

- Introduction
- Summary of the Relevant Facts
- Full Reasoning for the Decision
- Sanctioning Decision

Decision on the Anti-Doping Rule Violation in accordance with Article 8.3.3 of the WR Anti-Doping Rules

I. INTRODUCTION

- A. The World Rowing (the "WR") is the world governing body for the sport of Rowing.
- B. Mr Christopher Bailey (the "Athlete") is a rower from the United Kingdom.
- C. The WR has delegated the implementation of the WR anti-doping programme to the International Testing Agency (the "ITA"). Such delegation includes the Results Management and subsequent prosecution of Anti-Doping Rule Violations ("ADRV") from sample collected from rowing athletes, under the jurisdiction of the WR.

II. SUMMARY OF THE RELEVANT FACTS

1. On 26 February 2022, the Athlete participated in the 2022 World Rowing Virtual Indoor Championships. The athlete was selected for an In-Competition doping control and sample numbers A and B-10300002100 were collected from him. The Athlete declared in the Doping Control Form ("DCF") the use of "*Creatine, Caffeine, Red & Green formula*".
2. The A and B-samples were transferred for analysis to the World Anti-Doping Agency ("WADA")-accredited laboratory in London, United Kingdom (the "Laboratory"). On 7 April 2022, the Laboratory reported an Adverse Analytical Finding ("AAF") for *Drostanolone and its metabolite 3 α -hydroxy-2 α -methyl-5 α -androstan-17-one* in sample A-10300002100.
3. Upon inquiry, the Laboratory informed the ITA that the roughly estimated concentration of the Prohibited Substance in the Athlete's sample was as follows:
 - Drostanolone – 0.3 ng/ml
 - Drostanolone metabolite 3 α -hydroxy-2 α -methyl-5 α -androstan-17-one – 0.25 ng/ml
4. Upon receipt of the AAF, the ITA conducted the Initial Review of the results under Article 7 of the WR Anti-Doping Rules ("WR ADR") and Article 5.1.1 of the International Standards for Results Management ("ISRM") and found that, according to the ITA and the WR records, (a) no applicable Therapeutic Use Exemption ("TUE") had been or was in the process of being granted to the Athlete, (b) there was no apparent departure from the International Standard for Testing and Investigations ("ISTI") or the International Standard for Laboratories ("ISL") that could undermine the validity of the AAF, and (c) the AAF was not caused by the ingestion of the Prohibited Substance through a permitted route insofar as Anabolic Androgenic Steroids, such as Drostanolone and its metabolite are banned irrespective of the route of ingestion.
5. On 25 April 2022, the ITA notified the Athlete of the AAF and imposed a mandatory Provisional Suspension pursuant to Article 7.4.1 of the WR ADR with immediate effect

("AAF Notification"). The Athlete was also made aware of (i) the potential Consequences of the AAF, (ii) his procedural rights, including the right to request the B sample counter-analysis, a provisional hearing or an expedited final hearing and (iii) information regarding providing substantial assistance. Lastly, the Athlete was invited to provide explanations as to the circumstances that led to the presence of the prohibited substances in his sample.

6. The Athlete did not respond to the AAF Notification. Out of good faith and courtesy, on 10 May 2022, the ITA gave the Athlete another opportunity to respond to the AAF Notification and informed him that if did not provide a response on or before the final deadline, it would be deemed that he had waived his right to the opening and analysis of his B-sample and the matter would proceed accordingly.
7. Despite the reminder, the Athlete did not respond within the extended deadline. Accordingly, on 13 June 2022, the ITA informed the Athlete that it was asserting that he had committed an ADRV under Article 2.1 and/or Article 2.2 of the WR ADR ("Notice of Charge).
8. Through the Notice of Charge the Athlete was once again explained the consequences of the ADRV, the grounds for reducing of the period of Ineligibility and afforded another opportunity to provide explanation on the source of the prohibited substance in his sample. Notably, the Athlete was also made aware that if he did not provide any response to the Notice of Charge, then, as per Article 8.3.2, it would be deemed that he had waived a right to a hearing and accepted the consequences of the ADRV. In such event and as per Article 8.3.3, the ITA would proceed to issue a sanctioning decision.
9. The Athlete did not reply to the Notice of Charge within the set deadline. Accordingly, on 19 July 2022, the ITA once again gave the Athlete a final opportunity to provide a response and reminded him that in the absence of a response within the final deadline, a decision would be issued by the ITA on behalf of the WR as per Article 8.3.3 of the WR ADR without any further notice.
10. As on date, the Athlete has not provided any response to the AAF Notification, the Notice of Charge and /or the ITA's subsequent correspondence.
11. Based on the information in the ITA and the WR's possession, there is no prior ADRV recorded against the Athlete and the Athlete has been respecting the terms of his provisional suspension in force from 25 April 2022.
12. After review and in the context of Article 8.3.3 of the WR ADR exclusively, the WR/ITA has come to the following determination.

