

THE INDEPENDENT ANTI-DOPING DISCIPLINARY PANEL

Panel sitting in the following composition:

Chair: Catherine Minto
Members: Dr. Denise Forrest
Dr. Japheth Ford

Athletics (track and field)

WHEREABOUTS FAILURE: REASONABLE ATTEMPT TO LOCATE ATHLETE FOR TESTING; MISSED TESTS; WHETHER ATHLETE IS RETIRED, OR WAS RETIRED AT THE TIME OF THE MISSED TESTS; WHETHER ASSERTION OF RETIREMENT PREVENTS IMPOSITION OF SANCTIONS

Application No. 2 of 2023

IN THE MATTER BETWEEN

Jamaica Anti-Doping Commission, Kingston Jamaica Complainant

Represented by Ms. Annaliesa E. Lindsay Attorney-at-Law, Kingston Jamaica

v.

Tiffany James Rose - In Person.

Respondent

I. INTRODUCTION

1. The Complaint was brought by the Jamaica Anti-Doping Commission on the basis that the Respondent committed an Anti-Doping Rule Violation under Article 2.4 of the Jamaica Anti-Doping Commission Anti-Doping Rules, 2021 by committing three Whereabouts Failures within a 12 month period (the "violation").
2. The Complainant asserts that on three (3) occasions, being August 11, 2022, May 23, 2023, and June 19, 2023, the Respondent's whereabouts were unknown, and she could not be located for testing at the locations that she indicated that she would be in her Anti-Doping Administration and

Management System (ADAMS) whereabouts filing. ADAMS is a web-based database management tool for data entry, including the information for Whereabouts Filing.

3. The complaint was referred to the Independent Anti-Doping Disciplinary Panel for consideration and determination.

II. PARTIES

A. The Complainant

4. The Complainant is the Jamaica Anti-Doping Commission. The Jamaica Anti-Doping Commission (JADCO) is the National Anti-Doping Organization for Jamaica and is responsible for ensuring that all athletes comply with the World Anti-Doping Code, which is the document that harmonises regulations regarding anti-doping across all sports and all countries of the world.
5. JADCO is independent of the Independent Anti-Doping Disciplinary Panel (IADP) and the Anti-Doping Appeal Tribunal.

B. The Respondent

6. The Respondent Tiffany James Rose is a track and field athlete competing at the international level in *Sprint 400m or less* and is therefore an 'athlete within the meaning of Article 1 and Appendix 1 of the Jamaica Anti-Doping Commission Anti Doping Rules, 2021 (Rules). And, she is therefore subject to the JADCO Rules, and the International Testing Standards.

III. THE HEARING

7. The Independent Anti-Doping Panel was advised of the charge against the athlete by letter dated the 15th day of September, 2023 from JADCO.

8. The matter was fixed for hearing on the 5th of October, 2023, when the decision was reserved. The decision is based on the documentation produced, and the Athlete's statement at the hearing.
9. No orders were made for submissions to be lodged with the secretariat, in order to avoid unfair advantage to JADCO, and undue prejudice, and a general unfairness to the athlete who was not represented by an attorney-at-law at the hearing.

IV. THE EVIDENCE

10. Below is a summary of the main relevant facts and the athlete's response to the charges. There was not much dispute by the athlete to the underlying facts and charges.
11. By letter dated August 19, 2020, the athlete was advised that she had been included in the registered testing pool (RTP). Therefore, based on the JADCO Rules, the Athlete was required to make a Whereabouts Filing at the beginning of each quarter, providing specified information as to her whereabouts each day in the forthcoming quarter during an identified 60 minute slot. And, the athlete was required to be available for Testing at the declared whereabouts, during the 60-minute time slot in accordance with the International Standard for Testing and Investigations (ISTI).
12. On August 11, 2022, a Doping Control Officer ("DCO") was sent to test the athlete at Highlight View Road, Kingston between 05:00-06:00 a.m, which is the address and 60-minute time slot specified by the athlete in her Whereabouts filing for that period.
13. The Athlete was not located at the address and could not be reached by telephone. The DCO therefore submitted an Unsuccessful Attempt Report.

