TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2025/A/11391 Christopher Vui v. World Rugby

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Vladimir Novak, Attorney-at-law in Brussels, Belgium.

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom.

Prof Dr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-law in Hamburg, Germany.

in the arbitration between

Christopher Vui, Bristol, England.

Represented by Messrs Mike Morgan, Tom Seamer, Ben Cisneros and Sam Comb of Morgan Sports Law, London, United Kingdom.

Appellant

and

World Rugby, Dublin, Ireland.

Represented by Ms Louise Reilly SC and Mr Robert Kerslake of Kellerhals Carrard, Lausanne, Switzerland.

Respondent

I. PARTIES

1. Christopher Vui (the "Player" or the "Appellant") is a professional rugby union player from Samoa, a former captain of the Samoan national rugby team, and a former player for the Bristol Bears club in the Gallagher Premiership.

2. World Rugby (the "Respondent") is the international federation governing the sport of rugby, headquartered in Ireland.

3. The Appellant and the Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a brief summary of the relevant facts and allegations based on the Parties' written and oral submissions and the evidence adduced. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, the Award refers only to the submissions and evidence which the Panel considers necessary to explain its reasoning.

A. Background Facts

5. On 1 August 2023, during a training camp with the Samoa national team, the Player provided an out-of-competition urine sample (which was assigned sample reference 7099718) for doping control (the "Sample"). At the time of collection, the Sample was split into two bottles (i.e., the "A Sample" and the "B Sample").

6. The Sample was sent for analysis to the Sports Medicine Research and Testing Laboratory ("SMRTL"), the WADA-accredited laboratory based in Utah, United States of America. The Laboratory Director of SMRTL is Dr Daniel Eichner, who is also a member of World Rugby's Anti-Doping Advisory Committee (for which he receives a nominal fee). The Sample was received by SMRTL on 16 August 2023.

7. The A Sample was analysed between 25 August 2023 and 25 September 2023.

8. On 26 September 2023, SMRTL reported to World Rugby an adverse analytical finding ("AAF") for the presence of 19-norandrosterone ("19-NA") in the A Sample, in an estimated concentration of 7.8 ng/mL.

9. 19-NA is a metabolite of nandrolone, an anabolic steroid. It is prohibited at all times as a non-specified substance under S1.1 (Anabolic Androgenic Steroids) of the 2023 WADA Prohibited List.

10. On 27 September 2023, World Rugby sent a letter to the Player, in accordance with World Rugby Regulation ("Regulation") 21.7.2.2 of World Rugby's anti-doping rules ("ADR"), giving notice that the SMRTL analysis of the A Sample had returned an AAF for 19-NA. The letter informed the Player that (i) he might have committed an anti-doping rule violation ("ADRV") under Regulation 21.2.1 and/or Regulation 21.2.2 ADR; and (ii) he was provisionally suspended with effect from 27 September 2023. The Player was invited to confirm whether he wanted to have his B Sample analysed, and to provide an explanation for the AAF.

11. On 3 October 2023, the Player requested that World Rugby provide a copy of the Laboratory Documentation Package ("LDP") for the A Sample. In this letter and the correspondence that followed, World Rugby was informed that the Player would not be able to confirm whether he wanted to have his B Sample analysed until he had the opportunity to consider the A Sample LDP.

12. The Player received the A Sample LDP on 13 October 2023. World Rugby invited the Player to confirm whether he wished to proceed with the analysis of his B Sample, and – if so – whether he intended to send a representative.

13. On 20 October 2023, the Player informed World Rugby that Dr Valeria Catalani would attend the B Sample analysis on the Player's behalf.

14. On 22 October 2023, World Rugby notified the Player that the B Sample analysis would take place on 24 October 2023 at the SMRTL.

15. The analysis of the B Sample took place between 24 October 2023 and 26 October 2023 at the SMRTL. The analysis was performed by SMRTL's Associate Laboratory Directors, Dr Vinod Nair and Ms Mari Haybroek. While Dr Catalani attended SMRTL for the purposes of observing the analysis, it is accepted that Dr Catalani was not present for certain steps of the analysis of the B Sample, notably:

    - Dr Catalani was not in attendance when the B Sample was injected into the liquid chromatography instrument;
    - SMRTL did not permit Dr Catalani to observe the information displayed on the IRMS machine whilst it was running the analysis of the B Sample;
    - SMRTL did not permit Dr Catalani to attend the chromatographic data review stage of the analysis;
    - Dr Catalani was not present when SMRTL re-analysed one of the fractions of the B Sample ("Fraction 8").

16. On 31 October 2023, World Rugby notified the Player that the analysis of the B Sample had confirmed the AAF and the results were shared. The Player was invited to provide explanations. The Player requested a copy of the B Sample LDP.

17. The B Sample LDP was prepared on 7 November 2023.

18. On 23 November 2023, the Player responded that procedural safeguards and fundamental rights had been breached during the analysis of the B Sample – in particular because Dr Catalani had been excluded from "*critically important stage[s] of the analysis of the B Sample*" and on that basis requested that "*the case against Mr Vui must be immediately dismissed*."

19. On 23 December 2023, World Rugby charged the Player with an anti-doping rule violation for "Presence" and "Use", per Regulations 21.2.1 and 21.2.2 ADR respectively. The Appellant was invited to confirm whether he admitted or denied the alleged ADRVs.

20. On 16 January 2024, the Player denied the ADRV charges.

B. Proceedings before the World Rugby Judicial Committee

21. The matter was heard by a World Rugby Judicial Committee (the "JC") on 25 and 27 November 2024 and on 8 January 2025 (the "JC Hearing").

22. On 10 April 2025, the JC issued its decision, finding the Player had committed the ADRVs and imposed a four-year period of ineligibility, deemed to have commenced on 27 September 2023 (the "Appealed Decision").

23. The Appealed Decision contained the following conclusions:

- The Player did not establish that he had suffered any actual prejudice as a consequence of the delay in the reporting of the A Sample results: the JC concluded that "*[if] there had been any realistic possibility that the 21 days delay had caused Mr Vui prejudice in his defence, we should have seriously considered dismissal of the charges. But there was not*." (Paragraph 75). The Appellant "*was not prejudiced by the delay*." (Paragraph 81).

- The JC did "*not accept that Dr Eichner's position with World Rugby could cause a reasonably informed observer to have any reasonable doubt about the independence, impartiality and integrity of SMRTL in its testing and reporting of the results of Mr Vui's B Sample testing*." (Paragraph 89).

- While the JC upheld "*two of the three complaints of exclusion of Dr Catalani from the Sample B analysis*"(Paragraph 134), it "*rejected the complaint of Dr Catalani's exclusion from the IRMS data review and have held that was not a breach of ISL article 5.3.6.2.3.*"(Paragraph 137). In any event, upon review of

the authorities, the latest of which "*clearly rejected the continuing existence of a principle of fundamental breach*" the JC concluded that it "*should simply apply WR Regulation 21 and reject the Player's defence of fundamental breach*." (Paragraph 167).

- The question was therefore "*whether Dr Catalani's absence from those steps could reasonably have caused the AAF*" (Paragraph 177), in relation to which the JC found "*it is unreasonable to conclude that, as a result of Dr Catalani's exclusion from the three steps considered above, anything went wrong at SMRTL which could plausibly have changed the B Sample result from positive to negative*." (Paragraph 184).

- The JC further concluded that "*there was nothing wrong with the way SMRTL dealt with those vials [containing B Sample fractions] overnight*" and – as regards the re-analysis of Fraction 8 – found "*no breach of any rule or standard and no lack of transparency or other unfairness which affects the validity of the Sample B result*." (Paragraph 185).

- The JC concluded that the "*anti-doping rule violation*" was "*proven by the AAF of 19-norandosterone in his B Sample*" (paragraph 209), and the Appellant's "*case on supplement contamination as the source is too speculative and too lacking in hard evidence for us to find that as the probable explanation*" and that "*on the evidence before us the Player has failed to establish that his ADRVs, based on the valid B Sample results, were not intentional*." (Paragraphs 204 and 206).

- Accordingly, the JC concluded "*that under Regulation 21.10.2.1 his period of ineligibility will be four years*." (Paragraph 211).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 1 May 2025, the Player filed a Statement of Appeal at the Court of Arbitration for Sport in Lausanne, Switzerland (the "CAS"), against the Appealed Decision (the "Appeal"), pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code"). The Appellant requested that the matter be submitted to a Panel of three arbitrators and nominated Mr Jeffrey G. Benz, attorney-at-law and barrister in London, United Kingdom, as an arbitrator. The Appellant also requested that the deadline to file his Appeal Brief be extended to 5 June 2025.

25. On 14 May 2025, the Respondent agreed with the Appellant's extension request.

26. On 19 May 2025, the Respondent nominated Prof Dr Ulrich Haas as an arbitrator.

27. On 4 June 2025, the Appellant requested a further one-week extension of the deadline to file his Appeal Brief until 12 June 2025, to which the Respondent did not object on

the condition that it receives an equivalent one-week extension to its deadline to file its Answer (which was accepted by the Appellant).

28. On 12 June 2025, the Appellant submitted its Appeal Brief. The CAS Court Office invited the Respondent to submit their Answer by 24 July 2025.

29. On 24 June 2025, the CAS Court Office informed the Parties that the Panel appointed to decide the Appeal was constituted as follows:

President: Dr Vladimir Novak, Attorney-at-law in Brussels, Belgium

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom

Prof Dr Ulrich Haas, Attorney-at-law in Hamburg, Germany

30. On 22 July 2025, the Respondent requested an extension of the deadline to file the Answer until 14 August 2025 and that its deadline be meanwhile suspended. The Appellant objected to the extension request.

31. On 25 July 2025, the Respondent was granted a partial extension to file the Answer until 4 August 2025 and the CAS Court Office invited the Parties to state whether they request a hearing to be held in this matter.

32. On 4 August 2025, the Respondent filed the Answer.

33. On 5 August 2025, the Respondent requested a hearing.

34. On 11 August 2025, the Appellant also requested a hearing.

35. On 18 August 2025, the Parties informed the CAS Court Office that, given the number of witnesses which would be called, the matter would require a two-day hearing.

36. On 16 October 2025, the CAS Court Office informed the Parties that, in light of their confirmed availabilities (which were also discussed during a case management conference held on 2 October 2025), the hearing would be held by video conference on 19 and 20 January 2026. The Parties were invited to sign and return the Order of Procedure by 31 October 2025.

37. On 31 October 2025, the Parties returned the signed Order of Procedure.

38. On 9 January 2026, the Appellant issued a request for document production pursuant to Article R44.3 of the Code. The Appellant referred to Exhibit 30 to the Respondent's Answer Brief, which contained an email from Brian Ahrens (the Laboratory Director of the WADA-accredited laboratory in Los Angeles) to Mike Earl of World Rugby. The

Appellant noted that it was clear from the subject line and from the reference to "any additional questions" (emphasis added) that Mr Ahrens' email responded to an earlier email from Mr Earl, which included a query regarding the operation of laboratory standard operating procedures. However, the Appellant contended, Mr Earl's email, which would provide the context to Mr Ahrens' response, was not included in Exhibit 30 – only Mr Ahrens' response was filed. Moreover, the Appellant noted, the Respondent refused to disclose Mr Earl's email, at first instance.

39. On 15 January 2026, the Respondent requested that the Appellant's document production request be dismissed on the grounds of delay and lack of relevance.

40. On 16 January 2026, the Panel granted the Appellant's request for document production on the grounds that (i) the requested document was likely to exist and in the possession of the Respondent; and (ii) the inquiry about B sample process was directly relevant for the matter in dispute. While the Panel considered that the request was delayed, the relevance of the document prevailed. Accordingly, the Respondent was ordered to produce the requested document by 17 January 2026.

41. On 19 and 20 January 2026, the hearing took place by videoconference. The Panel was assisted by Ms Shanaize Yahiaoui, CAS Counsel, and Mr Joe Gaffney (in an administrative capacity with the consent of the Parties), and joined by the following participants:

- For the Appellant:
    - Mr Christopher Vui (Appellant)
    - Dr Laurent Rivier (Expert)
    - Dr David Trew (Expert)
    - Dr Diederik Smit (Expert)
    - Mr Ihar Nekrashevich (Witness)
    - Professor Pascal Kintz (Witness)
    - Mr Pat Lam (Witness)
    - Mr Dave Edgar (Witness)
    - Mr Mike Morgan (Counsel)
    - Mr Tom Seamer (Counsel)
    - Mr Ben Cisneros (Counsel)

- Mr Sam Comb (Counsel)

- For the Respondent:
  - Mr Brian Hammond (World Rugby)
  - Dr Vinod Nair (Witness)
  - Dr Tiia Kuuranne (Expert)
  - Dr Detlef Thieme (Expert)
  - Ms Louise Reilly SC (Counsel)
  - Mr Robert Kerslake (Counsel)

42. At the outset of the hearing, the Parties confirmed that they had no procedural issues or objections.

43. During the hearing, the Parties had ample opportunity to present their case, submit their arguments and answer the Panel's questions.

44. At the end of the hearing, the Parties stated that they had no objections as to the procedure adopted by the Panel, its constitution, or its jurisdiction. The Parties confirmed that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant's submissions

45. The Appellant's Appeal Brief contains the following requests for relief:

"(a) Set aside the Decision (including any order the JC may make as to costs);

(b) Dismiss the Alleged ADRVs, on any or all of the following grounds:

(i) SMRTL is not independent of World Rugby, in breach of Article 4.4.2.4 of the ISL, such that the Alleged AAF is invalid (see Section 7);

(ii) Mr Vui's fundamental right to observe the entirety of the analysis of the B Sample was violated, such that the Alleged AAF is invalid (see Section 15);

(iii) the integrity of the B Sample test result is fundamentally compromised by SMRTL's failure to maintain the security and integrity of the B Sample, such that the Alleged AAF is invalid (see Section 16);

(iv) the integrity of the test results is fundamentally compromised by SMRTL's breach of transparency, such that the Alleged AAF is invalid (see Section 17);

(v) the preparation of Mr Vui's defence has been significantly prejudiced by World Rugby (and/or SMRTL's) breach of the timeliness requirements in Article 5.3.8.4 of the ISL and Chapter 15 of the Guidelines (see Section 19);

(c) Alternatively, and without prejudice to the foregoing, find that the Alleged ADRVs were caused by Mr Vui's use of a Contaminated Product and that he bears No Significant Fault or Negligence for the same, such that a reprimand (and no period of Ineligibility) should be imposed under Article 10.6.1.2 of the WR ADR;

(d) Order World Rugby to reimburse Mr Vui's legal costs and other expenses pertaining to the first instance proceedings (pursuant to Article 21.8.1.2.13 of the WR ADR) and this appeal (pursuant to Article R65.3 of the CAS Code)."

