CAS 2019/A/6180 World Anti-Doping Agency (WADA) v. United States Anti-Doping Agency (USADA) and Ryan Hudson

CONSENT AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: The Hon Michael J. Beloff QC, Barrister, London, United Kingdom

Ad hoc Clerk: Mr Tiran Gunawardena, Solicitor, London, United Kingdom

in the arbitration between

World Anti-Doping Agency, Montreal, Canada

Represented by Messrs Ross Wenzel and Magnus Wallsten, Attorneys-at-law, Kellerhals Carrard, Lausanne, Switzerland

- Appellant -

and

United States Anti-Doping Agency, Colorado Springs, United States of America

Represented by Messrs William Bock and Jeff Cook, Attorneys-at-law, Kroger Gardis & Regas LLP, Indiana, United States of America

- First Respondent -

&

Mr Ryan Hudson, Oregon, United States of America

- Second Respondent -

I. PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is a Swiss private-law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms, including by enforcing its World Anti-Doping Code ("WADC").

2. The United States Anti-Doping Agency ("USADA" or the "First Respondent") is the National Anti-Doping Organization ("NADO") in the United States of America for Olympic, Paralympic, and Pan-American Sport, responsible for protecting clean athletes and the integrity of sport.

3. Mr Ryan Hudson (the "Athlete" or "Second Respondent") is an American citizen and a former professional weightlifter, born on 16 December 1978.

II. FACTUAL BACKGROUND OF THE DISPUTE

4. On 5 December 2015, the Athlete underwent a doping control test by USADA at the American Open. The sample collected resulted in an Adverse Analytical Finding ("AAF") for stanozolol (and its metabolites 16B-hydroxystanozolol and 4B-hydroxystanozolol).

5. On 14 December 2016, the Athlete accepted an anti-doping rule violation ("ADRV"). The Athlete was sanctioned with a four-year period of ineligibility as described in the International Weightlifting Federation ("IWF") Anti-Doping Policy ("ADP") and the WADC, beginning on 24 May 2016.

6. On 14 June 2017, the Athlete underwent an out-of-competition doping control test by USADA.

7. On 11 July 2017, the WADA-accredited laboratory in Salt Lake City, Utah, United States of America (the "Salt Lake Laboratory") reported that the Athlete's A-Sample resulted in an AAF for dehydrochlormethyltestosterone ("DHCMT").

8. On 18 July 2017, the Athlete was informed of the AAF, and of his right to request the relevant laboratory documentation package. The Athlete was also informed that if "*it is ultimately determined that a doping violation has occurred, a sanction may be imposed that will include [...] an eight-year period of Ineligibility for* [his] *second anti-doping rule violation pursuant to the IWF Anti-Doping Policy and Articles 10.1, 10.2, 10.7 and 10.8 of the* [the WADC]."

9. On 11 August 2017, the Salt Lake Laboratory reported that the B-Sample analysis confirmed the results of the A-Sample.

10. On 17 August 2017, the Athlete was informed that, following confirmation of the AAF in the B-Sample, the matter was being forwarded to the USADA Anti-Doping Review Board.

11. On 10 September 2017, the Athlete signed a "Stipulation of Uncontested Facts and Issues" (the "Stipulation"), which specified as follows:

- *"That USADA collected urine sample designated as USADA urine specimen number 1595217 out-of-competition on June 14, 2017;*
- *That USADA sent USADA urine specimen number 1595217 to the World Anti-Doping Agency ('WADA') accredited laboratory in Salt Lake City, Utah (the 'Laboratory') for analysis;*
- *That the Laboratory's chain of custody for USADA urine specimen number 1595217 was conducted appropriately and without error;*
- *That the Laboratory, through accepted scientific procedures and without error, determined that both the A and B Sample of USADA urine specimen number 1595217 contained dehydrochloromethyltestosterone (DHCMT) metabolite M3;*
- *DHCMT and its metabolites are prohibited substances in the class of Anabolic Agents on the WADA Prohibited List, adopted by both the Protocol and the IWF Anti-Doping Policy;*
- [...]
- *That Mr. Hudson understands that in accordance with Section 13 of the Protocol, he has the right to a review by a Panel of the independent Anti-Doping Review Board (the 'Review Board') of his urine specimen number 1595217, and that he voluntarily and knowingly waives his right to a review of his case by the Review Board;*
- ***Mr. Hudson acknowledges he has committed his second anti-doping rule violation***." (emphasis added)

