sole Arbitrator.
 18. On 29 August 2018, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing.
 19. On 3 and 5 October 2018, the Respondent and the Appellant respectively returned signed copies of the Order of Procedure to the CAS Court Office, which provided *inter alia* that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

20. The Appellant's submissions, in essence, may be summarized as follows:
 - The existence of an anti-doping rule violation ("ADRV") is not contested.
 - The Player believes the severity of the sanction is inappropriate in light of his lack of intent to cheat, which he has consistently maintained.
 - He acknowledges a certain level of negligence, which he attributes to the lack of anti-doping education in Qatar and the lack of a dedicated team doctor who could have provided advice as to the use of supplements.
 - The presence of nandrolone metabolites in his system must have been the result of ingestion of contaminated products. As he was not able to identify all of the supplements that he may have taken and kept no specific records, the fact that those certain supplements submitted for testing did not indicate the presence of nandrolone or nandrolone prohormones does not necessarily mean that another supplement that he might have ingested was not the cause of the ADRV.
 - Previous cases resulting in ADRVs involving the same substance, or resulting from contaminated nutritional supplements resulted in significantly lighter sanctions, if any.
 - Other recent CAS decisions took account of the relative lack of experience of athletes in confirming decisions in which the suspensions were significantly inferior to four years (including TAS 2016/A/4377 and TAS 2013/A/3341).

- A case with similar facts in which a footballer tested positive to nandrolone explained by the consumption of nutritional supplements resulted in a one-year suspension (TAS 2008/A/1588).
- The consequences of the four-year suspension on the Player are dramatic in that he is unable to renew his contract with Al-Gharafa and he is unable to provide the financial support to his parents that he previously ensured.

21. The Appellant makes the following requests for relief:

“Annuler, dans toutes ses dispositions, la décision du Panel disciplinaire antidopage de l’I.H.F., du 13 avril 2018

Statuant à nouveau

Constater l’absence de toute faute intentionnelle de M. ABDELHAK;

Par voie de conséquence:

A TITRE PRINCIPAL

Ne pas prononcer de sanction autre que la suspension provisoire et autoriser M. ABDELHAK à rejouer dès la notification de la décision à intervenir;

A TITRE SUBSIDIAIRE

Prononcer à l’encontre d M. ABDELHAK une suspension d’une durée tenant compte du caractère non-intentionnel de l’infraction et dont la durée (débutant le jour du prononcé de la suspension provisoire) ne saurait, en tout état de cause, excéder 2 ans;

EN TOUT ETAT DE CAUSE:

Condamner la Fédération Internationale de Handball à supporter l’ensemble des frais d’arbitrage, y compris ceux qui auraient été avancés par M. ABDELHAK, et à verser à ce dernier une somme de 5.000 CHF au titre des frais de procédure (notamment d’avocats et d’interprète) qu’il a dû engager pour faire valoir ses droits”.

22. The Respondent’s submissions, in essence, may be summarized as follows:

- The ADRV is established regardless of the nature of the products the Player may have consumed, or the manner in which they may or not have been labelled.
- The applicable period of ineligibility per the ADR is four years for a substance that is not a “Specified Substance” as defined in the WADA Prohibited List, unless the Appellant can establish that the ADRV was not intentional.
- Appellant bears the burden of proving that the ADRV was not intentional. He has failed to prove that he did not act in such a way that he “knew there was a significant risk that

his conduct might constitute or result in an [ADRV] and manifestly disregarded that risk”, which amounts to intent under the applicable ADR and the WADA Code.

- There is a considerable body of CAS case law supporting the notion that while it may not be impossible to demonstrate a lack of intention without establishing the origin of the prohibited substance, it is extremely rare and the circumstances must be truly exceptional. No such exceptional circumstances exist in this case.

23. The Respondent makes the following requests for relief:

“... the IHF hereby requests that the CAS Panel issue an award holding that:

- *The appeal of the Player is dismissed.*
- *The IHF is granted an award for costs”.*

V. JURISDICTION

24. Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

25. In addition, Article 13 of the ADR grants CAS jurisdiction with respect to appeals of athletes regarding anti-doping rule violations.

26. The Parties agree that CAS has jurisdiction to decide on this appeal and have confirmed their agreement by signing the Order of Procedure.

27. The Sole Arbitrator confirms that the CAS has jurisdiction to hear this appeal.

VI. ADMISSIBILITY

28. Article 13.7.1 of the ADR states that an appeal must be filed within 21 days.

29. The Appealed Decision refers, in its last paragraph, to the same provision of the ADRs regarding the time limit to file an appeal.

30. The grounds of the Appealed Decision were received by the Player on 13 April 2018. The Statement of Appeal was filed with the CAS on 3 May 2018.

31. It follows, therefore, that the Player’s appeal is admissible.

VII. APPLICABLE LAW

32. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

33. The ADRs (“Scope”, p. 5) provide that they are applicable to

“All Players and Player Support Personnel who are members of the IHF or of any National Federation or of any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues)”.

