Arbitration CAS (Oceania Registry) A2/2015 Australian Sports Anti-Doping Authority (ASADA), on behalf of Cycling Australia v. Jeone Park, award of 17 March 2016

Panel: The Hon. Justice Annabelle Bennett (Australia), Sole Arbitrator

Cycling
Doping (prohibited method: intravenous infusion of grape syrup and vitamins)
Establishment of an anti-doping rule violation and shifting of the onus to the athlete to mitigate the sanction
Athlete's youth and ignorance that an intravenous injection constituted a breach of the WADA Code
Athlete's personal duty to ensure that no prohibited method is used according to the WADA Code

1. **Once the anti-doping rule violation is established, the athlete must be suspended for two years, unless the conditions for eliminating or reducing the period of ineligibility are met. The onus then shifts to the athlete to mitigate the sanction and, in that regard, to satisfy the CAS of any specified facts or circumstances on the balance of probabilities.**

2. **Ignorance that an intravenous injection constituted a breach of the WADA Code (prohibited method) is no excuse. An athlete's youth and his propensity to accept direction from his family members are also not excuses. They are relied upon to alleviate the consequences for the purposes of assessing culpability. That lack of knowledge is not an exculpatory or mitigating factor.**

3. **Article 2.2 of the WADA Code provides that it is each athlete's personal duty to ensure that no prohibited method is used and that it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated. Further, the success or failure of the attempted use is not material.**

I. PARTIES

1. The Australian Sports Anti-Doping Authority (the "Applicant" or "ASADA") commenced these proceedings on behalf of Cycling Australia ("CA"). ASADA is the national anti-doping agency and the competent body for anti-doping issues in Australia.

2. Mr. Jeone Park (the "Respondent") is a professional cyclist. At the date of this Award, he is nineteen years old. He has considerable experience in racing at state, national and international levels.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence are set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all of the facts, allegations, legal arguments and evidence submitted by the parties in the proceeding, she refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning.

4. The Respondent is a participant in the sport of cycling. He is, and has always been, a citizen of the Republic of Korea. The Respondent moved to Australia with his family around the age of ten years. He became a member of CA in 2008, but ceased his membership on 31 December 2014.

5. The Respondent has competed in national and international cycling competitions. In August 2014, he won the Men's under 19 Sprint at the UCI World Junior Championship in Korea. The final for that event took place on 12 August 2014. In the second heat of this event, the Respondent fell off his bicycle and suffered bruising and scratches to his hip.

6. On 13 August 2014, the day after the event, the Respondent felt unwell. That evening, the Respondent's father, who is also a professional cyclist, took the Respondent to his cousin's home. The Respondent's cousin is a fully trained nurse. She suggested that an intravenous ("IV") infusion of grape syrup and vitamins might assist in making the Respondent feel better. The Respondent's father, after checking the substances in the proposed infusion with the Respondent's cousin, advised the Respondent that it did not contain any substances banned under the World Anti-Doping Code (the "WADA Code").

7. In the time period between the intravenous needle being inserted in and removed from the Respondent's arm, the Respondent's sister took a photograph of the Respondent. The photograph, which was subsequently posted to her Facebook account, shows the Respondent's arm and the IV fluid.

8. On 27 January 2015, Karen Smith, Senior Investigator at ASADA, sent a letter to the Respondent informing him, among other things, that:

   (i) the photograph had come to ASADA's attention;

   (ii) ASADA had commenced an investigation; and

   (iii) the Respondent's actions may have breached the national Anti-Doping Scheme and CA's Anti-Doping Policy (the "CA Anti-Doping Policy" or the "Policy").

9. On 25 May 2015, Mr. Ben McDevitt, CEO of ASADA, sent a letter to the Respondent. That letter noted that Mr. McDevitt had determined that there was a possible non-presence anti-

doping rule violation ("ADRV") of Use or Attempted Use of a Prohibited Method that warranted action and that Mr. McDevitt would refer the matter to the Anti-Doping Rule Violation Panel ("ADRVP") for its consideration.