12. On 7 March 2018, the Athlete informed USADA that he intended to retire from competing in the sport of Weightlifting.

13. On 13 March 2018, USADA confirmed receipt of the Athlete's notice of retirement. USADA informed the Athlete that his retirement effectively "tolled" (i.e. paused) his prescribed period of ineligibility.

14. On 10 August 2018, USADA charged the Athlete with an ADRV for the presence of DHCMT in his Sample from the 14 June 2017 out-of-competition doping test, and for the use and/or attempted use of DHCMT pursuant to Articles 2.1 and 2.2 of the IWF ADP and Articles 2.1 and 2.2 of the WADC (the latter of which has been incorporated into the USADA Protocol for Olympic and Paralympic Movement Testing - the "USADA Protocol"). The USADA Charge Letter also stipulated that USADA would seek up to an eight-year period of ineligibility for the Athlete's second ADRV.

15. On 27 November 2018, the Athlete signed an "Acceptance of Sanction" for an ADRV (the effect of which will be discussed below). The Athlete was sanctioned with a four-

year period of ineligibility beginning on 14 June 2017 (the "Appealed Decision"). The Appealed Decision was rendered by USADA in application of the USADA Protocol.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 4 March 2019, in accordance with Article R47 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"), WADA filed a Statement of Appeal with the CAS challenging the Appealed Decision. In its Statement of Appeal, WADA requested the nomination of a sole arbitrator to determine this case.

17. On 19 March 2019, in accordance with Article R51 of the CAS Code, WADA filed its Appeal Brief.

18. By USADA's letter of 1 April 2019, WADA's letter of 3 April 2019 and the Athlete's email of 3 April 2019, the Parties agreed to nominate the Hon Michael J Beloff QC, Barrister in London, United Kingdom, as Sole Arbitrator.

19. On 29 April 2019, the CAS Court Office informed the Parties that the Athlete had not filed an Answer within the deadline and that pursuant to Article R55 of the CAS Code, the Sole Arbitrator could nonetheless proceed with the arbitration.

20. On 15 May 2019, the Parties were informed that the Hon Michael J Beloff QC had accepted his appointment as Sole Arbitrator but wished to make a disclosure further to Article R33 of the CAS Code.

21. Also on 15 May 2019, in accordance with Article R55 of the CAS Code, USADA filed its Answer, in which it raised an objection to the CAS' jurisdiction.

22. On 24 May 2019, pursuant to Article R54 of the CAS Code and in light of the fact that none of the Parties had submitted a challenge further to Article R34 of the CAS Code against the disclosure made by the Hon Michael J Beloff QC, the CAS Court Office on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute was constituted as follows:

    Sole Arbitrator: The Hon Michael J Beloff, QC Barrister in London, United Kingdom

23. On 7 June 2019, WADA filed its observations on USADA's Objection to Jurisdiction and raised two other Preliminary Issues (i.e. issues of scope and date).

24. On 29 June 2019, USADA filed its Response on Jurisdictional and Preliminary Issues.

25. On 8 July 2019, WADA filed a further response to USADA's position ("WADA's Further Response").

26. On 9 July 2019, USADA protested that, absent agreement or order under Article R56 of the CAS Code, WADA's Further Response should not be admitted.

27. On 17 July 2019, further to USADA's 9 July 2019 protest, the Parties were informed that the Sole Arbitrator, taking into account both the need for fairness to all Parties and his own need for maximum assistance on the issues, directed that: (i) within 10 days, WADA

either provide English translations of any materials upon which it wished to continue to rely and which are in a language other than English (English being the language selected for these proceedings) or formally accept that materials not in English be struck from the record; and (ii) USADA be permitted to respond to WADA's Further Response within 10 days thereafter.