46. The Appellant's primary position is that the ADRVs are denied entirely, arguing that the AAF is invalid on multiple alternative grounds.

47. The Appellant's submissions are premised on the principle that athletes have a right to strict observance of mandatory safeguards by testing authorities and laboratories, given the strict liability nature of anti-doping violations, and that failure to strictly adhere to those mandatory safeguards necessarily invalidates any AAF. In particular:

- Laboratory Independence Issues: the Appellant challenges SMRTL's independence, noting that Dr Daniel Eichner serves as both the laboratory director and a paid member of World Rugby's Anti-Doping Advisory Committee. This dual role violates ISL Article 4.4.2.4 requirements for laboratory independence and fundamentally compromises the integrity of the Sample analysis, such that the AAF is invalid.

- B Sample Analysis Attendance Rights: the Appellant contends that his "*fundamental right*" to attend the entirety of the B Sample analysis was breached when Dr Catalani was excluded from critical stages of that analysis, including: the initial injection, chromatographic data review, and re-analysis of Fraction 8. The attendance rights are "*per se rules*", violation of which automatically invalidates the AAF, regardless of whether the breach affected the result of the B Sample analysis. The Appellant referred the Panel to a number of cases in support of this "*fundamental right*".

- Chain of Custody Breach: the Appellant argues the B Sample integrity was compromised when fractions were left unattended overnight without tamper-proof seals, breaking the chain of custody. The results of the B Sample analysis are therefore necessarily invalid and the AAF cannot be upheld.

- Transparency Violations: the Appellant alleges SMRTL breached transparency requirements by: (a) repeating analyses without proper documentation, and (b) including the results of repeated analyses in place of original results without explanation. This fatally compromised the verifiability and trust in the results, and those results must therefore be disregarded.

- Prejudicial Delays: the Appellant claims substantial prejudice from delays in sample processing and reporting (57 days between collection and AAF notification), which hampered his ability to investigate potential contamination sources. The ADRVs must be dismissed, or – in the alternative – the Panel must mitigate the prejudice suffered by adopting a less stringent approach to the question of source and / or sanction.

- Source and Intent: If the AAF is deemed valid, the Appellant argues it resulted from contaminated supplement use rather than intentional doping. He adduces evidence including hair analysis, polygraph results, and expert testimony that single-dose 19-NA use would be "*illogical*".

- Sanction Mitigation: Should ADRVs be found, the Appellant seeks only a reprimand under Article 10.6.1.2, arguing his fault falls at the lowest end of the spectrum.

B. The Respondent's submissions

48. The Answer to the Appeal Brief contains the following request for relief:

"*World Rugby respectfully requests the CAS to rule as follows:*

1. The appeal of Christopher Fatu Vui is dismissed.

2. The decision dated 10 April 2025 by the World Rugby Judicial Committee is confirmed.

3. The arbitration costs shall be borne by Christopher Fatu Vui.

4. World Rugby is granted a significant contribution to its legal and other costs."

49. In support of the request for relief, the Respondent submits as follows:

- The Charges: the Respondent alleges two charges: (1) a "*Presence*" charge under Regulation 21.2.1 ADR, which World Rugby submits is proven by 19-NA being present in the Sample, and (2) a "*Use*" charge under Regulation 21.2.2 ADR, which the Respondent submits is proven because the Appellant must have used 19-NA (or a precursor) for it to be present in the Sample.

- The Sanction: Since 19-NA is not a specified substance and the Appellant does not establish the ADRV was unintentional the four-year sanction under Regulation 21.10.2 ADR must be maintained.

50. The Respondent addresses the Appellant's submissions as to the validity of the B Sample analysis as follows:

- Laboratory Independence: the Respondent notes Dr Eichner serves on its Anti-Doping Advisory Committee for a nominal fee (£750 annually) and is not a World Rugby board member or official. His executive role at SMRTL did not involve analyzing the Sample, which was anonymized. The Respondent contends that any "*connection*" under Article 4.4.2.4 is insufficient to invalidate the AAF without showing such "*connection*" could reasonably have caused the result. The Respondent refers in this regard to Regulation 21.3.2.2 ADR.

- B Sample Analysis Attendance Rights: the Respondent submits that concepts of "*fundamental breach*" or "*fundamental right*" are: (a) not derived from current Regulations, (b) are based upon outdated CAS jurisprudence last accepted in 2015, and in any event (c) superseded by updated WADA Code provisions requiring causation.

- The Respondent's position is that there were no breaches of the Appellant's attendance rights. In this respect, it is submitted that the only right prescribed by ISL Article 5.3.6.2.3 is the "*right to attend the 'B' Sample opening, aliquoting and resealing procedures*" (being stages of the B Sample analysis at which Dr Catalani was present).

- The Respondent also refers to Regulation 21.3.2.2 ADR and submits that the Appellant has not in any event shown how any alleged departure from the ISL could reasonably have caused the AAF.

- Chain of Custody Breach: the Respondent submits that overnight storage of fractions in an instrument tray is necessary for multi-day analysis and the chain of custody is maintained as long as it occurs within the laboratory's "*controlled zone*". The Respondent submits this rebuts any hypothetical that fractions used for the remainder of the B Sample analysis were collected from a sample other than the Appellant's.

- Prejudicial Delay: As to the Appellant's submissions that the reporting delay prejudiced his defence, the Respondent contends the Appellant's failure to keep supplement records means delays had no bearing on his ability to establish source, and he must prove both prejudice and source to avail himself of defences under Regulation 21.10.6 ADR.

- Source and Intent: the Respondent argues that the Appellant has not met the standard of proof for establishing source. Regarding intent, the Respondent submits – with reference to CAS 2016/A/4534 – that establishing lack of intent

without proving source requires traversing the "*narrowest of corridors*" and is only possible in the "*rarest of cases*", and that the Appellant fails to do so here.

V. JURISDICTION

51. Regulation 21.13.1 ADR provides as follows:

"*Decisions made under the Code or these Anti-Doping Rules may be appealed as set forth below in Regulation 21.13.2 through 21.13.6 or as otherwise provided in these Anti-Doping Rules, the Code, or the International Standards. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise*."

52. Regulation 21.13.2 ADR provides as follows:

"*A decision that an anti-doping rule violation was committed, a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed; […] may be appealed exclusively as provided in this Regulation 21.13*."

53. Regulation 21.13.2.1 ADR provides as follows:

"*In cases arising from participation in an International Event or in cases involving International-Level Players, the decision may be appealed exclusively to CAS*."

54. Article R47 of the Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*."

55. The Respondent did not contest the jurisdiction of the CAS, and confirmed CAS jurisdiction by signing the Order of Procedure and participating fully in this proceeding.

56. The Panel concludes that CAS has jurisdiction to decide the present Appeal.

VI. APPLICABLE LAW

57. Article R58 of the Code provides as follows:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice,*

according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

58. This matter is governed by the ADR, which itself adopts the provisions of the WADA Code and International Standards (inclusive of both ISTI and ISL – per Appendix one to Regulation 21), per Regulation 21.4.3. In addition, in accordance with World Rugby By-Law 15(b), the ADR shall be construed in accordance with English law. However, the Panel is cognizant of Regulation 21.23.2 ADR, which provides as follows:

"The Code shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the Signatories or governments."

VII. ADMISSIBILITY

59. Article R49 of the Code provides:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

60. Regulation 21.13.6.1 ADR provides:

"*The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party*."

61. The Appealed Decision was adopted on 10 April 2025. The Statement of Appeal was filed on 1 May 2025, and thus within the deadline set out in the ADR. The Appeal Brief was submitted within the extended deadline of 12 June 2025.

62. The Respondent did not contest the admissibility of the Appeal.

63. The Panel concludes that the Appeal is admissible.

VIII. MERITS

64. The Appeal raises the following principal issues:

- The framework applicable to alleged departures from International Standards;
- Laboratory independence;

- B Sample attendance rights;
- Chain of custody issues;
- Transparency and ISO/IEC 17025 compliance;
- Prejudice from delay in notification and results management;
- Assessment of the alleged ADRVs;
- Intention; and
- Sanction.

A. The applicable framework

65. The Respondent alleges ADRVs under Regulations 21.2.1 ADR ("*Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample*") and 21.2.2 ADR ("*Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method*"). These provide as follows:

"*21.2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample*

21.2.1.1 It is the Players' personal duty to ensure that no Prohibited Substance enters their body. Players 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 Player's part be demonstrated in order to establish an anti-doping rule violation under Regulation 21.2.1."

"*21.2.2 Use or Attempted Use by a Player of a Prohibited Substance*

21.2.2.1 It is the Players' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method."

66. The burden and standard of proof in respect of the ADRVs is established by Regulation 21.3.1 ADR as follows:

"*World Rugby shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether World Rugby has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all*

cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Player or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Regulation 21.3.2.2 and 21.3.2.3, the standard of proof shall be by a balance of probability."

67. Regulation 21.2.1.2 ADR provides as follows:

"*Sufficient proof of an anti-doping rule violation under Regulation 21.2.1 is established by any of the following: […]; or, where the Player's B Sample is analysed and the analysis of the Player's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player's A Sample; or […]*"

68. Regulation 21.3.2 ADR provides as follows:

"*Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:*

21.3.2.1 Analytical methods or Decision Limits approved by WADA after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Any Player or other Person seeking to challenge whether the conditions for such presumption have been met or to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. The initial hearing body, appellate body, or CAS, on its own initiative, may also inform WADA of any such challenge. Within ten (10) days of WADA's receipt of such notice and the case file related to such challenge, WADA shall also have the right to intervene as a party, appear as amicus curiae or otherwise provide evidence in such proceeding. In cases before CAS, at WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge.

21.3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Player or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.

If the Player or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then World Rugby shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

21.3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or these Anti-Doping Rules shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defence to an anti-doping rule violation; provided, however, if the Player or other Person establishes that a departure from one of the specific International Standard provisions listed below could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or whereabouts failure, then World Rugby shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the whereabouts failure:

(a) a departure from the International Standard for Testing and Investigations related to Sample collection or Sample handling which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case World Rugby shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

(b) a departure from the International Standard for Results Management or International Standard for Testing and Investigations related to an Adverse Passport Finding which could reasonably have caused an anti-doping rule violation, in which case World Rugby shall have the burden to establish that such departure did not cause the anti-doping rule violation;

(c) a departure from the International Standard for Results Management related to the requirement to provide notice to the Player of the B Sample opening which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case World Rugby shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

(d) a departure from the International Standard for Results Management related to Player notification which could reasonably have caused an anti-doping rule violation based on a whereabouts failure, in which case World Rugby shall have the burden to establish that such departure did not cause the whereabouts failure."

69. Regulations 21.3.2.2 and 21.3.2.3 ADR implement Articles 3.2.2 and 3.2.3 of the WADA Code.

70. The comment on Article 3.2.2 of the WADA Code provides as follows:

"*The burden is on the Athlete or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. Thus, once the Athlete or other Person establishes the departure by a balance of probability, the Athlete or other Person's burden on causation is the somewhat lower standard of proof – "could reasonably have*

caused." If the Athlete or other Person satisfies this standard, the burden shifts to the Anti-Doping Organization to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding."

71. The comment on Article 3.2.3(iii) of the WADA Code provides as follows:

"*An Anti-Doping Organization would meet its burden to establish that such departure did not cause the Adverse Analytical Finding by showing that, for example, the B Sample opening and analysis were observed by an independent witness and no irregularities were observed*."

72. The Respondent submits that Articles 3.2.2 and 3.2.3 of the WADA Code represent the settled law on how alleged departures from International Standards (including the ISL) are to be treated. It is submitted that the standard of review "*requires a two-pronged approach*". The athlete must first establish that a departure occurred and, if so, the athlete must then prove that the departure "*could reasonably have caused*" the AAF. In the Respondent's submission, it is only when both of these elements are satisfied that the burden shifts back to the ADO to prove the departure did not in fact cause the AAF. It is submitted that the causation gateway applies to all departures from International Standards without exception.

B. SMRTL independence

73. Laboratory independence and the B Sample attendance rights are contained in the ISL.

74. In relation to laboratory independence, ISL Article 4.4.2.4 provides as follows:

"*The Laboratory shall be administratively and operationally independent from any organization that could exert undue pressure on the Laboratory and affect the impartial execution of its tasks and operations. In order to be administratively independent, the Laboratory cannot be administered by, connected or subject to an Anti-Doping Organization, sport organization or government Ministry of Sport or other government body responsible for sport performance, including their Board Members, staff, Commission Members or officials. This is necessary to avoid potential conflicts of interest and ensure full confidence in the Laboratory's competence, impartiality, judgment and operational integrity, in compliance with ISO/IEC 170252*."

75. The Appellant submits that Dr Eichner's dual role — as Laboratory Director of SMRTL and as a paid member of World Rugby's Anti-Doping Advisory Committee ("ADAC") — renders SMRTL "*connected*" to World Rugby within the meaning of ISL Article 4.4.2.4, and that this connection necessarily undermines SMRTL's independence and impartiality, such that the AAF must be invalidated. The Appellant relies on the principle that testing must not only be independent but must be seen to be independent, citing *UKAD v. X* and the decision of the Spanish Supreme Court in *RFEC v. Heras*.

76. The Respondent submits that Dr Eichner's membership of ADAC does not render him a "Board Member, staff, Commission Member or official" of World Rugby; that ADAC is a scientific advisory body with no decision-making authority over testing or results management; that Dr Eichner's fee is nominal (£750 per annum); and that Dr Eichner had no involvement in the analysis or reporting of the Appellant's Sample, which was anonymised and processed by other SMRTL personnel. The Respondent further submits that even if a technical "*connection*" exists within the meaning of ISL Article 4.4.2.4, the Appellant must still establish under Regulation 21.3.2.2 ADR that any such departure could reasonably have caused the AAF — which the Appellant has not done.

77. The Panel notes that the Appealed Decision found a "technical" breach of ISL Article 4.4.2.4, though did not invalidate the AAF.

78. The Panel notes that SMRTL is required to be "*administratively and operationally independent from any organisation […] that may have an interest in the result of the service*." The ISL explains that in "*order to be administratively independent, the Laboratory cannot be administered by, connected or subject to an Anti-Doping Organization, sport organization or government Ministry of Sport or other government body responsible for sport performance, including their Board Members, staff, Commission Members or officials*."

79. The Panel considers that the requirement that a laboratory be "*administratively and operationally independent*" is a corollary of the principle that a testing laboratory must be independent and impartial, and must also be seen to be independent and impartial.

80. In light of that principle, and the wording of ISL Article 4.4.2.4, any "*connection*" between SMRTL and World Rugby must be such that it may affect (or may reasonably be seen to affect) the administrative or operational functions of SMRTL.