10. On 27 May 2015, the Respondent signed a document entitled 'Acknowledgement and Acceptance of Voluntary Provisional Suspension'.

11. On 11 June 2015, the Respondent provided written submissions to the ADRVP. At paragraphs 1 to 3 of those submissions, the Respondent wrote:

> *1. The Athlete does not wish to contest the making by the Anti-Doping' Rule Violation Panel ('the Panel') of an Assertion relating to a non-presence Anti-Doping Rule Violation on 13 August 2014 ('ADRV').*
>
> *2. The Athlete submits that when the Assertion is made, it should not be in terms of paragraph (A) as articulated in the letter from the CEO of the Australian Sports Anti-Doping Authority ('ASADA') dated 25 May 2015 ('Assertion (A)').*
>
> *3. Assertion (A) alleges two discrete ADRVs, namely:*
>
> > *3.1. 'Use of a Prohibited Method',*
> >
> > *or*
> >
> > *3.2. 'Attempted Use of a Prohibited Method' (emphasis added)*
>
> (original emphasis).

12. On 23 July 2015, Mr. McDevitt sent a letter to the Respondent informing the Respondent that the ADRVP had considered the matter and was satisfied that the Respondent had committed the possible ADRV of Use or Attempted Use of a Prohibited Method.

13. On 11 August 2015, the Respondent provided further submissions to the ADRVP. At paragraphs 1 and 2 of those submissions, the Respondent wrote:

> *1. The Athlete does not put any submission in opposition to the conclusion that the Anti-Doping Rule Violation Panel ('ADRVP') should remain satisfied that he has committed the possible Anti-Doping Rule Violation of 'Attempted Use of a Prohibited Method'.*
>
> *2. Accordingly, the Athlete does not put any submission in opposition to the ADRVP making the Assertion set out in paragraph 6 of the letter to his solicitors from the CEO of the Australian Sports Anti-Doping Authority ('ASADA') dated 23 July 2015 ('the ASADA letter').*

14. Between 19 and 23 August 2015, the Respondent competed in the UCI Juniors Track World Championships in Kazakhstan. Between 16 and 22 October 2015, the Respondent competed in the South Korean National Championships. He has not competed since.

15. In this Award, all references to the WADA Code are references to the 2009 WADA Code and all references to the CA Anti-Doping Policy or the Policy are references to the CA Anti-Doping Policy 2010, unless otherwise stated.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. The Respondent requested that ASADA refer the matter to CAS to declare that the Respondent had committed the ADRV of Attempted Use of a Prohibited Method and to determine the appropriate sanctions.

17. In accordance with the Code of Sports-related Arbitration (the "Code"), on 3 November 2015, ASADA, on behalf of CA, filed an Application in the Ordinary Division of CAS. The Application named Mr. Park as the Respondent.

18. On 10 November 2015, in accordance with Art. R40 of the Code, the Applicant requested that the proceeding be heard by a Sole Arbitrator.

19. By email dated 26 November 2015, the Respondent agreed that the proceeding be heard by a Sole Arbitrator and requested that the Honourable Justice Annabelle Claire Bennett AO serve as such.

20. On 3 December 2015, the CAS Court Office confirmed the parties' agreement to appoint the Justice Bennett as Sole Arbitrator.

21. On 4 December 2015, a preliminary conference call was conducted between the parties and the Sole Arbitrator in order to determine the timetable and directions in relation to the proceeding.

22. On 4 December 2015, the Respondent filed with the CAS Oceania Registry and served on the Applicant all witnesses statements, exhibits and evidence to be relied upon in relation to the dispute.

23. On 11 December 2015, the Applicant filed with the CAS Oceania Registry and served on the Respondent all witness statements, exhibits and evidence to be relied upon in relation to the dispute.