28. On 23 July 2019, WADA submitted English versions of the materials on which it wished to rely.

29. On 2 August 2019, USADA filed a further response, which repeated its objections to the timeliness of WADA's response and subsequent submission but did not engage further with any substantive arguments.

30. On 29 August 2019, the CAS Court Office wrote to the Parties confirming that Mr Tiran Gunawardena, Solicitor, London, United Kingdom was appointed as *ad hoc* clerk in the proceeding.

31. On 10 March 2020, the Sole Arbitrator issued an Award on Jurisdiction, ruling that, *inter alia*, CAS had jurisdiction over the appeal filed by WADA.

32. On 14 April 2020, WADA filed a Reply with the CAS Court Office.

33. On 4 June 2020, in lieu of filing its Rejoinder, USADA informed the CAS Court Office that the Parties had signed a settlement agreement (the "Settlement Agreement") and requested that its Clause 1 be embodied in an Arbitral Award rendered by consent of the Parties, in accordance with Article R56 of the CAS Code. Clause 4 of the Settlement Agreement stated that the Sole Arbitrator was to invite the Parties to make submissions on the issue of costs and to make an appropriate order on costs in the Award.

34. On 26 June 2020, both WADA and USADA filed their respective submissions on costs with the CAS Court Office. The Athlete did not file a submission on costs.

35. On 10 July 2020, USADA filed its second submission on costs with the CAS Court Office. WADA did not file a second submission on costs.

36. On 20 July 2020, WADA filed a signed copy of the Order of Procedure with the CAS Court Office.

37. On 22 July 2020, USADA filed a signed copy of the Order of Procedure with the CAS Court Office.

38. On 27 September 2020, the Athlete filed a signed copy of the Order of Procedure with the CAS Court Office.

IV. THE SETTLEMENT AGREEMENT

39. The Settlement Agreement was signed by the Second Respondent on 30 May 2020, by the First Respondent on 1 June 2020 and by WADA on 4 June 2020.

40. The Sole Arbitrator has been requested to ratify the Settlement Agreement and embody its Clause 1 in a Consent Award.

41. Clause 1 of the Settlement Agreement concluded between the Parties provides as follows:

> *"[...] **NOW THEREFORE**, in consideration of the mutual agreements and promises stated herein, **IT IS AGREED AS FOLLOWS**:*
>
> *1. The Parties agree as follows:*
>
> *(a) The Acceptance of Sanction form signed by the Athlete and USADA on 27 November 2018 shall be set aside;*
>
> *(b) The Athlete is sanctioned with an eight-year period of ineligibility, commencing on 27 November 2018; and*
>
> *(c) USADA shall bear the arbitration costs for the CAS Appeal under R64.4."*

42. Paragraph 4 of the Settlement Agreement stated the following regarding the issue of costs:

> *"4. The Parties jointly request that the Sole Arbitrator determine, after inviting submissions on costs from the Parties, the Parties' respective requests for relief (as set out in their written submissions) with respect to a contribution to their legal and other costs, and make the appropriate order(s) within the context of the Consent Award."*

V. JURISDICTION

43. As noted previously, the issue of jurisdiction of the CAS was in dispute between the Parties. However, on 10 March 2020, the Sole Arbitrator issued an Award on Jurisdiction, ruling that the CAS has jurisdiction over the present Appeal. For the sake of brevity, the arguments raised by the Parties and the analysis of the Sole Arbitrator will not be repeated herein as they are set out in detail in the Award on Jurisdiction.

VI. RATIFICATION AND INCORPORATION OF THE SETTLEMENT AGREEMENT BY CAS

44. In accordance with Article R56 para. 2, second sentence, of the CAS Code, "[...] *Any settlement may be embodied in an arbitral award rendered by consent of the parties.*"

45. Therefore, the Sole Arbitrator is expressly allowed to issue an Award embodying the terms of the settlement, if all parties to the dispute agree. The Sole Arbitrator's endorsement of the Settlement Agreement and its incorporation in an award serves the obvious purpose of making easier the enforcement of the Settlement Agreement.