14. By letters dated August 12, 2022, and September 1, 2022, from JADCO the Athlete was advised of the missed test, the likely consequence, and the Athlete was given an opportunity to respond or explain the reason for her absence.
15. No explanation was submitted to JADCO by the athlete for her failure to be at the address for testing.
16. On May 23, 2023, a DCO was sent to test the athlete at 46 Morrison Street, Manchester, New Hampshire 03104, United States, between 08:00-09:00 a.m being the address and 60 minute time slot specified in her Whereabouts filing. However, the DCO was unable to locate her for testing. According to the unsuccessful attempt report, the DCO knocked on door of the address and the athlete's husband answered and indicated that she was not there.
17. By letters dated May 30, 2023, June 8 and June 16, 2023, from JADCO to the Athlete, the Athlete was advised of the missed test, the likely consequence, and the Athlete was given an opportunity to respond or explain the reason for her absence.
18. No explanation was submitted to JADCO by the athlete for her failure to be at the address for testing.
19. On June 19, 2023, a DCO was sent to test the athlete at her stipulated location of 46 Morrison Street, Manchester, New Hampshire 03104, United States, at the time identified for her 60-minute time slot. However, the DCO was unable to locate her for testing.
20. By letters dated June 21, 2023, June 29, 2023 and July 10, 2023 from JADCO to the Athlete, the Athlete was advised of the missed test, the likely consequence, and the Athlete was given an opportunity to respond or explain the reason for her absence.

21. No explanation was submitted to JADCO by the athlete for her failure to be at the address for testing.
22. By letter dated August 10, 2023, the Athlete was notified of the anti-doping rule violation (the three missed tests) and that:
 - a. She has the right to respond and to a fair hearing;
 - b. She has the right to admit the violation at any time and waive her right to a hearing;
 - c. She was not provisionally suspended.
23. Subsequent to the August 10, 2023 letter, JADCO made several attempts to contact and communicate with the athlete, all of which were unsuccessful.
24. JADCO eventually heard from the athlete through a series of WhatsApp messages on September 1, 2023 in which the athlete stated "*Go ahead with whatever decision, I have retired*". This was the first notice to JADCO that the athlete had retired.
25. Pursuant to article 8.4.14 of the Rules, the Panel was also provided with the DCO's unsuccessful attempt reports for each of the missed test dates; proof of successful transmission of the letters sent by JADCO to the athlete notifying her of the missed tests and the consequences of her whereabouts failure; the date of the WhatsApp message received by JADCO from the athlete advising that she had retired, and the whereabouts filing submitted by or on behalf of the athlete during the period of the three missed tests.
26. The Athlete's evidence at the hearing is that:
27. She moved to the United States of America in "August 2022". Therefore, she was not in Jamaica at the time of her first missed test on August 11, 2022. However, her Whereabouts Filing was not immediately updated by the family member who was tasked with updating her information.

28. That while she was in the United States of America, her situation changed as there was some delay in the regularization of her immigration status, and she was unable to immediately return to Jamaica, or publicly disclose her status. She therefore contemplated retirement, although this was not communicated to JADCO, or to the family member tasked with her quarterly whereabouts filings. Her ADAMS address was however updated to the address at 46 Morrison Street, Manchester, New Hampshire 03104, United States in October 2022.
29. That other personal issues subsequently befell her:- she became pregnant which had (undisclosed) complications. She was required to travel a far distance for medical appointments related thereto, which resulted in her not being at her stipulated location during the time slots for her second and third missed tests. As her pregnancy was being kept a secret, she was unable to disclose her medical condition with her extended family, or to update JADCO on her professional, personal or medical condition.
30. Ultimately, the athlete did not dispute the anti doing rule violation, or the error in her whereabouts filing (as it relates to the first missed test). She sought instead to explain or justify the violations in terms set out above.

V. THE LAW - ANTI DOPING VIOLATION

A. *Jurisdiction and Applicable Standard*

31. The World Anti-Doping Program that Jamaica is apart of, comprises three components:
 - i. The World Anti-Doping Code, which provisions are mandatory in substance and must be followed as applicable by each Anti-Doping Organization and Athlete or other Person *but do not replace the Rules that shall be adopted by each anti-doping organization;*