24. On 16 December 2015, prior to the commencement of the hearing, the parties signed the Order of Procedure. The hearing was held at the CAS Oceania Offices in Sydney, Australia. The Sole Arbitrator was assisted by Mr. Alistair L. Oakes, Solicitor in Sydney, Australia, and joined by:

<u>For ASADA</u>

- Ms. Houda Younan
- Mr. Stephen White

For the Respondent

- Mr. Anthony Crocker
- Ms. Sam McNally

25. The following witnesses gave evidence before the Sole Arbitrator:

- The Respondent
- Ms. Sonya Simpson (for ASADA).

26. At the start of the hearing, the parties confirmed that they had no objection to the composition of the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

27. The ADRV is a breach of Art. 7.1 of the CA Anti-Doping Policy, effective 1 January 2010, which incorporates by reference Art. 2.2 of the WADA Code.

28. The Respondent's submissions, in essence, may be summarised as follows:

- The Respondent committed the ADRV of Attempted Use of a Prohibited Method, namely IV infusion, on 13 August 2014.
- However, the Sole Arbitrator could be satisfied that the Respondent bears no significant fault or negligence, such that his period of ineligibility should be reduced in accordance with Art. 10.5.2 of the WADA Code. The Sole Arbitrator could be so satisfied on the following grounds:
  (1) the Respondent was a minor when he committed the ADRV; and
  (2) the conduct of the Respondent which constitutes the ADRV was principally the result of the actions undertaken by the adults around him.
- If the Sole Arbitrator was so satisfied, she should reduce the period of ineligibility to 1 year, having regard to the following factors:
  (1) the Respondent's timely acknowledgement of the ADRV;
  (2) the Respondent's status as a minor at the time of the breach;
  (3) the Respondent's relative powerlessness to control the situation;
  (4) the ADRV was not an attempt to gain an advantage in competition;

(5) there is no allegation of use of a Prohibited Substance;

(6) the Respondent gained no benefit from the attempted use; and

(7) the Respondent was unaware that he was committing an ADRV.

- Further, in relation to the date on which the period of ineligibility should begin, under Art. 10.9.2 of the WADA Code, the Sole Arbitrator has a discretion to commence the period of ineligibility at a date earlier than the date of the hearing decision where the Respondent promptly admits the ADRV.

- The Respondent admitted to this ADRV in his submissions to the ADRVP on 11 June 2015 or, in the alternative, on 11 August 2015. This admission triggers the Sole Arbitrator's discretion under Art. 10.9.2 of the 2009 WADA Code and the appropriate date to commence the period of ineligibility is the date of the admission.

29. In his written submissions, the Respondent made the following requests for relief:

21. The Respondent submits the following orders should be made:

21.1 Determine that the Respondent has committed the ADRV of Attempted Use of a Prohibited Method, namely an IV infusion, in breach of article 7.1 of the Cycling Australia Anti-Doping Policy 2010.

21.2 Sanction the Respondent by imposing a period of ineligibility of 12 months.

21.3 The period of ineligibility is to commence on 27 May 2015.

30. In the course of oral submissions, the Respondent did not press for 27 May 2015 as the appropriate date of commencement of the period of ineligibility.

31. ASADA's submissions, in essence, may be summarised as follows:

- The Respondent committed the ADRV of Attempted Use of a Prohibited Method, namely IV infusion, on 13 August 2014.

- The Respondent cannot establish that he bears no significant fault or negligence in respect of the ADRV. There is no evidence to suggest that Art. 10.5.2 of the WADA Code should apply to reduce the period of ineligibility based on exceptional circumstances. Accordingly, a period of ineligibility of two years should be imposed in accordance with Art. 10 of the WADA Code.

- In that regard:

(1) the Respondent was not inexperienced, having competed over a number of years and state, national and international competitions, was supported by CA coaches and was

a participant in a scholarship program funded by the South Australian Sports Institute ("SASI");

(2) the Respondent had been provided with anti-doping education, which specifically referred to prohibited methods. His anti-doping obligations were further brought to his attention by way of his scholarship obligations and his International Cycling Union ("UCI") membership cards; and

(3) the Respondent was aware of, and consented to, the IV infusion. His actions demonstrated a delegation of personal responsibility which is not consistent with the exercise of utmost caution.