46. All the Parties to the present dispute have agreed to embody part of the Settlement Agreement in a Consent Award. However, as any settlement "*may*" be embodied in an award, it is for the Sole Arbitrator to verify the *bona fide* of the Settlement Agreement, so that the consent award mechanism is not manipulated by the Parties as an instrument

of fraud, and to acknowledge that the settlement terms are not contrary to public policy principles or mandatory rules.

47. The Sole Arbitrator, having reviewed the text of the Settlement Agreement and the evidence on file, finds no reason to object to or to disapprove of the terms of the Settlement Agreement and is satisfied that the agreement constitutes a *bona fide* settlement of the dispute of which he was seized.

48. Accordingly, by consent, an Award is made directing the Parties to fully comply with all the terms of the Settlement Agreement. The Settlement Agreement and Consent Award terminates the CAS arbitration *CAS 2019/A/6180 World Anti-Doping Agency v. United States Anti-Doping Agency & Ryan Hudson.*

49. The above conclusion, finally, makes it unnecessary for the Panel to consider any other requests submitted by the Parties. Accordingly, all other and further motions or prayers for relief are dismissed.

VII. COSTS

50. As noted above, the issue of costs was the only issue which the Sole Arbitrator needed to consider, absent an agreed position on this issue in the Settlement Agreement.

51. Below is a summary of the Parties' written submissions on the issue of costs. Additional facts and allegations found in the Parties' written submissions may be set out, where relevant, in connection with the discussion that follows. While the Sole Arbitrator has considered all the facts, allegations and legal arguments submitted by the Parties on the issue of costs in the present proceedings, he refers in his Consent Award only to the submissions he considers necessary to explain his reasoning.

A. The Parties' Submissions on Costs

52. WADA's submissions may be summarised very briefly as follows:

- WADA noted that as per Clause 1(c) of the Settlement Agreement, the arbitral costs for these proceedings were to be borne by USADA.

- Regarding a contribution to its costs, WADA stated that the Appealed Decision was "*manifestly flawed and WADA had no choice but to appeal it.*" When there was a second ADRV, USADA imposed (or, more precisely agreed) an additional period of suspension of four years, which resulted in an aggregate period of suspension (including time served for the First ADRV) of approximately 5 years and 1 month. This had no basis whatsoever in the WADC or USADA Protocol, and no justification for it has ever been put forward by USADA.

- As this was a second ADRV, the appropriate sanction under the WADC/USADA Protocol, was clear i.e. that unless the Athlete could demonstrate that the violation was not intentional (which he never sought to do), the period of ineligibility should be 8 years pursuant to Article 10.7.1 of the WADC.

- When WADA pointed out this error in its Appeal Brief, USADA should have rectified its mistake and agreed to WADA's prayers for relief. Instead, USADA challenged CAS jurisdiction and sought to argue – for the first time – that the Athlete did not commit a second ADRV, which resulted in WADA having to file lengthy submissions on 7 June and 8 July 2020. The Sole Arbitrator's Award on Jurisdiction "*agreed with WADA's position on all material matters.*" In short, when confronted with its "*clear misapplication of the multiple violation provisions in the Code*", USADA sought to avoid the case (by challenging CAS jurisdiction) and change its case by arguing there was no second ADRV. The arguments were not only weak, but also implied non-compliance with the WADC and a complete rebranding of the Appealed Decision.

- Even after the Award on Jurisdiction, "*at which point it had become abundantly clear that the only possible sanction was an 8 year one*", USADA insisted on an in-person hearing in a remote part of Oregon in the United States of America. WADA submitted that "*with respect, it cannot be a sensible application of resources for WADA and/or its counsel to travel half the way across the world to discuss how many years ineligibility result from 4 multiplied by 2.*" Nevertheless, USADA insisted on an in-person hearing and also referred to the recent confidential CAS award of *CAS 2019/A/6313 Jarrion Lawson v IAAF*, which WADA claimed is "*based on legal error and ignores decades of case law on the strict requirements to establish origin.*" WADA also reiterated that USADA had never explained how it obtained a copy of this confidential award.