- ii. The WADA International Standards for Results Management (ISRM), which contain much of the technical detail necessary for implementing the Code and are mandatory for compliance with the Code.
 - iii. The Models of Best Practice and Guidelines, which provide solutions in different areas of anti-doping and, albeit not mandatory, provide relevant guiding canons to all involved in anti-doping controls;
32. JADCO has the necessary authority in keeping with its core functions to implement and administer the World Anti-Doping Code and the International Standards, and to that end has adopted its own rules to regulate anti-doping in sports in Jamaica.
33. According to article 3.1 of the Rules, JADCO has the burden of establishing that an Anti-Doping Rule Violations has occurred.
34. Article 3.1 further states that the requisite standard of proof is, "*to the comfortable satisfaction of the Independent Anti-Doping Disciplinary Panel, bearing in mind the seriousness of the allegation made*". Article 3.1 states further that the "comfortable satisfaction" standard of proof is in all cases greater than a balance of probability, but less than proof beyond reasonable doubt.
35. The test of "comfortable satisfaction" must take into account all the circumstances of the case.
36. As a general rule, and in keeping with article 3.2 and 8.4.9 of the Rules, the facts relating to anti-doping rule violations (ADRV) may (*i.e., it is permissible*) be established by any reliable means. This rule gives greater leeway to anti-doping organizations to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation – See comment to article 3.2 of the Rules.

37. The *Independent Anti-Doping Panel* is the Tribunal that will hear and determine all charges concerning an ADRV. And, its jurisdiction is derived from section 15 of the Anti-Doping in Sport Act, 2014 and article 8.2 of the Rules.
38. In keeping with article 8.4.1 the Panel shall have the power to regulate its practices and procedures. To that end rules 8.4.10 and 8.4.11 provides that the Panel may receive as evidence any statement, document, information or matter that may in its opinion assist to deal effectively with the matters before it, whether or not the same would be admissible in a court of law. And, to that end, the Panel *may* take evidence on oath.
39. As it relates to the *Athlete*, the athlete bears the burden of proof that he or she did not act intentionally, and/or was not negligent in committing the violation. Pursuant to article 3.1 of the Rules, the athlete has to either rebut the presumption of negligence, or establish specified facts or circumstances “by a balance of probability”, which means that the circumstances established by the athlete have to be more likely than not, true.
- B. *Was the Panel’s Jurisdiction ousted by the Athlete’s assertion that she was contemplating retirement, or had retired.*
40. Pursuant to article 5.5.6 of the Rules, an Athlete in the Commission's Registered Testing Pool shall continue to be subject to the obligation to comply with the whereabouts requirements set out in the International Standard for Testing and Investigations unless and until (a) the Athlete gives *written* notice to the Commission that he or she has retired or (b) the Commission has informed him or her that he or she no longer satisfies the criteria for inclusion in the Commission's Registered Testing Pool.

41. No notice was given by the Athlete of her retirement until September 1, 2023, which is after JADCO had communicated to the Athlete that she had committed an ADRV of article 2.4 of the Rules.
42. Further, article 7.7 of the Rules provides that: if an athlete or other retires while the Commission's Results Management process is underway, the Commission retains the authority to complete the Results Management process. If an athlete or other person retires before any Results Management process has begun, and the Commission would have had Results Management authority over the athlete or other person at the time the athlete or other person committed an anti- doping rule violation, the Commission has authority to conduct Results Management".
43. Therefore, the Panel has the jurisdiction to hear and determine the charge laid by JADCO against the athlete that she had committed an ADRV of article 2.4 of the Rules.
44. The case of United States Anti-Doping Agency (USADA) v Walter Davis (American Arbitration Association, Arbitration No. 77190 00587 BNEF, Final Award dated April 15, 2014) is of some value regarding the question of the Panel's jurisdiction.
45. Walter Davis was a Track and Field Athlete. He was charged with a whereabouts failure for failing to file his whereabouts Information on three occasions within a 12-month period. In his defence, the athlete's position is that he was still upset for not making the Olympic team and was therefore considering retirement. Therefore, he did not complete or submit that the required Whereabouts Filing. He had started looking for a job and was no longer on a full-time training schedule, so filling out a whereabouts form slipped his mind.
46. The evidence from USADA and USA Track and Field revealed that neither entity received notification of Mr. Davis' retirement. Therefore, USADA

retained its jurisdiction over the athlete, and imposed a sanction for the anti-doping rule violation.

C. *Anti-Doping Violation – Article 2.4.*

47. The athlete is charged with a whereabouts failure in breach of Article 2.4 of the Jamaica Anti-Doping Commission (JADCO) Anti-Doping Rules, 2021. A Whereabouts Failure is any combination of three (3) missed tests and/or filing failures within a twelve (12) month period by an Athlete in the Registered Testing Pool as provided by Article 5.5.1 of the Rules and the International Standards for Results Management (ISRM).
48. An Athlete who is in a Registered Testing Pool is required:
 - a) to make quarterly Whereabouts Filings that provide accurate and complete information about the Athlete’s whereabouts during the forthcoming quarter, including identifying where he/she will be living, training and competing during that quarter, and to update those Whereabouts Filings where necessary, so that he/she can be located for Testing during that quarter at the times and locations specified in the relevant Whereabouts Filing, as specified in International Standards for Results Management. A failure to make the quarterly whereabouts filings may be declared a “Filing Failure”; and,
 - b) to specify in his/her Whereabouts Filings, for each day in the forthcoming quarter, one specific 60-minute time slot where he/she will be available at a specific location for Testing, as specified in the International Standards for Results Management. This does not limit in any way the Athlete’s obligation to submit to Testing at any time and place upon request by an Anti-Doping Organization with Testing Authority over him/her. If the Athlete is not available for Testing at

