THE INDEPENDENT ANTI-DOPING DISCIPLINARY PANEL

Panel sitting in the following composition:

Chair: Catherine Minto
Members: Dr. Donovan Calder
Mr. Dean Martin

SPORT (squash)

PROHIBITED SUBSTANCE – BOLDENONE- CONTAMINATED MEAT- BURDEN OF PROOF- BALANCE OF PROBABILITY – DUTY OF ATHLETE TO ESTABLISH HOW PROHIBITED SUBSTANCE ENTERED HIS BODY- NO FAULT OR NEGLIGENCE- INTENTIONAL USE

Disciplinary Hearing No. of 2024

IN THE MATTER BETWEEN

Jamaica Anti-Doping Commission, Kingston Jamaica **Complainant**

Represented by Ian Wilkinson K.C. and Lenroy Stewart of Wilkinson Law, Attorneys-at-Law, Kingston Jamaica

v.

Julian Morrison, Kingston Jamaica **Respondent**

Represented by Dr. Emir Crowne and Matthew Gayle - Representatives, Port-of-Spain, Trinidad and Sayeed Bernard - Representative, Kingston, Jamaica.

I. INTRODUCTION

1. This Complaint was brought by the Jamaica Anti-Doping Commission against the Respondent, on the basis that the Respondent committed an Anti-Doping Rule Violation under Article 2.1 of the Jamaica Anti-Doping Commission Anti Doping Rules.

2. The Complainant asserts that urine samples taken from the Athlete on 18 January 2024 resulted in an adverse analytical finding **(AAF)**. The Athlete requested testing of the B Sample as well, which also had an adverse finding.

3. In his written response to the complaint, the Athlete admitted the AAF, and asserted that the AAF was likely due to contamination.

4. A hearing was requested by the Athlete, and therefore the complaint was referred to the Independent Anti-Doping Disciplinary Panel for consideration and determination.

II. PARTIES

A. The Complainant

5. 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 harmonizes the regulations on anti-doping across all sports and countries.

B. The Respondent

6. The Respondent **Julian Morrison** competes in the sport of squash at the national level, and is therefore an athlete within the meaning of Article 1 and Appendix 1 of the Jamaica Anti-Doping Commission Anti Doping Rules. The Respondent (hereinafter referred to as 'the Athlete') is therefore subject to the Jamaica Anti-Doping Commission Anti Doping Rules (JADCO Rules), and the International Testing Standards.

III. THE HEARING

7. The Independent Anti-Doping Panel was advised of the charge against the athlete and the matter was fixed for hearing. After two interlocutory

applications, the trial commenced, and evidence was taken on November 27, 2024, November 29, 2024 and December 13, 2024.

8. The following witnesses were called on the Complainant's case: Mrs. June Spence Jarrett - the Executive Director of JADCO, Ms. Maxine Gayle - Doping Control Officer and Professor Christiane Ayotte, the expert witness.

9. The Athlete Julian Morrison gave evidence and called Professor Pascal Kintz as an expert witness.

10. Written submissions were filed by both parties and the matter reserved for a ruling.

IV. THE EVIDENCE

11. The portions of the evidence in chief deemed relevant by the Panel will be set out below. Additional evidence arising from the cross-examiation of the witnesse will be referred to in the analysis of the merits of the complaint and defence advanced by the Athlete.

A. Complainant's case

12. An out-of-competition drug test was conducted on the athlete by JADCO's Doping Control Officer Ms. Maxine Gayle (hereafter "the DCO") on January 18, 2024.

13. The DCO was assisted by a Chaperone, Mr. Kamarr Taylor, who supervised the athlete while he gave his urine sample. The urine sample collection took place at the athlete's residence at 1 Toucan Way, Kingston 8, Saint Andrew, Jamaica, at approximately 5:30 a.m. The sample collected was split into two samples, and given sample code numbers **A7170529** and **B7170529**. The relevant information concerning the sample collection process was recorded on the Doping Control Form by the DCO and signed by the athlete.

14. The sealed "A" and "B" samples were delivered to the couriers, Federal Express, at 40 Half-Way Tree Road, Kingston 5, who later dispatched them to the World Anti-Doping Agency (WADA) accredited lab INRS-Institut Armand Frappier in Laval, Quebec, Canada.

15. On the 9th day of February 2024, The A sample was analysed and tested positive for the presence of Boldenone metabolite(s) which fall under the category of S1 (Anabolic Agents) in WADA's 2024 Prohibited list.

16. By letter dated February 21, 2024, the athlete was notified of the ***AAF*** based on the testing of his "A" sample. The athlete was also informed by JADCO that he was provisionally suspended from participating in any competition or activity in accordance with article 7.4.1 of the JADCO Rules, pending the final decision in the matter.

17. *There was an error in the notification letter of February 21, 2024 concerning the place of sample collection. This error was discovered and/or first raised by the athlete during the cross-examination of Mrs. June Spence-Jarett. On the application of JADCO, the Panel permitted the DCO to be called to give evidence, against the objections of the athlete as:*

    (a) The Executive Director could not give direct evidence, or evidence from her personal knowledge, as to the collection of the sample. Therefore, the DCO would be in a position to give the best evidence to the Panel in that regard.

    (b) There was no dispute between the parties as to the collection of the sample, on the date and at the place alleged. The athlete signed the Doping Control Form after the sample was collected.

    (c) On receipt of the notification letter of February 21, 2024, the Athlete (who was the subject of the sample collection) raised no issue in respect of the error in the letter. The error was not raised in his response (defence) to the complaint or in his witness

statement; which would suggest that this was a genuine error, and not one which caused any confusion or prejudice to the Athlete.

(d) The Athlete admitted the AAF.

