Arbitration CAS 2019/ADD/1 International Olympic Committee (IOC) v. Mikalai Novikau, award of 20 May 2019

Panel: Mr Murray Rosen QC (United Kingdom), Sole Arbitrator

Weightlifting
Doping (oral turinabol & stanozolol)
Violation of the anti-doping rule
Sanction

1. **Sufficient proof of an anti-doping violation (ADRV) under article 2.1.2 of the World Anti-Doping Code (WADC) is established by the presence of a Prohibited Substance or its metabolites belonging to Class S1.1a of the WADA 2019 Prohibited List in the A sample where the analysis of the athlete's B Sample confirms the presence the Prohibited Substance or its metabolites found in the athlete's A Sample. The establishment of the ADRV is confirmed by the fact that the metabolites found in the sample are substances specifically used for doping purposes for the purpose of article 2.2 of WADC and the athlete offered no other explanation for their presence in the sample. Thus, the athlete committed an ADRV under both WADC article 2.1 (presence) and article 2.2 (use).**

2. **Under article 7.1 of the IOC ADR, a violation in individual sports in connection with doping control automatically leads to disqualification of the athlete's results in the competition in question, with all other consequences related thereto as applicable including forfeiture of any medals, points and/or prizes.**

I. PARTIES

1. The International Olympic Committee (the "IOC" or "Claimant") is the world governing body of Olympic sport having its registered offices in Lausanne, Switzerland. The IOC is incorporated as an association pursuant to articles 60 *et seq.* of the Swiss Civil Code).

2. Mr. Mikalai Novikau (the "Athlete" or "Respondent") is a Belarusian weightlifter and a team member of the National Olympic Committee of Belarus who participated in the Games of the XXX Olympiad, London 2012 (the "2012 London Olympics").

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced in this procedure. 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 only refers to the submissions and evidence he considers necessary to explain his reasoning.

4. On 3 August 2012, the Athlete competed in the Men's 85 kg Weightlifting Event at the London Olympic Games, finishing in 12th place.

5. Following that Event, the Athlete provided a urine sample (sample no. 2718726) as part of the Doping Control Program at the 2012 London Olympics (the "Sample")

6. The Sample was analysed at the World Anti-Doping Agency ("WADA") accredited laboratory in London, United Kingdom (the "London Laboratory") using the available detection methods applied by the London Laboratory. This did not result in an Adverse Analytical Finding ("AAF") at that time.

7. At the IOC's request, the remains of the Sample (a partial A Sample and full B Sample) were subsequently transferred to the WADA-accredited laboratory in Lausanne, Switzerland for long-term storage.

8. Under Article 5.1 of the IOC's anti-doping rules applicable to the 2012 London Olympics (the "IOC ADR"), the IOC was entitled to re-analyse samples collected during the 2012 London Olympics.

9. As part of this process, a further analysis of the Sample was conducted by the Lausanne Laboratory. This analysis revealed the presence of Dehydrochlormethyltestosterone (also known as "oral turinabol") and Stanozolol metabolites, which belong to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2012 and 2019 WADA Prohibited List. Such a finding constituted an AAF.

10. The International Testing Agency (the "ITA"), by delegation from the IOC, reviewed the AAF and confirmed *inter alia* that the Athlete did not possess a Therapeutic Use Exemption for the relevant substances and that no apparent departures from the International Standard for Testing and Investigations or the International Standard for Laboratories could undermine the AAF.

11. On 17 December 2018, the ITA notified the Athlete of the AAF and in accordance with Article 6.2.6 of the IOC ADR, charged the Athlete with an anti-doping rule violation ("ADRV").

12. On 18 December 2018, the Athlete was provisionally suspended.

13. On 2 January 2019, the Athlete completed an "Athlete Rights Form" whereby he did not accept the AAF, requested the opening and testing of his B Sample, and further requested the laboratory documentation packages for his samples.

14. On 10 January 2019, the ITA provided the Athlete with the documentation package for his A Sample.

15. On 6 February 2019, the Athlete's B Sample was opened and analysed.

16. On 12 February 2019, the ITA informed the Athlete that the results of his B Sample confirmed that results of the A Sample and invited the Athlete to state whether he wanted a copy of the B Sample laboratory documentation package. The Athlete did not respond to such invitation.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 26 March 2019, the Claimant IOC filed a Request for Arbitration with the Anti-Doping Division of the Court of Arbitration for Sport (the "ADD") in accordance with Article A13 of the Arbitration Rules of the ADD (the "ADD Rules").

18. In its Request for Arbitration, and in accordance with Article A16 of the ADD Rules, the Claimant requested that this procedure be referred to a Sole Arbitrator appointed by the President of the ADD.

19. On 17 April 2019, the ADD, on behalf of the President of the ADD, confirmed the appointment of Mr. Murray Rosen QC as Sole Arbitrator in accordance with Article A16 of the ADD Rules.

20. On 18 April 2019, the Respondent Athlete filed his answer in accordance with Article A14 of the ADD Rules. In his answer, the Respondent admitted the ADRV against him and stated that he did not want a hearing to be held.

21. Following the Respondent's admission, on 23 April 2019, the ADD on behalf of the Sole Arbitrator informed the parties were informed that he did not deem any further written submissions necessary and ADD invited the Claimant to state whether it requested a hearing.

