Arbitration CAS anti-doping Division (OG PyeongChang) AD 18/005 International Olympic Committee (IOC) & International Bobsleigh & Skeleton Federation (FIBT) v. Nadezhda Sergeeva, partial award of 24 February 2018

Panel: Prof. Cameron Myler (USA), Sole Arbitrator

Bobsleigh
Doping (trimetazidine)
Jurisdiction of the CAS Anti-Doping Division
Definition of team sport
Consequences on the team of an ADRV in a sport which is not a team sport but where awards are given to teams
Continuation of the proceedings

1. **Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board has delegated to the CAS Anti-Doping Division (ADD) its power to decide upon any violation of the World Anti-Doping Code arising upon the occasion of the Olympic Games. Pursuant to Art. 8.1.1 of the IOC Anti-Doping Rules (ADR): *"Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules".* Article 1 of the CAS ADD Rules states that: *"[t]he CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR, and for imposition of any sanctions therefrom whether applied at the Games or thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the IOC and/or the International Federation concerned".***

2. **The IOC ADR defines a Team Sport as *"A sport in which the substitution of players is permitted during Competition".* As substitution of athletes is not permitted in bobsleigh competitions, it is not a team sport.**

3. **Article 11.3 of the IOC ADR states that: *"If one or more members of a team in a sport which is not a Team Sport but where awards are given to teams, is found to have committed an anti-doping rule violation […], the CAS Anti-Doping Division shall impose the consequences on the team […] which are provided in this respect in the applicable rules of the relevant International Federation, in addition to any consequences imposed pursuant to these Rules on the individual Athlete(s) found to have committed the anti-doping rule violation".* According to Article 11.2.2 of the IBSF ADR, *"An anti-doping rule violation committed by a member of a Team occurring during or in connection with an Event may lead to Disqualification of all of the results obtained by the Team in that Event"*, which gives discretion to determine whether the results of the athlete's team are also disqualified.**

4. After the anti-doping rule violation has been determined, the IOC is no longer a party to the procedure. The proceedings shall continue by and between the international federation concerned, who joined the proceedings as Co-Applicant, and the athlete, in regard to the consequences of the anti-doping rule violation which may be imposed on the athlete. The Sole Arbitrator, after consultation with the parties, shall determine the procedural directions applicable to the remaining part of the arbitration and shall issue, at the conclusion of the proceedings following the Olympic Games, a final award, all in accordance with Article 20 of the CAS ADD Rules.

I. FACTS

1. On 18 February 2018, Ms Nadezhda Sergeeva (the "Athlete") underwent an out-of-competition doping control (urine – sample no. 6332734). The results of the analysis of the Athlete's A Sample revealed the presence of Trimetazidine, a non-specified substance which is a Metabolic Modulator prohibited under S4.5.5.4 of the 2018 WADA Prohibited List.

2. The Athlete competed in the 2-person bobsleigh competition, which took place on 20 and 21 February 2018. The Athlete's Team finished in 12th place.

3. The Athlete was notified of the Adverse Analytical Finding by letter from the Global Association of International Sports Federation (on behalf of the IOC) on 23 February 2018.

4. In the Adverse Analytical Finding Notification Appendix dated 23 February 2018, the Athlete renounced the opening and analysis of the B-Sample and expressly accepted the Adverse Analytical Finding.

5. On 23 February 2018 at 19h20 KST, the IOC filed an application at the Anti-Doping Division of the Court of Arbitration for Sport ("CAS ADD") (the "Application"). In the Application, the IOC sought the following request for relief:

   1. The Application of the International Olympic Committee is admissible.

   2. The Athlete is found to have committed (an) anti-doping rule violation(s) in accordance with Article 2.1 and/or 2.2 of the IOC Anti-Doping Rules.

   3. The results obtained by the Athlete in the women's bobsleigh event of the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences (including forfeiture of the medal, diploma, medallist pin, points and prizes).

   4. The results obtained by the Athlete's Team in the women's bobsleigh event of the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences (including forfeiture of the medal, diploma, medallist pin, points and prizes).

   5. The Athlete is excluded from the Olympic Winter Games PyeongChang 2018.

   6. The Athlete's accreditation (number 3036191) be withdrawn.

7. The Chef de Mission of the Olympic Athletes from Russia delegation shall ensure full implementation of the award.

6. The IOC did not ask for the Athlete to be provisionally suspended or for her to be declared ineligible for the Olympic Winter Games PyeongChang 2018.