- WADA noted that if USADA had agreed at the outset to the imposition of an 8-year sanction – as it ultimately did in the Settlement Agreement – it would have spared WADA from having to file numerous submissions. Further, the proceedings had lasted over 16 months because "*USADA sought to defend a mistake that it now effectively concedes.*"

- WADA submitted that its costs in this matter amounted to CHF 46,445. Pursuant to Article R64.5 of the CAS Code, all the factors for allocating costs to the prevailing party are in WADA's favour. WADA also noted that its budget has come under significant pressure in recent years due to various multi-million dollar investigations it has had to fund. In the present case, given the above circumstances, WADA submitted that it would be appropriate for the Sole Arbitrator to award a contribution to its costs on a "*quasi-indemnity basis*", i.e. of no less than CHF 40,000 and noted that there are various examples where costs orders in excess of this have been made (citing *CAS 2009/A/1752&1753*).

53. USADA's submissions, which came in two tranches, may be summarised very briefly as follows:

- In its first submission on costs, in the context of Article R64.4 of the CAS Code, USADA claimed that "*there was no ad hoc clerk and no witnesses, experts and interpreters*" and its conduct in procuring a settlement minimised the expenses of the CAS. With respect to Article R64.5 of the CAS Code, USADA submitted that it was not seeking a costs order and that all Parties should bear their own costs.

- In its second and more detailed submission, USADA responded to WADA's arguments, all of which it rejected. In particular, USADA rejected WADA's request that costs be awarded on a "*quasi-indemnity basis*" and noted that the CAS Code does not provide for such a measure and indeed that was not what was intended by Article R64.5 of the CAS Code. Moreover, WADA's request "*is unsupported by relevant precedents and nearly barren of case law.*" USADA claimed that the sole case cited by WADA (i.e. *CAS 2009/A/1752 & 1753*), which was actually two cases, was significantly more complex and document intensive, had a 3-day hearing and involved the IOC – "*probably the most well-funded sports organization in the world.*"

- USADA also argued that the ordinary contribution for costs at the CAS was even lower than the range of CHF 5,000 – 10,000 suggested by WADA. USADA cited a variety of recent (anti-doping related) cases at the CAS (*inter alia CAS 2018/O/5676, CAS 2018/O/5704* and *CAS 2018/O/5667*) and noted that they were all either more complex or time consuming (e.g. had a hearing) and even still the costs awarded were in the range of CHF 2,000 – 8,000.

- USADA further argued that this case could have become much more complex and costly, but for the settlement which USADA procured. Moreover, even if WADA disagreed with the arguments put forth by USADA, the arguments were nevertheless submitted in good faith. Finally, USADA argued that WADA did not succeed on every legal argument, noting that WADA was seeking a sanction of an 8 year period of ineligibility ending on 24 May 2028 but the end date of ineligibility set out in the Settlement Agreement was 27 November 2026. Moreover, USADA argued that now that the matter had been settled, it is not open to WADA to argue that it would have prevailed on all the disputed issues at a hearing.

- Regarding its request for a hearing in Bend, Oregon, USADA noted that the USADA Protocol provides for hearings to be held in the USA at a location convenient to athletes.

- USADA rejected WADA's arguments regarding the *CAS 2019/A/6313 Jarrion Lawson v IAAF* case and stated that it was irrelevant (and "*could lead to no possible relief*") how USADA obtained a copy of the arbitral award.

- Regarding the comparative levels of funding, USADA noted that WADA submitted what it believed USADA's financial position was, but did not actually confirm its own budget/financial position. USADA argued that WADA was actually in a better financial position than USADA and further that WADA did not evidence its claims regarding the costs incurred on various investigations.