(e) The Athlete would be able to cross-examine the DCO, or amplify the evidence on his case, as the error was first disclosed on the cross-examination of Mrs. June Spence Jarrett.

(f) Accordingly, the Panel considered that there would be no prejudice in permitting this additional witness.

(g) In keeping with article 8.4.1 of the Rules, the Panel has 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. The Panel found that the direct evidence of the DCO would fall within this provision.

18. On February 26, 2024, there was a request made by the athlete for his "B" sample to be tested.

19. On March 18, 2024, the athlete's "B" sample was analysed at the WADA-accredited laboratory, INRS-Institut Armand Frappier in Laval, Quebec, Canada and also revealed the presence of Boldenone.

20. By letter dated March 22, 2024, from JADCO the athlete was notified of the AAF based on the testing of his "B" sample.

21. On May 14, 2024, the athlete was charged with the following anti-doping rule violation:

> ***Presence of a Prohibited Substance or its metabolites or Markers in an Athlete's Sample, pursuant to Article 2.1 of the JADCO Rules, by virtue of the presence of***

Boldenone in the Sample you provided on 18th January 2024 numbered 7170529.

22. The Complainant's expert Professor Ayotte gave evidence by a written report of August 15, 2024 and was subjected to cross-examination. In summary, it was Professor Ayotte's evidence that:

23. Boldenone can have a natural origin in some instances and was detected in some animal species and in some rare cases in humans. Since Boldenone can be found naturally in human urine, the analysis is done below certain concentrations to exclude endogenous origins.

24. The length of the hair sample examined by Professor Kintz would have needed to be longer than 2.5 cm (at least 4.5cm) to properly cover the period of the urine sample collection and the two months prior to that of November and December 2023 for Professor Kintz's conclusions to be accurate.

25. Since the hair that has grown during November and December 2023 was not available for testing, it would be "***impossible to presume that no exposure occurred during that period, let alone to determine the dosage, the timing and the frequency of boldenone administration that resulted in its presence in his urine in January 2024."*** **(**Dr. Ayotte's emphasis).

26. There is no evidence suggesting that boldenone residues contaminate meat in Jamaica, let alone to an extent that will generate its repeated consumption as proposed by Dr. Kintz. Since 2024, the laboratory in Montreal has received 3804 urine samples for testing from Jamaica. The athlete's sample is the first adverse analytical finding for Boldenone.

27. The **concentration** of Boldenone and it's main urinary metabolite in the athlete was not low.

28. Prior to the 2024 AAF, the athlete tested negative in October 2023, but this does not exclude a voluntary administration of boldenone.

29. ***The results of the hair test, if given any weight, support the administration of Boldenone by athlete.***

B. ***Athlete's case***:

30. The athlete relied on his witness statement of August 7, 2024 and was also briefly cross-examined.

31. It is the athlete's evidence that he has been in competition since the age of 10 and has won all national junior titles at least once each year and is a two time National Champion.

32. That a urine sample was taken by JADCO on *January 18, 2024 (the *erroneous collection date in his witness statement was corrected in amplification on his evidence in chief).* The sample was taken at his home, and he was shocked to learn that he had tested positive for Boldenone. He was out of competition at the time, having completed the last competition in November 2023, with the next competition being in August 2024. He had also been tested at least three times between August 2023 and December 2023, and they all came back clean. And, he is not big or fat, and doesn't have anger issues.

33. After assessing his diet, he formed the view that the only way he could have consumed the substance was through inadvertence and without any intention on his part. He therefore informed JADCO that the AAF was due to consumption of contaminated meat.

34. The Athlete's expert Professor Pascal Kintz submitted two reports and, he was cross-examined at the hearing. In summary, it was Professor Kintz's evidence that:

35. On April 3, 2024, he received a DHL parcel containing black hair of about 2.5cm in length. The hair was cut on March 28, 2024. However, based on a

standard growth rate of 1cm per month, the period of the AAF would have been covered by the hair sample that he received.

36. Based on his laboratory tests, the hair specimen tested positive for Boldenone. But the measured concentration was consistent with **limited exposures**, which can be the consequence of repetitively eating contaminated meat.

37. The low concentration of boldenone in the hair of the athlete is more likely to demonstrate that at the time of the doping control, he has not used boldenone to enhance physical performances. The compound has to be taken on a long-term basis to produce suitable effects. The hair test did not produce a result consistent with long term abuse.

38. That the Jamaican diet is generally high in possible sources of contamination: corned beef, jerk chicken, jerk pork, and beef patties.

V. THE RELEVANT LEGAL PRINCIPLES

A. Jurisdiction and Standard of proof

39. The World Anti-Doping Program comprises three components:

(a) The World Anti-Doping Code, which provisions are mandatory and must be followed by each Anti-Doping Organization and Athlete *but do not replace the Rules that shall be adopted by each anti-doping organization;*

(b) The WADA International Standards for Results Management (ISRM), which contain much of the technical detail necessary for implementing the Code and are mandatory.

(c) 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;

40. ***JADCO*** has the authority 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.

41. Pursuant to article 5.2 of the Rules, JADCO has the In-Competition and Out-of-Competition Testing authority over all Athletes at the national level. And, where the rules have been violated, refer the matter to the Independent Anti-Doping Disciplinary Panel for hearing and adjudication.

42. The ***Independent Anti-Doping Disciplinary Panel*** has the jurisdiction to hear and determine all issues arising from any matter which is referred to it pursuant to the Rules. Its jurisdiction is derived from section 15 of the Anti-Doping in Sport Act, 2014 and article 8.2 of the Rules. The Independent Anti-Doping Disciplinary Panel has the power to determine whether an anti-doping rule violation has been committed by an Athlete and, if so, the Consequences to be imposed pursuant to these Rules.

