

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
WORLD ATHLETICS**

Before:

Christopher Quinlan QC (Sole Arbitrator)

BETWEEN:

World Athletics

Anti-Doping Organisation

-and-

Blessing Okagbare

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

A. INTRODUCTION

1. World Athletics (“WA”), formerly the International Association of Athletics Federations (“IAAF”), is the International Federation governing the sport of Athletics worldwide. WA was represented in these proceedings by the Athletics Integrity Unit (“AIU”) which has delegated authority for Results Management and hearings on behalf of World Athletics pursuant to Rule 1.2 of the 2021 World Athletics Anti-Doping Rules (“ADR”).

2. The Respondent, Blessing Okagbare (“the Athlete”) is a 33-year-old long-jumper and sprinter from Nigeria; she is an Olympic Silver medallist (Beijing 2008, long-jump), World Championship Silver medallist (Moscow 2013, long-jump) and bronze medallist (Moscow 2013, 200m) and is the current Nigerian national champion in the 100m sprint (17 June 2021).
3. By Notice of Charge dated 20 September 2021, the Athlete was charged by the AIU with Anti-Doping Rule Violations (“ADRV”) under the ADR based on two Adverse Analytical Findings (“AAF”) for the presence of Prohibited Substances in samples (recombinant erythropoietin and human growth hormone) collected from the Athlete on 20 June 2021 and 19 July 2021. Further, the Athlete is charged with two breaches of Rule 12 of the ADR.
4. The Disciplinary Tribunal (“Tribunal”) was convened pursuant to Rule 8.5 ADR. The hearing of this matter took place by Zoom video conference call on 31 January 2022. At the conclusion of the said hearing the Tribunal reserved its decision. This document constitutes its reasoned Decision, in accordance with Rule 8.12 ADR. The Tribunal considered the entirety of the materials that the parties put before it and the evidence during the hearing. If this decision does not explicitly refer to a particular aspect of the evidence, document or submission, it should not be inferred that it has overlooked or ignored it; the Tribunal considered the entirety of the materials and evidence.

B. JURISDICTION

5. Rule 1.1.2 ADR provides:

“These Anti-Doping Rules are intended to implement the requirements of the 2021 version of the Code in the sport of Athletics and will be interpreted and applied in a manner that is consistent with the Code and the International Standards. The Code and the International Standards (each as amended from time to time) are integral parts of these Anti-Doping Rules and will prevail over these Anti-Doping Rules in case of conflict. These Anti-Doping Rules must be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of any Signatory or government. The comments annotating various provisions of

these Anti-Doping Rules, the Code and the International Standards will be used as an aid to interpretation of these Anti-Doping Rules.”

6. By Rule 1.4.1 the ADR apply to World Athletics and to each of its Member Federations and Area Associations. By virtue of Rule 1.4.2(f) the ADR apply to the Athlete. She is also an International-Level Athlete for the purposes of Rule 1.4.4 ADR.
7. The Athlete did not dispute that she was subject to the jurisdiction of WA and to the ADR. She also did not challenge the AIU’s jurisdiction for Results Management in respect of the AAFs or that the Disciplinary Tribunal has jurisdiction to determine the alleged breaches of the ADR.

C. FACTUAL BACKGROUND

8. The Athlete’s outdoor season began with competitions in the USA (where she is based) in mid-April, before a series of five elite-level, international competitions (World Athletics Continental Tour and Diamond League meetings) over a period of just eighteen days between 19 May 2021 and 6 June 2021.
9. The Athlete then participated in the Nigerian Olympic Trials on 17 June 2021 and 19 June 2021, finishing first both in the 100m on 17 June 2021 and in the 4x100m on 19 June 2021. Thereby, she qualified for the Tokyo 2020 Olympic Games, which took place in 2021.
10. The Athlete provided the First Sample on 20 June 2021. The First Sample was collected Out-of-Competition at 22:34 at a hotel in Lagos, Nigeria, immediately following the completion of the Athlete’s participation in the Nigerian Olympic Trials.
11. The Athlete continued to finish her outdoor season with a series of three elite level international competitions in Budapest, Monaco and London/Gateshead over a period of just seven days between 6 July 2021 and 13 July 2021. The Athlete then travelled to

Samorin, Slovakia on 14 July 2021, where, according to her Whereabouts information, she remained until the morning of 24 July 2021. She then travelled to Jacksonville, Florida and on to Vienna, Austria, from where she flew to Tokyo, Japan for the Olympic Games.

12. The Athlete provided the Second Sample at 05:49 on 19 July 2021.

13. On 30 July 2021, the World Anti-Doping Agency (“WADA”) accredited laboratory in Lausanne, Switzerland (the “Lausanne Laboratory”) reported the presence of human growth hormone hGH10 (“hGH”) in the Second Sample (the “hGH AAF”). Following the Athlete’s request, the B Sample was analysed by the Lausanne Laboratory (in the presence of the Athlete’s appointed representatives) on 11 August 2021. The analysis of the B Sample for the Second Sample confirmed the hGH AAF.

14. On 12 August 2021, the WADA-accredited laboratory in Cologne, Germany (“the Cologne Laboratory”) reported the presence of recombinant erythropoietin EPO14 (“EPO”) in the First Sample (the “EPO AAF”). The Athlete was notified thereof on 20 August 2021.

15. The same day, the Athlete provided her explanation for the hGH AAF. In summary, her explanation was that she had never used any Prohibited Substances and asserted that the following might explain the hGH AAF:

- a. Treatment for fever over three days including an injection and pills;
- b. Changes in menstrual cycle including severe bleeding;
- c. Thyroid medication;
- d. Use of a prenatal vitamin;
- e. Use of supplements; and/or
- f. Consumption of contaminated food.

