BEFORE THE AMERICAN ARBITRATION ASSOCIATION

North American Court of Arbitration for Sport Panel

U.S. Anti-Doping Agency, Claimant

and

Geneviève Jeanson, Respondent

AAA No. 30 190 00609 04

Final Award of the Arbitrators

We, the UNDERSIGNED ARBITRATORS, having been designated by the above-named parties, and having duly heard the proofs and allegations of the parties, and having issued an Interim Award on June 15, 2004, do hereby issue this Final Award, as follows:

1. We confirm and incorporate herein the Interim Award, which issued following an evidentiary hearing which took place in Montreal, Canada, on June, 11, 2004.

2. Claimant was represented by Travis T Tygart, its Director of Legal Affairs, and Respondent by Jean-Pierre Bertrand of McCarthy Tetrault s.r.l./LLP.

3. The parties have stipulated as to the essential facts and issues governing this proceeding, including the following:

3.1 The USADA Protocol for Olympic Movement Testing and the regulations of the Union Cycliste Internationale ("UCI Regulations") are applicable.

3.2 Respondent, a 22 years old elite cyclist who has raced on the international circuit since 1999 and was a member of the Canadian Olympic Team at the 2000 Olympic Games, is licensed by USA Cycling, the national federation for cycling in the United States.

3.3 At the October, 2003, UCI World Championship held in Canada, since Respondent, in accordance with UCI's safety regulations, provided a blood sample which showed a hematocrit level above the 47% UCI safety threshold for female riders, she was not permitted to participate in the race. It was undisputed that this caused Ms. Jeanson to be the subject of speculation, possibly damaged her reputation and was a very negative experience in her cycling career.

3.4 3.4 Early on the morning of April 21, 2004, prior to the start of the "La Flèche Wallonne" race in Belgium, Respondent provided a blood sample. She was shortly thereafter informed that her hematocrit level was 49.5, in excess of the safety threshold. She was thereupon requested to provide a urine sample, which she did in the presence of a male physician since she was informed that a female official was unavailable. Respondent elected to have a "B" sample of her blood analyzed. Unlike the "A" sample, the "B" blood sample did not result in an elevated hematocrit level. The urine sample tested negative for all prohibited substances.

3.5 The parties stipulated that the discrepancy in the results of the "A" and "B" blood samples "could be due to, among other reasons, a mechanical explanation or something in the blood", and that no inference should be drawn therefrom in favour of either party.

3.6 Respondent proceeded with the race, which commenced at or about 12.15 p.m.

3.7 Respondent was selected for drug testing following the race, and her name was posted at the finish line and at the drug testing station, approx 4.5 km from the finish location.

3.8 It is uncontested that Respondent failed to appear for drug testing at the drug testing station following the race, which she completed in 30th place.

4. The sole issue to be addressed by this panel is determination of the sanction to be applied to Respondent under the applicable UCI Regulations given her admitted failure to appear for the post-race drug testing.

4.1 Articles 131 and 132 of the UCI Regulations set out the sanctions applicable respectively to those who refuse to undergo a test or who negligently fail to appear for testing. Article 132 provides:

> "A rider who fails to appear for testing within the time limit shall be presumed to have refused the test and shall incur the penalties set out in article 131. A rider who is able to disprove the presumption that he has refused to take the test shall be penalized by a suspension of between one and six months and/or a fine as per article 128. Where circumstances justify it, a simple warning may be issued."

4.2 Accordingly, there is a presumption of refusal to undergo a test on the part of one who fails to appear for testing within the time limit. The issue before us is whether Respondent has been able to rebut the presumption.

4.3 We believe that, based on her testimony, her prior record and the evidence comprising the facts and circumstances of her case, she has succeeded in rebutting the presumption that UCI Regulations, Article 132, prescribes that a failure to appear for testing constitutes a refusal to take the test.

