CAS 2021/A/8262 Russian Anti-Doping Agency v. Yuriy Selikhov; CAS 2021/A/8380 World Anti-Doping Agency v. Russian Anti-Doping Agency & Yuriy Selikhov

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: James Drake K.C., Barrister and Arbitrator, London, United Kingdom

in the arbitration between

Russian Anti-Doping Agency, Moscow, Russian Federation
Represented by Mr Graham Arthur, Solicitor, GM Arthur, Liverpool, United Kingdom

Appellant in CAS 2021/A/8262

and

Yuriy Selikhov, Orel, Russian Federation

Respondent in CAS 2021/A/8262

World Anti-Doping Agency, Montreal, Quebec, Canada
Represented by Mr Nicolas Zbinden, Attorney, Kellerhals Carrard, Lausanne, Switzerland and Mr Ross Wenzel, WADA General Counsel, Lausanne, Switzerland

Appellant in CAS 2021/A/8380

and

Russian Anti-Doping Agency, Moscow, Russian Federation
Represented by Mr Graham Arthur, Solicitor, GM Arthur, Liverpool, United Kingdom

First Respondent in CAS 2021/A/8380

Yuriy Selikhov, Orel, Russian Federation

Second Respondent in CAS 2021/A/8380

I. PARTIES

1. The Russian Anti-Doping Agency ("RUSADA") is the National Anti-Doping Organisation ("NADO") in the Russian Federation and a signatory to the World Anti-Doping Code ("WADC"). Its registered office is in Moscow, Russia. From time to time it issued anti-doping rules in accordance with the WADC including the "All-Russian Anti-Doping Rules of April 13, 2011" (the "2011 ADR") and the "Russian Anti-Doping Rules of 24 June 2021" (the "2021 ADR").

2. The World Anti-Doping Agency ("WADA") is a Swiss private law foundation with its registered seat in Lausanne, Switzerland and its headquarters in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport. WADA publishes the WADC, which provides the framework for anti-doping policies, rules, and regulations for sports organisations and related public bodies throughout the world.

3. Mr Yuriy Selikhov (the "Athlete") is a Russian bobsledder. Amongst other things, he competed in the 2018 Olympic Games held in PyeongChang.

II. FACTUAL BACKGROUND

4. On 15 October 2013, the Athlete underwent an out-of-competition doping control in Sochi, Russia, during which he provided a sample of urine. The sample was separated into two separate sample bottles which were given the reference numbers A2846740 (the "A Sample") and B2846740 (the "B Sample") (collectively, the "Sample"). The Sample was transported to the WADA-accredited laboratory in Moscow, Russia (the "Moscow Laboratory"). The Moscow Laboratory analysed the A Sample, the results of which were reported as negative.

5. In April 2020, the Sample was sent to the Swiss Laboratory for Doping Analyses, a WADA-accredited laboratory in Lausanne, Switzerland (the "Lausanne Laboratory"), the director of which is Dr Tiia Kuuranne. The Lausanne Laboratory re-analysed the A Sample and by a report dated 7 April 2020 (supplemented by a letter dated 23 December 2020) reported an adverse analytical finding ("AAF") by reason of the presence of a metabolite of dehydrochloromethyltestosterone ("DHCMT") in an indicative estimated concentration of 6pg/mL.

6. DHCMT is a non-specified anabolic androgenic steroid which was prohibited at all times under S1.1 of the WADA 2013 Prohibited List. DHCMT is not a threshold substance. It is sometimes referred to as 'oralturinabol' and 'turinabol'.

7. By letter dated 8 June 2020, RUSADA notified the Athlete of the AAF and informed him that the finding represented a potential violation of Article 2.1 of the 2011 ADR. The Athlete was provisionally suspended from the date of the letter.

8. The Athlete did not request the analysis of the B Sample.

9. The Athlete responded to RUSADA as follows (undated):

"I, Selikhov Yuriy Anatolievich, the world class master of sports in bobsleigh, the participant of the Olympic Games 2018, confirm that in 2013 as a member of Russian national team I was taking only those pharmacological products that were given to me by a team doctor during training camps.

I also purchased some nutrition supplements for increasing body mass in Ukraine and abroad, as they are cheaper than in Russia. I do not exclude the possibility that they could be contaminated.

I have been a member of testing pool for 7 years, submitting my whereabouts information every day, I have been tested several times - during competitions, team camps, at home, I was admitted by IBSF to participate in Olympic Games 2018.

I do not have any violations.

Please, clear the matter and do not take away my sport activities. For me sport is much more than work, it is all my life as I have been in national team since 2004 (16 years old) and I have never been compromised".

III. THE DECISION OF THE DADC

10. As was foreshadowed in RUSADA's notice to the Athlete of 8 June 2020, RUSADA forwarded the case file to its Disciplinary Anti-Doping Committee (the "DADC").

11. On 17 December 2020, the Athlete requested a hearing before the DADC, which hearing took place on 27 May 2021 in Moscow.

12. By its decision No. 123/2021 dated 27 May 2021 (communicated to RUSADA on 10 August 2021) (the "Appealed Decision"), the DADC determined that the Athlete had not committed an anti-doping rule violation ("ADRV") pursuant to the 2011 ADR. It is sufficient for the present purposes to note the following passage from the decision:

"22. Taking into account that:

• The negligible concentration of metabolite is on the verge of reliability, which significantly increases the probability of the false positive results of studying the sample;

• No information has been given to the Committee about the Limit of Detection (LOD) for initial (screening) and confirmatory analysis;

• The kinetics of the concentration of metabolite of Dehydrochlormethyltestosterone in the Athlete's samples has not been disclosed;

• In the initial research of sample A [2846740], presence of metabolite of Dehydrochlormethyltestosterone has not been confirmed;

• Previously, the Athlete has not committed violations of anti-doping rules and requirements;

• The fact that Dehydrochlormethyltestosterone is doping which is not specific for bobsleigh;

The Committee concludes that RUSADA has not fulfilled the condition regarding the burden of proof pursuant to standard stipulated by article 3.1.1. of All-Russian Anti-Doping Rules.