81. No evidence has been adduced by the Appellant that Dr Eichner's membership of World Rugby's Advisory Committee (for which he receives a nominal fee) would have such an effect (or might reasonably be seen to have such an effect) on SMRTL's operational or administrative independence or on the testing of samples submitted by World Rugby (either in relation to the Appellant or generally).

82. The Panel therefore considers that the allegations of "*conflict*" and "*undermined independence*" are speculative and are not supported by credible evidence. Furthermore, the Panel has considered whether a reasonably informed observer, aware of Dr Eichner's dual role, would harbour reasonable doubts about SMRTL's independence or impartiality. The Panel concludes that such an observer would not, having regard to the following: (a) the Advisory Committee is a scientific advisory body with no decision-making authority over testing or results management; (b) the fee is nominal (£750 per annum) and does not create any material financial dependency; (c) Dr Eichner

had no involvement in the analysis or reporting of the Appellant's Sample; and (d) the Sample was anonymised and processed through SMRTL's standard workflow by other personnel.

83. Furthermore, the Panel considers that neither World Rugby nor SMRTL could reasonably be said to have any interest at the testing stage beyond an accurate analysis and a correct result.

84. The Panel is also mindful that it is common practice within the anti-doping system for WADA-accredited laboratory directors and senior scientists to serve on scientific advisory bodies for sports organisations, WADA, and other entities. Such service promotes knowledge-sharing and harmonisation of best practices across the anti-doping ecosystem. The Panel considers that such advisory roles do not inherently compromise a laboratory's independence, provided that (as here) the advisory role does not create material financial dependency or other material "*connection*".

85. The Panel therefore dismisses the Appellant's claim related to a breach of ISL Article 4.4.2.4.

C. B Sample attendance rights: scope and legal effect of the exclusion(s) of Dr Catalani

86. In relation to attendance rights, the relevant part of ISL Article 5.3.6.2.3 provides as follows:

"*The following non-Laboratory Persons shall be authorized to attend the "B" Confirmation Procedure:*

The Athlete and/or representative(s) of the Athlete or, in the absence of the Athlete and/or representative(s), an Independent Witness:

The Athlete and a maximum of two (2) representative(s) […] have the right to attend the 'B' Sample opening, aliquoting and resealing procedures;

The Athlete and/or one (1) representative may also have reasonable opportunity to observe other steps of the "B" Confirmation Procedure, as long as their presence in the Laboratory does not interfere with the Laboratory's routine operations or Laboratory safety or security requirements."

87. The Appellant submits that his "*fundamental right*" to attend the entirety of the B Sample analysis was breached when Dr Catalani was excluded from critical stages of that analysis, including: the initial injection, chromatographic data review, and re-analysis.

88. The Panel first considers whether the B Sample attendance rights are "*fundamental*" per se, before turning to the existence of any alleged breach of the B Sample attendance rights.

1. Are B Sample attendance rights "fundamental rights" subject to a "per se" rule?

89. The Appellant acknowledges the text of Articles 3.2.2 and 3.2.3 of the WADA Code (implemented through Regulations 21.3.2.2 and 21.3.2.3(c) ADR), but disputes that these provisions apply to so-called "*fundamental*" procedural breaches such as B Sample attendance rights.

90. The Appellant argues that a line of CAS jurisprudence has treated B Sample attendance rights as "*fundamental*" and has applied a "*per se*" rule. In this respect, the Appellant alleges that the causation gateway which the Respondent refers to does not apply to breaches of fundamental rights: if the fundamental right is not respected, the B Sample results must be disregarded, without requiring the athlete to prove that the breach could reasonably have caused the AAF.

91. The Appellant refers the Panel to a line of cases (including CAS 2002/A/385, CAS 2003/A/477, CAS 2008/A/1607, CAS 2010/A/2161, CAS 2014/1/3487, CAS 2015/A/3977, and *ADO v Z*) for the proposition that the denial of an athlete's right to attend any stage of the B Sample analysis automatically invalidates the B Sample results. The referenced CAS cases found as follows:

- CAS 2002/A/385: The athlete was not informed of the date or time at which the B Sample were to be analysed.
- CAS 2003/A/477: The B Sample was analysed without the knowledge or authority of the athlete.
- CAS 2008/A/1607: The B Sample was analysed without the athlete being provided reasonable opportunity to attend the analysis.
- CAS 2010/A/2161: The B Sample was analysed without the athlete being informed.
- CAS 2015/A/3977: The B Sample was analysed without the athlete being provided reasonable opportunity to attend analysis.
- CAS 2014/A/3487: The Panel allowed the athlete's appeal on other grounds and therefore did not need to consider whether the athlete's appeal should be allowed on the basis that "*certain IST departures will be treated a so serious that, by their very nature, they will be considered to undermine the fairness of the testing*

process to such an extent that it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred" (paragraph 152).

92. The Respondent submits that the concept of "*fundamental breach*" in relation to B Sample rights has been superseded by developments to the WADA Code and in CAS jurisprudence -- in the most recent iteration of the WADA Code it is expressly provided that the deprivation of an athlete's right to be notified of the B Sample opening will only invalidate an AAF where the athlete can establish such deprivation could reasonably have caused the AAF (whereupon the burden of proof shifts to the anti-doping authority), and where the anti-doping authority cannot then show that such deprivation of the B Sample rights did not cause the AAF.

93. The Panel considers it appropriate to consider the changes in the WADA Code, given the importance of: (a) the substance of those changes, and (b) the timing of those changes to the Parties' respective positions. The Panel therefore sets out the evolution of the wording of the WADA Code below.

2003 WADA Code	**2009 WADA Code**	**2015 WADA Code**	**2021 WADA Code**
3.2.1 WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis. The Athlete may rebut this presumption by establishing that a departure from the International Standard occurred. *If the Athlete rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause*	*3.2.1 WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred* ***which could reasonably have caused the Adverse Analytical Finding****.* *If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories*	*3.2.2 WADA -accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred* ***which could reasonably have caused the Adverse Analytical Finding****.* *If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard*	*3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred* ***which could reasonably have caused the Adverse Analytical Finding****.* *If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard*

the Adverse Analytical Finding. *3.2.2 Departures from the International Standard for Testing which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete establishes that departures from the International Standard occurred during Testing then the Anti-Doping Organization shall have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the antidoping rule violation.*	*occurred which could reasonably have caused the Adverse Analytical Finding, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.* *3.2.2 Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete or other Person establishes that a departure from another International Standard or other antidoping rule or policy* ***which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation occurred****, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.*	*for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.* *3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or Anti-Doping Organization rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Athlete or other Person establishes a departure from another International Standard or other anti-doping rule or policy* ***which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation****, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.*	*for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.* *3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or in an Anti-Doping Organization's rules shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Athlete or other Person establishes that a departure from one of the specific International Standard provisions listed below* ***could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or whereabouts failure****, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or whereabouts failure:* *[…]*

			(iii) a departure from the International Standard for Results Management related to the requirement to provide notice to the Athlete of the B Sample opening ***which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding****, in which case the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;*

94. The Panel considers that the causation requirement which is submitted by the Respondent to exist as part of the "*two-pronged*" approach was clearly imported by the 2009 iteration of the WADA Code and then retained in later iterations of the WADA Code (as reflected in the bold text). Importantly, the most recent iteration of the WADA Code also specifically provides that a departure from the primary requirement to notify the athlete of the B sample opening may only potentially invalidate the AAF if the "*two-pronged*" approach is met.

95. This is consistent with amendments made between iterations of the ISL: the previously identified "*fundamental right*" to attend the opening, aliquoting and resealing was amended to a "*right*", removing the term "*fundamental*" between the 2019 and 2021 iterations of the ISL.

96. It is submitted by the Appellant that the introduction of Article 3.2.3(iii) between the 2015 and 2021 iterations of the WADA Code was done without consultation and either: (a) cannot be intended to diminish B Sample rights; (b) was adopted in a procedurally unfair manner; or (c) cuts across rights that are essential to ensure procedural fairness. The upshot of the Appellant's submission is that Article 3.2.3(iii) should not or could not be applied.

97. The Panel is unconvinced. The WADA Code is periodically revised through an established process and presented and discussed at the respective edition of the World Anti-Doping Conference. Furthermore, all changes of the WADA Code need a 2/3 majority of WADA's Foundation Board (Article 25.1.3 of the WADA Code). The idea

that amendments of the WADA Code may be sneaked into the text in violation of a "*proper*" procedure is, thus, difficult to follow. In any event the burden of establishing that a particular provision was adopted in a procedurally unfair manner lies with the party so alleging. That burden has not been discharged. In any event, the Panel does not accept that the application of a causation requirement to B Sample attendance rights is inherently incompatible with procedural fairness.

98. Rather, it seems to the Panel to import a proportionate safeguard that balances an athlete's procedural rights against the integrity of the anti-doping system and the public interest in ensuring that reliable analytical results are not set aside on the basis of procedural irregularities that had no bearing on the outcome.

99. In light of the foregoing analysis, and particularly (i) the evolution of the WADA Code from 2003 to 2021, (ii) the express introduction of the causation requirement in Article 3.2.3(iii) of the 2021 WADA Code (implemented through Regulation 21.3.2.3(c) ADR), (iii) the deliberate removal of the term "*fundamental*" from the ISL between the 2019 and 2021 iterations, the Panel concludes that the concept of a "*fundamental breach*" operating as a *per se* rule to invalidate B Sample results, without any requirement to establish a causative link between the departure and the AAF, is no longer consistent with the applicable regulatory framework as per 2021 WADA Code.

100. As to the development of CAS jurisprudence, the Respondent refers the Panel to two cases in support of the "*two-pronged*" approach in relation to departures from the ISL or other international standards – and in support of the position that the cases relied upon by the Appellant are outdated.

101. The first case is CAS 2013/A/3112 where it was explained (in relation to the 2009 iteration of the WADA Code):

"[…] *the Panel deems a mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis. Further, the Panel remarks that such athlete's rebuttal functions only to shift the burden of proof to the anti-doping organization, which may then show, to the Panel's comfortable satisfaction, that the departure did not cause a misreading of the analysis*". (Paragraph 85).

102. In CAS 2018/A/5584, the sole CAS arbitrator explained:

"*G. Fundamental breach*

128. The Athlete argues that under the so-called "fundamental breach" concept, since the Athlete was deprived of the right to attend or be represented at the opening and splitting of the B sample at the Warsaw Laboratory, the breach is to be considered so fundamental that the B sample results are automatically invalidated without any need for the Athlete to demonstrate how the breach could have caused or did cause the AAF.

129. POLADA highlights that the fundamental breach concept was developed through case law before the 2015 WADC came into force and that it runs contrary to the explicit wording of Article 3.2.2 of the 2015 WADC. POLADA mentions that WADA has legislated in the opposite direction by adopting the provision on further analysis of long-term stored samples in Article 5.2.2.12.10 ISL which was not expressly permitted under Article 5.2.2.12 of the 2012 edition of the ISL. POLADA mentions that it is not aware of any CAS cases applying the "fundamental breach" under the 2015 WADC.

130. The Sole Arbitrator accepts that Article 3.2.2 of the 2015 WADC provides explicitly that, where departures from the international standards occur, the athlete must demonstrate a plausible causative link with the AAF and only then the burden shifts to the Anti-Doping Organization to demonstrate that the departure did not in fact cause the AAF.

131. As already stated above, the Sole Arbitrator concludes that no plausible link between the AAF and the alleged departures were evidenced and there is no supported reason to ignore the clear terms of Article 3.2.2 of the Polish ADR and the WADC and to invalidate the ADRV based on a perceived "fundamental breach"."

103. While these cases precede the 2021 WADA Code, the Panel finds that the "*two-pronged*" approach taken in CAS 2013/A/3112 and CAS 2018/A/5584 is the course which the Panel must now follow after the introduction of Article 3.2.3(iii) to the WADA Code (as implemented through Regulation 21.3.2.3(c) ADR).

104. The Panel was also taken to the case of *ADO v Z* by the Appellant. In that case, Dr Catalani was excluded from the chromatographic data review stage of the B Sample analysis of an athlete. The UK National Anti-Doping Panel – in a decision dated 6 November 2024 (i.e., post-dating the 2021 WADA Code) – found this was a "*serious breach of the [athlete's] procedural rights including the right to a reasonable opportunity to verify test results which are the sole basis upon which a strict liability charge is brought*." This "*breach of his right to procedural fairness […], alone, would require [the UK NADP] to dismiss the charge*."

105. The Panel considers that *ADO v Z* should not be followed because:

- The anti-doping organisation at issue did not operate within the WADA framework, and compliance with the ISL was not required. It therefore operated outside the framework in which World Rugby and the Appellant operate.
- The decision of the National Anti-Doping Panel cited only one CAS case on the subject. The jurisprudence had been inconsistent prior to the 2021 WADA Code, and this is not reflected in the reasoning of the National Anti-Doping Panel.
- Most importantly, *ADO v Z* (like the other cases referred to by the Appellant) is at odds with the clear wording of the 2021 iteration of the WADA Code and Regulation 21.3.2.3(c) ADR.

106. Accordingly, the Panel finds that the causation gateway set out in Regulation 21.3.2.2 and Regulation 21.3.2.3 ADR applies to all alleged departures relating to B Sample attendance rights.

107. In applying the causation gateway, however, the Panel must guard against setting a causation standard that is impossible to meet, to avoid rendering the B sample attendance rights a pure fiction. The Panel considers that an appropriate and practical causation standard is as follows: an athlete needs to substantiate a plausible indication of error in the B sample process that, while not observed due to the exclusion, is plausible based on other (documentary) evidence, or broader circumstances raising doubts about the specific B sample process. The Panel recognizes that this standard remains demanding insofar as the athlete is effectively prevented from observing one or more steps where an error might have occurred. Accordingly, the Panel considers it appropriate to adopt a more lenient approach towards the Athlete in assessing the degree of plausibility of an error depending on the circumstances of the case. In any event, mere speculation or hypothesis without a "plus factor" raising doubts would be insufficient.

2. Alleged breaches – ISL Article 5.3.6.2.3

108. The Panel considers that there is no dispute that Dr Catalani was not present at the following phases of the B Sample analysis:

- The initial injection of the Appellant's B Sample into the HPLC instrument on 25 October 2023;
- The chromatographic data review (i.e., the stage at which the raw instrumental output is processed, integrated, and converted into reportable delta values);
- SMRTL re-analysis of Fraction 8.

109. ISL Article 5.3.6.2.3 provides as follows:

> "*The following non-Laboratory Persons shall be authorized to attend the "B" Confirmation Procedure:*
>
> *The Athlete and/or representative(s) of the Athlete or, in the absence of the Athlete and/or representative(s), an Independent Witness:*
>
> *The Athlete and a maximum of two (2) representative(s) […] have the right to attend the 'B' Sample opening, aliquoting and resealing procedures;*
>
> *The Athlete and/or one (1) representative may also have reasonable opportunity to observe other steps of the "B" Confirmation Procedure, as long as their presence in the Laboratory does not interfere with the Laboratory's routine operations or Laboratory safety or security requirements*."