43. As it relates to the standard of proof at the hearing before the Panel, JADCO has the burden of establishing that an Anti-Doping Rule Violation has occurred, *see article 3.1 of the Rules.*

44. Article 3.1 further states that the requisite standard of proof is, "*to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation made*". Article 3.1 states further that the "comfortable satisfaction" standard is in all cases greater than a balance of probability, but less than proof beyond reasonable doubt.

45. 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 JADCO by any reliable means. This would include, reliable laboratory or other forensic testing, admissions, testimony of witnesses, or other documentation evidence – *See comment to article 3.2 of the Rules.* WADA-

accredited laboratories are presumed to have conducted the sample analysis and custodial procedures in accordance with the International Standard for laboratories.

46. The ***Athlete*** bears the burden of establishing that any violation is not intentional, or as a result of negligence on his part. Pursuant to article 3.1 of the Rules, the athlete has to establish specified facts or circumstances "by a balance of probability", which means that the facts established by the athlete have to be more likely than not, true.

B. The Anti-Doping Violation – Article 2.1

47. The athlete's anti-doping violation was expressed as:

> ***Presence of a Prohibited Substance or its metabolites or Markers in an Athlete's Sample, pursuant to Article 2.1 of the JADCO Rules, by virtue of the presence of Boldenone in the Sample you provided on 18th January 2024 numbered 7170529.***

48. Article 2.1 of the JADCO Rules, provides that the following constitute an anti-doping rule violation:

> 2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.
>
> 2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. *Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.4.*

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, *where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample;* or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.S

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, *the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*

49. It is not in dispute between the parties that Boldenone is a prohibited and non-specified substance under the category of anabolic androgenic steroids, and is prohibited at all times, both in and out of competition, as indicated by the World Anti-Doping Code International Standard Prohibited List of 2024.

50. The Athlete has admitted the presence of the substance or its metabolites in his sample. Therefore, the Complainant has established to the comfortable satisfaction of the Panel that the Athlete committed an *anti-doping rule violation under Article 2.1.*

51. It now remains to be determined , the appropriate sanction to be imposed.

*C. **The sanction for article 2.1 violations**.*

52. Where an ADRV has been committed under Article 2.1 the sanctions are determined by Article 10 of the Rules. The provisions of Article 10 which need to be considered for this matter are Articles 10.2, 10.5 and 10.6.

53. Article 10.2 sets out the period of Ineligibility for a violation of Article 2.1:

> *10.2.1 The period of Ineligibility, subject to Article 10.2.4, s**hall be four (4) years** where:*
>
> *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person **can establish that the anti-doping rule violation was not intentional**.*

54. The term "**intentional**" is meant to identify those Athletes or other Persons who engage in conduct **which they knew constituted** an anti-doping rule violation or **knew that there was a significant risk** that the conduct might constitute or result in an anti-doping rule violation and ***manifestly disregarded that risk*** – *see Article 10.2.3.*

55. Pursuant to Article 10.5, the four (4) year period of ineligibility will be **eliminated** where:

> *[The]Athlete or other Person establishes in an individual case that he or she bears **No Fault or Negligence**, then the otherwise applicable period of Ineligibility shall be eliminated.*

56. There will be a ***Reduction** of the Period of Ineligibility where there is **No Significant Fault or Negligence,** or where the athlete establishes that the ADRV is a result of a contaminated product.*

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years.

57. Article 10.6.1.2 treats with contaminated products.

10.6.1.2 *Contaminated Products*

In cases where the Athlete or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Athlete or other Person's ***degree of Fault****.*

58. ***"Fault"*** is defined in Appendix 1 of the JADCO Rules as:

Any ***breach of duty or a lack of care appropriate to a p****articular 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****]".*

59. "*No Fault or Negligence*" and "*No Significant Fault or Negligence*" are also defined in the Appendix to the Rules

"No Fault or Negligence: The Athlete or other Persons 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 Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a protected person or recreational athlete, for any violation of Aticle 2.1 , the Athlete* ***must also establish how the Prohibited Substance entered his or her system.****"*

"No Significant Fault or Negligence: The Athlete or other Persons' establishing that ***any Fault or negligence,*** *when viewed in ithe totality of the circumstances and taking into account the criteria for No Fault or Negligence,* ***was not significant in relationship to the anti-doping rule violation.*** *Except in the case of a Protected Person or Recreational Athlete,, for any*

violation of Article 2.1, the ***Athlete must also establish how the Prohibited Substance entered the Athlete's system.***

60. 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.*
    b. *Normal degree of fault.*
    c. *Light degree of fault.*

61. 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.

62. The Panel further notes that the concept of negligence as employed in the ISRM, implies *unintentional carelessness.*

63. When taken as a whole, the staged process by which the appropriate sanction is to be determined is as follows:

    a) Once an Article 2.1 violation is established the **default Period** of Ineligibility is four years (Article 10.2.1);

    b) If the Athlete can establish that the ADRV was **not intentional** then the Period of Ineligibility will be reduced from four years, with the degree of fault determining the appropriate period of ineligibility (Article 10.2.1).

    c) If the Athlete establihes that he **bears No Fault or Negligence** then the Period of Ineligibility shall be eliminated (Article 10.5);

    d) If the Athlete can establish **No Significant Fault or Negligence** and that the Prohibited Substance came from a Contaminated Product then the Period of Ineligibility shall be at a minimum, a reprimand and, at a maximum, two years ineligibility depending on the Athlete's degree of fault (Article 10.6.1.2); or

e) If the Athlete can establish **No Significant Fault or Negligence** then the Period of Ineligibility may be reduced based on the athletes degree of fault, but the reduced period of in eligibility may not be less than on half of the period of ineligibility otherwise applicable.