7. On 23 February 2018 at 19h45 KST, the CAS ADD acknowledged receipt of the Application, informed the Athlete of this procedure and issued preliminary procedural directions to the parties and potentially interested parties.

8. On 23 February 2018 at 22h30 KST, the CAS ADD issued further procedural direction to the parties and invited the International Bobsleigh & Skeleton Federation (the "IBSF") to join the procedure as a Co-Applicant.

9. On 23 February 2018 at 23h58 KST, the IBSF confirmed that it wished to join the procedure as a Co-Applicant. In such letter, the IBSF requested that the Sole Arbitrator/Panel provisionally suspend the Athlete beyond the period of the Games such that the Athlete would not be able to compete pending a final decision on any applicable sanction, if so determined.

10. On 24 February 2018 at 00h20 KST, the Athlete advised the CAS ADD that she accepted an adverse analytical finding and reserved her right to seek elimination or reduction of the standard eligibility period based on the "No Fault or Negligence" principle during further disciplinary proceedings. Moreover, the Athlete accepted a provisional suspension beyond the period of the Games.

11. On 24 February 2018 at 11h19 KST, the parties were informed that the President of the CAS ADD appointed Prof. Cameron Myler, attorney-at-law in New York, United States of America, as Sole Arbitrator.

II. JURISDICTION

12. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board has delegated to the CAS ADD its power to decide upon any violation of the World Anti-Doping Code arising upon the occasion of the Olympic Games.

13. Pursuant to Art. 8.1.1 of the International Olympic Committee Anti-Doping Rules applicable to the Olympic Winter Games PyeongChang 2018 (the "IOC ADR"):

"Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules".

14. Article 1 of the CAS ADD Rules states that: *"[t]he CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR, and for imposition of any sanctions therefrom whether applied at the Games or*

thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the IOC and/or the International Federation concerned".

15. The parties do not contest the jurisdiction of the CAS ADD to decide the dispute.

16. It follows that the CAS ADD has jurisdiction over the Application.

III. MERITS

17. The Athlete expressly accepts the adverse analytical findings against her and therefore the Sole Arbitrator confirms that the Athlete committed an anti-doping rule violation in accordance with Article 2.1 (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*) of the IOC ADR.

18. As a consequence, the results obtained by the Athlete in the women's bobsleigh event of the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including, if applicable, forfeiture of any medal, diploma, medallist pin, points and prizes.

19. With respect to the results affecting the Athlete's Team in the women's bobsleigh event, Article 11.2.2 of the IBSF Anti-Doping Rule (the "IBSF ADR") states that: *"An anti-doping rule violation committed by a member of a Team occurring during or in connection with an Event may lead to Disqualification of all of the results obtained by the Team in that Event with all consequences for the Team and its members, including forfeiture of all medals, points and prizes, except as provided in Article 11.2.3".*

20. Furthermore, Article 11.3 (Consequences to Teams in sports which are not Team Sports) of the IOC ADR states that: *"If one or more members of a team in a sport which is not a Team Sport but where awards are given to teams, is found to have committed an anti-doping rule violation during the Period of the Olympic Winter Games PyeongChang 2018, the CAS Anti-Doping Division shall impose the consequences on the team (e.g., loss of points, Disqualification from a Competition, Event or the Olympic Winter Games PyeongChang 2018, or other consequences) which are provided in this respect in the applicable rules of the relevant International Federation, in addition to any consequences imposed pursuant to these Rules on the individual Athlete(s) found to have committed the anti-doping rule violation".*

21. The IOC ADR defines a Team Sport as *"A sport in which the substitution of players is permitted during Competition".* Substitution of athletes is not permitted in bobsleigh competitions, so Article 11.3 of the IOC ADR applies in this case and the consequences on the Athlete's Team are determined pursuant to the relevant rules of the IBSF, namely Article 11.2.2 of the IBSF ADR.

22. The Athlete's anti-doping rule violation arises from the presence of a prohibited substance in her urine sample that was collected on 18 February 2018, which was two days prior to the first day of the women's bobsleigh event on 20 February 2018. As such, the Athlete's anti-doping rule violation was committed *"during or in connection with"* her Team's competition at the Olympic Games.