110. There is no allegation that Dr Catalani was excluded from "*attend[ing] the 'B' Sample opening, aliquoting and resealing procedures.*" The alleged exclusions relate to the "*other steps of the "B" Confirmation Procedure.*" The attendance right for the "other steps" are not absolute:

> *"Athlete and/or one (1) representative may also have reasonable opportunity to observe other steps of the "B" Confirmation Procedure, as long as their presence in the Laboratory does not interfere with the Laboratory's routine operations or Laboratory safety or security requirements*." (Emphasis added).

111. The Panel does not accept the Appellant's submission that the drafting of ISL Article 5.3.6.2.3 provides the athlete and / or representative with a "*mandatory right*" to observe the "*other steps*" of the B Sample analysis subject only to the condition that the athlete and / or representative's presence does not interfere with the laboratory's operations, safety or security.

112. First, there is a very clear distinction between the first bullet of ISL Article 5.3.6.2.3 which does refer to the "***right*** *to attend the 'B' Sample opening, aliquoting and resealing procedures*" (emphasis added) and the second bullet of ISL Article 5.3.6.2.3 which does not make any reference to the athlete having a *right* to attend the remainder of the B Sample analysis. If the drafters had intended a mandatory right to observe all remaining steps, they would have employed the language of the first bullet ("*have the right to attend*") rather than the materially different formulation "*may also have reasonable opportunity to observe*." The shift from "*right*" to "*reasonable opportunity*," and from "*attend*" to "*observe*," is deliberate and also makes sense. Sample opening, aliquoting and resealing procedures bear the danger that samples may be swapped or polluted due to unproper handling. To exclude this from happening it makes perfect sense to let the athlete or his or her representative observe these parts of the B Sample handling. The

"other steps" of the B Sample analysis are – in principle – retrievable from the Laboratory Document Package ("LDP") and, therefore, no mandatory right of attendance is needed.

113. Second, the Appellant submits that the words "*also have reasonable opportunity to*" are intended to allow for "*logistical flexibility*" insofar as those words "*refer not to whether the athlete is permitted to observe the remaining steps of the B sample analysis, but rather to how the laboratory practically facilitates that observation*".

114. Specifically, it is submitted that these allow the laboratory discretion "*in determining the appropriate time, location or method of observation — but it does not permit the laboratory to deny access altogether or to limit the observation to selected steps of the B sample analysis for reasons unrelated to interference*". It is submitted that "*the word "reasonable" qualifies the manner in which the right to observe the remainder of the B sample analysis is implemented, not the scope of the right itself*."

115. The Panel does not accept this submission. The Appellant's interpretation renders the "*reasonable opportunity*" wording otiose. If, as the Appellant contends, the scope of the right were fixed and absolute, subject only to the non-interference condition, the laboratory would necessarily have "*logistical flexibility*" as an inherent incident of that condition; attendance at an unsuitable time, or in unsuitable conditions, would cause the non-interference threshold to be met, and the laboratory could refuse attendance on that basis. On the Appellant's interpretation, the words "*reasonable opportunity*" would add nothing and would serve no independent function. An interpretation of the second bullet of ISL Article 5.3.6.2.3 which renders aspects of the drafting otiose cannot be accepted by the Panel.

116. Against this background, the Panel considers that the second bullet of ISL Article 5.3.6.2.3 confers a qualified entitlement comprising two distinct elements.

117. First, the plain and ordinary meaning of the words "*reasonable opportunity*" imports a measure of discretion on the part of the laboratory as to whether and how observation of "*other steps*" of the "*B Confirmation Procedure*" are to be facilitated, recognising that not every step in the analytical process may lend itself to meaningful observation. The phrase has to be given some meaning as distinct from the mandatory language of the first bullet ("*have the right to attend*"), and thus can only be read as indicating that the entitlement is not absolute and that the laboratory retains a degree of discretion which is limited by the threshold of reasonableness. When the threshold of reasonableness will be exceeded is context-sensitive.

118. Second, the express condition that the representative's presence must not interfere with the laboratory's routine operations, safety, or security operates as a separate and

independent ground on which the laboratory may refuse attendance altogether: where the representative's presence would so interfere, there is no entitlement to be present.

119. These two elements operate cumulatively. Whether a laboratory has complied with the provision in excluding an athlete or representative from observing "*other* steps" of the "*B* Confirmation Procedure" hence requires the Panel to undertake a two-step assessment: (1) was the athlete's representative given a reasonable opportunity to observe all other steps of the B Sample analysis; and (2) was the non-interference condition met.

3. Alleged breach - Initial injection

120. Dr Catalani's witness evidence, and testimony at the hearing, is that Dr Nair left her in the office of the laboratory, following injection of the negative control sample, and told her that he would return to collect her so that she could observe the injection of the B Sample. When Dr Nair did escort Dr Catalani back to the laboratory, the B Sample injection had already commenced in her absence.

121. At the hearing, Dr Nair gave evidence that the HPLC instrument operates as a closed, automated system: once the vials are loaded onto the instrument tray and the cover is closed, the injection sequence is controlled by the instrument software based on the pre-verified vial positions, and no visibility of which vial is being injected is possible from outside the closed instrument.

122. Dr Nair further testified that he had agreed to retrieve Dr Catalani when the B Sample injection was ready on 25 October 2023, but that in the event he retrieved her only after the injection had already commenced.

123. Dr Nair accepted in cross-examination that Dr Catalani had a right to observe the initiation of the injection sequence, and that she had missed that step because she had been left waiting.

124. Dr Trew, the Appellant's expert, opined that the injection step is "*critical*" and "*essential*" to the analytical procedure because incorrect vial placement or positioning at the point of injection could result in the wrong sample being analysed, and that "*in a laboratory where the results obtained may be used to make decisions with potentially life-changing consequences, it is of even greater importance that each result is linked to the correct sample vial by a documented, unbroken and verified chain of custody*."

125. The Respondent submitted in response that Dr Catalani had been present to observe and verify the vial positions on the tray before the HPLC cover was closed on 24 October 2023, and that her presence at the exact moment of injection on 25 October would have added no meaningful verification given the closed and automated nature of the instrument.

126. The Panel considers the following:

- Dr Catalani was present on 24 October 2023 to observe the vial placement and verification stage;
- The HPLC fractionation sequence commenced overnight;
- Dr Nair agreed to retrieve Dr Catalani when the B Sample injection was ready on 25 October 2023, but in the event Dr Nair retrieved her only after the injection had already started; and
- Dr Catalani was therefore not present at the exact moment the B Sample injection commenced.

127. On this basis, the Panel finds as follows:

- The injection of the B Sample is a step in the "*B Confirmation Procedure*" within the meaning of ISL Article 5.3.6.2.3, and falls within the category of "*other steps*" that the representative "*may ... have reasonable opportunity to observe*" which – as set out above – is further subject to the non-interference condition.
- Dr Nair agreed to accommodate Dr Catalani's request to attend the injection commencement and then failed to retrieve her as promised. The Panel therefore considers that this constitutes a departure from the "*reasonable opportunity*" afforded to the Appellant and Dr Catalani to observe "*other steps*" of the "*B Confirmation Procedure*" within the meaning of ISL Article 5.3.6.2.3. As accepted by Dr Nair, Dr Catalani was denied the opportunity to observe a step that the laboratory had agreed she could attend.
- WADA Code Article 3.2.3 and Regulation 21.3.2.3(c) ADR apply to this alleged departure. The Appellant must establish that the exclusion of Dr Catalani from observing the exact moment of injection commencement "*could reasonably have caused*" the AAF.
- To show Dr Catalani's exclusion could have reasonably caused the AAF, it must be shown that Dr Catalani's presence could reasonably have changed what was done by SMRTL and the change could reasonably have produced a negative result for 19-NA. The Panel refers in this regard to CAS 2014/A/3487, which considered the wording "*could reasonably have caused the Adverse Analytical Finding*" in 33.3(b) of the IAAF Anti-Doping Rules, and explained that:

  "*the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the IST departure and the presence of a prohibited substance in the athlete's sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible*."

- However, the Panel does not consider that the exclusion of Dr Catalani from the initial injection stage could reasonably have caused the AAF for the following reasons:
    - The evidence establishes that Dr Catalani verified the vial identity and positions on the tray on 24 October 2023, immediately before the tray was sealed and the automated sequence commenced.
    - The HPLC instrument operates in a closed, automated, and electronically controlled manner. The injection sequence is determined by the instrument software based on the vial positions as verified. The injection process was automated and documented (the instrument records the injection sequence in the LDP). The LDP was available for the Appellant's review.
    - Even if Dr Catalani had been present at the moment of injection on 25 October 2023, she would not have been able to see inside the closed instrument or verify which vial was being injected, as Dr Nair's uncontested evidence confirms.
    - The Appellant has provided no substantiation of vial mis-identification, sample mix-up, or any other plausible error in the injection process.

128. The exclusion of Dr Catalani from the initial injection stage, while a breach of ISL Article 5.3.6.2.3, does not without further substantiation render the results of the B Sample analysis invalid.

4. Alleged breach - chromatographic data review

129. The Appellant alleges a further breach of the B Sample attendance rights insofar as SMRTL refused to allow Dr Catalani to observe the chromatographic data review stage (which occurred on 26 October 2023). The data review stage is when the raw instrumental output (voltage peaks) is processed through integration software, baselines are set, peaks are accepted or rejected, and the processed data are converted into human-readable delta values.

130. In particular, Dr Catalani was not permitted to:

- observe the information displayed on the IRMS machine whilst it was running the analysis of the B Sample; and
- attend the chromatographic data review stage of the analysis, to see how the raw data was processed into values later used for data analysis and Results Management.

131. Testimony at the hearing was as follows:

- SMRTL operates a policy under which athlete representatives are excluded from:
    - Observing the instrumental data acquisition in real time whilst the IRMS instrument is running; and
    - Attending the data review stage at which the raw instrumental output is processed, integrated, and converted into reportable delta values.
- This exclusion policy was applied to Dr Catalani on 26 October 2023.
- SMRTL's justification for the exclusion was based on operational considerations (including need to avoid pressure on analysts, need to avoid distraction, resource constraints in providing "*chaperone*" support to external observers) rather than any specific allegation that Dr Catalani would interfere with the analysis or compromise safety or security.
- Dr Kuuranne testified that the data review stage is "*a lengthy and intensive task that involves the assessment of batch and sample acceptance criteria, integration of peaks from multiple sample aliquots for each target and endogenous reference compound, as well as identification measured substance on GC/MS*."
- Dr Kuuranne further testified that the presence of an external person during data review creates a risk of interference: "*there are multiple stages which require full focus on the work*" and that this stage is "*the most prone for interferences for the final stages of the process*."
- Dr Kuuranne gave an anecdotal example of a situation at another laboratory where an external representative had argued with the analyst about peak placement for an hour, causing disruption.
- She confirmed that the Lausanne laboratory does not permit athlete representatives to attend the data interpretation stage, though it does permit them to review the resulting data at the end of the session.
- Dr Nair similarly testified that SMRTL's policy of excluding representatives from the data review stage is applied uniformly to all athlete representatives regardless of expertise, and that the policy exists because "*witnesses present in laboratory aren't always familiar with these processes*" and that it "*would be a considerable investment of time to explain the type of performance occurring*."
- Dr Nair confirmed that all data produced by the instrument is included in the LDP, and that any manual adjustments to integration are clearly denoted and visible on the printed report. He confirmed that no manual adjustments were applied to the Appellant's samples.

- Mr Nekrashevich, the Appellant's expert, testified that he had attended approximately 30 B Sample analyses at WADA-accredited laboratories and had always been permitted to observe the data review stage in some form. He described three methods by which he had observed data review: (i) watching the analyst's screen in real time; (ii) reviewing the data files before the review; and (iii) reviewing the resulting printouts after the review.

- He gave evidence of one occasion at another WADA-accredited laboratory where, during data review, analysts were about to make an impermissible change to results from a previous injection, and that his presence prevented this from occurring.

- However, in cross-examination, Mr Nekrashevich confirmed that he was not alleging that any such misconduct occurred at SMRTL in the present case: "*I have no reasons to believe it happened*."

- Dr Trew similarly confirmed in cross-examination that his evidence concerning the theoretical possibility of data manipulation was speculative: "*I have no evidence to support it but I am just saying that it is possible that they could have, it could have been tampered with*."

- Dr Rivier, the Appellant's forensic toxicology expert, confirmed in cross-examination that he had not reviewed the LDP in this case and therefore could not confirm that the data presented in the LDP was the same as that produced by the laboratory instrument.

132. The Panel finds as follows:

- The chromatographic data review of the B Sample is a step in the "*B Confirmation Procedure*" within the meaning of ISL Article 5.3.6.2.3, and falls within the category of "*other steps*" that the representative "*may ... have reasonable opportunity to observe*" which – as set out above – is further subject to the non-interference condition.

- Dr Nair and Dr Kuuranne gave evidence that the presence of an external person during data review creates pressure on the analyst, risks distraction, and may lead to disruption if the external person asks questions or disputes the analyst's integration decisions.

- The Panel recalls the principles established above that exclusion from the "other steps" of the B Confirmation Procedure is possible in case of the representative's interference with the laboratory's routine operations **or** where the laboratory has exercised its discretion that a specific part of the analytical process does not lend itself to meaningful observation subject to the threshold of reasonableness. Whether the threshold has been exceeded in the matter at hand by a categorical exclusion applied uniformly to all representatives appears debatable, considering on the one hand that it appears (a) from the testimony at the Hearing

that there are only a few B Sample analyses observed each year per laboratory, which limits the practical burden on the laboratory; (b) the lack of evidence that Dr Catalani's presence would have caused disruption in this particular case; and (c) the importance of the athlete's attendance rights and on the other hand that SMRTL's policy of excluding representatives from data review forms part of SMRTL's accredited procedures, which have been audited and reviewed by WADA without finding non-compliance with ISL requirements. The Panel, however, can leave this question open, because – in any event – there is no causal link between the alleged breach (if accepted) and the AAF.