64. It is for the Athlete to satisfy the Panel that the violation was not intentional, and, even if that is proven, that he bore no fault or negligence, or no significant fault or negligence as the case may be.

65. How does the Athlete go about establishing this?

D. Test – Evidence required to discharge the burden on the Athlete.

66. *On the Complainant's case:* the burden on the Athlete is high. In discharging the burden, the Athlete must establish how the substance entered his body. (WADA v. IWF & Yenny Fernanda Alvarez Caicedo CAS 2016/A/4377, para 51)

67. The Complainant further submits that **it is not sufficient for the Athlete to merely protest his innocence, or suggest that the substance must have entered his body inadvertently from some supplement, m**edicine or other product, which the Athlete ingested at the relevant time. Rather, the athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or meat product that the athlete took contained the substance in question (WADA v. IWF & Yenny Fernanda Alvarez Caicedo supra, para. 52).

68. As it was put in ***International Wheelchair Basketball Federation*** **v. UK Anti-Doping & Simon Gibbs** ***CAS 2010/A/2230*** to permit an athlete to establish no fault or negligence by little more than a denial that he took it, would undermine the objectives of the Code and Rules. The Athlete has a personal duty to ensure that no Prohibited Substance enters his body. Spiking and

contamination – *two prevailing explanations volunteered by athletes for such presence* – do and can occur; but it is too easy to assert either.

69. It was also emphasized in **WADA v. Damar Robinson & JADCO CAS 2014/A/3820** that actual evidence is necessary to prove the origin of a prohibited substance.

70. A similar view was held by the IBAF Doping Hearing Panel in the case of Pedro Lopez (IBAF 09-003), which was cited with approval at paragraph 55 of the WADA v. IWF & Yenny Fernanda Alvarez Caicedo decision:

> *"In this case, the athlete's suggestion that one or more of the medications or supplements that he took must have been contaminated with Boldenone, is nothing more than speculation, unsupported by any evidence of any kind. He has not shown that Boldenone was an ingredient of any of those substances, nor has he provided any evidence, for example, that the supplements that he took were contaminated with Boldenone.* ***Such bare speculation is not nearly sufficient for the athlete's burden*** *under Art. 10.5 of establishing how the prohibited substance got into his system".*

71. And in Arbitration CAS 2016/A/4563 World Anti-Doping Agency (WADA) v. Egyptian Anti-Doping Organisation (EGY-NADO) & Radwa Arafa Abd Elsalam, award of 16 January 2017:

> *"56…the necessity of proving how the substance got there, is a precondition to qualify for any reduction in sanction, and that flows naturally from the principle of the Athlete's responsibility for what goes into her body.* ***If an athlete cannot prove to the comfortable satisfaction of the tribunal how a prohibited substance got into his/her body, she cannot exclude the possibility of intentional or significantly negligent use.*** *A mere hypothesis is not sufficient in this regard. The WADC is quite clear that an athlete must completely exclude these possibilities in order to be entitled to a reduction in sanction."*

72. The "comfortable satisfaction" test does not apply to the Athlete. And therefore, the dictum in that regard in the Radwa Arafa Abd Elsalam case, will not be adopted by this Panel. The burden on the athlete is establish facts by the lower standard of 'balance of probability'.

73. In the ***World Anti-Doping Agency*** v ***Egyptian Anti-Doping Organisation &*** Radwa Arafa Abd Elsalam case, the Athlete alleged that the ADRV was due to food contaminate with the substance Ractopamine found in the Athlete's body. The Athlete produced two translated receipts dated 20 June 2015 and 10 July 2015 for the purchase of 20 kilos of Brazilian meat, hot dog and green sausage. However, apart from this evidence, there was no other evidence, which could substantiate or document the hypothesis presented to establish the source or origin of the prohibited substance.

74. The Arbitrator found that in cases of meat contamination, it must – as a *minimum* – be a requirement that the Athlete sufficiently demonstrates where the meat originated from. For example, where did the butcher buy the Brazilian meat, how was the Brazilian meat imported into Egypt, has any of the other imports of meat been examined or tested for the presence of Ractopamine, etc.? Having failed to establish this minimum requirement, the Athlete was sanctioned with a four-year period of ineligibility.

75. This stringent evidentiary test was also adopted in **World Anti-Doping Agency (WADA) v Comitato Permanente Antidoping San Marino NADO (CPA) & Karim Gharbi, Arbitration CAS 2017/A/4962,** award of 3 August 2017 where the arbitrator said at paragraphs 3 and 4:

> *"3…an athlete must adduce concrete evidence to demonstrate that a particular product that the athlete ingested contained the substance in question, as a preliminary to seeking to prove that it was unintentional or without fault or negligence.*
>
> *4. If an athlete fails to establish how a prohibited substance entered into his/her body, her/his anti-doping rule violation shall be deemed intentional and sanctioned accordingly based on the applicable regulations.*

76. In the **WADA) v Comitato Permanente Antidoping San Marino NADO (CPA) & Karim Gharbi** decision, the Athlete was tested out-of-competition and his A-Sample analysis revealed the presence of Dehydrochlormethyltestosterone ("DHCMT"). DHCMT is not a Specified Substance, but is a synthetic anabolic androgenic steroid known to affect muscle size and strength and red blood cell production.

77. In his defence, the Athlete gave evidence that he was unaware of how the substance entered his body, and that he had gathered every possible supplement taken. However, there was no evidence that the supplements taken by the Athlete were contaminated with DHCMT. The Athlete had made no effort to test the supplements he had taken for the prohibited substance.