23. As set forth above, Article 11.2.2 of the IBSF ADR provides that *"An anti-doping rule violation committed by a member of a Team occurring during or in connection with an Event* ***may*** *lead to Disqualification of all of the results obtained by the Team in that Event"*, which gives the Sole Arbitrator the discretion to determine whether the results of the Athlete's Team are also disqualified.

24. In the AAF Notification Appendix dated 23 February 2018, the Athlete agreed that she accepted the Adverse Analytical Finding. Additionally, in an email dated 23 February 2018, the Athlete confirmed that she *"accepted the Adverse Analytical Finding"* and *"is aware about the consequences of the acceptance of AAF including the disqualification of results"*.

25. While the Athlete *"reserved its (sic) right to seek elimination or reduction of the ineligibility period in the further proceedings within the CAS ADD"*, she did not make any arguments or present any reasons why the results of her Team should not be disqualified as the result of her anti-doping rule violation.

26. Given that the Athlete did not object or otherwise respond to the IOC's request with respect to the disqualification of the Team results, and noting that the Sole Arbitrator is given discretion in this regard, the Sole Arbitrator confirms that such Team results should be disqualified. Separately, considering that the prohibited substance in question is a non-specified substance, and noting that the anti-doping rule violation occurred only two days prior to the women's bobsleigh event and during the period of the Games, it cannot be excluded that the prohibited substance giving rise to the anti-doping rule violation was still present in the Athlete's body at the time of the competition.

27. As such, the results obtained by the Athlete's Team in the women's bobsleigh event of the Olympic Winter Games PyeongChang 2018 are also disqualified with all resulting consequences including, if applicable, forfeiture of any medal, diploma, medallist pin, points and prizes.

28. It is understood that the Athlete has left the Olympic Village and that the Chef de Mission of the Olympic Athletes from Russia delegation shall ensure full implementation of the award.

29. The Sole Arbitrator notes that the Athlete expressly reserves her right to seek the elimination or reduction of the ineligibility period on the basis of "No Fault or Negligence" in further disciplinary proceedings outside the period of the Olympic Games. Such reservation is the right of the Athlete and more information will follow concerning the next steps in this procedure in due course following the Games.

30. The anti-doping rule violation now having been determined, the IOC is no longer a party to this procedure.

IV. CO-APPLICANT IBSF

31. Further to the IBSF's request to participate as a Co-Applicant in this procedure, the Sole Arbitrator notes the IBSF's delegation of power to the CAS ADD in accordance with Articles

7.1.2 and 10.2.2 of the IOC ADR (as confirmed by the IBSF in its email communication to the CAS dated 17 October 2017). In this regard, the IBSF's request is granted.

32. These proceedings shall continue by and between the IBSF, who joined these proceedings as Co-Applicant, and the Athlete, in regard to the consequences of the ADRV which may be imposed on the Athlete. The Sole Arbitrator, after consultation with the parties, shall determine the procedural directions applicable to the remaining part of the arbitration and shall issue, at the conclusion of these proceedings following the Olympic Games, a final award, all in accordance with Article 20 of the CAS ADD Rules.

33. In the interim, and considering the IBSF's request that the Athlete be provisionally suspended following the conclusion of the Games, and noting the Athlete's agreement in this regard, the Athlete is hereby provisionally suspended until such time a final decision is rendered on her violations, or otherwise informed.

V. DECISION

34. On the basis of the submissions of the parties as set forth above, the application of the IOC is granted and therefore:

    a. The Athlete is found to have committed an anti-doping rule violation in accordance with Article 2.1 of the IOC ADR.
    b. The individual results obtained by the Athlete in the women's bobsleigh event of the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including, if applicable, forfeiture of any medal, diploma, medallist pin, points and prizes.
    c. The results obtained by the Athlete's Team in the women's bobsleigh event of the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including, if applicable, forfeiture of any medal, diploma, medallist pin, points and prizes.
    d. The Athlete is excluded from the Olympic Winter Games PyeongChang 2018.
    e. To the extent not yet done so, the Athlete shall leave the Village and return her accreditation (number 3036191) immediately.

35. With the issuance of this Order, the IOC's participation in this proceeding is hereby terminated.

36. Furthermore, the application of the IBSF is granted and therefore:

    a. The Athlete is provisionally suspended from all Competition following the conclusion of the Olympic Winter Games PyeongChang 2018 pending a final decision on her violation.