133. However, the Panel finds that the Appellant has not established that the exclusion of Dr Catalani from this stage "*could reasonably have caused*" the AAF, for the following reasons:

- The Appellant has not identified any plausible error in the data review process, any inappropriate integration setting, or any plausible irregularity in the processing of his samples. His case rests on the proposition that exclusion from data review means he cannot know whether an error occurred and therefore cannot prove causation. However, as outlined above, mere speculation that an error might have occurred is insufficient; what is required is substantiation of plausibility of an error. This is, in principle, possible – an athlete who is excluded from data review can still:
    - Review the LDP and identify any irregularities or inconsistencies;
    - Retain expert advisers to review the documented data and identify potential errors or questionable decisions;
    - Point to specific aspects of the data processing that appear problematic or inconsistent with standard procedures;
    - Adduce evidence (as Mr Nekrashevich did) of errors that have occurred at other laboratories during unsupervised data review stages, and demonstrate – beyond speculation – how it is that similar errors could plausibly have occurred in his case.
- The Panel acknowledges that certain types of errors, such as inappropriate manual integration adjustments that are not recorded or are recorded in a manner that does not reveal their inappropriateness, may be difficult to detect from the LDP alone.
- However, the Panel considers that this difficulty does not render the causation standard impossible to meet; it requires that the athlete marshals the available evidence (including expert analysis of the documented data, comparison with standard procedures, and any other relevant circumstances) to establish that a departure could reasonably have caused the AAF. The standard requires

substantiation of plausibility of an error. What the athlete cannot do is rely on purely speculative assertions that something might have gone wrong without any substantive basis for that assertion.

- The Panel has reviewed the evidence concerning the data processing in the Appellant's case. Dr Nair testified that default integration settings were used, that no manual adjustments were applied to the Appellant's samples, and that all procedures were followed in accordance with SMRTL's standard operating procedures. The LDP was provided to the Appellant and was reviewed by his expert advisers. No specific errors or irregularities have been identified.

- Mr Nekrashevich gave evidence of one occasion at another WADA-accredited laboratory where errors were about to occur during data review and his presence prevented them. This evidence demonstrates that errors can occur during data review. However, it does not establish that errors did occur, or could reasonably have occurred, in the Appellant's case at SMRTL. Each case must be assessed on its own facts.

- The Panel further notes that Dr Rivier confirmed in cross-examination that he had not reviewed the LDP in this case and therefore could not confirm that the data presented in the LDP was the same as that produced by the laboratory instrument — a concession that significantly limits the weight to be given to his opinion that the data review stage should have been observed.

- The Panel also notes that Dr Trew confirmed in cross-examination that his evidence concerning the theoretical possibility of data manipulation was speculative and that he had no evidence to support it.

134. The exclusion of Dr Catalani from the chromatographic data review, while a breach of ISL Article 5.3.6.2.3, does not without further substantiation of a plausible error render the results of the B Sample analysis invalid.

5. Alleged breach – exclusion from re-analysis of Fraction 8

135. The Appellant submits that SMRTL re-analysed Fraction 8 after Dr Catalani had been told to leave the laboratory on 26 October 2023; that the B Sample LDP presented the re-analysis result for Fraction 8 in place of the original result; and that neither the Appellant nor Dr Catalani were informed in advance that a re-analysis would occur.

136. Dr Nair gave detailed evidence concerning the re-analysis of Fraction 8:

- He explained that during method validation, SMRTL evaluates a range of signal intensities within which the instrument produces consistent and repeatable isotope values (the "validated linearity range").

- WADA Technical Document TD2021NA ("TD2021NA") Article 2.3 expressly provides that "*No value obtained from any peaks of intensity below or above the validated linearity range of the instrument or in the presence of significant co-eluting peaks shall be considered or reported*."

- Dr Nair testified that when the data from the original Fraction 8 injection was reviewed, it was found that the signal was higher than the validated linearity range and therefore invalid.

- SMRTL accordingly re-analysed Fraction 8 at a lower injection volume, in accordance with laboratory protocol.

- The re-analysis was performed by an auto-sampler machine, and the vial remained in its original position on the instrument until the analysis was complete. In other words, a smaller volume of Fraction 8 was injected into the instrument from the same vial as the previous (invalid) Fraction 8 analysis.

- The re-analysis result fell within the validated linearity range and was included in the LDP.

- Dr Nair confirmed that SMRTL maintained records and documentation of both the original injection and the re-injection, which were produced during the proceedings.

137. The Appellant's case on this issue was therefore not that the re-injection itself was impermissible, but rather that Dr Catalani should have been notified and given the opportunity to attend it.

138. It is alleged that Fraction 8 was one of the two endogenous reference compounds ("ERCs") required for reporting an AAF (because the 19-NA concentration was below 15 ng/ml, TD2021NA requires two valid ERC comparisons). The re-analysis was therefore outcome-determinative, and Dr Catalani should have been notified and given the opportunity to attend.

139. The Panel finds that Dr Catalani was not informed in advance that a re-analysis would occur and was not given an opportunity to attend it.

140. The Respondent's position is that:

- The original Fraction 8 result was invalid under TD2021NA Article 2.3 (outside linear range) and SMRTL was required by the Technical Document not to report an invalid result;

- SMRTL re-analysed Fraction 8 to obtain a valid result, in accordance with standard procedures;

- The re-analysis was a necessity arising from the invalidity of the original result;
- There was no obligation to notify Dr Catalani of the re-analysis because it occurred as part of the standard analytical workflow to address an invalid result.

141. The Panel finds as follows:

- ISL Article 5.3.6.2.3 does not expressly address re-analysis or repeat injections. The provision requires attendance at "*opening, aliquoting and resealing*" and reasonable opportunity to observe "*other steps*" of the confirmation procedure, subject to non-interference.
- The Panel considers that re-analysis of a fraction is an "*other step*" within the meaning of ISL Article 5.3.6.2.3. The Panel must therefore consider whether the laboratory breached ISL Article 5.3.6.2.3 in not providing Dr Catalani the reasonable opportunity to attend and observe the Fraction 8 re-analysis.
- Re-injection or re-analysis of fractions that yield invalid results (e.g. outside linear range, insufficient signal, contamination) is a routine part of IRMS analysis – the Panel was referred to ISL Article 5.3.6.2.3 in this regard. Analysts regularly need to repeat injections at different volumes or with different parameters to obtain valid results.
- However, the fact that re-analysis of a fraction is a routine part of IRMS analysis does not justify denying Dr Catalani the reasonable opportunity to attend that step.
- Furthermore, the Panel acknowledges that the re-analysis of Fraction 8 was of particular significance in this case, because Fraction 8 was one of only two ERCs required for reporting the AAF under TD2021NA (given that the 19-NA concentration was below 15 ng/mL).
- The outcome-determinative nature of the re-analysis in this case is a factor that weighs heavily in favour of providing the athlete's representative with notice and an opportunity to attend.
- Dr Catalani had been permitted to observe the original analysis of fractions of the B Sample (including of Fraction 8). The Panel considers this is indicative that SMRTL ought to have considered (or did consider) that Dr Catalani's attendance should have been given a reasonable opportunity to attend the re-analysis.
- Although the Panel heard submissions and testimony that attendance rights at a re-analysis engage the practical reality that laboratories cannot always predict in advance which re-analyses will prove outcome-determinative, or the possibility of notice and attendance for repeat injections could disrupt laboratory workflow,

the Panel considers such countervailing factors must be given limited weight (if any).

- On this occasion, no attempt was made to give the Appellant or Dr Catalani notice of the re-analysis or to provide a reasonable opportunity for attendance at the re-analysis.

- While the existence of a re-injection would have been a fact comprehensible from the LDP (on the basis that the numbering and timing of the injection and analysis of Fraction 8 was out of sequence and hence indicated the re-injection), the Panel considers this to be of limited relevance to the assessment of breach. The LDP is prepared and delivered only after the re-analysis takes place. The re-analysis can only be ascertained after-the-fact.

- The Panel therefore finds that SMRTL's re-analysis of Fraction 8 in Dr Catalani's absence, and without advance notice, constituted a breach of ISL Article 5.3.6.2.3.

142. However, the Panel considers that the Appellant has not established the required causation (as required under WADA Code Article 3.2.3 and Regulation 21.3.2.3 ADR) for the following reasons.

- The Appellant submits that "*but for the result of the re-analysis of Fraction 8, SMRTL could not have reported an AAF in respect of Mr Vui's Sample (as is not disputed by SMRTL). In other words, the re-analysis of Fraction 8 of the B Sample, performed in the absence of Mr Vui's representative, caused the AAF*." However, this is not the correct counterfactual against which the causation analysis must be considered.

- Causation under WADA Code Article 3.2.3 and Regulation 21.3.2.3 ADR will only be established where it is shown that the exclusion of Dr Catalani could have reasonably caused the AAF.

- The fact that the re-analysis was outcome-determinative (in the sense that without it, no AAF could have been reported) does not establish that the absence of Dr Catalani's observation "*could reasonably have caused*" the AAF but the outcome-determinative nature of the step is taken into account in the assessment of the degree of plausibility of an error that ought to be indicated.

- However, the Appellant has not identified any plausible error in the re-analysis nor raised any doubts about the reliability of the re-analysis. Mere speculation or hypothesis is simply insufficient to satisfy the causation requirement.

143. Accordingly, the Fraction 8 re-analysis claim is dismissed.

6. Overall conclusion on B Sample attendance rights

144. In conclusion, the Panel finds that none of the alleged B Sample attendance exclusions, while highly regrettable, could reasonably have caused the AAF. Accordingly, the exclusions do not invalidate the B Sample results.

145. For completeness, and without prejudice to the finding at para. 145, while the Panel did not find that the B Sample attendance exclusions led to the ADRV in this case, the violations were nonetheless troubling to the Panel, which deliberated on this issue exceptionally. Laboratories would be well-advised to follow B sample testing standards, to avoid questions about the integrity or reliability of the process or potential violations so prevalent so as to lead another panel to reduce the sanction on that ground alone.

D. Overnight handling of B Sample fractions

146. The Appellant alleges that B Sample fractions were left overnight in the IRMS instrument tray without tamper-proof seals and without being placed in a lockable area, and that this constitutes a break in the chain of custody rendering the results invalid.

147. The Panel notes that ISL Article 5.3.4 addresses the chain of custody and requires that samples and aliquots be stored securely and that custody be documented. The ISL does not prescribe specific requirements for individual sealing of aliquots or fractions during instrumental analysis. The relevant question under ISL Article 5.3.4 is whether the fractions were maintained in conditions that ensured their integrity and security throughout the analytical process.

148. The Respondent's position is that the fractions remained on the IRMS instrument in a secure laboratory environment with keycard access, that the overnight handling was consistent with SMRTL's accredited procedures, and that sample integrity was not compromised.

149. At the hearing, Dr Nair gave evidence that the fractions were left on the IRMS instrument tray overnight because the instrument was still acquiring data for other samples and would not have finished until approximately 1 am, making it impractical to remove the fraction tubes from the instrument mid-run.

150. He testified that the fractions remained in exactly the same positions in which they had been collected, ensuring that the chain of custody was intact and that the laboratory had complete control of the sample location.

151. He further testified that the laboratory environment is a secure controlled zone with keycard access restricted to authorised personnel.

152. Dr Nair confirmed that, at Dr Catalani's request, SMRTL placed stoppers on the fraction tubes, which he described as exceeding the requirements of SMRTL's standard operating procedure.

153. Dr Kuuranne gave testimony that, assuming the instrument tray is within the controlled zone of the laboratory, the integrity of the samples was respected, and that anabolic steroids are not volatile, making the risk of cross-contamination very low. Rather, it was explained that further covers or seals – as were requested by Dr Catalani – could create contaminants that would upset the validity of the samples.

154. She further noted that the batch included positive and negative quality controls to monitor different stages of the process.

155. Dr Trew, the Appellant's expert, opined that the chain of custody was broken by the failure to apply tamper-proof seals to the fraction vials overnight, and that "*a sample shall be demonstrably secure from tampering from its entry to the laboratory until it leaves the laboratory*."

156. However, in cross-examination, Dr Trew confirmed that he had not looked at either the WADA Code or the ISL in preparing his report, and that his opinion as to the possibility of tampering by laboratory staff was speculative insofar as no specific allegations were made.

157. The Panel is convinced by the evidence of Dr Nair and Dr Kuuranne on this issue and finds that the overnight handling was consistent with SMRTL's accredited procedures and did not compromise the integrity of the B Sample fractions, for the following reasons:

- The fractions were at all times within the secure laboratory environment.
- The IRMS instrument tray is not designed to accommodate individual tamper-proof seals for each vial whilst the instrument is in operation.
- The overnight handling was part of the normal analytical sequence for IRMS analysis.
- The Appellant has not identified any specific risk of tampering or contamination, nor any evidence that tampering or contamination actually occurred.

158. It is for the same reasons that, even if the overnight handling amounted to a departure from best practice or ISL Article 5.3.4, the Panel considers that the Appellant has not established that the overnight handling could reasonably have caused the AAF (so as to rebut the presumption that SMRTL complied with the ISL).

159. The overnight handling claim is therefore dismissed.

E. Transparency and ISO/IEC 17025 compliance

160. It is submitted by the Appellant that compliance with ISO/IEC 17025 is required by the ISL, and that these "*standards act as mandatory procedural safeguards, without which there could be no confidence or credibility in doping control, and no athlete could legitimately be sanctioned for the presence of a Prohibited Substance in their sample (as there would be no reliable evidentiary basis on which to do so)*."

161. The Appellant refers to ISL Articles 4.4.2.1 and 5.1.

162. ISL Article 4.4.2.1 provides as follows:

"*Maintain ISO/IEC 17025 Accreditation*

The Laboratory shall maintain accreditation to ISO/IEC 17025, with primary reference to the analysis of Samples (Section 5.0), granted by a relevant Accreditation Body, which is an ILAC full member and signatory to the ILAC MRA for testing activities as defined in ISO/IEC 17025."

163. ISL Article 5.1 provides as follows:

"*Introduction and Scope*

This section of the ISL is intended as an extension of the application of ISO/IEC 17025 to the field of Doping Control. Any aspect of Analytical Testing or management not specifically discussed in this document or in the relevant Technical Documents, Technical Letters or Laboratory Guidelines shall be governed by ISO/IEC 17025 (or ISO 15189, as applicable for ABP Laboratories). The application focuses on the specific parts of the processes that are critical with regard to the quality of the laboratory's performance as a Laboratory or ABP Laboratory, and are therefore significant in the evaluation and accreditation process.

This section introduces the specific performance standards for a Laboratory or ABP Laboratory, as applicable. The conduct of Laboratory Analytical Testing is considered a process within the definitions of ISO 17000. Performance standards are defined according to a process model where the Laboratory practice is structured into three (3) main categories of processes:

- Structural and Resource Requirements,

- Process Requirements,

- Management Requirements."

164. The Panel considers that neither of these provisions, nor cases CAS 2009/A/1752 and *ADO v Z* (upon which the Appellant also relies, those cases being decided upon concepts of procedural fairness), supports the assertion that the requirements in ISO/IEC 17025 vis-à-vis reporting the re-analysis of Fraction 8 are mandatory under the ISL (or otherwise).

165. The Appellant alleges that SMRTL's failure to record in the LDP (as initially provided) that the original Fraction 8 analysis was performed and was determined to be invalid constitutes non-conformity with ISO/IEC 17025 requirements and undermines transparency.