4.4 Respondent testified credibly that she was in a distraught frame of mind from the series of events leading up to the commencement of the race on April 21, 2004. The confluence of those events, which took place one after the other immediately preceding the start of the race, are unusual, if not unique, and such as to cause even a highly experienced, calm and responsible athlete to be unnerved and disquieted or, as she wrote to USADA's Anti-Doping Review Board in May, 2004, "physically drained". Firstly, Respondent had flown into Belgium the evening before the competition from North America. Secondly, on the morning of the competition she received a report that her hematocrit count was abnormal (and medically dangerously) high and more than 5.6 points higher than her count taken three days earlier. Thirdly, while awaiting analysis of the "B" sample of the blood collected, she was informed that a urine test was required of her, but that no female official was available to attend her urine sampling. Finally, she received the results of the "B" blood sample, which showed a count within the acceptable limit and 4.6 points lower than the "A" sample result.

4.5 It is not difficult to conclude that even a hardened race veteran might be shaken and unnerved by this series of events preceding a race start. For a 22 year old female to be distraught and rendered "hysterical" (as she testified) is entirely credible under the circumstances described by Respondent and unrefuted by Claimant. Indeed, even Claimant's witness, Dr. Dieleman, who took Respondent's samples preceding the race, testified by telephone at the evidentiary hearing that Respondent was "hysterical" after learning of the result of the "B" blood sample and that she experienced severe emotional trauma that likely accounted for her lapse in checking whether she had been selected for a post-race drug test. To have unwittingly neglected to check the notice at the finish line that she had been selected for a drug test is, accordingly, neither improbable nor unreasonable given also that she placed 30th (well below her normal and expected performance) in the race, and given that she had been drug tested earlier in the day preceding the start of the race and, as she testified, in a most humiliating way in that she had to provide her urine sample in the presence of a male official.

Additional factors that might explain Respondent's post-competition state of mind include her testimony that in the few European competitions in which she had raced she had finished at the top level, that automatically required drug testing, and that in North America racers generally were notified of post-race testing by radio or chaperones. While such notification is not required under the applicable rules, these practices plausibly might have contributed to her mental lapse following the "La Flèche Wallonne" race. Moreover, Respondent did not after the race leave the finish area, which might have suggested an attempt to avoid the test, but rather remained for a significant period of time to answer media questions and sign autographs.

4.6 Article 124 of the UCI Regulations after stating that "the penalties must be proportionate to the offence committed" recites elements to be considered in imposing the sanctions for an offence. They include, inter alia:

- the circumstances surrounding the offence,
- the character, age and experience of the transgressor,
- the gravity of the consequences of the penalty for his social, sporting and economic position,
- the risk to a professional career,
- the rider's normal discipline and programme, particularly as regards the length of the season for that discipline and the number and importance of the events."

4.7 Claimant argued that as an experienced, professional cyclist, she should have been aware of her obligation to ascertain whether she had been selected for testing and, therefore, that her failure to appear should be treated as a refusal to appear, thereby invoking the minimum four year sanction provided under UCI Regulations, Article 131.

4.8 Respondent, while an experienced rider, is nevertheless only 22 years old. Her record indicates that she has acted as a responsible professional who has taken several drug tests over the years and never tested positive. Indeed, a urine sample taken on the very morning of the competition at issue tested negative.

4.9 There is no doubt that a suspension would have prevented Respondent from participation in the 2004 summer Olympic Games, perhaps the single most important

competition in this athlete's career, and foreclosed her chances of obtaining necessary funding to support her chosen career as a cyclist possibly for years to come.

5. We conclude that Respondent (a) has committed a doping offence, her first offence, for failure to appear for the post-competition drug testing, (b) that the stipulated manner of notification by the UCI of Respondent's selection for drug testing was in compliance with applicable UCI Regulations, (c) that Respondent was able, through testimony and other evidence provided to the panel at the June 11, 2004 evidentiary hearing, to disprove the presumption of refusal to take the test, (d) that the rather unique circumstances of Respondent's case, as described, supra, do not justify a suspension but, rather, a warning, as authorized by UCI Regulations, Article 132.