III. FULL REASONING FOR THE DECISION

13. As per Article 2.1.1 of the WR ADR,

"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. 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

[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the

Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]

14. In accordance with Article 2.1.2 of the WR ADR, sufficient proof of an ADRV under Article 2.1 is established by *inter alia* – the 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 analysed.
15. In the present case, the Athlete did not provide any response to the ITA's AAF Notification and in particular did not request for the opening and analysis of the B-sample. Therefore, it is deemed that the Athlete has waived this right. In application of Article 2.1.2, it is therefore undisputed that the Athlete has committed an ADRV under Article 2.1 of the WR ADR for the *Presence of a Prohibited Substance or its Metabolites or Markers*.
16. According to Article 10.2.1 of the WR ADR, the period of *Ineligibility* imposed for the violation of Article 2.1 shall be, generally speaking four years. This four year period of *Ineligibility* can be increased to maximum of up to 6 years in the event that aggravating circumstances (within the meaning of Article 10.4 are present). This is explained below as follows:

10.2. Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 - The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.

The notion of "intentional" is defined in Article 10.2.3 of the WR ADR:

10.2.3: As used in Article 10.2, 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 [...].

17. Further "aggravating circumstances" is defined as follows:

Circumstances involving, or actions by, an Athlete or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.

18. This applicable period of *Ineligibility* can firstly be reduced if the Athlete meets his burden of proof and establishes that the ADRV is not intentional within the meaning of Article 10.2.3. of the WR ADP. Further, the period of *Ineligibility* can be eliminated, reduced or suspended under the certain conditions as provided for in Article 10.5, Article 10.6 or Article 10.7 of the WR ADR.
19. According to the established caselaw of the Court of Arbitration for Sport (“CAS”)¹, the requirement of the proof of source of a Prohibited Substance, which falls on the Athlete, is not mandatory but remains a crucial factor in deciding whether the Athlete has succeeded in discharging her/his burden of proving lack of intent. In other words, whilst failing to show how the Prohibited Substance entered the Athlete's system may not preclude the Athlete from establishing that his ADRV was not intentional, exceptional circumstances and/or evidence must be submitted to justify the assumption of lack of intent.
20. In the present case, the Athlete has not provided any explanations for the circumstances that led to the presence of the Prohibited Substance in his sample. Indeed, the Athlete has not submitted any response whatsoever. Therefore, the circumstances surrounding his ADRV are unknown and there are no grounds to reduce the applicable period of Ineligibility. Consequently, the Athlete shall be subject to a 4-year period of Ineligibility.
21. In addition to the period of Ineligibility imposed, as per Article 9 of the WR ADR, the results obtained by the Athlete at the 2022 World Rowing Virtual Indoor Championships shall be automatically disqualified including forfeiture of medals, points and prizes. Further, as per Article 10.10 of the WR ADR, all results of the Athlete from the date of sample collection until the date of provisional suspension shall also be disqualified with all resulting Consequences.
22. Despite the ITA's inquiries, the Athlete has not provided substantial assistance within the meaning of the WR ADR and/or admitted to the ADRV.
23. Consequently, and in the context of Article 8.3.3 of the WR ADR only, WR issues a decision on the Athlete's ADRV, as detailed below.