such location during the 60-minute time slot specified for that day then this failure may be declared a “Missed Test”.

49. A Missed Test is a failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in his/her Whereabouts Filing for the day in question, in accordance with the International Standard for Testing and Investigations.
50. A Filing Failure is a failure by the Athlete (*or by a third party to whom the Athlete has delegated the task*) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing, *or*, to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete, in accordance with the International Standard for Testing and Investigations.
51. An Athlete may only be declared to have committed a Filing Failure where JADCO establishes each of the following:
 - a) That the Athlete was duly notified: (i) that they had been designated for inclusion in a Registered Testing Pool; (ii) of the consequent requirement to make Whereabouts Filing; and (iii) of the Consequences of any Failure to Comply with that requirement;
 - b) That the Athlete failed to comply with that requirement by the applicable deadline;
 - c) In the case of a second or third missed test or Filing Failure, that the athlete was given notice, of the previous missed test or Filing Failure.
 - d) That the Athlete’s missed test or failure to file was at least negligent. For these purposes, the Athlete will be presumed

to have committed the failure negligently upon proof that they were notified of the requirements yet did not comply with them. That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to the failure.

52. The athlete is under an ongoing responsibility to file updates where there is a change in circumstances.

D. Assessment and Finding on Violation

53. Based on the documents provided, the Panel finds that JADCO has established to its comfortable satisfaction that the athlete has, in fact, committed a breach of article 2.4 of the rules. The athlete has a personal responsibility to be available for Sample collection at the time and location declared in her whereabouts filing, and to update her whereabouts filings as it becomes necessary. And, this was not done in this case.
54. There was an error in JADCO's notification letter of May 30, 2023 to the effect that: *"according to your file, no whereabouts failure has been recorded against you in the last 12 months"*. However, in the subsequent notification letter of June 16, 2023 concerning the May 23, 2023 missed test, JADCO advised the athlete that *"if a missed test is recorded against you, this will be your second (2nd) Whereabouts Failure within the current 12 month period"*, thereby superseding or curing the error in the May 30, 2023 letter.
55. But for the June 16, 2023 letter, the error in the May 30, 2023 letter may have potentially been fatal, since in the case of a second or third missed test, the athlete must be given notice of the previous missed test so that the Athlete would be on high alert or exercise greater caution for the remainder of the 12 month period. Further, the athlete must be notified of the 12-month period or window which is applicable.

56. Therefore, given the letter of June 16, 2023 the Panel finds that the required elements for an ADRV under article 2.4 of the Rules has been established.
57. There is no indication by the athlete at the hearing, that her travel in August 2022, or the medical appointments in May and June 2023 were as a result of an emergency, or that she had insufficient time to update her whereabouts filing in keeping with the change in her location. Whilst the panel accepts that the athlete has a right to maintain her privacy as she deems necessary, this cannot run contrary to her duty and personal obligations as an athlete.
58. Further, the fact that the athlete no longer resided at the Highlight View Road, Kingston address at the time when the DCO attended on August 11, 2022, and, her delegate failed to update her whereabouts filings accordingly, does not negate the athlete's liability in respect of the August 11, 2022 missed test.
59. The athlete always remains ultimately responsible for making accurate and complete whereabouts filings, whether she makes each filing personally or delegates the task to a third party. It is not a defence to an allegation of a filing failure or a missed test that the athlete delegated such responsibility to a third party and that third party failed to comply with the applicable requirements or to update the athletes whereabouts filing; *see- Arbitration CAS 2020/A/7526 World Athletics (WA) v. Salwa Eid Naser & CAS 2020/A/7559 World Anti-Doping Agency (WADA) v. WA & Salwa Eid Naser, award of 30 June 2021 and and CAS 2022/A/9033 International Tennis Federation (ITF) v. Mikael Ymer.*
60. In the decision of ITF v Mikael Ymer, the athlete (a tennis player) delegated the filings task entirely to a third party, who incorrectly recorded that the athlete was staying at the Hotel Kyriad, rather than the Hotel Ibis, where the athlete was eventually booked to stay. The athlete's whereabouts filing was not corrected after the athlete verified his correct hotel. Therefore, the athlete's whereabouts filing did not correspond with his actual location for the day when the DCO attended for testing.