23. In addition, the Committee takes into account that much time has passed from the sample collection from the Athlete (the year of 2013), which negatively impacts the Athlete's capabilities of protecting his rights.

24. Under such circumstances, reduction of the burden of proof established by art. 3.1.1. of All-Russian Anti-Doping Rules, is even more unacceptable and would not correspond to the high standards of conducting anti-doping proceedings stipulated by the World Anti-Doping Code, and the practice of its application based on these standards.

25. The Committee decided to acknowledge Yuriy Selikhov as not having committed violations of the anti-doping rules and requirements".

13. On 10 August 2021, RUSADA formally received the Appealed Decision.

14. On 13 September 2021, WADA, following a request, received elements of the RUSADA case file by email from RUSADA.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. RUSADA and WADA challenge the Appealed Decision in these appeals.

16. On 26 August 2021, RUSADA filed its appeal before the Court of Arbitration for Sport (the "CAS") against the Athlete in respect of the Appealed Decision and submitted its Statement of Appeal (in CAS 2021/A/8262) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). By its Statement of Appeal, RUSADA requested that the matter be referred to a sole arbitrator.

17. On 30 September 2021, RUSADA filed its Appeal Brief in CAS 2021/A/8262 in accordance with Article R51 of the CAS Code.

18. On 4 October 2021, WADA filed its appeal before the CAS against the Appealed Decision and submitted its Statement of Appeal in CAS 2021/A/8380 in accordance with Articles R47 and R48 of the CAS Code. The respondents to this appeal are RUSADA and the Athlete. By its Statement of Appeal, WADA requested that the matter be referred to the same sole arbitrator as for the appeal in CAS 2021/A/8262.

19. On 5 November 2021, WADA filed its Appeal Brief in CAS 2021/A/8380 in accordance with Article R51 of the CAS Code.

20. On 30 November 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to consolidate the two sets of proceedings pursuant to Article R52 of the CAS Code.

21. On 10 December 2021, RUSADA filed its Answer in CAS 2021/A/8380 in accordance with Article R55 of the CAS Code.

22. The Athlete, despite having been duly invited to do so by the CAS Court Office, did not file an Answer in either proceeding, or participate in any other way in the proceedings.

23. On 10 May 2022, and in accordance with Article R54 of the CAS Code, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the arbitral tribunal appointed to decide these consolidated appeals was constituted as follows:

Sole Arbitrator: James Drake K.C., Barrister and Arbitrator in London, United Kingdom.

24. On 3 November 2022 and 21 November 2022, WADA and RUSADA (but not the Athlete) signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Sole Arbitrator.

25. A hearing took place on 24 November 2022. The hearing was conducted remotely via Webex. The following persons took part in the hearing:

a. The Sole Arbitrator:

i. Mr James Drake K.C.

b. RUSADA:

i. Mr Graham Arthur, Counsel

c. WADA:

i. Mr Nicolas Zbinden, Counsel

ii. Mr Ross Wenzel, General Counsel, WADA

iii. Dr Kuuranne, Director, Lausanne Laboratory

d. The Athlete:

i. There was no appearance by or for the Athlete

e. CAS Court Office:

i. Ms Carolin Fischer, Counsel

26. It is important to note that the invitation to attend the hearing was sent by the CAS Court Office to the Athlete both by courier and by email. In light of the Russian-Ukraine war, delivery by courier was not possible but there is no indication that the email invitation was not received in the ordinary course of things. The Sole Arbitrator notes that Article R57 para. 4 of the CAS Code, addressing the specific question of failure by a party to attend a hearing, provides as follows:

"If any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award".

27. At the conclusion of the hearing, those parties who participated in the hearing confirmed that they had had a full and fair opportunity to present their respective cases, that their right to be heard had been fully respected, and that they had no objection to the manner in which the proceedings had been conducted.

V. THE PARTIES' SUBMISSIONS

28. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has taken account of and carefully considered all of the submissions made and evidence adduced by the Parties. The following represents a summary of the Parties' principal submissions.

A. RUSADA's Submissions

29. RUSADA addressed the Appealed Decision, the liability on the part of the Athlete, and the consequences or sanctions that should be imposed in the event that the Athlete was found liable.

The Appealed Decision

30. In the submission of RUSADA, the DADC was wrong to decide that the Athlete had not committed an ADRV. In doing so, the DADC misconstrued the applicable rules and instruments.

a. The principal basis on which the DADC concluded that RUSADA had not established that DHCMT was present in the Athlete's sample was because it had not explained whether or not the level of DHCMT was above the relevant Limit of Detection ("LOD"). On that basis, the DADC took the view that it could not be sure that there was enough reliable evidence for it to find that an ADRV had been committed.

b. That is a misappreciation as to what LOD is and what it is not. The International Standard for Laboratories (the "ISL") refers to the term 'Limit of Detection'. It is defined as the *"analytical parameter of assay technical performance; lowest concentration of an analyte in a sample that can be routinely detected, but not necessarily identified or quantified, under the stated test method conditions"*. The LOD is therefore a measure of the performance of the initial testing procedure. It is not a concentration beneath which a prohibited substance cannot be reliably detected. It is not, as the DADC understood it to be, a 'floor', cut-off, or some similar low threshold.

c. The DADC drew attention to an absence of information regarding LOD on the basis that, in effect, it is saying *"we have not been told what the LOD for DMT is and so we cannot know whether a concentration of 6 picograms/mL can be relied upon"*.