78. In imposing the four year sanction, the Arbitrator held that the Athlete's contention that he must have ingested the DHCMT from contaminated supplements had no evidentiary basis as there was no testing of the supplements he had allegedly taken or any other persuasive source. That if such an "explanation" was dispositive, any athlete whose body contained a prohibited drug could assert that it had come from contaminated supplements of any sort. That would destroy the effectiveness of WADC and of the anti-doping regulations based on it and amount to a license to cheat and an abject surrender in the battle against doping.

79. It was specifically held at paragraphs 51 to 53 of the decision that:

> *"51. To establish the origin of the prohibited substance, it is nowhere near enough for an athlete to protest innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which he or she was taking at the relevant time.*
>
> *52. Rather, an athlete must adduce actual evidence to demonstrate that a particular product ingested by him or her contained the substance in question, as a preliminary to seeking to prove that it was unintentional, or without fault or negligence.*

53. *Some previous expressions regarding this test were recently referred to in CAS 2016/A/4662 as including the following points among others:*

a. *"The raising of an unverified hypothesis is not the same as clearly establishing the facts" (CAS 99/A/234 & 235) and "The Respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred" (CAS 2006/A/1067).*

b. *"To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination - two prevalent explanations volunteered by athletes for such presence - do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature for the athlete's basic personal duty to ensure that no prohibited substances enter his body" (CAS 2010/A/2230).*

80. *On the Athlete's case:* the burden is not as stringent. The Athlete submits that there is no need to prove how the substance entered his body, in order to establish that the violation was not intentional, and that there was no significant fault or negligence on his part. Indeed, although the Athlete has not established how the substance entered his body in this case, he has concluded his written submissions with the following possible sanctions:

a. An *elimination* of the period of Ineligibility as he bears No Fault or Negligence; or

b. A period of Ineligibility for 14 months, with credit for time already served, as his anti-doping rule violation was not intentional and his degree of Fault was low;

81. The athlete has relied on several authorities in advancing this proposition.

82. In **Shayna Jack v. Swimming Australia & Australian Sports Anti-Doping Authority CAS A1/2020** the Athlete appealed the four year ineligibity period which was imposed at first intance. The Athlete/Applicant admitted that she had not demonstrated or provided any evidence as to how the Prohibited Substance ligandrol entered her body, but nevertheless submitted that she had proved that the ADRV was not intentional and did not occur due to any fault

or negligence on her part. In making this submission, the Applicant advanced the following possible origins of contamination:

a) Possibly the supplements the Applicant was using were contaminated at a manufacturing level;

b) Possibly the supplements the Applicant was using were contaminated by being prepared or mixed in a blender which might have been used earlier to blend supplements used by her partner or brothers which, in turn, might have been contaminated or have contained ligandrol;

c) Possibly the Applicant came into contact with the ligandrol or ingested it as a result of using pool or gym facilities open to the public Townsville and/or Cairns whilst training for the Trials for the World Swimming Championships in May/June 2019.

83. The sole arbitrator found, that having regard to the definitions of "No Fault or Negligence" and "No Significant Fault or Negligence" it was an essential requirement that the "Athlete must also establish how the Prohibited Substance entered … her system." As the Athlete had not established how ligandrol entered her system, and provided only speculation (and it does not rise any higher than that) then the Athlete had not made out a case for a reduction in the ineligibility period. See paragraphs 59 to 70 of the decision.

84. Therefore, the only scope for reduction of the four year ineligibility period, was for the Athlete to establish that the violation was not intentional. The sole arbitrator correctly rejected the submission, that in order to prove that the ADRV was not intentional within the meaning of Article 10.2.3 of the Policy, the Applicant had first to establish how the substance entered her body. The Arbitrator held at paragraph 75 of decision that: "*…in contradistinction to the definitions of "No Fault or Negligence" or "No Significant Fault or Negligence", the definition of "intentional" in Article 10.2.3 of the Policy does not expressly require such a threshold requirement." And, it should not* lightly inferred that the drafters of the WADC wished to make it any more difficult for an Athlete to displace

such a finding and to reduce the severe sanction than the express wording of Article 10.2.3 actually states.

85. It was ultimately held that the stringent approach is not required where Athlete is seeking to establish that ADRV is not intentional. At paragraph 11 of the decision it was held:

> *"Further, it has been suggested that, absent an athlete proving how a Prohibited Substance came into his or her system, there is "only the narrowest of corridors" or "only extremely rare cases" where an athlete will be able to discharge the onus of proving that the ADRV was not intentional (see, e.g., Villanueva and Lawson). With respect, however, the Sole Arbitrator believes that such descriptions are an unhelpful, unnecessary and unwarranted gloss on the wording employed in Article 10.2.3 or its equivalents. Given the severe default sanction, even for a first offender, the actual language employed in Article 10.2.3 and the actual practical difficulties for an applicant in seeking to discharge his or her onus of proof in circumstances such as the present, the Sole Arbitrator considers that it is unwarranted to approach the consideration of which an Athlete has discharged the onus case upon him or her from a perspective that he or she must be able to fit within "the narrowest of corridors" or show that his or her case is an "extremely rare" one. Rather, the proper approach is to determine whether, on the totality of the evidence, the Applicant has proven on the balance of probabilities that she did not, or did not attempt to, cheat. For the reasons which follow, the Sole Arbitrator finds that the Applicant has discharged the onus of showing that the ADRV was not intentional.*

86. In finding that the Athlete had established that the ADRV was not intentional, the Arbitrator considered that there was no direct evidence that the Athlete had "intentionally" ingested ligandrol to enhance performance. And, the athlete's coaches, peers at the national competition level, officials and doctors as well as family members gave strong character evidence on her behalf. It was held that:

> *'without exception, those people spoke of the Applicant in the most glowing and praiseworthy of terms. The general tenor of their evidence was that the Applicant was a very hardworking,conscientious, likeable and motivated athlete of the highest integrity who wanted to be a role model for other younger*

swimmers and, in fact, had proven to be so. None of them thought she was likely to knowingly or recklessly take a Prohibited Substance.