- In the alternative, if the Sole Arbitrator is satisfied that the Respondent bears no significant fault or negligence in respect of the ADRV, and Art. 10.5.2 applies, the Respondent's degree of fault in all the circumstances warrants a reduction of no more than 4 months (taking into account his relative youth and the absence of any evidence of actual, or an intention to gain, competitive advantage), resulting in a 20-month period of ineligibility.

- In relation to the commencement of the period of ineligibility, the Respondent's 11 June 2015 submissions did not constitute an admission of an ADRV (either Use of a Prohibited Method or Attempted Use of a Prohibited Method). It was only in his 11 August 2015 submissions that the Respondent admitted that he committed the ADRV of 'Attempted Use of a Prohibited Method'. Therefore, ASADA did not object to the commencement of any period of ineligibility as early as 11 August 2015.

32. In its Amended Application Form, ASADA made the following requests for relief:

ASADA requests the CAS:

1. Determine that the Respondent has committed the anti-doping rule violation of Attempted Use of a Prohibited Method, namely an IV infusion, on 13 August 2014, in breach of Article 7 of the Cycling Australia Anti-Doping Policy 2010, which incorporates by reference Article 2.2 of the WADC; and

2. Sanction the athlete in accordance with the Policy, where relevant, and the Cycling Australia Anti-Doping Policy 2010.

33. In its written submissions, ASADA also submitted that in accordance with Art. 10.8 of the WADA Code, all results obtained from the date that the ADRV occurred (13 August 2014), through to the commencement of the ineligibility period should be disqualified, including forfeiture of any medals, records, points and prizes.

V. JURISDICTION

34. Art 8.4 of the CA Anti-Doping Policy 2015 provides as follows:

> *8.4 Establishment of hearings*
>
> *8.4.1 The Article 8 hearing body for the purposes of this Anti-Doping Policy at first instance is CAS or a hearing body recognised or approved in writing by ASADA on a case-by-case basis. Any appeal from a first-instance decision will be heard by CAS.*
>
> *8.4.2 Should a Person elect to have a hearing in accordance with Article 8 or Article 7.9.3, the Person will be responsible for filing their application for a hearing with CAS, and paying any applicable CAS fees.*
>
> *8.4.3 ASADA and the sporting administration body are both entitled to present evidence, file submissions, cross-examine witnesses and do any other thing necessary for the enforcement of this Anti-Doping Policy at any hearing under this Article.*
>
> *8.4.4 Each party shall bear in equal proportions any upfront fee of CAS (excluding the initial CAS application fee which shall be borne by the party applying). Should it be found that no anti-doping rule violation has been committed, ASADA shall reimburse the Athlete or other Person their application fee and their portion of the upfront fee. Each party shall otherwise bear their own costs.*

35. Art 8.6 of the CA Anti-Doping Policy 2015 provides as follows:

> *8.6.1 CAS will determine:*
>
> *a) if the Person has committed a violation of this Anti-Doping Policy;*
>
> *b) if so, what Consequences will apply (including the start date for any period of Ineligibility); and*
>
> *c) any other issues such as, but not limited to, reimbursement of funding provided to the Athlete or other Person by a sport organisation.*
>
> *8.6.2 Consequences will be in accordance with Article 10.*

36. The parties acknowledged in signing the Order of Procedure dated 16 December 2015 that the CAS has jurisdiction to determine this dispute pursuant to Arts. 8.4 and 8.6 of the CA Anti-Doping Policy 2015 (dated 1 January 2015).

37. The parties also acknowledged in the Order of Procedure that the dispute has been filed in the Ordinary Division of CAS and that the decision of CAS will be final and binding on all parties.

38. The Sole Arbitrator, therefore, confirms that CAS has jurisdiction to hear this appeal.

VI. ADMISSIBILITY

39. In accordance with Arts. 8.4 and 8.6 of the CA Anti-Doping Policy 2015, ASADA submitted the present application to convene CAS to determine whether an anti-doping rule violation was committed and, if so, the appropriate sanction. The application is therefore admissible.