- Regarding WADA's alleged costs of CHF 46,445 in the present matter, USADA noted that no detailed breakdown or itemised record of time has been provided, as would be the common practice in litigation where costs awards can be made. USADA acknowledged that Article R64.5 of the CAS Code does not require documentation; however, when a substantial award of costs is requested – as is the case here – USADA claimed "*it is incumbent*" on the party requesting it to

provide such evidence.

54. The Athlete did not file a submission on costs.

B. The Sole Arbitrator's Analysis

55. Article R64.4 of the CAS Code provides the following:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,
- the administrative costs of the CAS calculated in accordance with the CAS scale,
- the costs and fees of the arbitrators,
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,
- a contribution towards the expenses of the CAS, and
- the costs of witnesses, experts and interpreters.

The final account of the arbitration costs may either be included in the award or communicated separately to the parties."

56. Article R64.5 of the CAS Code reads as follows:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, 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 outcome of the proceedings, as well as the conduct and the financial resources of the parties."

57. The Sole Arbitrator notes that the Parties agreed in the Settlement Agreement that USADA would bear the entirety of the costs of the arbitration pursuant to Article R64.4 of the CAS Code. For completeness, the Sole Arbitrator notes that USADA was incorrect in stating in its letter dated 26 June 2020 that no *ad hoc* clerk was appointed (an *ad hoc* clerk was appointed in this matter on 29 August 2019). Nevertheless, the costs of the arbitration procedure will be notified to the Parties in due course by the CAS Court Office and as agreed in the Settlement Agreement, these costs will be borne by USADA.

58. Pursuant to Article R64.5 of the CAS Code, the Sole Arbitrator has the discretion to grant the prevailing party *"a contribution towards its legal fees and other expenses incurred in connection with the proceedings."* The Sole Arbitrator has considered WADA's and USADA's submissions on this issue, as set out above, which are diametrically opposed.

59. Regarding this issue, Mavromati & Reeb[1] stated:

> *"27 [...] The contributions granted by CAS Panels are relatively modest. The ICAS adopted the notion of 'contribution' in order to avoid that the financial obstacle*

[1] Mavromati & Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, Kluwer Law International, 2015, at page 628.

would discourage potential parties, be they athletes, clubs or sports federations to proceed before the CAS. In other words, the ICAS wanted that the issue of costs remains a secondary element and not a key issue which, depending on the outcome of the arbitration procedure, would have a durable impact on an athlete's career or on the survival of a sports body. [...]

28 *As a general rule, the Panel may follow reasonable and objective criteria in order to grant the prevailing party a contribution towards its legal fees and expenses with regard to the arbitration proceedings.* [...]

29 *Article R64.5 is clear in that the prevailing party will not receive the reimbursement of all costs incurred during the arbitration procedure. This is also in line with the general principles of Swiss procedural law, which foresee that successful parties in civil proceedings are usually awarded a mere minor participation to their costs, which rarely cover the full legal costs.* [...]

30 [...] *A contribution is, by definition, a portion of the entire amount of the legal costs incurred by the parties. On the basis of the awards rendered by the CAS so far, it appears clearly that in 98% of such awards the legal costs granted amount from CHF 0 to CHF 20,000. Some Panels have awarded higher amounts (up to CHF 100,000) in very complex and lengthy cases.*"

60. Based on the above, and on the standard custom and practice of the CAS, whilst the Sole Arbitrator considers that USADA should make a contribution to WADA's costs and expenses pursuant to Article R64.5 of the CAS Code, he does not consider that there are grounds either in principle or precedent to award such a contribution to costs on a quasi-indemnity basis.

61. As noted, the standing practice at the CAS is to award only a relatively modest contribution to the respective legal fees and expenses of the other party. The underlying rationale of this standing practice is to not overly burden access to justice, since arbitration costs as well as contributions to legal fees and expenses may constitute – in principle – a significant barrier to access to justice. The Sole Arbitrator considers that awarding a costs contribution on a quasi-indemnity basis of CHF 40,000 (or more) in the present case would be contrary to these principles, and indeed could potentially also be in violation of Swiss procedural law.