87. Therefore in **Shayna Jack** case, the Arbitrator was able to find that "based on her own evidence and presentation and the evidence and presentations of those who know her best, the Applicant presented to the Sole Arbitrator as a person who was inherently very unlikely to intentionally or recklessly ingest a Prohibited Substance." And, that the four year ineligiblity period was a severe sanction for a first offence.

88. Further, the sole Arbitrator found that the Applicant took considerable steps, at considerable expense, to seek to ascertain or identify the origins of the Prohibited Substance which she came to ingest. The ineligibility period was reduced to two (2) years.

89. The **USADA v. Erriyon Knighton, Case No: 24052801** decision is in stark contrast to the case before this Panel. In that case, the Athlete was able to identify the source or origin of the prohibited substance (trenbolone) by scientifc testing of oxtail that he had consumed. The USADA's investigator shipped the meat to Texas Tech University, where the meat was prepared for analysis. The oxtail was then shipped to the WADA-accredited laboratory at UCLA for analysis. The UCLA laboratory's analysis of the meat detected the presence of trenbolone at a concentration of 0.1 ng/g. The Athlete also provided hair samples to be tested by Professor Pascal Kintz, and both hair specimens tested negative. The Athlete also voluntarily submitted to a polygraph exam which found him to be truthful in denying that he has ever knowingly used trenbolone. The athlete was also tested before and after the AAF. The tests after were all negative, which supported possibility of isolated incidence of contamination .

90. In **Jarrion Lawson v. IAAF, CAS 2019/A/6313** the CAS Panel found it more likely than not that the origin of the prohibited substance was contaminated

beef consumed in a restaurant the day before the test. Following a very careful review and examination of the evidence and expert testimony, the Panel was unanimously of the view that Jarrion Lawson had established that he bore no fault or negligence for his positive test results.

91. Importantly, the Panel found that the code did not explicitly require an Athlete to show the origin of the substance to establish that the violaton was not intentional. Therefore, the Panel had a level of flexibility to examine all the objective and subjective circumstances of the case, and to decide whether the violation was in fact, intentional. It is important to underscore the circumstances in the **Jarrion Lawson** case which led to a finding that the athlete had provided sufficient evidence that his positive test result was unintentional. This was summarized at paragraph 90 of the decision:

    a) The scientific evidence, such as it is, show that it was reasonably plausible that the positive urine sample resulted from the consumption of beef the previous day, which was contaminated by a hormone implant. *The results of the subsequent hair analysis conducted by Professor Kintz was negative*.

    b) The Athlete's credibility and history, supported by tests which he volunteered and evidence of his manager and trainer, go beyond a mere denial and corroborate his explanation. *The athlete had volunteered for and underwent a polygraph examination by a former FBI polygraph chief who reported that the athlete was truthful when he said he did not intentionally ingest the prohibited substance.*

    c) common sense must count strongly against it being a mere coincidence that he tested positive, for such a tiny amount of a dangerous and illegal prohibited substance as to be undetectable in his hair, and for no rational benefit, so soon after having eaten beef from hormone – treated cattle after numerous tests over his previous career, always negative

including tests during a period of injury in 2017/18 and in competition on 20 May 2018

d) The Panel finds it more likely than not, that the origin of the Epitrembolone was contaminated beef innocently consumed, and that this is indeed one of those rare cases where the impossibility of proving scientifically that the steak consumed did or did not contain hormone residues does not debar the athlete from establishing his innocent lack of intent under article 10.21 (a) of the IAAF ADR.

92. As it relates to the Athlete's written submissions on the ITA v. Tara Moore & Barbara Gatica, SR/152/2023, decision, the Panel will assess the expert witnesses based on the evidence which was given during the course of hearing, and not based on a previous Panel's assessment of the expert witnesses at a different hearing.

VI. MERITS AND ANALYSIS

93. The burden is on the Athlete to persuade the Panel that the default ineligibility period of four (4) years is inapplicable, given the particular factual circumstances of his case. The question is whether the Athlete has placed sufficient material before the Panel to warrant the elimination of the ineligibility period, or a maximum sanction of fourteen (14) months as contended by the Athlete's in his written submissions. On an examination of all the objective and subjective circumstances of this case, the Panel finds that the Athlete has not made out a case for either of these awards.

94. In arriving at its conclusions, the Panel has disregarded all submissions made by the athlete which are not supported by evidence (oral or documentary) led during the course of the proceedings.

95. The starting point of any discussion on sanction for violation of Article 2.1, is an ineligibility period of four (4) years.

96. To satisfy the Panel that the Athlete is entitled to an elimination or reduction of that ineligibility period, the Athlete must satisfy the panel by ***reliable*** evidence, that the violation was not intentional, and/or that he bore no fault or negligence, or no significant fault or negligence as the case may be.

97. The definition of "*No Fault or Negligence*" and "*No Significant Fault or Negligence*" in the Appendix to the Rules expressly requires that in addition to satisfying the Panel that he 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 used or been administered the Prohibited substance,* "*the Athlete* ***must*** also establish how the Prohibited Substance entered his or her system." The "must" in that regard was interpreted by this Panel as mandatory.