61. The Panel held that whether the person to whom the whereabouts filings tasks was delegated was negligent or there was a failure to inform that person of a change in address, is irrelevant. The key issue is that the athlete, like any other international-level athlete, cannot be discharged of his whereabouts duties by delegating away his obligation to comply with the applicable Rules. The Panel there held, that this is what the athlete effectively did by relying on a third party, without taking the steps one would expect a responsible athlete to take.
62. Further, the athlete is still at fault if he chooses an unqualified person as his delegate, or if he fails to instruct the delegate properly or set clear procedures that the delegate must follow in carrying out his task, and/or if he fails to exercise supervision and control over the delegate in the carrying out of the task.
63. In this case, Mrs. Tiffany Jones has not mounted a defence, or contest to the charge that she was not at the location listed in her whereabouts filings on the three missed test dates, within the current twelve month period. The athlete is therefore taken to have admitted the Anti-Doping Rule violation. The burden is therefore on the athlete to establish that she did not act intentionally or negligently in order for there to be a reduction of the sanction from the 2 year ineligibility period.

VI. THE SANCTION

64. Article 10.3.2 of the JADCO Rules provides that for violations of Article 2.4, the period of ineligibility shall be two (2) years, subject to reduction to a minimum of one year, depending on the Athlete's degree of fault. The flexibility between two years and one year of ineligibility in this Article is not available where there is a pattern of last minute whereabouts changes, or other conduct which raises a serious suspicion that the Athlete was trying to avoid being available for testing.
65. Fault is defined in Appendix 1 of the JADCO Rules as;

Any breach of duty or a lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an athlete or other persons degree of fault include, for example, the athlete to other person's experience, whether the athlete or other person is a protected person, special considerations such as impairment, degree of risk that should have been perceived by the athlete and the level of care and investigation exercised by the athlete in relation to what should have been the perceived level of risk. In assessing the athlete or other persons degree of fault, the circumstances considered must be specific and relevant to explain the athletes or other persons departure from the expected standard of behaviour. Thus, for example, the fact that an athlete would lose the opportunity to earn large sums of money during a period of ineligibility, or the fact that the athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of ineligibility under article 10.6 .1 or 10.6 .2.

Comment: The criteria for assessing an Athlete's degree of fault are the same under all Rules where fault is to be considered. However, under Rule 10.6.2, no reduction of sanction is appropriate unless, when the degree of fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Athlete or other Person was involved]".

66. The Panel recognizes the following three degrees of fault based on CAS 2013/A/3327 & 3335 (Marin Cilic v. International Tennis Federatiom)
- a. *Significant degree of or considerable fault. See also CAS 2021/A/7983 Brianna McNeal v. WA CAS 2021/A/8059 WA v. Brianna McNeal, award of 9 June 2022 (operative part of 2 July 2021)*
 - b. *Normal degree of fault.*
 - c. *Light degree of fault.*
67. No fault or negligence is defined in Appendix 1 of the Rules as the Athlete or other Person establishing that he or she *did not know or suspect and could not*

reasonably have known or suspected even with the exercise of utmost caution, that he or she had...violated an anti-doping rule.

68. No significant fault or negligence is defined in Appendix 1 of the Rules as the Athlete or other Person establishing that any Fault or Negligence, when *viewed in the totality of the circumstances* and taking into account the criteria for No Fault or Negligence, was *not significant in relation to the anti-doping rule violation*.
69. The concept of *negligence* is not defined in the JADCO Rules. However, it is generally accepted that negligence will exist where there is a failure to observe a duty of care, and, more specifically, where steps are not taken that would have been expected from a reasonable person in a similar situation.
70. The Panel further notes that the concept of negligence as employed in the ISRM, implies *unintentional carelessness*. Only the highest priority athletes are included in the registered testing pool, and it is reasonable to expect such athletes would be on high alert with respect to complying with the whereabouts requirements, and particularly so if two whereabouts failures have already occurred in any period of less than 12 months.
71. Considering that an athlete is ultimately responsible for the Whereabouts Information being correct, and, in being available at that location during the specified time slot, a missed test *shall* be deemed to be due to the athlete's negligence. The athlete therefore has the burden to rebut the presumption that negligent behaviour on her part, caused or contributed to her failure (i) to be available for Testing at the location indicated during the relevant time slot, and (ii) to update her most recent Whereabouts Filing to give notice of a different location or time slot when she would be available for Testing on the relevant day. *See Arbitration CAS 2020/A/7526 World Athletics (WA) v. Salwa Eid Naser & CAS 2020/A/7559 World Anti-Doping Agency (WADA) v. WA & Salwa Eid Naser, award of 30 June 2021.*