VII. APPLICABLE LAW

40. Article R45 of the Code provides as follows:

> *The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide ex aequo et bono.*

41. Although the parties acknowledged in signing the Order of Procedure that the law of the merits, being the substantive law of the dispute, shall be the law of New South Wales and that the policy to be applied was the CA Anti-Doping Policy 2015, it was agreed between the parties during the hearing that the CA Anti-Doping Policy 2010 was applicable in this matter, on the basis that it applied at the time of the alleged ADRV. The ADRV occurred in August 2014.

42. Under Art. 17 of the CA Anti-Doping Policy 2010, Art. 10 of the WADA Code applies. The parties agreed that the 2009 WADA Code applies to violations occurring during 2014 and that, by the principle of *lex mitior*, the 2015 WADA Code may apply when imposing a sanction if a more lenient sanction would arise under the 2015 WADA Code than under the 2009 WADA Code. In the present case, under the 2015 WADA Code, the same initial sanction would apply, namely a period of ineligibility of two years and the principle of *lex mitior* has no application.

43. Mr. Park is an "Athlete" in accordance with Art. 3 of that Policy, and therefore a person to whom the Policy applies.

VIII. MERITS

44. The Athlete accepts that he committed the ADRV of Attempted Use of a Prohibited Method, namely an IV infusion, on 13 August 2014.

45. The three issues to be determined, as identified by the Respondent, are as follows:

- Whether the Athlete can establish that he was not significantly at fault, nor was he negligent, so as to reduce the mandatory two year suspension period. He makes it clear that this part of his case does not constitute a submission that there was no fault or negligence on his part.

- If a reduction is appropriate, what is the appropriate sanction? If the grounds for reduction are not enlivened, he accepts that the CA Anti-Doping Policy and WADA Code provide for a mandatory two-year suspension.

- When does the period of suspension begin? There are, on the Respondent's case, three possible dates, the first of which is not pressed, but will be dealt with for completeness.
    - 27 May 2015, when the provisional suspension was handed down;
    - 11 June 2015, when he says that he acknowledged the violations to ASADA; or
    - 11 August 2015, the date of submissions to the ADRVP, it being the date that ASADA says is the correct commencing date as the date on which he admitted the ADRV.

46. The Respondent gave evidence before the CAS and was cross-examined. His case was, in effect, a plea in mitigation. The Respondent made no submission under Art. 10.5.1 of the WADA Code that he bears *"no fault or negligence"* but submits that Art. 10.5.2 is engaged because he bears *"no significant fault or negligence"*. If that is so, there is a discretion to reduce the period of ineligibility from two years to not less than one year.

A. Whether the Respondent is entitled to a reduction in the period of suspension: the nature of the violation

47. Once the violation is established, *prima facie* the Respondent must in consequence be suspended for two years (Art. 10.2 of the WADA Code), unless the conditions for eliminating or reducing the period of ineligibility are met. The onus then shifts to the Respondent to mitigate the sanction and, in that regard, to satisfy the CAS of any specified facts or circumstances on the balance of probabilities (Art. 3.1 of the WADA Code).

48. It is important to appreciate that the ADRV is of Attempted Use of a Prohibited Method, namely an IV infusion, not the Attempted Use of a Prohibited Drug.

49. The Respondent explained why he went to his cousin for advice and treatment when he felt unwell the day after his fall. The thrust of the Respondent's case is that he accepted the advice of his father, who checked the content of the substances that his cousin had proposed, and advised that the proposed solution did not contain prohibited substances. The Respondent says that he was aware that he could not take any prohibited substances. Although he did not himself read the list of ingredients on the label of the proposed infusion, he accepted the advice of his father, a professional cyclist, and his cousin, a registered nurse.