5.1 The panel has considered relevant precedents in concluding that a warning, rather than a suspension, is warranted. In that regard, we believe the result reached in the first Fullard case (CAS 2002/A/384 Fullard v/ UCI & SACF) in which Jacques Fullard, a cyclist, received a warning for his first offence, is appropriate in this case. Conversely, to suspend Respondent would be to prescribe a sanction disproportionate to her offence, a first offence.

5.2 In accordance with UCI Regulations, Article 128(4) we also impose upon Respondent a fine in the sum of CMF 500 insofar as Respondent is an elite woman athlete under the age of 23.

6. Each side shall bear its own costs and attorney's fees.

7. The administrative fees and expenses of the American Bar Association and the compensation and expenses of the Arbitrators to be determined by the American Arbitration Association, shall be borne by the Claimant, USADA.

8. This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

Dated: June 28, 2004

Walter G. Gans

Walter G Gans, Chair

Christopher L Campbell, Esq

Hon Peter J Lindberg

competition in this athlete's career, and foreclosed her chances of obtaining necessary funding to support her chosen career as a cyclist possibly for years to come.

5. We conclude that Respondent (a) has committed a doping offence, her first offence, for failure to appear for the post-competition drug testing, (b) that the stipulated manner of notification by the UCI of Respondent's selection for drug testing was in compliance with applicable UCI Regulations, (c) that Respondent was able, through testimony and other evidence provided to the panel at the June 11, 2004 evidentiary hearing, to disprove the presumption of refusal to take the test, (d) that the rather unique circumstances of Respondent's case, as described, supra, do not justify a suspension but, rather, a warning, as authorized by UCI Regulations, Article 132.

5.1 The panel has considered relevant precedents in concluding that a warning, rather than a suspension, is warranted. In that regard, we believe the result reached in the first Fullard case (CAS 2002/A/384 Fullard v/ UCI & SACF) in which Jacques Fullard, a cyclist, received a warning for his first offence, is appropriate in this case. Conversely, to suspend Respondent would be to prescribe a sanction disproportionate to her offence, a first offence.

5.2 In accordance with UCI Regulations, Article 128(4) we also impose upon Respondent a fine in the sum of CMF 500 insofar as Respondent is an elite woman athlete under the age of 23.

6. Each side shall bear its own costs and attorney's fees.

7. The administrative fees and expenses of the American Bar Association and the compensation and expenses of the Arbitrators to be determined by the American Arbitration Association, shall be borne by the Claimant, USADA.

8. This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

Dated: June 28, 2004

Walter G Gans, Chair

Christopher L Campbell, Esq

Hon Peter J Lindberg

competition in this athlete's career, and foreclosed her chances of obtaining necessary funding to support her chosen career as a cyclist possibly for years to come.

5. We conclude that Respondent (a) has committed a doping offence, her first offence, for failure to appear for the post-competition drug testing, (b) that the stipulated manner of notification by the UCI of Respondent's selection for drug testing was in compliance with applicable UCI Regulations, (c) that Respondent was able, through testimony and other evidence provided to the panel at the June 11, 2004 evidentiary hearing, to disprove the presumption of refusal to take the test, (d) that the rather unique circumstances of Respondent's case, as described, supra, do not justify a suspension but, rather, a warning, as authorized by UCI Regulations, Article 132.

5.1 The panel has considered relevant precedents in concluding that a warning, rather than a suspension, is warranted. In that regard, we believe the result reached in the first Fullard case (CAS 2002/A/384 Fullard v/ UCI & SACF) in which Jacques Fullard, a cyclist, received a warning for his first offence, is appropriate in this case. Conversely, to suspend Respondent would be to prescribe a sanction disproportionate to her offence, a first offence.

5.2 In accordance with UCI Regulations, Article 128(4) we also impose upon Respondent a fine in the sum of CMF 500 insofar as Respondent is an elite woman athlete under the age of 23.

6. Each side shall bear its own costs and attorney's fees.

7. The administrative fees and expenses of the American Bar Association and the compensation and expenses of the Arbitrators to be determined by the American Arbitration Association, shall be borne by the Claimant, USADA.

8. This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

Dated: June 28, 2004

Walter G Gans, Chair

Christopher L Campbell, Esq

Hon Peter J Lindberg