



INTERNATIONAL CYCLING UNION

President

USADA
Mr. William Bock III
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Sent by email only:
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Aigle, 3 August 2012
Ref: Presidency

Dear Mr Bock,

We refer to your letter dated July 26th 2012.

Before dealing with the issue of jurisdiction we will come back briefly to the Respondents that have no UCI licence, in particular those that USADA claims to have banned for life.

The case of the non-license-holders

Articles 18.2 and 18.3 of UCI's anti-doping rules (ADR) confirm that in order to sanction a non-licence-holder the latter must be subject to the jurisdiction of a competent body. A contractual basis or a basis of public law is required to grant such competence with respect to such person. As the person concerned has no licence another basis than a licence is required to vest jurisdiction. We don't see on what basis USADA can claim jurisdiction.

We are not aware that any person other than Mr Bruyneel and Mr Armstrong have held a UCI licence at any relevant time that could vest jurisdiction in USADA. We have no idea of what the evidence is that you are referring to in this respect.

With respect to the same persons you state correctly that they may waive a hearing. Yet UCI doesn't know whether they did so or not. If these persons may not have requested a hearing within the deadline set by USADA there may be other reasons for that than a waiver, for example that they were not notified or not notified in time.

In any case even if a hearing is waived, the elementary principles of fair process cannot be waived and such principles require that these persons are entitled to a review by a person or body other than the "prosecutor", especially as in this case it is about a non-analytical case where there is no report from a laboratory or another neutral instance, the persons concerned have not been provided with the evidence that is invoked against them and not less than a life ban has been requested against them.

Jurisdiction for results management

UCI's jurisdiction for results management in this case results from the applicable rules, i.e. articles 10 and 12 ADR which are in compliance with article 15.3 of the Code.

This is not altered by the time that passed between 12 June and 13 July, nor is it by the way in which certain media may have understood and/or worded answers to questions that may have been asked. Correcting media on statements in the world of cycling would be a full time job that the UCI has decided not to fulfil, assuming that responsible people do not judge on the basis of press articles.

In addition as you may know the rule is what the rule says and not what I might have said in answer to questions without having had the opportunity to check.

Anyway there is certainly no waiver whatsoever by the UCI of its right to conduct results management, left aside the fact that USADA has no jurisdiction to judge that.

The USADA protocol

The only thing that results clearly from the USADA protocol is that USADA has jurisdiction in relation with testing conducted by USADA. For the rest USADA might possibly claim results management jurisdiction if USADA shows that it discovered the anti-doping rule violation that it is prosecuting: article 15.3 of the Code.

We cannot comment upon your claim that USADA discovered evidence of anti-doping rule violations before the e-mail of Mr Landis of 30 April 2010 or discovered evidence after that email. As you do not disclose that evidence, we cannot take your claim into account. Please note that any evidence discovered after 30 April 2010 in relation with, pursuant to or in the wake of the email of Mr Landis cannot vest jurisdiction in USADA, even if the investigation into Mr Landis's statements would have led to the discovery of other elements.

Please note also that USADA was investigating on behalf of USA Cycling just as the UCI requested other national cycling federations to conduct an investigation concerning their respective licence holders. So USADA was investigating on behalf of UCI.

As USADA does not show to UCI that USADA discovered (the) anti-doping rule violation(s) that it is alleging without link with the email of Mr Landis, USADA's claim that it did so and therefore would have jurisdiction for results management cannot be taken into account.

If USADA would forward its file to UCI, UCI could check whether there is any substance in USADA's claim for jurisdiction for results management.

The fact that USADA refuses to do so justifies that the inference is drawn that USADA's file does not show that it discovered the anti-doping rule violation(s) that it alleges against the Respondents.

Anyway if the USADA protocol would grant jurisdiction to USADA while, as is the case here, the UCI rules grant jurisdiction to UCI, the rules of the UCI prevail: according to CAS case law the rules of the International Federation take precedence over the rules of a national organization. This principle is also incorporated in the Code: for example it is the International Federation that determines the jurisdiction of national anti-doping organizations for athletes that are not a national, resident, license-holder or member of a sport organization

of its country. It is also the International Federation that defines the concept of out-of-competition testing for which national anti-doping organizations have concurrent authority.