98. In this case, the Athlete has essentially placed his entire diet of Chinese food, corned beef, jerk chicken, jerk pork, and beef patties before the Panel, and then hypothesized that one or more of these meat products, must have caused the AAF. There was no *attempt* by the Athlete to narrow the source of the alleged contamination to a particular product or meat, as was done in the **Erriyon Knighton** and **Jarrion Lawson** decision. There was also no attempt by the Athlete to scientifically test any of the meat products that he consumes as part of his diet, for possible contamination as was also done in the **Erriyon Knighton** and **Shayna Jack** decision.

99. Further, the Athlete's expert, Professor Kintz, did not assist in scientifically identifying the source or origin of the prohibited substance in Athlete's system. It was the evidence of Professor Kintz in cross-examination that he was told that the AAF was likely due to meat contamination; there was no independent testing or verification by Professor Kintz to confirm this.

100. Professor Kintz's further conclusion that the Jamaican diet is generally high in possible sources of contamination - *corned beef, jerk chicken, jerk pork, and beef patties* - is not supported by any empirical data, scientific study, statistics or

published work. And, there is no data or evidence on the Athlete's case on how boldenone is purportedly introduced into meat products consumed in Jamaica. For example, are farmers in Jamaica widely injecting cows with boldenone during animal rearing, or, is the contaminated meat product imported into Jamaica, and if so, from which country? Further, the Athlete has not addressed the critical question on why he has tested positive for boldenone now, if he maintained this diet for some years? Has Jamaica only recently started injecting animals with boldenone or importing meat so contaminated? Ultimately, there is a lack of data to support Professor Kintz's conclusions, which has therefore rendered his conclusions, unreliable.

101. In the **USADA v. Erriyon Knighton, Case No: 24052801** the expert gave evidence on the use of the hormone or banned substance trenbolone acetate in animals as a growth promotor, and that it was widespread in the United States and the majority of South and Central American countries. Professor Kintz does not purport to be an expert on meat in Jamaica. To the contrary it is his evidence in cross-examination that he did not research beef contamination in Jamaica and was "…absolutely not a specialist of meat, contamination." Professor Kintz was simply relying on what he was told; which is the Athlete's hypothesis of the source or origin of the prohibited substance in his system.

102. The Panel accepts on a balance of probability, and prefers the testimony of Professor Ayotte on this issue That if contaminated meat (Chinese food, corned beef, jerk chicken, jerk pork, and beef patties) was as prevalent in the Jamaican diet as Professor Kintz has concluded, then more Jamaican athletes (and not just the subject athlete himself) would test positive for Boldenone.

103. This approach is consistent with the following dictum in the ***World Anti-Doping Agency*** v ***Egyptian Anti-Doping Organisation &*** Radwa Arafa Abd Elsalam case:

> *Had the problem of food contamination with the prohibited substance of Ractopamine been a widespread problem, as claimed by Respondents, why has not one single other case of food contamination with this particular substance been reported to the relevant Egyptian authorities? According to the information of WADA, no other Egyptian athletes have tested positive for Ractopamine,which also suggests that the hypothesis of the Respondents of wide spread contamination of imported meats is not s*upported by other cases of doping violations in Egypt.

104. Further, the fact that the athlete had tested negative in the three earlier tests in October and November 2023, still does not satisfy the burden of establishing how the substance entered his body. It only provides an assumption on when the Prohibited Substance entered the Athlete's system. It does not provide any evidence whatsoever of how the prohibited substance entered the Athlete's system – see ***Shayna Jack*** decision.

105. Therefore, on a strict interpretation and application of the definitions in the Appendix to the Rules, the Panel finds that the athlete has not made out a case of *"No Fault or Negligence*" or *"No Significant Fault or Negligence'* having failed to *establish how the Prohibited Substance entered his system.* We are left with no more than an hypothesis, which was not supported by any data or literature on animal rearing, meat imports or, the Jamaican diet.

106. The next issue, is whether the Athlete has satisfied the Panel on a balance of probabilities that the violation was not intentional.

107. There is no definition for "intentional" in the Appendix to the Rules, and there is no express or implicit requirement that the Athlete establishes *how the Prohibited Substance entered his system in order to satisfy the panel that the ADRV was not intentional,*. If the drafters of the Rules wanted the Panel to adopt such a stringent test for "intentional", then they would have included a similar definition to that of *"No Fault or Negligence*" or *"No Significant Fault or*

Negligence - see **Shayna Jack v. Swimming Australia & Australian Sports Anti-Doping Authority** decision.

108. Therefore, the Panel finds that the stringent test in the ***World Anti-Doping Agency*** v ***Egyptian Anti-Doping Organisation &*** Radwa Arafa Abd Elsalam *and* **World Anti-Doping Agency (WADA) v Comitato Permanente Antidoping San Marino NADO (CPA) & Karim Gharbi, Arbitration** decisions do not apply to the Panel's consideration of whether the ADRV was intentional. And, the Panel rejects the dictum to the effect that the "A*thlete must adduce concrete evidence to demonstrate that a particular product that the athlete ingested contained the substance in question, as a preliminary to seeking to prove that it was unintentional…".* And, that. *"If an athlete fails to establish how a prohibited substance entered into his/her body, her/his anti-doping rule violation shall be deemed intentional and sanctioned accordingly based on the applicable regulations."*

109. *Article 10.2.3 of* the Rules provides that the term "**intentional**" is meant to identify those Athletes who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and *manifestly disregarded that risk.* There is no accompanying test, criteria or definition to assist the Panel to determine if the conduct is intentional.

110. Therefore, the Panel accepts that there is some flexibility for the Panel to examine all the objective and subjective circumstances of the case, and to decide whether the violation was in fact, intentional, bearing in mind, that the provision is geared at "cheaters". That is, athletes who knowingly violate the rules, or disregards obvious risks that they would be violating the rules.