d. RUSADA submitted that the answer is that the Lausanne Laboratory identified that the sample contained DHCMT in accordance with WADA Technical Document TD2015IDCR and has reported an AAF based on the presence of DHCMT in the A Sample. The result can therefore be relied upon because it is based on data acquired from the confirmation procedure of the A Sample, together with positive and negative quality control samples in the same analytical batch.

e. The DADC was wrong to conclude that *"the negligible concentration of metabolite was on the verge of authenticity"*. DHCMT is not a threshold substance; all that is required for the purposes of an ADRV therefore is the presence of any quantity of the prohibited substance.

f. The DADC was wrong to rely on the fact that samples tested prior to the Sample were *"clean"*. That is entirely irrelevant to the issue of liability for an ADRV in respect of the Sample.

g. The DADC was wrong to rely on the fact that the Athlete had been found not to have committed any ADRVs prior to the date on which the Sample was taken. That is entirely irrelevant to the issue of liability for an ADRV in respect of the A Sample. It might potentially be relevant to sanction.

Liability

31. As to liability, RUSADA submitted as follows:

a. The analysis undertaken by the Lausanne Laboratory shows the presence of DHCMT in the Athlete's A Sample. This presence constitutes an ADRV pursuant to Article 2.1 of the 2011 ADR which provides that the *"presence of a prohibited substance or its metabolites in an Athlete's Sample"* constitutes an ADRV.

b. Article 2.1.2 of the 2011 ADR provides that *"sufficient proof of anti-doping rule violation under Article 2.1 is established by … [the] presence of a Prohibited Substance or its Metabolites … in an Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed"*.

c. In this case, DHCMT has been found to be present in the Athlete's A Sample in circumstances where the Athlete waived analysis of his B Sample and the B Sample was not analysed.

d. The analysis carried out by the Lausanne Laboratory was compliant with the ISL.

e. The Athlete has committed an ADRV arising from the presence of a prohibited substance in the A Sample.

Sanctions

32. The submissions made on behalf of RUSADA in relation to sanctions may be summarised in the following way.

a. On the basis that the ADRV has been established, the relevant sanction is a period of ineligibility of two years, as provided for in Article 9.2 of the 2011 ADR, unless the Athlete can establish that he acted without "Significant Fault" as that term is defined in the 2011 ADR.

b. Article 10.5.2 of the 2011 ADR requires the Athlete to establish on the balance of probabilities how the DHCMT entered his system, and he has not done so by evidence before the Sole Arbitrator.

c. In this regard, the explanation offered by the Athlete (see paragraph [9] above that he purchased some nutrition supplements in Ukraine and abroad and that he does *"not exclude the possibility that they could be contaminated"*) is merely speculative and does not discharge his burden of proof, on the balance of probabilities, to establish the likely source of the prohibited substance as being a "Contaminated Product" as that term is used in the 2011 ADR. The Athlete has merely asserted his innocence and speculated as to how the substance might have entered his system but he has adduced no evidence. RUSADA relied on a number of CAS authorities in this respect: see CAS 2014/A/3615; CAS 2014/A/3820; CAS 2016/A/4377; CAS 2016/A/4626; CAS 2016/A/4919; CAS 2017/A/4692; and CAS 2019/A/6541.

d. In the absence of an explanation how the prohibited substance entered his system, the Athlete cannot avoid the imposition of the mandatory sanction of two years.

e. RUSADA agreed with and adopted WADA's submissions in relation to aggravation (see below). It thus sought a period of ineligibility of between two and four years.

f. The Athlete was provisionally suspended from 8 June 2020 to 27 May 2021. The 2011 ADR permit this period to be credited against the period of ineligibility.

33. RUSADA sought the following relief:

"113. RUSADA respectfully requests that:

113.1 The Decision be set aside.

113.2 Mr. Selikhov be found to have committed an Article 2.1 anti-doping rule violation contrary to the ADR, with the appropriate sanction being a two-year period of Ineligibility, with credit being applied in respect of the provisional suspension.

113.3 That the period of Ineligibility be increased to four years if there are found to be Aggravating Circumstances present in connection with the anti-doping rule violation.

113.4 The conditions applicable to the period of Ineligibility should be those specified in the ADR.

113.5 The costs of the arbitration and a contribution to legal costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5".

B. WADA's Submissions

34. WADA's overarching submissions were:

a. The Appealed Decision *"is fundamentally flawed"* in that, for reasons that were irrelevant the DADC found that an ADRV had not been established despite the fact that DHCMT had been correctly identified in the A Sample.

b. The ADRV has been established on the evidence.

c. The Athlete should have received a period of ineligibility of between two and four years.

The Appealed Decision

35. WADA submitted that the decision of the DADC was flawed for the following reasons:

a. The DADC concluded that the ADRV was not established on the basis that *"no information has been given to the Committee about the Limit of Detection (LOD) for initial (screening) and confirming analysis"*.

b. This element is irrelevant. The LOD only relates to the validation of the method for the initial testing procedure (see TD2019MRPL, para. 2.0). It is irrelevant to the specific analysis of samples, and does not relate in any way to the confirmation procedure, which is concerned with the identification of the prohibited substance.

c. The ISL explicitly clarifies that *"if successfully identified, a Non-Threshold Substance can be reported at a concentration below the estimated LOD of the Initial Testing Procedure or the LOI of the Confirmation Procedure"*.

d. The DADC was therefore fundamentally wrong to place any weight on the fact that the Lausanne Laboratory's LOD of the initial testing procedure was not known to it.