166. The Respondent's position is that TD2021NA Article 2.3 required SMRTL not to report the original Fraction 8 result because it was outside the linear range, and that disclosure in any event occurred during the proceedings.

167. At the hearing, Dr Rivier confirmed in cross-examination that he had not reviewed the LDP in this case and therefore could not confirm that the data presented in the LDP was the same as that produced by the laboratory instrument.

168. Dr Rivier further confirmed that it was "*entirely correct not to report first result because it was outside the linearity range*" and that the laboratory "*did correctly*" perform the re-injection.

169. Dr Trew, in cross-examination, confirmed that he is not an expert in anti-doping regulations and had not addressed the applicable WADA Technical Documents in his report. He disagreed with the Respondent's position that it was correct not to report a result outside the linearity range under TD2021NA Article 2.3, but acknowledged that his opinion was based on ISO/IEC 17025 principles rather than the specific anti-doping regulatory framework.

170. The Appellant's case on transparency is therefore that, notwithstanding the requirement in TD2021NA Article 2.3 not to report the invalid result, SMRTL was nonetheless required to disclose in the LDP that the original analysis had occurred and had been determined to be invalid, under the ISO / IEC Requirements (which the ISL requires compliance with as the ISO / IEC Requirements are "*mandatory safeguards*").

171. The Respondent submits that TD2021NA Article 2.3 mandates non-reporting of the invalid result, and that the existence of the re-analysis was ultimately disclosed during the proceedings, enabling the Appellant to raise and argue the issue.

172. The Panel recalls that TD2021NA Article 2.3 provides as follows:

> "*No value obtained below or above the linearity range of the instrument ... shall be considered or reported*."

173. The Panel considers that the provision clearly requires laboratories not to report results that are outside the linear range. It is not clear from Dr Trew's report or the Appellant's submissions how SMRTL's compliance with TD2021NA would amount to a breach of the ISO/IEC Requirements, good laboratory practice, or in any way constitute non-permitted tampering.

174. Furthermore, the Panel considers there to be a distinction between: (a) the obligation not to report an invalid result (which TD2021NA Article 2.3 clearly imposes, and which SMRTL complied with); and (b) the 'requirement' described in Dr Trew's report to "*provide output that is not misleading, is complete, and contains all information on which an interpretation might be made and, in addition, obliges a laboratory to disclose all of its results*."

175. The latter 'requirement' is said to amount to a breach of Clause 4.9 of the ILAC Requirements. However, as Dr Trew notes, these are characterised as "*guidelines*" or "*guidance*".

176. While the Panel considers that guidance must generally be followed, it must remain open to laboratories to depart from such guidance for good reason. The guidance would otherwise be indistinguishable from a mandatory rule. One potential reason for departure from guidance could be a laboratory's compliance with a conflicting mandatory obligation.

177. In any event, the Panel finds that Appellant's allegation is one of transparency; even if a deviation from ISL were shown, no evidence or submissions have been made as to how the lack of transparency could reasonably have caused the AAF.

178. This aspect of the Appellant's appeal is therefore also dismissed.

F. Prejudice from delay in notification and results management

179. The Appellant alleges that he was notified of the AAF 57 days after sample collection (1 August to 27 September 2023), which exceeded: (i) the 20-day deadline for reporting A Sample analysis under ISL Article 5.3.8.4; (ii) the requirement of immediate transportation (and in any event transportation no later than seven days from collection) in Chapter 15 of the WADA Sample Collection Guidelines; and (iii) the requirement of samples being transported as soon as possible (under Article 9.3.2 ISTI).

180. The Appellant claims that this delay prejudiced his ability to preserve and test supplements, thereby prejudicing his ability to establish a contamination source and, therefore, the alleged ADRVs must be dismissed. In the alternative, it is submitted a less stringent approach to the question of source or sanction must be taken.

181. The Respondent's position is that the delay was not excessive or unreasonable in the circumstances, that ISL timeframes are guidelines rather than strict deadlines, and that the Appellant has not established actual prejudice.

182. ISL Article 5.3.8.4 provides as follows:

"*Reporting of "A" Sample results* [by the laboratory] *should occur in ADAMS within twenty (20) days of receipt of the Sample*".

183. The Panel also considers this to be a non-mandatory requirement, insofar as the word "should" is used, whereas elsewhere in ISL Article 5, the drafter uses "shall" – which the Panel takes to mean a decision was taken as to the meaning of ISL Article 5.3.8.4.

184. The relevant passage of Chapter 15 of the WADA Sample Collection Guidelines provides as follows:

"*Samples must always be transported to the Laboratory that will be analyzing the samples using the TA/SCA's authorized transport method, as soon as possible after the completion of the sample collection session. If for any logistical reasons the immediate transportation of urine sample is not possible, such transportation should occur no later than seven days from the date of collection*."

185. Article 9.3.2 ISTI provides as follows:

"*Requirements for Transport and Storage of Samples and Documentation*

[…]

Samples shall always be transported to the Laboratory that will be analyzing the Samples using the Sample Collection Authority's authorized transport method, as soon as possible after the completion of the Sample Collection Session. Samples shall be transported in a manner which minimizes the potential for Sample degradation due to factors such as time delays and extreme temperature variations."

186. The Sample was collected on 1 August 2023, and arrived at SMRTL on 16 August 2023. The delay in shipping was apparently due to doping control staff being "*a little lax with timeframes*." The Panel does not consider this to be an appropriate justification from departing from the WADA Sample Collection Guidelines or Article 9.3.2 ISTI.

187. The results were reported on ADAMS on 26 September 2023 (41 days after the Sample arrived at SMRTL). There is therefore a delay of 21 days in reporting the A Sample, under ISL Article 5.3.8.4.

188. The Appellant was notified of the AAF on 27 September 2023 (57 days post-collection; 42 days after the Sample arrived at SMRTL).

189. CAS jurisprudence recognises that in some rare cases significant delays can lead to reduction of sanctions. The Panel is also aware that in extreme cases a dismissal of charges was contemplated by panels. Any of the above requires, however, that a delay in the proceedings have put the athlete in a position of significant evidentiary hardship ("Beweisnotstand"). In order to assess whether this is the case, the non-mandatory deadlines in the WADA Sample Collection Guidelines or ISTI are not particularly helpful, because they have not been drafted to take account of the evidentiary situation of the parties involved. These deadlines are not intended to advise or enable an athlete to collect, record or register evidence. Thus, whether there is a case of Beweisnotstand is to be assessed based on general procedural principles and independently of the above provisions providing for deadlines for analysis of a sample or notification of an AAF.

190. The Panel notes that – in Swiss procedural law – on which the Panel falls back to fill a procedural lacuna within the meaning of Article 182 (3) of the Swiss Private Internal Law Act, the allocation of the burden of proof is based on considerations of equity or expediency, as well as on the principle of the protection of legitimate expectations, the typical proximity to the evidence, and the clarity of the legal situation. The burden of proof – based on these criteria – is also meant to apply in cases where there is hardship. More particularly, under Swiss law, there is no general rule that, in cases of evidentiary hardship, the burden of proof must be reversed in an individual case, nor is there a rule that the standard of proof should be lowered in such circumstances. Nor does evidentiary hardship exempt a party from liability. An exception is discussed for situations in which the evidentiary hardship is significant and results from the opposing party's obstruction of evidence, namely where that party, in breach of its duties, fails to create evidence before or during the proceedings, or unlawfully and culpably destroys, manipulates, or otherwise withholds it from the opposing party. In the case at hand World Rugby did not engage in any such activity. The evidentiary hardship for the Player in this case was not caused by the delays in the proceedings, but by the Athlete not recording and collecting necessary evidence in his sphere of control.

191. In any event to accept significant evidentiary hardship, the threshold is set high:

- In CAS 2024/A/10647, notification of an ADRV some 79 days after sample collection was said by the athlete to have caused prejudice and – as the Appellant submits in this case – impacted the athlete's ability to identify products which may have been contaminated, as the athlete had not retained the original batch of many of the medicines which she took. The Panel had no regard to this delay in finding that the athlete had not discharged the burden to establish the source of a prohibited substance in her sample. The period of ineligibility was, however, backdated, given the substantial delays which occurred in the athlete's

proceedings (most of which were following the notification of the ADRV) which were not attributable to the athlete.

- In *FINA v Palmer*, the FINA Doping Panel found the athlete was prejudiced by delay of *twenty months* between sample collection and notification of an AAF. The FINA Doping Panel accepted the athlete's submission that the failure to notify the athlete of the AAF for such an extended period undermined the athlete's ability to meet the threshold burden of establishing how the *specified* substance entered her body. The requirement to prove how the substance entered the athlete's body was "*excused in these extraordinary circumstances where the anti-doping organization with results management responsibility knew that there was a positive drug test and still waited over 20 months to notify the athlete of the positive test*." A reprimand and no period of ineligibility was imposed.

- In CAS 2009/A/1782, there was a delay of *over six months* between sample collection and questions by the anti-doping organisation, including as to when the athlete had urinated prior to providing his sample, and when he had used his inhaler prior to the sample. The Panel found (at paragraph 55) that such a long period was "*unacceptable*" and that "*the Player was not in the position to answer to such questions precisely, because of ITF's fault and was therefore deprived of the right to fair evidence proceedings, which emerges from the right to be heard, the right to a fair trial and the principle of equal treatment, which are fundamental and which were disregarded in the present case*." A reprimand and no period of ineligibility was imposed.

- In CAS 2012/A/2922, the Panel found "*significant flaws*" in the case against the athlete meant that he was "*disabled from preparing an effective defence by reason of denial of sight of the relevant documents*". There were also issues which led to the relevant laboratory being deprived of its WADA accreditation. Amongst those issues were that the athlete faced a delay of *over four and a half months* between sample collection and notification, and *over eight months* between sample collection and the first opportunity to make his defence. The athlete received the A Sample ADP only after proceedings were commenced at the CAS. The presumption that WADA accredited laboratories have conducted analyses and procedures in accordance with International Standards was rebutted and the ADRV was not established to the comfortable satisfaction of the Panel.

192. The Panel finds that the delay in this case, whilst regrettable and in excess of the ISL guideline, does not warrant dismissal of the charges or reduction of the sanction, because the delay was of limited prejudicial effect (if any). This reflects the following considerations:

- The delay in this case is several orders of magnitude less serious than those in cases where unjustified delays caused prejudice to an athlete's defence and led to a dismissal of charges or reduction of sanction. The closest comparator is CAS

2024/A/10647, where the delay (79 days between sample collection and athlete notification) appears to have been given no weight by the Panel, which concluded that the athlete had not discharged the burden on her to establish the source of the prohibited source in her sample. This was notwithstanding the athlete's submission that the delay prevented her from searching for the source of the AAF.

- There is no reason to believe that the delay caused the Appellant any prejudice.
    - Appellant failed to record what supplements he was taking prior to sample collection.
    - The supplements that would have been used by the Appellant and the Samoa team were in any event used by "*around the end of August 2023*" (i.e., prior to the deadline for SMRTL to report the results of the A Sample).
    - The Appellant's submissions that he would have been able to test products had he been notified sooner are therefore dismissed as, on the Appellant's own evidence, those supplements would have been consumed before the deadline for notification (and hence would not have been available for testing).
    - In light of this, and as he failed to maintain a record of the supplements he was taking, had he been notified of the results of the A Sample sooner, he would in any event be in the position in which he was left here.
    - In relation to the Appellant's submission that, absent delay, the Appellant and those assisting him would have a better chance of remembering crucial information, the Panel finds that the limited nature of the delay cannot credibly be said to have caused memories to fade in a meaningful way.
    - The Panel therefore agrees with the Respondent's submission that the delay cannot have caused the Appellant to suffer actual prejudice.

193. The delay claim is therefore dismissed.

G. Assessment of the alleged ADRVs

194. The Panel has found that none of the alleged procedural breaches invalidates the B Sample results. The B Sample analysis conducted at SMRTL from 24-27 October 2023 confirmed the presence of 19-norandrosterone (a metabolite of nandrolone, a prohibited anabolic steroid) in the B Sample, consistent with the A Sample finding.

195. Regulation 21.2.1 ADR provides that it is an anti-doping rule violation for a prohibited substance or its metabolites or markers to be present in a player's sample.

196. The Panel finds that the Respondent has established to the comfortable satisfaction of the Panel that 19-NA was present in the Appellant's urine sample collected on 1 August 2023. The A Sample analysis and B Sample confirmation analysis (both conducted by a WADA-accredited laboratory using validated analytical methods) provide clear and reliable evidence of presence.

197. The ADRV under Regulation 21.2.1 ADR (Presence) is therefore established.

198. Regulation 21.2.2 ADR provides that it is an anti-doping rule violation to use or attempt to use a prohibited substance or prohibited method. The presence of 19-NA (a metabolite of nandrolone) in the Appellant's sample establishes that nandrolone or a nandrolone precursor entered his body.

199. The ADRV under Regulation 21.2.2 ADR (Use) is therefore established.

H. Intentionality and Source

200. Having found that the ADRVs are established, the Panel must address the issues of source and intentionality, which determine the applicable period of ineligibility.

201. Regulation 21.10.2.1 ADR provides for a four-year period of ineligibility for ADRVs involving prohibited substances that are not Specified Substances (19-NA is a non-Specified Substance), unless the athlete can establish that the ADRV was not "*intentional*".

202. "*Intentional*" is defined in Regulation 21.10.2.3 ADR as follows:

> "*As used in Regulation 21.10.2, the term "intentional" is meant to identify those Players 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance*."

203. The Panel considers the test for intention is as applied in CAS 2017/A/5016 & 5036, which is whether the athlete has "*proven, by a balance of probabilities, that he did not engage in a conduct which he knew constituted an anti-doping rule violation or knew*

that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk".

204. The comment to Article 10.2.1.1 of the WADA Code (the equivalent provision to Regulation 21.10.2.1 ADR) provides as follows:

"*While it is theoretically possible for an Athlete or other Person to establish that the anti- doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance*."

205. This is an articulation of the strict approach taken in CAS jurisprudence, in which it has been found that a lack of intent can be established without establishing the origin of the prohibited substance, although only in the rarest of circumstances. The articulation of this approach is as follows:

- In CAS 2016/A/4534, the Panel held (at paragraph 37) that "*[w]here an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him*" (emphasis added).

- In CAS 2016/A/4919, the Panel concluded (at paragraph 66) that "*while this Panel assumes in favour of the Athlete that he does not have to necessarily establish how the prohibited 19-NA entered his system when attempting to prove on a balance of probability the absence of intent, in all but the rarest cases the issue is academic*."

206. It is submitted by the Appellant that he can rebut the presumption of intent by proving (on the balance of probabilities) that the source was inadvertent contaminated supplement ingestion.