VII. ASSESSMENT OF APPROPRIATE SANCTION

72. The World Anti-Doping Code seeks to foster uniformity of sanctions globally through a harmonized framework which is applicable to all sports. See Doping Authority Netherlands v N. CAS 2009/A/2012. Notwithstanding the foregoing principle, the Tribunal in Doping Authority Netherlands v N sets out the following approach:

"The sanctioning body has to determine the reasons which prevented the athlete in a *particular situation* from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the *specific and individual circumstances*."

73. Examples of particular situations or individual circumstances which have led a Disciplinary Panel or the Court of Arbitration in Sports to impose the maximum ineligibility period, or, reduce the period of ineligibility will be set out below.
74. In CAS 2013/A/3241, World Anti Doping Agency (WADA) v. Comitato Olimpico Nazionale Italiano (CONI) & Alice Fiorio, it was the athlete's evidence that she had missed the test and forgot to update her Whereabouts location, because she was travelling to see her doctor. The Tribunal found that the athlete was preoccupied with her physical state, and therefore her conduct bore no significant fault or negligence and reduced her sanction to the minimum of one year.
75. In USADA v. Jessica Cosby AAANo. 77190 00543 09, in determining the appropriate sanction, the Panel found that *stress* or *depression* is a factor that can be taken into account in finding a lower degree of fault, and the athlete's sanction was thereby reduced.

76. In United States Anti-Doping Agency (USADA) v Walter Davis (American Arbitration Association, Arbitration No. 77190 00587 BNEF, Final Award dated April 15, 2014) the Athlete was charged with a whereabouts failure for failing to file his whereabouts Information on three occasions within a 12-month period. In his defence, the athlete's position is that he was upset for not making the Olympic team and was therefore considering retirement. Therefore he did not complete or submit that the required Whereabouts Filing. The USADA recommended a one-year period of ineligibility at the hearing, and the Panel agreed, and imposed the sanction accordingly. It is worthy of note, that a "filing failure" is considered by some of the authorities to be a less serious offence than a missed test.
77. In JADCO v Odean Brown - JADP2015/1 - the athlete was a cricketer included in the Jamaica Anti-Doping Commission's Registered Testing Pool (RTP). The ADRV consisted of two missed tests and a filing failure within the 12 month period. In response to the second missed test, the athlete offered the following written explanation to JADCO:
- "I just want to apologize for my missed test, due to the fact that I wasn't home. I Left early for training that morning (6:30 am). I was trying to beat the traffic into Kingston. My wife had called me the same time and told me that they came, so i called the office the same time."*
78. The athletes coach provided corroborating evidence as to his location at training on the specified date. And, that punctuality of the players was a matter that was taken seriously by him and the other administrators of the National Team.
79. As it relates to his filing failure, the athlete stated that it was due to someone hacking into his email account, and that he did not have access to it for more

than two months. The Panel found that the appropriate sanction would be a period of fifteen (15) months ineligibility.

80. In *Drug Free Sport New Zealand v Kris Gemmell, CAS 2014/A/2* the athlete had two (2) missed tests and one filing failure. The Panel imposed a sanction of 15 months ineligibility, and the following circumstances were considered:

- a) The athlete offered no reasons to explain his filing failure.
- b) The Panel however viewed a filing failure as a "*minor offence*" and "*an offence at the lower end of the scale.*"
- c) The athlete was in the basement of the house and was not aware that a Doping Control Officer had come to test him. And, the *Doping Control Officer had made no attempt to contact the athlete by phone.*
- d) On the day of the second missed test, the athlete failed to update his Whereabouts filing because he received news that his father had been admitted to hospital. The athlete was therefore upset and under pressure. This was sufficient for the purpose of establishing exceptional circumstances, or lowering the degree of fault.