Liability

36. On liability, WADA's submissions may be summarised in the following way:

a. Pursuant to Article 2.1 of the 2011 ADR, the presence of a prohibited substance, its metabolites or markers constitutes an ADRV.

b. Article 2.1.2 of the 2011 ADR adds that *"[s]ufficient proof of anti-doping rule violation is established by […] presence of a prohibited substance or its metabolites or markers in an Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed".*

c. Article 2.1.3 of the 2011 ADR provides that *"[e]xcepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a prohibited substance or its metabolites or markers in an Athlete's Sample shall constitute an anti-doping rule violation"*.

d. DHCMT is a non-threshold substance prohibited at all times. Therefore, any concentration of DHCMT reported constitutes an ADRV.

e. It is important to note the process by which a sample is analysed in accordance with the ISL and the technical documents issued thereunder, WADA TD2015IDCR and WADA TD2019MRPL. The analysis in two phases. The first phase is the initial testing procedure which is designed to identify whether the sample contains a prohibited substance. The second phase is the "confirmation procedure" in order to confirm the presence of a prohibited substance. In this context, where a non-threshold substance is involved, the confirmation procedure only requires identification of the prohibited substance. Indeed, non-threshold substances are substances *"for which identification, in compliance with* [WADA TD2015IDCR], *constitutes an Adverse Analytical Finding"*; and WADA

TD2019MRPL adds that *"a confirmed identification of a Non-Threshold Substance at any concentration shall be reported as an Adverse Analytical Finding"*.

f. The Lausanne Laboratory re-analysed the A Sample in accordance with the above procedure. In a report dated 7 April 2020 (supplemented by a letter dated 23 December 2020), the Lausanne Laboratory reported an AAF by reason of the presence of a metabolite of DHCMT in an estimated concentration of 6pg/mL.

g. The ADRV has therefore been established.

Sanctions

37. On the consequences that should follow from this, WADA submitted (in summary) as follows:

a. Article 9.2 of the 2011 ADR provides that *"the period of ineligibility for a violation of paragraph 2.1, paragraph 2.2 […] shall be as follows, unless the conditions for eliminating or reducing the period of ineligibility, as provided in paragraph 9.4 and 9.5, or the conditions for increasing the period of ineligibility, as provided in paragraph 9.6, are met: First violation: Two (2) years Ineligibility"*.

b. The conditions set forth in Articles 9.4 and 9.5 of the 2011 ADR for reducing or eliminating the period of ineligibility require an athlete to establish how the prohibited substance entered his/her body. In this case the Athlete has only claimed that the positive came from a contaminated supplement without providing any evidence for such allegation. This is not sufficient to satisfy his strict burden to establish origin (see CAS 2014/A/3820, para. 80).

c. Therefore, the standard sanction for the Athlete's violation is two years.

d. WADA submitted, however, that, pursuant to Article 9.6 of the 2011 ADR, there were in this case aggravating circumstances which should be taken into account.

e. The aggravating circumstances in this case were that, according to the evidence, the Athlete used (different) prohibited substances on more than one occasion, and also that he was a "protected athlete" under the Russian doping scheme (see below).

f. WADA submitted that, accordingly, the Athlete should receive a period of ineligibility between two and four years.

38. In respect of the aggravating circumstances, WADA relied on the following materials which were adduced into evidence:

a. The "McLaren Reports" dated July and December 2016 and the findings therein in relation to what has become known as the "Russian doping scheme".

b. The counter-detection methodology described by Prof. McLaren as "Washout Testing", a scheme to monitor the doping of certain protected athletes and ensure that these athletes would not test positive at events outside of Russia. The monitoring was conducted through official and unofficial samples and recorded on schedules known as the "Washout Schedules", some of which schedules were provided to Prof. McLaren in the

course of his investigation by a whistle-blower and were disclosed to the public as part of the "evidence disclosure package" ("EDP") put online by Prof. McLaren's team in December 2016.

c. One of these Washout Schedules, EDP0031, contains the following text (with the date '14/07' being identified as 14 July 2013):

Selikhov 14/07	bobsleigh	T/E 2.0, Boldenone, 400 000, traces of oral-turinabol!!

d. It therefore appears, submitted WADA, that the Athlete: (a) was a participant in the Washout Testing program, (b) was a protected athlete within the Russian doping scheme; and (c) had a history of use of DHCMT.

39. WADA sought the following relief:

"34. WADA respectfully requests the Panel to rule as follows:

1. The appeal of WADA is admissible.

2. The decision rendered on 27 May 2021 by the Disciplinary Anti-Doping Committee of RUSADA in the matter of Yuriy Selikhov is set aside.

3. Yuriy Selikhov is found to have committed an anti-doping rule violation.

4. Yuriy Selikhov is sanctioned with a period of ineligibility of two to four years starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Yuriy Selikhov before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

5. All competitive results obtained by Yuriy Selikhov from and including 15 October 2013 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. The arbitration costs shall be borne by the Respondents jointly and severally.

7. WADA is granted a contribution to its legal and other costs".

C. The Athlete's Submissions

40. The Athlete did not file an Answer in either appeal and did not participate in either appeal. The only material before the Sole Arbitrator from or for the Athlete was his undated response to RUSADA set forth in paragraph [9] above.

VI. JURISDICTION

41. Article R47 of the CAS Code provides (in relevant part) 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".

42. RUSADA and WADA signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Sole Arbitrator, which noted, *inter alia*, that: (a) RUSADA and WADA rely on Rule 11.2.2 of the 2011 ADR (RUSADA) and Rule 15.2.1 and 15.2.3 of the 2021 ADR (WADA) as conferring jurisdiction on the CAS. The jurisdiction of the CAS was not contested by the Athlete.