34. The Appealed Decision was rendered on the basis of the ADR.

35. Article 20.4 of the ADR states:

“The Code and the International Standards shall be considered integral parts of these Anti-Doping Regulations and shall prevail in case of conflict”.

36. The applicable regulations consist of the ADR, including the WADA Code and the WADA International Standards.

VIII. MERITS

37. The question before the Sole Arbitrator is whether and to what extent the ADR allow for a reduction of the four-year period of ineligibility currently being served by the Player, and, if so, to what extent.

38. Article 11.2 ADR provides:

“11.2. Ineligibility for presence, use or attempted use or possession of a Prohibited Substance or Prohibited Method

The period of ineligibility for a violation of Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s sample), 2.2 (Use or attempted use by a Player of a Prohibited Substance or a Prohibited Method) or 2.6 (Possession of a Prohibited Substance or a Prohibited Method) shall be as follows, subject to potential reduction or suspension pursuant to Articles 11.3, 11.4 or 11.5:

11.2.1. The period of Ineligibility shall be four years where:

11.2.1.1. 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.

11.2.1.2. *The anti-doping rule violation involves a Specified Substance and the IHF can establish that the anti-doping rule violation was intentional.*

11.2.2. *If Article 11.2.1 does not apply, the period of ineligibility shall be two years”.*

39. Nandrolone and its metabolites are not a “Specified Substance” as defined by the applicable 2017 WADA Prohibited List, and the Player therefore does not have the benefit of the doubt when it comes to whether or not his ADRV was intentional in nature. Consequentially, the Player must establish that he did not commit an ADRV intentionally.
40. The standard of proof applicable to the Player’s discharge of his burden in this respect is a balance of probability (2015 WADC Article 3.1).
41. The Player argues that the ADRV can only be explained by the consumption of nutritional supplements, devoid of any intent to dope (*“sans aucune volonté dopante”*). His basis for this is allegedly that scientific publications have recognised a link between the absorption of nutritional supplements and the presence of 19-NA and 19-NE in the system. The two publications produced by the Appellant’s counsel to illustrate this (one of which is not identified) refer to the fact that nandrolone or nandrolone prohormones are known to have been present in nutritional supplements as contaminants, that have resulted in ADRVs in the past. The statements are however made in a general sense, are unsubstantiated and, critically, do not refer to any particular nutritional supplement.
42. The Player is a regular consumer of nutritional supplements, as illustrated by the fact that he had a number of them tested, but he also stated that he did not have the means to have all of them analyzed, and that he had not been able to procure some of the products that he had previously consumed. Those that were tested for the presence of nandrolone and its prohormones showed no presence of these contaminants. The Player therefore did not establish a specific causal link between a product that contained a contaminant which could have caused the ADRV, and which, in turn, he consumed.
43. As a result, we are left simply with the denial that the Player never knowingly doped, and that he did not have a specific intent to cheat.
44. The Sole Arbitrator is not convinced by this assertion, as the question of whether a separate and distinct intent to cheat (other than the intent to commit an ADRV in the broader sense) under the 2015 WADC has now been the subject of a significant line of CAS cases drawing upon CAS 2016/A/4512, which held that *“the requirement of ‘intent’ [is] satisfied by a situation in which there was a significant risk that the [Player’s] conduct might constitute or result in an anti-doping rule violation and the [Player] manifestly disregarded that risk”*.
45. Moreover, while the Player is suggesting a manner in which the prohibited substance might have entered his body unintentionally, he falls (significantly) short of proving it. While the CAS has on occasion suggested that it may be possible to disprove intent without proving the manner in which the substance entered an athlete’s body (see CAS 2016/A/4534 and CAS 2016/A/4919), it has also stressed that this would likely occur only in the rarest of cases.

46. As emphasized in CAS 2010/A/2230 and CAS 2014/A/3820, actual evidence is necessary to prove the origin of a prohibited substance. To accept mere speculation that the substance is present as a result of hypothetical contamination would be to lower the bar well below the threshold of the Player's duty to ensure that no prohibited substances enter his body.
47. The explanation proffered by the Player in this case does not rise to the level of proof found in CAS 2016/A/4676, which the Player suggests as an example of a case in which an ADRV was found to be unintentional despite lack of conclusive proof of origin. Regardless of whether this case is entirely congruent with other CAS cases on this point (which the Respondent argues it is not), the proof provided therein nevertheless included a supplement that was analysed and tested positive to the prohibited substance at issue. In the instant case, the Appellant provides no more than mere supposition in this respect.
48. Finally, the earlier cases cited by the Appellant are distinguishable on various grounds, both factual and legal, including the fact that they occurred prior to the 2015 WADC.
49. Seeing as the Appellant has been unable to prove that the Prohibited Substance entered his system entirely unintentionally, or otherwise prove lack of intent, the four-year period of ineligibility must be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Ahmed Abdelhak on 3 May 2018 is dismissed.
2. The decision of the International Handball Federation Anti-Doping Disciplinary Panel dated 13 April 2018 and suspending Ahmed Abdelhak for a period of ineligibility of four years, expiring at midnight on 23 January 2021, is confirmed.
- (...)
5. All other or further motions or prayers for relief are dismissed.