111. In terms of the subjective circumstances, the Panel would require evidence on the history and character of this Athlete. Some independent testimony on who this athlete is, as a person – see the **Shayna Jack** and **Jarrion Lawson** decisions.

112. In this case, there was a remarkable lack of independent testimony on the Athlete's character, integrity and how the athlete was viewed by his peers, coaches and family, especially where there is no reliable evidence (merely an hypothesis) on how the prohibited substance entered the Athlete's system. Save for his denials, shock and protestations, *there* was no reliably credible evidence to corroborate his explanation or denials.

113. Professor Kintz's conclusion that there was only a low concentration of boldenone in the hair that he tested, and, that this would demonstrate that at the time of the doping control, the Athlete had not intended to use boldenone to enhance physical performances, were not reliable, given his answers in cross-examination and to the questions put by the Panel. Professor Kintz failed to safeguard the chain of custody of the specimen that he was to examine, and which would form the subject of his expert report. Professor Kintz did not speak directly with the athlete, did not nominate or appoint an independent party in Jamaica to supervise the taking of the sample from the athlete, and subsequent shipment to him for testing. Professor Kintz had no way of verifying that the hair sample that he tested, was that of the athlete.

114. The Athlete's submissions that the Panel should adopt a "common sense" approach to the chain of custody deficiencies in the hair sample tested by Professor Kintz, is not acceptable. In cross-examining the DCO Maxine Gayle, the Athlete's attorney emphasized the critical importance of the "chain of custody" of the samples to be tested. The Panel will not ascribe greater significance to the chain of custody of samples to be tested by the Complainant pursuant to its doping control responsibility, than, to the chain of custody of the hair samples to be tested by an Athlete' expert to ascertain the source of the doping violation or the Athlete's intention. Each test is of significance to the Panel's determination of the issues before it, even though the Complainant's burden (comfortable satisfaction) is higher than that of the Athlete's (balance of probability).

115. Further Professor Kintz admitted in cross-examination and in his answers to the questions from the Panel, that hair samples are proned to reflect lower dosages of boldenone, therefore rendering his conclusions on the lo dosage of boldenone found in the hair sample tested, to be unreliable. It would have been a forgone conclusion that there would be low dosage in any hair sample that he tested.

116. Ultimately, the Panel finds that Professor Kintz did not assist the Panel on either of the issues concerning whether the ADRV was intentional, or, through no fault or negligence of the Athlete.

117. As it relates to the objective circumstances, the Panel accepts that there is no evidence that the Athlete intentionally ingested the prohibited substance.

118. The Panel also considered that the Athlete was tested on October 10th 2023, October 23rd 2023 and November 5, 2023 during competition, and all samples came back negative. Although the evidence as to the exact dates of testing came from Professor Kintz, it was not challenged by the Complainant.

119. Further, although the Athlete has been competing since he was 10, and has held many national titles, he has never tested positive at anytime during his career. His only postive test came during the out of competition period. This carried some weight with the Panel, in accepting on a balance of probability that this Athlete was not a cheater. The Athlete had a long career without positive results, so the probability of his knowingly choosing to ingest a prohibited substance now, while out of competition, seemed dubious.

120. Professor Ayotte concluded that the level of boldenone found in the Athlete's sample was "not low". However, this was not expounded upon, or clarified. By "not low", was the dosage average, high, mid range,, and, does this indicate intentional doping, and how would the Athlete benefit from the "not low" dosage found in his sample? There was insufficient material from which the

Panel could objectively conclude intentional doping from Professor Ayotte's conclusion.

121. It was based on these objective factors, that the Panel accepted it more true than not, that there was no intention to knowingly ingest Boldenone.

122. For these reasons, the Panel reduced the default ineligibility period by one half, to two years. The Panel could not accede to the Athlete's submission for no ineligibility period or fourteen months, as, much more could have been done by way of material placed before the Panel, especially when considering the authorities cited by the Athlete. **Shayna Jack** and **Erriyon Knighton** took considerable steps, at considerable expense, to seek to ascertain or identify the origins of the Prohibited Substance. **Shayna Jack** and **Jarrion Lawson,** placed independent testimony on the Athlete's credibility, character, integrity and history before the Panel. **Jarrion Lawson** and **Erriyon Knighton** volunteered for polygraph tests. And, in all the cases cited by this Athlete, the Athletes attempted to narrow the source or origin of the prohibited substance that was ingested. They did not simply place the Athlete's entire diet before the Panel, and hypothesized, that it must be one of these meat products.

123. Ultimately, the Panel accepted that there may be some difficulty identifying the source of a prohibited substance, and, the Athlete's long career without positive results, tipped the scale in this Athlete's favor.

124. The Panel accepts that there was a significant delay in delivering this Ruling. However, no further reduction in ineligibility period was considered given the deficiencies in the Athlete's case, as set out at paragraph 122 above. The commencement date would therefore run from the provisional suspension date, instead of an earlier date, such as the date of sample collection.

VII. AWARD

1. The Panel determines that:

   a. The Athlete has committed an anti-doping rule violation in relation to the positive result for Boldenone in breach of article 2.1 of the Jamaica Anti-Doping Commission Anti-Doping Rules.

   b. There shall be a period of two year ineligibility commencing from February 21, 2024 being the date on which the Mandatory Provisional Suspension was imposed by the Complainant.

   c. No costs are awarded to either party.

Dated the 16th day of May, 2025

The Independent Anti-Doping Panel
Kingston, Jamaica

Catherine Minto – Chair

Dr. Donovan Calder, Member

Mr. Dean Martin, Member