207. He further submits that if he establishes source and rebuts intent, he may be entitled to further reduction under Regulation 21.10.6 ADR, which would permit reduction of the two-year period to a range between one and two years.

208. Regulation 21.10.6.1 ADR provides as follows:

"*21.10.6.1.1 Specified Substances or Specified Methods*

Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Player or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Player's or other Person's degree of Fault.

21.10.6.1.2 Contaminated Products

In cases where the Player 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 Player or other Person's degree of Fault."

209. The burden is on the Appellant to prove the source and to rebut intent, on the balance of probabilities. The Panel recalls that the balance of probability is a standard which entails the athlete having the burden of showing that the occurrence of the circumstances on which the athlete relies is more probable than their non-occurrence (CAS 2022/A/8970).

210. In CAS 2023/A/9916, the Panel confirmed that "*[n]umerous CAS cases confirm the same approach… As the analysis of these cases reveal, protestations of innocence and speculations do not suffice and the [rules] and case law are aligned to require specific, concrete evidence from the concerned athlete about the origin of the Prohibited Substance detected in his/her body*."

211. In CAS 2017/A/5016 & 5036, the Panel held (at paragraph 124) that "*the Athlete, even though he is not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the anti-doping rule violation and his behaviour, that specific circumstances exist disproving his intent to dope,"* and further (at paragraph 125) that *"an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF [...] and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent*."

212. In CAS 2023/A/9337, the Panel noted that the proof of origin of the prohibited substance is a "*crucial, almost indispensable element for an athlete to disprove intent*" and held (at paragraph 76) that "*the explanations put forward by the Appellant as to the presence of the Prohibited Substance are limited to mere theoretical possibilities, which have not been linked to definite circumstances that are particular or specific to this case*."

213. In short, in the words of the Panel in CAS 2014/A/3820, "*an athlete must provide actual evidence as opposed to mere speculation*" (Paragraph 80).

214. Moreover, the Panel recalls the analysis in CAS 2021/A/7579 & 7580:

"*Although this remains an area where the jurisprudence at present appears unsettled, there is at least clear consensus at the following level of generality: speculations, declarations of a clear conscience, and character references are not sufficient proof. It is an unacceptable paradox to posit, as the Appealed Decision apparently does, that the effect of the apparent unavailability of "reliable, relevant scientific" (i.e. objective and*

probative) evidence is to give the Athlete the same benefit as if she had found and presented it." (Paragraph 133)

"*As certitude with respect to the source of contamination decreases, so the Athlete's chances of prevailing depend on a counterbalancing increase of the implausibility of bad motive and negligence. The doping hypothesis must no longer (on balance) make sense in all the circumstances, and the charge of recklessness must (on balance) be overcome*." (Paragraph 155)

"*It should be clear from what has already been observed above that the present Panel is disinclined to give weight to uncorroborated assertions of the accused and persons close to him or her. The point is made often enough: denials and protestations of innocence are the common coin of the guilty as well as the innocent*." (Paragraph 172).

215. The Appellant made a number of submissions in this regard, and an abundance of evidence was submitted, including evidence on doping practices, hair analysis, supplement testing, character evidence and polygraph testing. This evidence is assessed as follows.

1. The Appellant's supplements use and testing

216. The Panel received factual evidence from the Appellant, Mr Edgar, and Mr Lam concerning supplements use during the Samoa training camp. This evidence also spoke to the Appellant's character in particular vis-à-vis anti-doping obligations.

- The Appellant testified that he had used supplements from Body Science during the training camp in Samoa in July and August 2023, those supplements having been provided to him by Samoa Rugby Union.

- The Appellant's evidence is that he used (or may have used) up to 35 supplement products in Samoa in the period shortly before sample collection (July-August 2023). These were largely provided by the Samoa national team.

- The Appellant confirmed that he had not kept a written record of which supplements he was taking, and that the list of supplements set out in Annex 2 to his witness statement had been compiled with reference to the list of supplements provided by Mr Edgar rather than from his own independent recollection.

- None of the tested supplements (eight products) contained detectable nandrolone or nandrolone precursors.

- The Appellant submits this cannot rule out contamination because only eight of approximately 35 products were tested, and most were replacement stock rather than the original containers. It was submitted that the delay in the reporting of

his A Sample prejudiced the Appellant's ability to consider the other supplements.

- The Appellant testified that he had not disclosed any supplements on his doping control form because he "*just wanted to get out of there*" after a stressful and disruptive sample collection experience.
- In cross-examination, the Player confirmed that he had been tested on nine previous occasions and had disclosed supplements and medications on previous DCFs, and that he was aware of his obligation to disclose.
- The Appellant's evidence is that pharmaceutical, meat, and environmental routes of exposure were investigated without identifying any links.
- The Appellant has been steadfast that he has never knowingly used nandrolone or any other nor-steroid.
- Mr Edgar confirmed that no written record was kept of which supplements individual players were using during the training camp, and that he could not say with certainty which supplements the Appellant had used. He confirmed that the supplements had been used up by the end of August 2023.
- Mr Lam confirmed that records were kept of which supplements players used at Bristol Bears and that, while the Appellant took supplements while at the training camp with Samoa, he did not normally use supplements with his club.
- Mr Lam and Mr Edgar testified to the Appellant's integrity and diligence in relation to his anti-doping obligations.
- [redacted]

2. Polygraph evidence

217. The Appellant further relied on the results of a polygraph test, as administered and described in the report of Dr Ashcroft, as corroborative evidence of credibility and lack of intent.

218. The Appellant was asked the following questions, and gave the following answers:

"*R1. Have you ever knowingly taken any Norsteroid?*

Answer: No.

R2. Have you ever purposefully administered any Norsteroid to yourself?

Answer: No.

R3. Have you ever deliberately taken any Norsteroid?

Answer: No."

219. Dr Ashcroft's analysis based on the Appellant's test scores in the polygraph examination indicated "*a 95% likelihood that the posterior odds of truthtelling exceed the prior odds*." A further analysis was carried out using a statistical algorithm. This resulted in "*statistically significant scores indicative of NO DECEPTION INDICATED to the pertinent questions*."

220. It was explained in Dr Ashcroft's report that "*The statistical probability that Mr Vui's test data were produced by a deceptive person is approximately less than one per cent (p-value <0.003) or about less than one in a hundred*."

221. The Respondent submits that the polygraph evidence amounts to protestations of innocence and ought to be given limited weight.

222. The Panel recalls cases CAS 2011/A/2384 and CAS 2011/A/2386, in which the Panel took "*good note of the fact that the results of the polygraph corroborate Mr Contador's own assertions, the credibility of which must nonetheless be verified in light of all the other elements of proof adduced. In other words, the Panel considers that the results of the polygraph add some force to M Contador's declaration of innocence but do not, by nature, trump other elements of evidence*."

223. The Panel was also taken to cases CAS 2020/A/6695 & 6700 & 7386 which found as follows:

"*the Panel considers that Dr Ashcroft's evidence in respect of the polygraph examination results adds force to Ms Walker's declarations of innocence concerning the intentional taking of cocaine but, as stated, that evidence is not decisive in that regard and must yield, if there is persuasive objective evidence to the contrary*" (Paragraph 263).

224. The Panel was further taken to CAS 2019/A/6313:

"…*More to the point, the Panel finds that the polygraph evidence before it here - explained in the expert evidence provided by Mr. Shull in his affidavit, on which he was examined at the hearing - is at the very least sufficiently credible to warrant that it be taken into consideration, as supporting the Panel's assessment of [the athlete's] credibility in denying any intentionally doping*." (Paragraph 88).

225. The Panel recalls CAS 2016/A/4534, in which it was explained (at paragraph 46) that:

"*while CAS Panels may have previously found polygraph evidence to be admissible, such evidence is of limited value. Moreover, the cost involved is disproportionate to any probative value of such test. If, in the future, it were not, as a matter of practice to be entertained by CAS panels, this would have the beneficial consequence that an athlete could not be criticized for failure to submit to such tests as a means of seeking to show lack of intent*."

226. The Panel has also considered CAS 2020/A/9551, in which the mixed treatment of polygraph evidence was summarised as follows:

"*As regards the polygraph tests, the Panel notes that in the light of the Swiss Federal Tribunal and CAS jurisprudence, they are often considered to be inadmissible or mere statements (see e.g. SFT 6B_663/2011 para 1.3; SFT 6B_708/2009 para 1.6; SFT 109 Ia 273 para 7; CAS 1999/A/246, para 9; CAS 1996/A/157, para. 14; CAS OG 00/006, para 40d; CAS 2008/A/1515, para 119; CAS 2017/A/4954; CAS 2017/A/5954), or to have a limited probative value (CAS 2011/A/2384 & 2386; CAS 2019/A/6313)*."

227. At the hearing in that case, the "*Parties engaged in rigorous examination of the experts in relation to the polygraph, the consequence of which was to cause the Panel to place no reliance on the polygraph tests, one way or another*." (Paragraph 116).

228. In CAS 2021/A/7768, a similar summary was provided:

"*The Panel retains that polygraph tests are, in light of the Swiss Federal Tribunal and CAS jurisprudence, usually considered as inadmissible or mere statements (see e.g. SFT 6B_663/2011 para 1.3; SFT 6B_708/2009 para 1.6; SFT 109 Ia 273 para 7; CAS 1999/A/246, para 9; CAS 1996/A/157, para. 14; CAS OG 00/006, para 40d; CAS 2008/A/1515, para 119; CAS 2017/A/4954; CAS 2017/A/5954). They may have limited probative value in very specific instances, in particular when supported by other strong evidence or filmed (CAS 2011/A/2384 & 2386; CAS 2019/A/6313), which does not appear to be the case here*." (Paragraph 197).

229. The Panel in that case considered that "*at best*" the polygraph test undertaken by the player "*would be of very limited probative value*". However, the polygraph was ultimately found to not assist the athlete.

230. The Panel considers that the jurisprudence makes clear that limited probative value should be given to polygraph evidence. Polygraph evidence may, at most, "*add some force*" to an athlete's statement (which is itself given limited weight by virtue of the jurisprudence on protestations).

231. While the Panel will take a holistic view on all evidence provided on the Appellant's intention, the Panel considers it appropriate to address the probative value of Dr Ashcroft's evidence here.

232. The Panel considers there to be some similarities with CAS 2024/A/10411, in which the test "*consisted in only three very short questions, while a significantly more detailed questioning could have been relevant.*" While the Award does not record the questions asked, it was "[o]*n that basis*,[that] *the Panel concludes that the polygraph test does not assist in the resolution of the issues in the case*." (Paragraph 172).

233. The Panel also considers there to be similarities with CAS 2021/O/7977, in which the questions were as follows:

"- Question: "Did you at any time knowingly ingest nandrolone?" Answer: "No".

- Question: "Did you intentionally ingest the drug nandrolone?" Answer: "No"."

234. In that case, the expert's opinion was "*that the Athlete was truthful when she answered 'no' to the relevant questions. In addition, the objective scoring system indicated no significant reactions and no deception. The probability of this result being produced by a deceptive person was reported to be 0.0002 or less than 0.2 %.*" (Paragraph 132).

235. This was supported by an independent evaluation of the athlete's polygraph charts by a second examiner, who *"concluded that the Athlete was truthful when she answered the above questions*" (Paragraph 133).

236. The Panel in that case found that "*the questions posed were rather restrictive. This is all the more true considering that the Athlete stated that, before receiving the charge letter, she was not aware of what nandrolone is. It would have made more sense to ask the Athlete whether she had taken doping substances at the material time. Irrespective of the above, the Panel also refers to the CAS case law in CAS 2011/A/2384, at paras. 233-243 (polygraph examination)*" (Paragraph 134).

237. While no evidence was adduced as to the methodology adopted by Dr Ashcroft, the Panel considers that the polygraph evidence could have reasonably been expected to include more detailed questioning: including whether the Appellant understood the meaning of "*Norsteroid*", and about the Appellant's approach to his anti-doping obligations both generally and with the Samoan team (in relation to which there is considerable evidence in the Appellant's witness statement).

238. Accordingly, the Panel considers that Dr Ashcroft's evidence has limited probative value, though it shall still be considered with the balance of the evidence provided to the Panel.

3. Hair analysis

239. The Appellant further submitted samples of his hair for analysis by Prof Kintz. These samples were negative for nandrolone and its precursors. Prof Kintz concluded that the

Appellant "*has not been repetitively exposed*" to nandrolone or its precursors in the 12-month period from 1 November 2022 to 1 November 2023. It is submitted that this analysis is inconsistent with a deliberate doping scenario.

240. Prof Kintz reiterated his testimony at the Hearing. In cross-examination, Prof Kintz confirmed that the hair analysis could not rule out microdosing, a single large dose taken months before the sample, or administration of a depot preparation of nandrolone ester.

241. Dr Thieme's evidence was that the analytes documented in the hair tests left considerable uncertainty when considered against the numerous sources of nandrolone which are available: "*In particular, the absence of the substance nandrolone phenylpropionate, which is relatively frequently used for doping purposes and whose analysis was not documented by either laboratory, leaves considerable ambiguity*."

242. Dr Thieme further opined that the detection limits of 10pg/mg referred to in the certain of the testing documents appeared "*inappropriately high for corresponding trace analysis of anabolic steroids in hair*."

243. Finally, Dr Thieme questioned the significance of hair analysis carried out on distal segments.

4. Evidence on nandrolone use

244. Dr Smit's written report explains that it would be "*illogical – in fact, useless – and unusual for an athlete to use either (a) a single dose; or (b) occasional doses; of nandrolone (or a nandrolone precursor) for performance enhancing purposes*".

245. Dr Smit further testified at the hearing that nandrolone is "*normally always used as esters*" and that to achieve a performance-enhancing effect, administration over "*6 to 8 weeks*" is generally required, such that a single dose would be "*not feasible*" for performance enhancement.

246. He confirmed that this applied to elite athletes as well as bodybuilders, though he acknowledged in cross-examination that the purpose of nandrolone use may differ between the two groups.

247. The Appellant submits that this "*dopey doper*" scenario, "*assumes that Mr Vui has either: (i) ignored the consensus as to how to use nandrolone; or (ii) intentionally doped with nandrolone but sought no guidance whatsoever on how to do so (whether via research or by speaking with other nandrolone/ steroid users)*." It is submitted that "*both assumptions are highly unrealistic*."

248. Dr Thieme testified that nandrolone is "*one of the most frequent anabolic steroids*" used in doping, typically administered as a depot preparation by intramuscular injection, which "*can be active for 12 weeks*."

249. He explained that a depot preparation of nandrolone decanoate could be detectable in urine for many months after a single large dose, whilst potentially being washed out of hair by the time of analysis.