50. The Respondent has not attempted to minimise his actions. He has cooperated with CA and ASADA and his evidence was given in a straightforward and direct manner, acknowledging the facts of this event. He also explained his knowledge of the anti-doping rules and the fact that he had passed the relevant tests simply by guessing and repeating the multiple choice answers, using different email addresses until he finally passed. He effectively acknowledged that he had not known or understood the CA Anti-Doping Policy. In particular, it became clear that, while he had appreciated that there were rules concerning prohibited substances, he had not appreciated that there were rules concerning prohibited methods. Apparently his father also failed to understand that fact.

51. ASADA submits that the Respondent has failed to establish the absence of significant fault because his case is not truly exceptional or outside the vast body of cases such as to warrant mitigation.

52. That is, the Respondent was not aware that there were not only prohibited substances but also prohibited methods. His evidence was that as of 13 August 2014, he did not know that using an intravenous injection constituted a breach of the WADA Code. This is despite the fact that two questions in the online test (the ASADA level 1 e-learning education program) that he completed while a member of the SASI in 2012 were directed to prohibited methods. It is apparent that the Respondent did not really understand, or takes steps to clarify or to enable the understanding of, the content of the questions. Suggestions that this was somehow not his fault and that the test was therefore inadequate should be rejected, especially in circumstances where the Respondent did not take any steps to familiarise himself with the subject matter.

53. The Respondent accepts that ignorance is no excuse. His youth and his propensity to accept direction from his family members are also not excuses and are not advanced as such. They are relied upon to alleviate the consequences for the purposes of assessing culpability. However, despite his youth, the Respondent was under no compulsion to accept the offer of the prohibited method. The IV infusion was arranged by his father and administered by his cousin. He was aware of it and accepted the administration of it. The Respondent says that he asked his father if the fluid had any illegal substance but once his father told him that it did not contain any substances that are banned under the WADA Code, there is no suggestion that the Respondent hesitated to accept the infusion. His evidence is that the needle was only in his arm for a less than five minutes before it was removed because he was finding it painful. However, the Respondent had personal responsibilities in this matter of which he was aware and he could not simply disregard them by relying on others in an impermissible delegation of responsibility. Article 4.1 of the CA Anti-Doping Policy imposes strict obligations.

54. Further, he was the recipient of a scholarship from the SASI, was a regular competitor in cycling events and championships, and had coaching support. He had been a member of CA from 2008. He was aware of the CA Anti-Doping Policy which was brought to his attention, and he underwent anti-doping education while with the SASI. He completed the ASADA level 1 e-learning education program on 21 June 2013 and attended internal SASI education seminars. However, despite knowing that he was being tested as to the extent of his knowledge on that subject, he declined to acquire sufficient knowledge and instead relied on guesswork and repetition to pass the test. His lack of knowledge was the result of his own inaction rather than because of any inadequacy of the training. While the substances in the infusion were not prohibited, the method of administration was. He was simply not aware of this fact. That lack of knowledge is not an exculpatory or mitigating factor (Art. 4.1.12 of the CA Anti-Doping Policy; Art. 2.2.1 of the WADA Code).

55. As ASADA submitted, the relevant minimum standard is the exercise of relevant caution and the Respondent exercised none. In the circumstances, the mere fact that he was a minor, then aged seventeen, is insufficient to constitute an exceptional case, as made clear in the commentary to Art. 10.5 of the WADA Code. He may have been a minor but he did not lack experience.

56. Article 10.5.2 of the WADA Code provides that there may be a reduced period of ineligibility where an Athlete establishes that he or she bears no significant fault or negligence. This may apply, for example, where the Athlete could not reasonably have known or suspected that he or she had been administered with the prohibited method, even with the exercise of utmost caution. While the Respondent's youth is a relevant factor, he was not without experience. The circumstances in this case do not lend themselves to a reasonable lack of knowledge or understanding in accepting an IV infusion. The Respondent is a professional athlete who has competed at the highest levels for a number of years, and with success. He should not have remained ignorant of his anti-doping obligations. Accepting that there is no suggestion of any intent to gain a competitive advantage by reason of the ADRV, nor that a prohibited substance was involved, the Respondent has nonetheless shown a dereliction and abdication of personal responsibility for his actions. The decision whether or not to accept the IV infusion was within his control.