You also misunderstand article 12 ADR. That article does not provide for concurrent jurisdiction. On the contrary that article states that UCI has jurisdiction in all cases referred to in this article and requires a decision by the UCI to leave the case to another anti-doping organization, provided that such organization has jurisdiction under the Code. Even supposing that USADA has jurisdiction under the Code – which USADA fails to establish - in this case UCI refuses to leave the case to USADA.

The circumstance that the case of Mr Armstrong might end up being brought forward by USADA before AAA if UCI conducts the results management is irrelevant for the issue of jurisdiction for results management: the outcome of the results management process by the competent authority is no basis for shifting jurisdiction for the results management process to the body that may be competent for conducting the disciplinary proceedings (which is in fact USA Cycling, USADA receiving delegation from USA Cycling) but that has no competence for results management.

UCI's alleged conflict of interest

I will not dwell long on your allegations on this subject. We already heard them from another person who had to come back on his statements publicly and once again in court. We contest and reject these allegations which we feel denote a political intention against cycling and the UCI.

Your considerations on UCI's position vis-à-vis the riders apply to all international federations and to all other anti-doping organizations: these organisations can only test with the means that are at their disposal.

The UCI has always used all means at its disposal as is shown, by the way, by the names of prominent riders that were found positive after UCI tests, including Mr Hamilton and Mr Landis. This shows also that the UCI is not afraid of extensive testing. The UCI was also the first international federation to introduce new means in the fight against doping, including the urinary EPO test in 2001, the homologous blood transfusion test in 2004 and most recently, the blood passport.

WADA has repeatedly commended UCI for its fight against doping.

The law enforcement investigations are certainly not limited to cycling as you may know and are investigations that also USADA would be unable to conduct. (For your information we remind you that regarding the Festina case, at that time only the French ministry of sports could test in France: so your argument concerns the then French government rather than the UCI. The Court of appeals of Douai confirmed that the UCI had done all it could in the fight against doping).

You also know that apart from Festina, these investigations also concerned other sports.

On the other hand it is quite scaring that you proffer accusations based upon press articles.

Where you indicate that USADA has talked with Mr Saugy, Mr Saugy will have told you that there was no positive test for Mr Armstrong at the 2001 Tour de Suisse.

Mr Verbruggen has said nothing else than that Mr Armstrong never tested positive, which is correct.

Anyhow whether there is a conflict of interests is not a matter for USADA to decide.

In addition an alleged conflict of interests is no ground for denying UCI its right to conduct the results management. As already indicated in our letter of 13 July, USADA and WADA can appeal to CAS if UCI would decide not to go forward with the case. Whether such decision would be influenced by an alleged conflict of interests is irrelevant. The appeal to CAS is the appropriate way to deal with any such supposed conflict of interests.

As was also indicated in our letter of 13 July UCI accepts that the results management is conducted by independent experts.

Even regardless of the issues of jurisdiction and conflict of interests this is the best way to proceed as USADA has disqualified itself as a neutral body by proffering pages of accusations against the UCI which denotes a bias against cycling, by ignoring UCI's efforts in the fight against doping, by judging upon press articles, by refusing to submit the evidence its accusations are allegedly based upon, by claiming results management authority without giving evidence of such claim, by calling for witness statements under unknown but apparently unprecedented conditions which seem also contrary to the Code, by claiming to ban a person for life without elementary due process, by invoking a violation of conspiracy that is not provided for in the rules.

Conclusion

This case has to be taken out from this mine-affected sphere and given into the hands of third persons.

Therefore UCI stands by its letter of 13 July.

However, if USADA would not accept to entrust results management to an independent person or body then we suggest that USADA and UCI submit the issue of jurisdiction for results management to CAS.

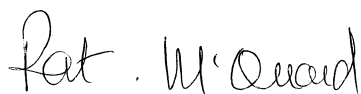
Please let us know what USADA's position is in this respect.

In the mean time and until further notice UCI denies USADA any authority to act or proceed on the basis of ADR or any other rule of the UCI or otherwise on behalf of UCI and/or USA Cycling.

We inform USA Cycling accordingly.

Now that UCI has been advised of the request for proceedings before AAA we inform also AAA and the Respondents.

Yours sincerely,



Pat McQuaid
President

Cc USA Cycling
AAA
Mr David Howman, Director General, WADA
Mr Olivier Niggli, Legal Director WADA
Mr Mike Morgan, counsel to Mr J. Bruyneel
Mr Mark Levinstein, counsel to Mr L. Armstrong
Dr Pedro Celaya Lezama