43. The Sole Arbitrator, therefore, confirms that CAS has jurisdiction to decide these appeals.

VII. ADMISSIBILITY OF THE APPEAL

44. As to admissibility:

a. The CAS Code provides at Article R49 that *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned … the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

b. The 2021 ADR provide:

i. By Article 15.2.3.3, that the deadline for an appeal other than by WADA is 21 days from the date on which the decision being appealed is received by the appealing party.

ii. By Article 15.2.3.4, that the deadline for WADA's appeal *"shall be the later of: a) Twenty-one (21) days from the expiry of the time for filing an appeal by other parties,* [and] *b) Twenty-one (21) days after WADA's receipt of a complete file relating to the decision".*

c. The DADC Decision was received by RUSADA on 10 August 2021. The Statement of Appeal was filed on 26 August 2021, and therefore within the twenty-one day time period.

d. WADA received the case file (at least in part) on 13 September 2021. WADA's Statement of Appeal was filed on 4 October 2021, and therefore within the twenty-one day time period.

e. There was no objection by the Athlete as to the admissibility of either appeal.

45. These appeals are therefore admissible, as was common ground between RUSADA and WADA and as was confirmed in the signed Order of Procedure.

VIII. APPLICABLE LAW

46. Article R58 of the CAS 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".

47. Accordingly, the applicable regulations are the ADR issued by RUSADA and to the extent that such rules do not deal with an issue then the law of the Russian Federation as domicile of the DADC is to be applied subsidiarily.

48. The ADR in place at the time of the conduct in question are the 2011 ADR and these rules shall apply to the merits of the appeals. According to the legal principle *tempus regit actum*, procedural matters are governed by the edition of the rules applicable at the time of these appeals, namely the 2021 ADR.

IX. THE MERITS

49. The Sole Arbitrator notes that, while the entirety of the submissions made and the evidence adduced by the Parties have been carefully considered, the Sole Arbitrator sets forth below only those matters considered necessary to explain the reasoning and decide the dispute.

50. The merits of the appeal shall be considered in two sections: liability and sanctions.

A. Liability

a. The Alleged ADRV

51. At the outset, it is to be noted that nothing was said by the Athlete in answer to the various criticisms made by RUSADA and WADA of the Appealed Decision, and there was no attempt by the Athlete to sustain the Appealed Decision on its own terms. In any event, the Sole Arbitrator agrees that the Appealed Decision is flawed for the very reasons put forward by RUSADA and WADA, see in particular what is said at paragraph 30 *et seq.* above.

52. The task for the Sole Arbitrator is therefore to decide, *de novo*, whether an ADRV has been committed here on the basis of the material put forward by the Parties.

53. RUSADA and WADA allege that the Athlete has committed a violation of Article 2.1 of the 2011 ADR. For the sake of good order, this rule provides as follows:

"II. Anti-Doping Rule Violations

2. Doping is defined as the occurrence of one or more violations of the following Rules:

2.1. Presence of a prohibited substance or its metabolites or markers in an Athlete's Sample.

2.1.1. It is each Athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation described in these Rules.

For purposes of observing the Rules involving the presence of a prohibited substance (or its metabolites or markers), the Rules adopt the rule of strict liability. Under the strict liability principle, an Athlete is responsible, and an anti-doping rule violation occurs, whenever a prohibited substance is found in an Athlete's Sample. The violation occurs whether or not the Athlete intentionally or unintentionally used a prohibited substance or was negligent or otherwise at fault. If the positive Sample came from an in-competition test, then the results of that competition are automatically invalidated according to the Rules. However, the Athlete then has the possibility to avoid or reduce sanctions if the Athlete can demonstrate that he or she was not at fault or significant fault according to the Rules or in certain circumstances did not intend to enhance his or her sport performance according to the Rules.

The strict liability rule for the finding of a prohibited substance in an Athlete's Sample, with a possibility that sanctions may be modified based on specified criteria, provides a reasonable balance between effective anti-doping enforcement for the benefit of all "clean" Athletes and fairness in the exceptional circumstance where a prohibited substance entered an Athlete's system through no fault or negligence or no significant fault or negligence on the Athlete's part. While the determination of whether the anti-doping rule violation has occurred is based on strict liability, the imposition of a fixed period of ineligibility is not automatic. The strict liability principle set forth in the Rules has been consistently upheld in the decisions of CAS.

2.1.2 According to the Rules sufficient proof of an anti-doping rule violation is established by either of the following: presence of a prohibited substance or its metabolites or markers in an Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the prohibited substance or its metabolites or markers found in the Athlete's A Sample.

2.1.3. Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a prohibited substance or its metabolites or markers in an Athlete's Sample shall constitute an anti-doping rule violation.

2.1.4. As an exception to the Rules, the Prohibited List or International Standards may establish special criteria for the evaluation of prohibited substances that can also be produced endogenously".

54. The 2011 ADR go on to provide, by Article 3, for the burden and standard of proof and for the methods of establishing facts and presumptions:

"III Proof of Doping

3.1 Burdens and standards of proof.

3.1.1. RUSADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether RUSADA 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 the Rules place the burden of proof upon the Athlete or other person alleged to have committed the Rules violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in paragraph 9.4 and 9.6 where the Athlete must satisfy a higher burden of proof.

3.2 Methods of establishing facts and presumptions.

3.2.1. Facts related to the Rules violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete... 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 … 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 RUSADA 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 rules violation shall not invalidate such results if the Athlete … establishes that a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the Adverse Analytical Finding or other Rules violation occurred, then RUSADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the rules violation. …".

55. As noted, the ADRV alleged in these appeals is the violation of Article 2.1 of the 2011 ADR by reason of the presence of a prohibited substance or its metabolites or markers in the Athlete's A Sample. The Athlete waived his right to have the B Sample analysed. That being so, according to Article 2.1.2 of the 2011 ADR (see above) sufficient proof of an ADRV is established by the presence of a prohibited substance or its metabolites or markers in an athlete's A Sample.

56. In the Sole Arbitrator's view, it is clear from the evidence from the Lausanne Laboratory that the Athlete's A Sample did contain a metabolite of DHCMT (and that it did so in an estimated concentration of 6pg/mL). There is no dispute that DHCMT is a non-threshold substance prohibited at all times and that, accordingly, the presence of any concentration of DHCMT constitutes an ADRV. Nor is there any challenge on the part of the Athlete to any of this evidence. Indeed, the Athlete does not challenge the violation at all, but rather seeks to explain it.