81. The Panel held that the athlete's explanation provided "some partial excuse" for the missed test.

82. In *Australian Sports Anti-Doping Authority v Jerrod Bannister, Court of Arbitration for Sport, Ref A1/2013 Final Award dated July 22, 2013*, the athlete admitted that two of his three missed tests were "Inexcusable" and offered no explanation for them. His defence was confined to only one of the missed test, and in that regard the Athlete contended that the missed test was not due to his fault or negligence. The DCO had been incorrectly advised by hotel reception of the hotel where the Athlete was staying, that the athlete had checked out of the hotel. The Panel imposed a sanction of 1 year and 8 months.

83. Christian Coleman v. World Athletics CAS 2020/A/7528 whereby the notice of charge dated June 16, 2020 the athlete was charged with three whereabouts failures within the 12 month period beginning January 16, 2019. The failures included:
- a) Missed Tests, dated 16th January 2019
 - b) Filing failure in connection with a test attempt on 26th April, 2019.
 - c) Missed test on 9th December 2019
84. In rendering a two-year ban, the Disciplinary Tribunal described Coleman's behaviour as "*very careless at best and reckless at worst*" and viewed there to be no mitigating factors which could have reduced the ban. However, on appeal to the Court of Arbitration in Sports, the ineligibility period was reduced to 18 months as, inter alia, the DCO did not contact the athlete by phone, while at the location of the 9th of December 2019 unsuccessful attempt; a circumstance which the athlete had become used to based on previous DCO visits.
85. In Arbitration CAS 2020/A/7526 World Athletics (WA) v. Salwa Eid Naser & CAS 2020/A/7559 World Anti-Doping Agency (WADA) v. WA & Salwa Eid Naser, award of 30 June 2021 that Panel found that:
- An athlete, that has shown an *unacceptable degree of nonchalance and a worryingly lackadaisical approach to his/her whereabouts obligations* under the ADR in all three Whereabouts Failures, thereby deserves no reduction of the ineligibility period and shall be sanctioned with the standard two-year ineligibility period
86. The post 2020 CAS decisions reveals sanctions ranging from 18 months (CAS 2021/A/8391; CAS 2020/A/7528) to 24 months (CAS 2020/A/7526 & 7559; CAS 2020/A/6763) depending on the degree of fault of the athlete.

87. When viewed on a totality of the circumstances, the Panel by a majority finds that the Athlete's period of ineligibility in this case, should be two (2) years.
88. The Athlete's evidence as to the particular circumstances which led to the ADRV is summarized above under "Evidence". Essentially, it is the Athlete's position that she missed the first test because she was no longer residing at Highlight View Road and was then in the United States of America. And, she missed the second and third tests due to medical appointments. However, none of these assertions have been corroborated by documentary evidence such as a passport data entry or stamp or medical certificate as in the *Cosby* decision.
89. Nonetheless, even if the Panel accepts that the athlete had travelled outside of Jamaica at the time of the first missed test, or, was attending a medical appointment at the time of the second and third missed tests, this could not be considered to be unintentional carelessness.
90. There is no indication that the athlete's travel plans in August 2022, or her medical appointments on May 23, 2023, and June 19, 2023 were emergencies. Therefore, the athlete would have had time to change her whereabouts filings to correspond to her new situation and location. The Panel finds that the athlete was negligent in failing to do so - CAS 2022/A/9033 International Tennis Federation (ITF) v. Mikael Ymer.
91. The athlete's negligent conduct was perhaps influenced by her decision or contemplation of retiring. However, this was not communicated to JADCO. Based on article 5.5.6 of the Rules, the athlete is under an obligation to notify JADCO of her retirement. This is a further breach of the Athlete's obligations, and therefore the athlete's possible retirement should not be a mitigating factor.
92. The athlete's negligent conduct is further underscored by her failure to contact JADCO, to provide an explanation, when based on the unsuccessful attempt

reports, the DCO spoke with a family member of the athlete on the 2nd and 3rd missed tests. On the occasion of the second missed test, the DCO spoke with the athlete's husband, and on the occasion of the 3rd missed test, the DCO spoke with the athlete's mother and a gentleman. It is reasonable to infer that the athlete's mother or husband, would have informed her of the DCO's visit.