IV. DECISION ON THE ANTI-DOPING RULE VIOLATION UNDER ARTICLE 8.3.3 OF THE WR ANTI-DOPING RULES

In the matter of the adverse analytical finding for related to sample number 10300002100 which was collected from Mr Christopher Bailey (the “Athlete”) on 26 February 2022, the ITA, on behalf of WR, issues the following Decision:

- Anti-Doping Rule Violation:

The Athlete is found to have committed an Anti-Doping Rule Violation under Article 2.1 of the WR ADR.

- Ineligibility Period:

Pursuant to Article 10.2.1 of the WR ADR, the applicable period of Ineligibility is **4 years**.

- Start of Ineligibility period:

Considering that the Athlete has been serving a Provisional Suspension since **25 April 2022**, credit shall be given for the prior of provisional suspension effectively served.

¹ CAS 2016/A/4627 para 49 and 59; CAS 2016/A/4439, para 54; CAS 2016/A/4534, para 37 and CAS 2016/A/4919 para 63

Accordingly, the period of *Ineligibility* shall remain in force and effect until **24 April 2026**.

- Status During Ineligibility:

In application of Article 10.14.1 of the WR ADR, during the period of Ineligibility, the Athlete cannot participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by a Signatory², or a Signatory's member organization, or a club or other member organization of a Signatory, or a Signatory's member organization, or in Competitions authorized or organized by any professional league or any international or national level Event organization or any elite or national-level sporting activity funded by a governmental agency.³

As an exception to Article 10.14.1 of the WR ADR described above, the Athlete may return to train with a team or to use the facilities of a club or other member organization of WR's member organization during the last two months of the Athlete's period of Ineligibility (Article 10.14.2).

Otherwise, the it is the Athlete's responsibility to make sure he complies with the terms of the period of Ineligibility and that if he breaches the Ineligibility status, the results of such prohibited participation shall be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. The new period of Ineligibility may be adjusted based on the Athlete's degree of fault and other circumstances of the case (Article 10.14.3 of the WR ADR).

The Athlete remains subject to Testing as per Article 10.14.1 of the WR ADR.

- Disqualification of Results:

Pursuant to Article 9 of the WR ADR, the competitive results of the Athlete at the at the 2022 World Rowing Virtual Indoor Championships are automatically disqualified including forfeiture of medals, points and prizes.

Further, as per Article 10.10 of the WR ADR, all the competitive results of the Athlete obtained after the date of sample collection (i.e. 26 February 2022) and until the date the Athlete was provisionally suspended (i.e. 25 April 2022), if any, are also disqualified with all resulting consequences.

- Right of Appeal:

² Signatories are the entities signing the Code. More specifically, the International Olympic Committee, International Federations, the International Paralympic Committee, National Olympic Committees, National Paralympic Committees, Major Event Organizations, and National Anti-Doping Organizations are Signatories.


³ [Comment to Article 10.14.1: For example, subject to Article 10.14.2 below, Ineligible Athletes cannot participate in a training camp, exhibition or practice organized by their Member Federation or a club which is a member of that Member Federation or which is funded by a governmental agency. Further, an Ineligible Athlete may not compete in a non-Signatory professional league (e.g., the National Hockey League, the National Basketball Association, etc.), Events organized by a non-Signatory International Event organization or a non-Signatory national-level Event organization without triggering the Consequences set forth in Article 10.14.3. The term "activity" also includes, for example, administrative activities, such as serving as an official, director, officer, employee, or volunteer of the organization described in this Article. Ineligibility imposed in one sport shall also be recognized by other sports (see Article 15.1, Automatic Binding Effect of Decisions). An Athlete or other Person serving a period of Ineligibility is prohibited from coaching or serving as an Athlete Support Person in any other capacity at any time during the period of Ineligibility, and doing so could also result in a violation of Article 2.10 by another Athlete. Any performance standard accomplished during a period of Ineligibility shall not be recognized by WR or its Member Federations for any purpose.]

This decision shall be communicated to the parties with right of appeal, namely the World Anti-Doping Agency and the Athlete's National Anti-Doping Organization in accordance with Article 13.2.3 of the WR ADR.

- Public Disclosure:

The disposition of the Anti-Doping Rule Violation (including the identity of the Athlete) will be published in accordance with Article 14.3 of the WR ADR.

Signature on behalf of the WR:



Name: Ms Dominique Leroux-Lacroix
Date: 10 August 2022