22. On 1 May 2019, the ADD confirmed (as had been warned) that the IOC silence was treated as its not submitting that a hearing was necessary and that the Sole Arbitrator considered himself sufficiently well informed to render a decision without a hearing and based solely on the parties' written submissions.

23. On 3 and 6 May 2019, the Claimant and Respondent, respectively, signed and returned the

IV. SUBMISSIONS OF THE PARTIES

24. The IOC's submissions, in essence, may be summarised as follows:

- Dehydrochlormethyltestosterone and Stanozolol metabolites belong to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2012 and 2019 WADA Prohibited List.
- Both substances were found in the Athlete's A Sample and confirmed in the Athlete's B Sample. Such presence constitutes an ADRV in accordance with Article 2.1.2 of the World Anti-Doping Code ("WADC").
- A further violation under Article 2.2 of the WADC could be established considering that the substances found in the Athlete's sample are specifically used for doping purposes and this evidenced intentional use by the Athlete.
- The Athlete failed to provide any explanation for the ADRV.

25. In its Request for Arbitration, the IOC requested the following relief:

The International Olympic Committee hereby respectfully asks the Court of Arbitration for Sport to rule that:

1) The International Olympic Committee's request is admissible.

2) Mikalai Novikau is found to have committed an anti-doping rule violation in accordance with the IOC Anti-Doping Rules.

3) Mikalai Novikau's results from the 2012 London Olympics are disqualified, along with all other consequences, including forfeiture of any medals, points, and prizes.

26. The Athlete's submissions, in essence, may be summarised as follows:

- The Athlete has never taken any prohibited substances and/or methods and has always respected anti-doping rules. Nevertheless, due to the long period of time between the test and the positive result, he has had no time to present evidence of his innocence.
- He accepts and acknowledges the results of the A and B Samples and admits the ADRV and requests a decision without a hearing.
- No costs should be attributable to him given his poor financial situation.

27. The Athlete did not make any formal requests for relief.

V. JURISDICTION

28. Article A2 of the ADD Rules provides as follows:

CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a sports entity, by contract or by specific agreement.

These Rules apply only to the resolution by first instance arbitration of alleged anti-doping rule violations filed with CAS ADD. They neither apply with respect to appeals against any other decision rendered by an entity referred to in this Article nor against any decision rendered by CAS ADD.

Decisions rendered by CAS ADD shall be applied and recognized in accordance with the WADC.

CAS ADD shall also have jurisdiction in case of alleged doping violations linked with any re-analysis of samples.

On 7 March 2019, the parties executed an Arbitration Agreement to refer this matter to the ADD.

29. The parties further confirmed ADD jurisdiction by signing the orders of procedure.

30. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide this matter.

VI. APPLICABLE LAW

31. Article A20 of the ADD Rules provides as follows:

The Panel shall decide the dispute in in accordance with the WADC and with the applicable ADR or with the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.

32. The IOC ADR applicable to the 2012 London Olympics applies, without limitation, to all doping controls conducted during the 2012 London Olympics. More specifically, the Preamble to the IOC ADR provides as follows:

All participants (Athletes and Athlete Support Personnel) and other Persons accept these Rules as a condition of participation and are presumed to have agreed to comply with the Rules.

33. No party has objected to the application of the IOC ADR and indeed, the parties agreed with their application when signing the order of procedure.

34. The Sole Arbitrator therefore confirms that the IOC ADR, in conjunction with the WADC as provided for in the IOC ADR, applies to this procedure.

VII. MERITS

A. The Anti-Doping Rule Violation

35. As mentioned above, two metabolites of Prohibited Substances belonging to Class S1.1a of the WAFA 2019 Prohibited List were found in the Sample on reanalysis.

36. Sufficient proof of an anti-doping violation under Article 2.1.2 of WADC is established by the presence of a Prohibited Substance or its metabolites in the A Sample *"… where the analysis of the Athlete's B Sample confirms the presence the Prohibited Substance or its metabolites … found in the Athlete's A Sample"*. This has been admitted by the Athlete in the present case.

37. Moreover, the metabolites found in the Sample are substances specifically used for doping purposes for the purpose of Article 2.2 of WADC and the Athlete offered no other explanation for their presence in the Sample.

38. Accordingly, the Sole Arbitrator finds that the Athlete committed an anti-doping rule violation under both WADC Article 2.1 (presence) and Article 2.2 (use)

B. The Applicable Sanction

39. Under Article 7.1 of the IOC ADR, a violation in individual sports in connection with doping control automatically leads to disqualification of the athlete's results in the competition in question, with all other consequences related thereto as applicable including forfeiture of any medals, points and/or prizes.

40. Accordingly the Athlete's results at the 2012 London Olympics are disqualified and all medals, points and prizes awarded to him (if any) are forfeited.

41. The IOC did not seek payment of any of its costs from the Athlete and Athlete is to be credited for his prompt admission of the ADRV. In these circumstances, the Sole Arbitrator confirms that each party shall bear their own legal and other costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the International Olympic Committee on 26 March 2019 against Mr. Mikalai Novikau is upheld.

2. Mr. Mikalai Novikau committed an anti-doping rule violation in accordance with the International Olympic Committee's Anti-Doping Rules applicable to the XXX Olympiad, London 2012.

3. The results obtained by Mr. Mikalai Novikau at the XXX Olympiad, London 2012 are disqualified with all resulting consequences including, if applicable, forfeiture of any medal, points and prizes.

4. (…).

5. (…).

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