57. None of the matters put by the Respondent, individually or cumulatively, establish grounds for exculpation or a basis for mitigation of the sanction provided for.

B. The appropriate sanction

58. Article 2.2 of the WADA Code provides that it is each Athlete's personal duty to ensure that no Prohibited Method is used and that it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated. Further, the success or failure of the attempted use is not material. The Athlete does not dispute that the attempted use took place.

59. As the Respondent has not established a case for mitigation, the appropriate sanction is two years.

From what date should the period of suspension commence?

60. Article 10.9 of the WADA Code provides that the period of ineligibility shall start on the date of the hearing decision, save where there have been delays not attributable to the Athlete or where the Athlete promptly admits the ADRV. If the Athlete voluntarily accepts a provisional suspension in writing and respects it, he or she receives a credit for such period against any period of ineligibility which may ultimately be imposed.

The proposed commencement date of 27 May 2015

61. After having been contacted by ASADA investigators in early April 2015, the Respondent voluntarily participated in a recorded interview with ASADA. On 27 May 2015, he voluntarily signed an *"Acknowledgment and Acceptance of Voluntary Provisional Suspension"*, which stated that it concerned the possible ADRV of Use of a Prohibited Method and that the suspension would remain until that possible violation was finally determined by CA. Submissions were put on his behalf in June 2015, at a time when the possible ADRV was Use or Attempted Use of a Prohibited Method. He was subsequently advised that on 16 July 2015, the ADRVP was

satisfied that the possible ADRV was Attempted Use and not Use of a Prohibited Method, after which he resumed competition.

62. This chronology forms the basis for the Assertion that the period of ineligibility should be backdated to commence on 27 May 2015 and be held to have expired on 16 July 2015. It is apparent that the voluntary suspension was in connection with the possible ADRV of Use and not of Attempted Use of a Prohibited Method, the latter being the subject of this hearing. The Respondent has not established that the period of ineligibility should be so backdated with respect to a period of ineligibility for this ADRV.

63. It is fair to say that by the conclusion of the hearing, this date was not pressed. As a consequence of the Respondent's position in not pressing the 27 May 2015 date, it became unnecessary to consider the evidence of Ms Simpson as to this issue. It is dealt with for the sake of completeness.

The proposed commencement date of 11 June 2015

64. In his submissions of 11 June 2015 (the "June submissions"**)**, the Respondent made it clear that he *"does not wish to contest the making"* by the ADRVP of an "Assertion relating to a non-presence ADRV". He then notes that the Assertion alleged two discrete ADRVs, namely Use and Attempted Use of a Prohibited Method. The submissions continued to advance the propositions that an Assertion should only allege one ADRV for reasons of duplicity and that if both allegations are to be pursued, there should be two separate Assertions. The June submissions also suggest that the ADVRP should elect which Assertion should remain, based on the material.

65. The ADVRP noted the concession made in the submissions as to the fact that the Respondent did not wish to contest the Assertion, but formed the view that he did not *"explicitly admit"* to either Use or Attempted Use. This is the position now contended for by ASADA which submits that it was not until the Respondent's submissions of 11 August 2015 that he made it clear that he admitted the ADRV of Attempted Use of a Prohibited Method.

66. In his 11 August 2015 submissions, the Respondent stated:

"The Athlete does not put any submission in opposition to the conclusion that the [ADRVP] should ***remain*** *satisfied that he has committed the possible [ADRV]"* (emphasis added).

67. This suggests that the Respondent understood the June submissions to have constituted an admission. He also asserted in the 11 August 2015 submissions that the June submissions did explicitly acknowledge that an Assertion would be made.

68. It is the Sole Arbitrator's view that it was the Respondent's clear intention to admit the ADRV in the June submissions and that, read beneficially, he did so. He was seeking to have the two aspects of the Assertion separated in order better to deal with them and in the expectation that the evidence would lead the ADRVP to decide to proceed with one Assertion and not the other.