250. He confirmed that the hair analysis did not rule out a single large dose taken months before the sample.

251. In cross-examination, Dr Thieme confirmed that he was not an expert in doping practices *per se*, but had been involved in approximately 200 cases involving nandrolone, the vast majority of which involved bodybuilders or powerlifters rather than elite athletes. He confirmed that the typical application of nandrolone is by depot injection, and that the biological activity of a depot preparation would persist for "*something like eight to twelve weeks*."

5. Panel's Analysis

252. The Panel has carefully considered whether the cumulative weight of the evidence before it, including the tests carried out on supplements, the negative hair test, the Appellant's clean anti-doping record (nine tests over seven years, all negative), the character evidence attesting to his integrity (including the Appellant's own evidence as supported by Dr Ashcroft's evidence), and the expert evidence on nandrolone use is sufficient to establish – on the balance of probabilities – lack of intention on the Appellant's part. The Panel concludes that it is not, for the following reasons:

- The Appellant has not identified any contaminated supplement. All eight tested supplements were negative.

- Whilst it is true that only eight of approximately 36 products potentially used by the Appellant were tested, the fact remains that there is no positive evidence of contamination in any product that the Appellant *actually* used. The testing was, in large part, speculative.

- Assuming that a supplement amongst the 36 listed in the annex to the Appellant's witness statement returned a positive result, the Appellant would still need to show that he had consumed the contaminated batch. The Panel notes that neither the Appellant nor Samoa Rugby kept a contemporaneous record of precisely what was taken by the Appellant.

- The Appellant was the only Samoa player to test positive (despite communal supplement use), which is an additional factor that trends away from the contamination theory. The Panel acknowledges the Appellant's submissions that

(a) not all Samoa players were tested, and (b) scientific literature establishes that contamination levels in supplements can be highly variable between individual units of the same product (non-homogeneous contamination). These are valid considerations. However, the Panel considers that the absence of any other positive test is a circumstance that, taken together with the other evidence, reduces the probability that a communally used supplement was contaminated.

- Furthermore, the Panel dismisses the Appellant's submissions that: (a) contamination is prevalent in the Australian market; (b) the identities of manufacturers of the Body Science supplements are unknown and so it cannot be concluded they are reputable; (c) all of the relevant supplements have since been discontinued; (d) the supplements used were not batch tested; and (e) the concentration of 19-NA is consistent with supplement contamination (the range proffered between as little as 0.00013 mg/g, or as much as 10.8mg/g, which is a significant range). These submissions do not go to the probability of the Appellant ingesting a contaminated product - they merely open the door to the possibility he may have done so.

- The Appellant's case rests on the proposition that one of the untested supplements (or one of the products for which only replacement stock was tested) must have been contaminated. This is speculation, and is not sufficient to overcome the requisite burden on the Appellant.

253. The Appellant's position on contamination and intentionality must therefore be considered in light of the jurisprudence of, inter alia, CAS 2016/A/4534 and CAS 2016/A/4919. In this regard, the Appellant is left with "*the narrowest of corridors*" through which he "*must pass to discharge the burden which lies upon him*." In other words, the Panel has considered whether the Appellant passes through that "*narrowest of corridors*" left to athletes in situations where they cannot prove the source of the prohibited substance (CAS 2016/A/4534) and, thus, compel the Panel to consider whether the Appellant's case is one of those "*rarest cases*" (CAS 2016/A/4919) where such passage is possible.

254. The Panel recalls CAS 2019/A/6313, in which it was explained (at paragraph 75) that *"the so-called "corridor" must be sufficiently narrow to prevent intentionally doped athletes with a means of evading due sanctions, yet still wide enough to allow unintentionally doped athletes an opportunity to exculpate themselves by means of relevant and convincing evidence.*"

255. The Panel considered CAS 2019/A/6313 as one of *"rarest of cases*" in considering the width of this *"narrowest of corridors*". In that case, the Panel found an athlete who tested positive for Trenbolone was able to meet his burden of proving that the AAF was caused by the consumption of contaminated meat. In short, the athlete's "*proof of lack of intention loom especially large*" – so much so that the proof was *"in fact overwhelming*." (Paragraph 85). In that case, the athlete:

- Clearly explained, from the beginning of the disciplinary proceedings against him:
    - the type of meat he had eaten (including the part of the animal eaten, such part being where steroids could have been injected),
    - in what quantity the meat was consumed,
    - the name of the restaurant,
    - the exact time of the lunch when the meat was consumed.
- Exhibited evidence in support of his claims, such as a restaurant receipt, bank account records confirming the purchase of lunch in that restaurant, and text messages setting up the lunch meeting at that restaurant.
- Provided concrete evidence in support of his explanation as to the source of the AAF, *inter alia*: expert evidence on the American meat industry contradicting the expert opinion adduced by the respondent; pictures of the packaged meat received by the restaurant; and an affidavit from the restaurant co-owner as to the origin and type of the meat consumed by the athlete.
- 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*".
- The Panel notes that the athlete's credibility weighed heavily on the Panel's analysis.

256. On the other side of the line is CAS 2016/A/4534, in which stanozolol was present in the athlete's sample, where the athlete was not able to persuade the Panel that he had consumed contaminated supplements or contaminated meat. As to the supplements, none of the supplements tested were revealed to be the source of the stanozolol (although Herbalife, which produced the athlete's supplements, could not dismiss the possibility that his supplements were free from any contamination). The Panel found:

"*There was, […], no evidence upon which the Athlete could rely to discharge his burden of proving lack of intent. The absence of evidence as to the source of the Stanozolol closed off one avenue. All that was left were his protestations of innocence, the character evidence given by his coach, the lie detector test, the hair sample analysis and his bare assertion that his recent improvements in terms of times for his events achieved prior to the Pan-Am Games were the product of superior conditioning*."

257. On this basis, the appeal of the athlete was dismissed.

258. For the reasons that follow, the Panel considers the Appellant does not *pass through the narrowest of corridors*.

- Character evidence and protestations of innocence, although relevant to credibility, are of limited weight as a matter of principle in CAS jurisprudence:
    - Mr Vui's evidence and testimony, and the testimony of Mr Edgar and Mr Lam are therefore relevant but not determinative.
    - For the reasons explained, Dr Ashcroft's evidence – while considered by the Panel – is of limited probative value and not determinative.
    - [redacted]
- A clean testing record, whilst relevant, is of limited probative value given the infrequency of testing (nine samples over seven years, with a gap of almost two years before the positive test).
- As to the Appellant's credibility, the Panel considers it difficult to accept that the Appellant took the utmost care in observing his anti-doping obligations: he kept no contemporaneous record of supplements consumed (assuming others would do so for him), and declared that he was taking no supplements in his doping control form (which was not true).
- The Appellant is a senior athlete, who was well aware of his obligations and had complied with his obligations to disclose matters in his doping control form at previous tests. The submission that this is irrelevant is rejected, particularly as the Appellant seeks to rely on his anti-doping record and his character generally.
- While the Panel has regard for the reputation and credibility of Prof Kintz in his area of expertise, the negative hair test is consistent with absence of repeated use over 12 months, but (as the Respondent's expert testified, and as Prof Kintz accepted) does not rule out microdosing, single-dose administration, or intermittent use.
- The criticisms of the hair analysis and the acknowledgements by Prof Kintz are particularly significant as Dr Thieme concluded that the most conceivable explanations are:

  "*a (possibly repeated) oral ingestion of nandrolone or appropriate prohormones - whether as a deliberate microdose or unintentional contamination - leading to low urine levels but not being significantly incorporated into hair*

  or

an intake of intramuscular use of depot preparations of nandrolone esters that was made a long time (i.e. months) ago, is still well detectable in the urine in trace amounts but have already been washed out of the hair and/or were not covered by the analyses."

- Furthermore, the analysis undertaken by Prof Kintz did not go unchallenged by Dr Thieme more generally, the detection limits were opined to be "*inappropriately high for corresponding trace analysis of anabolic steroids in hair*" and "*hair concentrations of nandrolone decreased considerably after only a few weeks*".

- The Panel considers these criticisms of Prof Kintz's analysis have merit, and weaken the probative value of the hair analysis.

- Expert evidence of Dr Smit that single-dose use would be "*illogical*" is not, of itself, sufficient to show on balance that use occurred intentionally. The Panel does not consider this evidence discharges the competing explanations provided by Dr Thieme. These explanations were not meaningfully challenged at the hearing, save that the depot use would be at a different dosage levels to those observed in studies on therapeutic use.

259. In short, the Appellant's case lacks the necessary "*concrete evidence*" required by the CAS jurisprudence and does not exhibit exceptional circumstances. Accordingly, the Panel finds that the Appellant has not established, on the balance of probabilities, that the source of the 19-NA in his sample was inadvertent contaminated supplement ingestion. His case rests on speculation rather than proof.

260. Accordingly, the Panel considers that the Appellant has not rebutted the presumption of intent.

I. Sanction

261. In summary, the Panel's conclusions on the merits are as follows:

- SMRTL did not breach ISL Article 4.4.2.4 (laboratory independence);

- at least one of the alleged exclusions of Dr Catalani from the B Sample analysis constituted a breach of ISL Article 5.3.6.2.3, but the Appellant has not established that the alleged exclusions could reasonably have caused the AAF;

- the overnight handling of B Sample fractions did not breach ISL chain of custody requirements;

- the initial non-disclosure of the Fraction 8 re-analysis did not constitute a breach of any mandatory requirement in the ISL or Technical Documents;

- the delay in notification does not warrant dismissal of the charges;

- the ADRVs under Regulations 21.2.1 (Presence) and 21.2.2 (Use) ADR are established;

- the Appellant has not established, on the balance of probabilities, that the source of the 19-NA identified in the Appellant's Sample was inadvertent contaminated supplement ingestion.

262. The Appellant's submissions as to sanction which are contingent upon the Panel finding that the Appellant had established that the source of the 19-NA identified in the Appellant's Sample (including the submission that no period of ineligibility ought to be imposed) must therefore be dismissed.

263. The Appellant submits at para. 25.1 of the Appeal Brief that in calculating any period of ineligibility, the Panel should:

- Give credit for the Appellant's period of provisional suspension per Regulation 21.10.13.2.1 ADR; and

- Any period of ineligibility should be deemed to have commenced on the date of Sample collection (i.e., 1 August 2023), as a consequence of the "*various substantial delays there have been throughout this case*", per Regulation 21.10.13.1 ADR.

264. Regulation 21.10.13.2.1 ADR provides:

"*If a Provisional Suspension is respected by the Player or other Person, then the Player or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If the Player or other Person does not respect a Provisional Suspension, then the Player or other Person shall receive no credit for any period of Provisional Suspension served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Player or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal*."

265. Regulation 21.10.13.1 ADR provides:

"*Where there have been substantial delays in the hearing process or other aspects of Doping Control, and the Player or other Person can establish that such delays are not attributable to the Player or other Person, World Rugby or the Judicial Committee may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred*."

266. The Panel accepts that credit should be given for the Appellant's period of provisional suspension.

267. Regarding the commencement date of the period of ineligibility, as a threshold matter, the Panel notes that in his request for relief the Appellant did not formally ask that the commencement date be backdated, although the Appellant did request so in the Appeal Brief (para. 25.1) without any procedural objection from the Respondent. The Panel therefore proceeded with the analysis.

268. Whether the period of ineligibility should be deemed to have commenced sooner than the date on which the period of provisional suspension began is a matter for the Panel's discretion. This is clear from the language used in Regulation 21.10.13.1 ADR. The Panel's interpretation of a provision materially identical to Regulation 21.10.13.1 ADR in CAS 2015/A/4059 (a case referred to by the Appellant) supports this.

269. The Panel notes that "*Doping Control*" is defined as "*All steps and processes from test distribution planning through to ultimate disposition of any appeal and the enforcement of Consequences, including all steps and processes in between, including but not limited to Testing, investigations, whereabouts, TUEs, Sample collection and handling, laboratory analysis, Results Management, and investigations or proceedings relating to violations of Regulation 21.10.14 (Status During Ineligibility or Provisional Suspension)*."

270. The Appellant identified a number of delays not attributable to the Appellant:

- 57 days between Sample collection and the notification of an AAF;
- One month between the date on which the Appellant provided his initial explanation and the date on which the Appellant was charged with the ADRVs;
- Five months between the date on which the Appellant raised issues regarding the B Sample analysis and the Respondent setting out its position;
- Six weeks between the date on which the first instance hearing was due to conclude and the date on which it ultimately concluded; and
- Three months between the conclusion of the first instance hearing and the Appealed Decision being issued.

271. While the Panel found above that the Appellant did not show that the delays caused an actual prejudice and therefore could not dismiss the charges or reduce the sanction, the Panel considers that the delays at hand, not attributable to the Appellant, do warrant backdating the commencement date of the period of ineligibility from 27 September 2023 to the sample collection on 1 August 2023.

IX. COSTS

272. Article R65.1 of the Code provides as follows:

> "*This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. It is not applicable to appeals against decisions related to sanctions imposed as a consequence of a dispute of an economic nature. In case of objection by any party concerning the application of Article R64 instead of R65, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue*."

273. Article R65.2 of the Code provides as follows:

> "*Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS. […]*"

274. Article R65.3 of the Code provides as follows:

> "*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties*."

275. Pursuant to Article R65.2, the Award is pronounced without costs, except for the CAS Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the Appellant and which is retained by the CAS.

276. The Respondent requested that the Appellant be ordered to pay "*a significant contribution to its legal and other costs*."

277. In exercising its discretion under Article R65.3 of the Code, and having regard, on one hand, to the delay in the Sample processing and the Athlete's exclusion from a part of the B sample process and, on the other hand, to the complexity of the case, which involved extensive witness preparation, multiple expert witnesses, and a broad range of legal arguments, and the outcome of the case whereby the Respondent overwhelmingly prevails, the Panel deems it fair and reasonable that the Appellant pays a total amount of CHF 5,000 (five thousand Swiss Francs) as a contribution towards the Respondent's legal fees and other expenses incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Christopher Vui on 1 May 2025 against World Rugby with respect to the decision of the World Rugby Judicial Committee dated 10 April 2025 is partially upheld with respect to the commencement date of the period of ineligibility.

2. The decision of 10 April 2025 by the World Rugby Judicial Committee is upheld, except in relation to the commencement date of the period of ineligibility.

3. Mr Christopher Vui is sanctioned with a four-year period of ineligibility, which commenced on 1 August 2023.

4. The Award is pronounced without costs, except for the CAS Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr Christopher Vui, which is retained by the CAS.

5. Mr Christopher Vui is ordered to pay World Rugby a total amount of CHF 5,000 (five thousand Swiss Francs) as contribution towards the legal costs and expenses it incurred in connection with these proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 11 June 2026

THE COURT OF ARBITRATION FOR SPORT

Vladimir Novak
President of the Panel

Jeffrey Benz
Arbitrator

Ulrich Haas
Arbitrator