62. The Sole Arbitrator acknowledges that there have been instances where costs contributions have been significant – even up to CHF 100,000 – but those cases had truly exceptional circumstances which warranted such an award. For example, the footnote to the provision cited above from Mavromati & Reeb regarding a costs award of up to CHF 100,000 cited the example of *F. Landis v USADA* (Award of 27 June 2008). That case was an exceptionally lengthy procedure. Moreover, the Panel in that case considered that there was "*litigation misconduct*" by the appellant.

63. The Sole Arbitrator appreciates that WADA considered it "*had no choice but to appeal*" the Appealed Decision and incur costs in addressing arguments put forward by USADA in these Appeal proceedings, which it considered "*weak*" and "*unattractive.*" However, as noted by USADA, these arguments "*were made in good faith, and WADA does not suggest otherwise.*" The Sole Arbitrator notes that the principle of good faith applies not

only to state court proceedings but to arbitration proceedings (cf. Article 52 of the Swiss Civil Code of Civil Procedure: "*All persons involved in the proceedings must act according to the principle of good faith*"). The Sole Arbitrator has no reason to conclude that USADA acted in violation of that principle. The Sole Arbitrator also agrees with USADA that Article R64.5 of the CAS Code was not intended "*to sanction a party for merely losing legal arguments on appeal.*"

64. The Sole Arbitrator therefore turns to the specific criteria set out in Article 64.5 of the CAS Code. On the one hand, WADA succeeded, importantly, in establishing that the CAS had jurisdiction over this appeal. Further as regards the substantive merits, whilst the appeal was ultimately settled, the outcome of the settlement was significantly closer to the outcome sought by WADA, than USADA. To that extent WADA was the winner. On the other hand, whilst there were complex issues addressed in the written submissions on jurisdiction, there was ultimately no hearing in this matter at any stage and pro tanto costs were saved on all sides.

65. The Sole Arbitrator did not consider there to be a need to conduct a forensic analysis of the Parties' respective financial positions. This is not a case where an individual David confronted a corporate Goliath. The contest pitted two institutions against each other, both of which had established access to funds.

66. Having considered and evaluated all the above factors, the Sole Arbitrator determines that USADA shall pay to WADA the amount of CHF 9,000 (nine thousand Swiss Francs) as a contribution to the costs and expenses incurred by the latter in these proceedings.

67. Lastly, the Sole Arbitrator notes that the Athlete chose not to participate actively in the Appeal and did not appoint counsel to represent him. Accordingly, the Sole Arbitrator determines that the Athlete will bear only his own costs and expenses, if any, incurred in these proceedings.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Settlement Agreement submitted to the CAS Court Office by the Parties on 4 June 2020 is hereby ratified by the CAS with the consent of the Parties and its relevant terms are incorporated into this arbitral Award.

2. Each Party is hereby ordered to perform the obligations and duties as per the Settlement Agreement referred to above.

3. The arbitral procedure *CAS 2019/A/6180 World Anti-Doping Agency v. United States Anti-Doping Agency & Ryan Hudson* is terminated and deleted from the CAS roll.

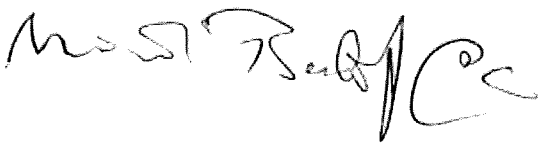
4. In accordance with the Settlement Agreement, the arbitration costs, to be determined and served to the Parties by the CAS Court Office, shall be borne by the United States Anti-Doping Agency.

5. The United States Anti-Doping Agency shall pay to the World Anti-Doping Agency the amount of CHF 9,000 (nine thousand Swiss Francs) as a contribution to the costs and expenses the latter incurred in connection with the present proceedings. Ryan Hudson shall bear his own costs and expenses incurred in these proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 23 October 2020

THE COURT OF ARBITRATION FOR SPORT



Michael J. Beloff QC
Sole Arbitrator

Tiran Gunawardena
Ad hoc Clerk