The proposed commencement date of 11 August 2015

69. ASADA accepts that, for the purposes of Art. 10.9.2 of WADA Code, the Respondent admitted on 11 August 2015 that he committed the ADRV. Accordingly, ASADA says that it would not object to this as the date for the commencement of the period of ineligibility.

Other matters relevant to the commencement date

70. The parties agreed that the matters raised at the hearing about the Respondent's subsequent competition activities were not relevant. The Respondent accepts any consequential disqualification and this also means that it is not necessary to consider Ms Simpson's evidence as to this issue.

71. At the hearing, the Respondent first made a submission that Art. 10.9.1 of the WADA Code applies to affect the date of commencement of the ineligibility period by reason of alleged delays that have occurred on the part of ASADA. He points to evidence that further information was gathered as to the ADRV on 29 August 2014 but that the first communication from ASADA to the Respondent was not until 27 January 2015, some five months later. The Respondent submits that this delay can be *"brought to account"*, although he does not suggest a *pro rata* application.

72. Even if the Respondent were to be permitted to raise an argument based on Art. 10.9.1 at the hearing without notice, ASADA does not accept that there has been substantial delay or that Art. 10.9.1 has any application to this case. ASADA submits that the Respondent's submission amounts to an unsubstantiated assumption of delay, including an assumption as to the last date of the gathering of evidence. The only evidence pointed to by the Respondent was as to a meeting between his coach, Mr Short, and ASADA officials. ASADA points out that there is no evidence of lack of activity and submits that no assumptions can be made or inferences drawn, as the allegation was only raised at the hearing and, accordingly, ASADA was not in a position to adduce evidence, let alone positive evidence to rebut the allegation.

73. The evidence relied on by the Respondent is inconclusive of the actions of ASADA in obtaining material in relation to the ADRV. The Respondent has not established that Art. 10.9.1 has any application, nor has he enabled the Sole Arbitrator to identify a discrete period of time that would properly be attributable to any delay, let alone to the required "substantial delay".

Conclusion

74. The Respondent has committed a violation of the CA Anti-Doping Policy, namely the ADRV of Attempted Use of Prohibited Method in breach of Art. 7.1 of the CA Anti-Doping Policy, (which incorporates by reference Art. 2.2 of the WADA Code) and is subject to a sanction of a period of ineligibility from competition.

75. There is no sufficient basis to conclude that Art. 10.5.2 of the WADA Code should apply to reduce the period of ineligibility based on exceptional circumstances. Accordingly, a period of two years should be imposed. The commencement of the period of ineligibility is 11 June 2015.

76. It was not in dispute between the parties that if the Responded had competed in cycling events after the date of the commencement of his period of ineligibility, then, in accordance with Art. 10.8 of the WADA Code, he would be disqualified from those events and would forfeit any medals, points and prizes.

77. It is the Sole Arbitrator's view that as the period of ineligibility is to have commenced on 11 June 2015, all competitive results obtained by the Respondent from that date, if any, shall be invalidated, with all resulting consequences including forfeiture of any medals, points or prizes. There are no circumstances advanced which warrant the exercise of the Sole Arbitrator's discretion to find otherwise.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. Jeone Park committed an anti-doping rule violation of Attempted Use of a Prohibited Method, namely an intravenous infusion, in breach of Art. 7 of the Cycling Australia Anti-Doping Policy 2010, which incorporates by reference Art. 2.2 of the 2009 World Anti-Doping Code.

2. In accordance with Art. 17 of the Cycling Australia Anti-Doping Policy 2010 (which incorporates by reference Art. 10 of the 2009 World Anti-Doping Code), a period of ineligibility be imposed upon Jeone Park for a period of two (2) years, backdated to commence on 11 June 2015.

3. All competitive results obtained by Jeone Park from 11 June 2015 shall be invalidated with all resulting consequences, including forfeiture of any medals, points or prizes.

4. (…)

5. All other motions or prayers for relief are dismissed.