57. Further, as just noted, Article 3.2.1 of the 2011 ADR provides that WADA-accredited laboratories, as the Lausanne Laboratory is here, are presumed to have analysed the A Sample in accordance with the ISL. It was open to the Athlete to rebut this presumption by establishing, by evidence, that there has in fact been a departure from the ISL which has

caused the AAF. In this case, however, the Athlete makes no such contention and adduces no such evidence.

58. Accordingly, the Sole Arbitrator is comfortably satisfied that the Athlete has committed a violation of Article 2.1 of the 2011 ADR.

B. Sanctions

59. In light of the determination on liability, it is necessary to consider sanctions. The Sole Arbitrator must consider (a) the period of ineligibility and (b) the disqualification of the Athlete's results in competition after the commission of the ADRV.

1. Period of Ineligibility

60. Dealing first with the period of ineligibility to be imposed, the 2011 ADR provide in relevant part as follows.

"9.2 Ineligibility for Use of Prohibited Substances …

The period of ineligibility for a violation of paragraph 2.1, paragraph 2.2 … shall be as follows, unless the conditions for eliminating or reducing the period of ineligibility, as provided in paragraph 9.4 and 9.5, or the conditions for increasing the period of ineligibility, as provided in paragraph 9.6, are met:

First violation: Two (2) years Ineligibility.

…

9.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

Where an Athlete … can establish how a specified substance entered his or her body or came into his or her possession and that such specified substance was not intended to enhance the Athlete's sport performance or mask the use of a performance-enhancing substance, the period of ineligibility found in Paragraph 9.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of ineligibility from future events, and at a maximum, two (2) years of ineligibility.

To justify any elimination or reduction, the athlete... must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance-enhancing substance. The Athlete's … degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility.

9.5 Elimination or Reduction of the Period of Ineligibility Based on Exceptional Circumstances

9.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of ineligibility shall be eliminated. When a prohibited substance or its markers or metabolites is detected in an Athlete's sample in violation of paragraph 2.1, the Athlete must also establish how the prohibited substance entered his or her system in order to have the period of ineligibility eliminated. …

9.5.2 No Significant Fault or Negligence

If an Athlete... establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of ineligibility may be reduced, but the reduced period of ineligibility may not be less than one-half of the period of ineligibility otherwise applicable. ... When a prohibited substance or its markers or metabolites is detected in an Athlete's sample in violation of Paragraph 2.1, the Athlete must also establish how the prohibited substance entered his or her system in order to have the period of ineligibility reduced.

9.6 Aggravating Circumstances Which May Increase the Period of Ineligibility

If Disciplinary Committee or Court of Arbitration establishes in an individual case involving an anti-doping rule violation ... that aggravating circumstances are present which justify the imposition of a period of ineligibility greater than the standard sanction, then the period of ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete... can prove to the comfortable satisfaction of the hearing panel that he or she did not knowingly commit the anti-doping rule violation.

Examples of aggravating circumstances which may justify the imposition of a period of ineligibility greater than the standard section are:

- *the Athlete ... committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations;*

- *the Athlete ... Used or Possessed multiple Prohibited Substances ... on multiple occasions;*

- *...*

- *the Athlete ... engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.*

The examples of aggravating circumstances are not exclusive".

61. It follows from these provisions that the 'standard' period of ineligibility is two years, to be calibrated up or down according to the circumstances.

62. In these appeals, the Athlete has suggested in his undated response to RUSADA (see paragraph [9] above) that he *"purchased some nutrition supplements for increasing body mass in Ukraine and abroad, as they are cheaper than in Russia"* and that he does *"not exclude the possibility that they could be contaminated"*.

63. In this respect, as Articles 9.4 and 9.5 of the 2011 ADR make plain, it is a matter for the Athlete to establish how the substance entered his body, which he is required to do on the balance of probabilities, *i.e*., more probable than not. The difficulty for the Athlete is that he has adduced no corroborative evidence at all to this end. There is no evidence one way or the other before the Sole Arbitrator as to whether any of the supplements allegedly used by the Athlete did contain any DHCMT and that such supplements were the source of the substance. In these circumstances, it is clear that there is no room here for the elimination or reduction of the two years standard sanction.

64. WADA and RUSADA submitted, however, that there were in this case aggravating circumstances which should be taken into account and which should result in an ineligibility period of between two and four years, namely (a) there is evidence that the Athlete used different prohibited substances on more than one occasion and (b) that the Athlete was a protected athlete under the Russian doping scheme.

65. As a matter of general principle, the Sole Arbitrator adopts what was said in this respect in CAS 2017/O/4980 that "The appropriate period of ineligibility should be determined taking into account the gravity of the aggravating circumstances and the particular circumstances of the case." It is therefore necessary to assess the gravity of the aggravating circumstances in this case in the particular circumstances of this case.

66. WADA relied on the McLaren Reports dated July and December 2016 and what was reported by Prof. McLaren (and his team) as to the Russian doping scheme and, in particular, the so-called "washout testing" program within that scheme. These matters were the subject of consideration in CAS 2021/A/8012 and the Sole Arbitrator adopts the account set out therein. It is enough for present purposes to say that there was a Russian doping scheme and that an essential ingredient of it was the washout testing program. In this case, the excerpt from the washout schedules adduced into evidence in these appeals, EDP 0031 (see paragraph [38] above), shows, on its face, that the Athlete (a) was a participant in the washout testing program and (b) used prohibited substances (boldenone and DHCMT or turinabol) on another occasion, namely on or about 14 July 2013.