93. Therefore, the athlete would have been aware, prior to the 2nd and 3rd missed test letters from JADCO, that a DCO had attended at her location to collect a sample. And yet no attempt was made by the athlete to update her whereabouts filings, or to contact JADCO to provide some explanation or to indicate that she had in fact, retired. That would have been the perfect opportunity for the athlete to communicate to JADCO that she had retired, and was to be removed from the registered testing pool. It would have effectively terminated the athlete's obligations as an athlete.
94. Further, having updated her whereabouts filing in October 2022 to reflect the address at 46 Morrison Street, Manchester, New Hampshire 03104, United States, it would appear that at that stage, there would have been no decision by the athlete to retire. By that stage, the results management process would have already commenced. And therefore, the athlete ought to have been on high alert that a ADRV was imminent given her August 11, 2022 missed test.
95. The following other factors were taken into account in arriving at the 2-year ineligibility period:
 - a) The athlete's statement that the missed test of August 11, 2022 was due to her absence from the jurisdiction, is not established on a balance of probabilities. The athlete's whereabouts filings was updated on **August 9, 2022** to the Highlight View Road, Kingston address. That is, two (2) days prior to the missed test of **August 11, 2022**. The panel finds, that if the athlete was scheduled to leave Jamaica by or before August 11, 2022

it is unlikely that her Whereabouts Filing would have been updated two days earlier on August 9, 2022 to list a Kingston address.

- b) The athlete's statement that the missed test of May 23, and June 19, 2023, was due to a medical appointment that she had to travel a far distance to attend, and therefore left her address early, is not established on a balance of probabilities. On the DCO's visit of May 23, 2023, the athlete's husband Jamar Rose advised the DCO that she was in North Carolina and had not been at the address "*for a while*". This would suggest, that the athlete had not left earlier that day for the medical appointment, thereby reaffirming the Panel's position that the athlete had time to update her whereabouts filings.
 - c) The athlete did not provide her correct/current contact number to the anti-doping authority. The DCO was unable to reach the Athlete on any of the numbers provided, which may have availed to her benefit as in the *Coleman* decision. On each visit the DCO placed several calls to the athlete – see unsuccessful attempt reports. This is critical, as the contact number is a last resort or failsafe to assist athletes in avoiding a missed test.
96. Each of the foregoing factors at paragraphs 88 to 96 amounts to negligence, and when assessed collectively represents a composite level of negligence that can only be described as significant.
97. The Panel cannot take the athlete's breaches lightly. It has consistently been held that the whereabouts regime represents a powerful and effective means of deterring and detecting doping in sport, and therefore it is crucial to know where athletes are located at any particular time. Accordingly, the regime is necessarily strict – *CAS 2022/A/9033 International Tennis Federation (ITF) v. Mikael Ymer*.

98. The panel further finds that there was no *exceptional* circumstance for any of the missed tests. The interpretation of the expression “exceptional circumstances” is considered to be restrictive so as only to include *very unusual* or *abnormal situations* - CAS 2021/A/7983 Brianna McNeal v. World Athletics (WA) & CAS 2021/A/8059 WA v. Brianna McNeal, award of 9 June 2022 (operative part of 2 July 2021),
99. When viewed in the totality of the circumstances and taking into account the criteria for No Significant Fault or Negligence, the Panel finds that the Athletes fault is more consistent with the Athlete in Arbitration CAS 2020/A/7526 World Athletics (WA) v. Salwa Eid Naser & CAS 2020/A/7559 World Anti-Doping Agency (WADA) v. WA & Salwa Eid Naser, award of 30 June 2021 and that accordingly there would be no reduction of the ineligibility period.

VIII. START DATE OF SANCTIONS

100. The Panel finds that there was some delay in the hearing process, particularly in rendering its decision in keeping with Article 8.7.1 of the Rules
101. Accordingly, in keeping with Article 10.13.1, the period of ineligibility will commence from November 5, 2023.

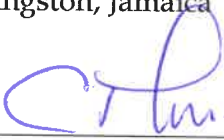
IX. AWARD

102. The Panel determines that:
- a. The Athlete has committed an anti-doping rule violation in relation to three missed tests and particularly article 2.4 of the Jamaica Anti-Doping Commission Anti-Doping Rules, 2021.
 - b. There was significant fault and negligence on the part of the Athlete.
 - c. There shall be a period of two year ineligibility.

- d. The period of eligibility should run from November 5, 2023.
- e. No costs are awarded to either party.

Dated the 25th day of January 2024

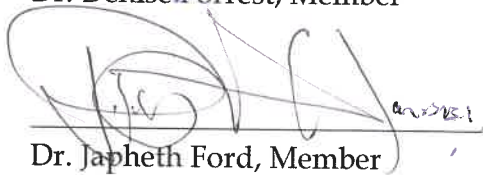
The Independent Anti-Doping Panel
Kingston, Jamaica



Catherine Minto – Chair



Dr. Denise Forrest, Member



Dr. Japheth Ford, Member