67. That being so, the Sole Arbitrator is satisfied that there are aggravating circumstances here pursuant to Article 9.6 of the 2011 ADR that justify the imposition of a period of ineligibility greater than the 'standard' sanction of two years.

68. In this respect, there is nothing from the Athlete, as required under Article 9.6 of the 2011 ADR, that goes to show that he did not knowingly commit the ADRV. It follows therefore that a period of ineligibility of greater than two years up to a maximum of four years should be imposed on the Athlete.

69. The Sole Arbitrator takes the view that, in all the circumstances of these appeals, an additional period of ineligibility is warranted. The evidence shows that, in taking part in the washout testing program, the Athlete did participate in a doping plan or scheme and that he did, on one prior occasion, use a prohibited substance. It is, in the end, a matter of judgment as to what measure of additional period of inelgibility is appropriate in any given circumstances. In the circumstances of this case, the Sole Arbitrator is of the view that an additional period of 12 months is justified, bringing the total period of ineligibility to three (3) years.

70. As to when that period should commence, the applicable rule is Article 9.10 of the 2011 ADR, which provides (in relevant part) as follows:

"9.10 Commencement of Ineligibility Period

9.10.1 Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed.

9.10.2 If a provisional suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed.

9.10.3 Delays Not Attributable to the Athlete or Other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or Other Person, the Disciplinary Anti-Doping 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".

71. The period of ineligibility should therefore commence on the date on which this Award comes into force and credit shall be given for the Athlete's provisional suspension. In this case the Athlete was provisionally suspended from 8 June 2020 to 27 May 2021.

2. Disqualification

72. WADA seeks the disqualification of all competitive results obtained by the Athlete from and including 15 October 2013 (that being the date of the doping control) to the date of the Award, with all resulting consequences (including forfeiture of medals, points and prizes). RUSADA seeks no such relief.

73. The doping control test in these appeals was conducted out of competition. It follows therefore that those provisions relating to automatic disqualification for in-competition testing do not apply and that the following provisions as to disqualification in relation to out-of-competition testing are relevant:

"IX. Sanctions on Individuals

…

9.8 In addition to the automatic disqualification of the results in the competition which produced a positive sample under paragraph VIII, all other competitive results obtained from the date a positive Sample was collected (whether in-competition or out-of- Competition), or other anti-doping rule violation occurred, through the commencement of any provisional suspension or ineligibility period, shall, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes".

74. The Sample was collected on 15 October 2013. According therefore to this provision, all competitive results obtained by the Athlete since that date should be disqualified – *"unless fairness requires otherwise"*.

75. During the course of the hearing, it was argued by WADA that it was a matter for the Athlete to show, by the evidence and on the balance of probabilities, that fairness required some other more lenient result and that, in the absence of such showing by the Athlete, the Sole Arbitrator enjoyed no discretion to consider whether fairness required a different period of time for the period of ineligibility. The authorities cited for this proposition included: Lewis & Taylor, Sports Law and Practice, 3d ed., 2014 at p545 and Manninen and Nowicki, "'Unless Fairness Requires otherwise' A review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offences", Bulletin TAS/ CAS Bulletin 2017/2; CAS 2021/ADD/37; and CAS 2022/ADD/44 at [116].

76. But these authorities only go so far. These authorities were not concerned with the free-standing discretion of a panel but instead with the question whether it was for the ADO or the athlete to show that fairness did or did not require a different result. They should not be read as addressing the larger issue of the general discretion of the panel. Indeed, this is made plain by the Sole Arbitrator in CAS 2021/ADD/37 at [62] where, while recognising that a panel cannot assess factors such as unaffected results or financial hardship in the absence of evidence from the athlete on these matters, a panel is nevertheless able to assess issues such as delays in results management *"and the overall length of the disqualification relevant in particular to a re-testing situation".*

77. In this respect, the Sole Arbitrator observes as follows:

    a. It is right to say that the starting position is that all competitive results from the date of the positive sample are to be disqualified. This flows from the use of the word 'shall'.

    b. It is also right to say, however, that the period of disqualification is ordinarily from the date of the positive sample through the commencement of any provisional suspension or period of ineligibility. It does not mean that the disqualification should catch all competitive results up to the date of the award.

    c. There is nothing in the rule either way as to who bears the burden of showing that the exception is to be applied in any given circumstances.

    d. It is right that the exception will ordinarily be invoked by the athlete in an endeavour to minimise the length and breadth of the period of disqualification. If an athlete argues for a shorter period of time then the athlete will, of course, bear the burden of persuading the panel that fairness so requires.

    e. It is also right to say that any consideration of fairness must include not only fairness to the athlete in question but also fairness to the other athletes who competed with that athlete and to the integrity of the sport generally.

    f. None of this is to say, however, that a CAS panel (or other tribunal) is somehow precluded from bringing into account notions of fairness when assessing the period of disqualification. The rule says that all competitive results obtained from the date a positive sample was collected through the commencement of any provisional suspension

or ineligibility, shall be disqualified *"unless fairness requires otherwise"*. If a panel forms the view that fairness does require otherwise then it is open to the panel to say so and there is nothing in the rule or in the CAS jurisprudence or as a matter of principle to suggest otherwise.

g. In the Sole Arbitrator's view this is of a piece with established CAS jurisprudence to the effect that the rule is subject to a 'general principle of fairness' and that, even in the absence of a showing by an athlete, a CAS panel has a discretion to modify this period of time should fairness so dictate: see, *e.g.*, CAS 2017/O/5039; CAS 2019/O/6153. The latter case provides helpful guidance in this respect:

"120 In the absence of evidence by the Athlete, who carries the burden of proof in regard to the "fairness exception", the Sole Arbitrator cannot assess or assume factors such as unaffected results or financial hardship stemming from the disqualification. The Sole Arbitrator is able, however, to review the Athlete's degree of fault and issues such as delays in results management and the overall length of the disqualification relevant in particular to a re-testing situation.

…

127 The re-testing of the Athlete's 2011 Sample took place over five (5) years and three (3) months following the 2011 Sample collection and the re-testing of the Athlete's 2012 Sample took place over four (4) years and eight (8) months following the 2012 Sample collection. The Sole Arbitrator recognises that anti-doping organisations are entitled to re-test samples at any time within the applicable statutes of limitations, and that they tend to await a later period as retesting is typically done once and they want to benefit from the most advanced science and testing process available. Nevertheless, the Athlete should not be penalized by and disqualified for an excessive period merely as a result of a decision of the anti-doping organisations not to proceed with the re-testing at an earlier date. The Sole Arbitrator notes that once the Samples were re-tested the anti-doping organisation has acted diligently and without delay. …

130 CAS case law confirms the broad discretion of panels in adjusting the disqualification period to the circumstances of a specific case. Taking into account, on the one hand, the seriousness of the ADRVs in the present case, the fact that multiple ADRVs occurred and the argued degree of fault by the Athlete and, on the other hand, the period of over five years of requested disqualification without evidence of use of prohibited substances (but for the two confirmed ones) when the governing body could have theoretically brought this case earlier, as well as the sanction already imposed, the Sole Arbitrator finds that the principles of proportionality and fairness in line with vast CAS jurisprudence do not support disqualification of results for such an extended period of time".

78. On this issue the Sole Arbitrator adopts the view taken in CAS 2020/O/6759 [89]-[90]:

"89. Therefore, the general rule is that, in addition to the automatic disqualification of the results in the competition where the Adverse Analytical Finding has been produced, all the Athlete's competitive results obtained from the date of the commission of the ADRV through the start of any provisional suspension or ineligibility period shall be disqualified. In this regard, the Sole Arbitrator notes that the retroactive disqualification of the competitive results

of an athlete that has committed an ADRV is fair and necessary to restore the integrity of all the sporting competitions in which he or she competed, rectifying the record books in the interest of sport. Deciding otherwise would be tantamount to reward the deceiver and would not be fair at all vis-à-vis the rest of the athletes that did not use Prohibited Substances.

90. Notwithstanding this, it is also important not to forget that the primary reason behind this measure (i.e. the disqualification of the sporting results of an athlete that cheated) is not to sanction him or her, but to ensure fair play and equal opportunities for all athletes, annulling those results achieved by those who acted or is reasonable to believe that have acted dishonestly vis-à-vis their competitors, being involved in any kind of ADRV, which is one of the most despicable breaches of the fundamental principles of sport. But, at the same time, it should be taken into account that, in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential disqualification period covers a very long term, which is normally the case when the facts leading to the ADRV took place long before the adjudicating proceedings started which usually occurs when they are opened as a result of the re-testing of a sample or of the uncover of a sophisticated doping scheme. In addition, in this type of cases it may be difficult to prove that the athlete at stake used prohibited substances or methods during such a long period of time".

79. In these appeals, the Sole Arbitrator takes the view that there are exceptional circumstances which militate against a strict application of the disqualification rule, *i.e.*, fairness does require otherwise. First, the events in question took place in 2013, long before these arbitral proceedings. The potential period of disqualification therefore does indeed cover a long term (in the order of nine years) as a result of the re-testing program in place subsequent to the Russian doping scandal. Second, the ADRV relates solely to the doping control undertaken on 15 October 2013, and there is no suggestion, let-alone evidence to prove that the Athlete used prohibited substances during such a long period of time following the date of the doping control.

80. These circumstances do, in the Sole Arbitrator's view, set this matter apart from the ordinary and require, in the interests of fairness, a reduction of the period of disqualification. In this regard, the Sole Arbitrator takes the view that fairness requires that all competitive results for a period of three (3) years from 15 October 2013 through to and including 14 October 2016 should be disqualified (with all attendant consequences), that being the same period of time as the period of ineligibility imposed in these appeals.

X. CONCLUSION

81. In view of all the above considerations, the Sole Arbitrator holds and determines that the appeals brought by RUSADA and WADA should succeed. In particular:

a. The Sole Arbitrator is comfortably satisfied that the Athlete's sample contained a prohibited substance in violation of Article 2.1 of the 2011 ADR.

b. The Athlete is sanctioned with a period of ineligibility of three (3) years starting from the date of this Award, but with credit to be given for the period already served in provisional suspension, being from 8 June 2020 to 27 May 2021.

c. All of the Athlete's competitive results for a period of three (3) years from 15 October 2013 through to and including 14 October 2016 shall be disqualified, with all of the resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 August 2021 by the Russian Anti-Doping Agency against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 123/2021 rendered on 27 May 2021 (*CAS 2021/A/8262 Russian Anti-Doping Agency v. Yuriy Selikhov*) is upheld.

2. The appeal filed on 4 October 2021 by the World Anti-Doping Agency against the decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 123/2021 rendered on 27 May 2021 (*CAS 2021/A/8380 World Anti-Doping Agency v. Russian Anti-Doping Agency & Yuriy Selikhov*) is upheld.

3. The decision of the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency No. 123/2021 rendered on 27 May 2021 is set aside.

4. Yuriy Selikhov is found to have committed an anti-doping rule violation under Article 2.1 of the All-Russian Anti-Doping Rules of April 13, 2011.

5. A period of three (3) years ineligibility is imposed on Yuriy Selikhov, starting on the date of this Award. The period of provisional suspension served by Yuriy Selikhov between 8 June 2020 and 27 May 2021 shall be credited against the period of ineligibility imposed.

6. All competitive results achieved by Yuriy Selikhov from 15 October 2013 through to and including 14 October 2016 shall be disqualified, with all of the resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

7. (…).

8. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 13 July 2023

THE COURT OF ARBITRATION FOR SPORT

James Drake KC
Sole Arbitrator