16. On 27 August 2021, the Athlete provided her explanation for the EPO AAF. She denied taking EPO and said:

"[...] This is the second [AAF] reporting substances I have no explanation how there [sic] were found in my sample, as I have not taken anything relating to this substance."

17. On 10 September 2021, the AIU requested in writing the Athlete's cooperation with a wider investigation by the AIU into the hGH and EPO AAFs. Pursuant thereof she was interviewed by AIU representatives by video conference on 15 September 2021. During the interview, the Athlete said, in summary, that she could not explain the AAFs. During the said interview, she was issued by the AIU with a Demand pursuant to Rules 5.7.4, 5.7.5 and 5.7.7 ADR ("the Demand").

18. The Demand, *inter alia*:

- a. Informed her of the AIU's reasonable belief that she had information, records, articles and/or things in her possession and/or under her control that may evidence or lead to the discovery of evidence related to ADRVs under Rules 2.1 and Rule 2.2 ADR and the basis of that belief.
- b. Reminded the Athlete of her obligation to report any knowledge or suspicion that any other athlete or other person had committed an ADRV or other breach of the ADR.
- c. Required the Athlete to provide to the AIU for inspection, copying and/or downloading (i) any records in hard copy or electronic format that may contain information of relevance to the investigation (ii) electronic storage devices and cloud-based servers and (iii) any passwords, login credentials and other identifying information required to access electronically stored records.
- d. Informed her that the Head of the Integrity Unit had formed the reasonable belief that the information contained on or in those items (and the items themselves) were capable of being damaged, altered or destroyed such that the Athlete was required to provide the items requested in the Demand to the AIU immediately to

ensure that the relevant evidence could be preserved pursuant to Rule 5.7.7 of the Rules.

19. During the said interview the Demand and the relevant processes under the Rules, including the Athlete's right to file an objection to the Demand with the Chair of the Disciplinary Tribunal (or his delegate) within seven (7) days, were fully explained to the Athlete. However, the Athlete ultimately refused to provide her mobile telephone to the AIU representatives as required under the Demand. The Athlete did not provide any information about other AAF or breaches of the Rules which had or may have been committed by her or by any third party.

20. On 20 September 2021, the AIU issued a Notice of Charge to the Athlete in accordance with Rule 8.5.1 and Article 7.1. The Athlete was charged as set out in paragraphs 21-23 below.

D. PROCEEDINGS BEFORE THE DISCIPLINARY TRIBUNAL

(1) Charges

21. By Notice of Charge dated 20 September 2021 the Athlete was charged as follows:

"Pursuant to the foregoing, you are hereby charged with committing the following Anti-Doping Rule Violations (the "Charge"):

2.1.1. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, pursuant to Rule 2.1, by virtue of the presence of EPO in the First Sample and/or hGH in the Second Sample; and

2.1.2. Use of a Prohibited Substance (i.e. EPO and hGH), pursuant to Rule 2.2."

22. She was informed of the potential consequences thereof. In the same Notice the Athlete was informed:

"For the avoidance of doubt, the Provisional Suspensions imposed upon you pursuant to Rule 7.4.1 in our letters dated 30 July 2021 and 20 August 2021 remain in force and you continue

to be barred temporarily from participating in any Competition or activity until this matter is fully determined.”

23. By Notice of Proceedings Under Rule 12 ADR the Athlete was informed of the commencement of disciplinary proceedings against her for her refusal to comply immediately with the Demand issued to her on 15 September 2021 pursuant to Rule 5.7.4 in the context of the Integrity Unit’s investigation into her two alleged ADRVs. She was informed of the potential consequences thereof.

24. This matter was referred to the Disciplinary Tribunal in accordance with Rule 8.4 ADR on 04 October 2021.

(2) Disciplinary Tribunal

25. The Disciplinary Tribunal was appointed by letter dated 6 October 2021. There has been no objection to the composition thereof.

26. A Preliminary Meeting took place by way of telephone conference call on 15 October 2021. The Tribunal issued Directions as set out in Appendix 1.

27. Following the Athlete’s failure to comply with an aspect of those Directions, on 16 November 2021 a further Direction was issued:

“The response from the athlete does not comply with my paragraph 1.2 of my Directions. By 16.00 on 18 November the athlete must comply with that paragraph or state the date upon which she wishes or will be in a position to comply”.

28. The Athlete did not reply. In consequence on 25 November 2021 the following further Directions were issued:

“I will determine this case as a sole arbitrator.

By 16.00 (GMT) on 3 December 2021 The Athlete must submit her answer brief addressing World Athletics' arguments and setting out arguments on issues that the Athlete wishes to raise at the hearing, as well as written witness statements from the Athlete and from each other witness (fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes the Panel to hear from the witness and enclosing copies of documents upon which the Athlete intends to rely.

If the Athlete cannot comply with the Direction on 6.2. she must file with Sport Resolutions an explanation in writing no later than 16.00 26 November."

29. The Athlete submitted an Answer brief dated 16 December 2021 ("Answer Brief"). In paragraph 5.5 thereof she said:

"The AIU can have access to the content of the Respondent's phone if properly produced before the Disciplinary panel".

30. Thereafter the Athlete was given a further opportunity to provide her mobile telephone for imaging by the AIU. On 21 December 2021, the Secretariat informed WA that the Disciplinary Tribunal Chair invited the parties to liaise regarding potential agreement on directions in that respect. The same day WA wrote to the Athlete's lawyer with its proposed directions, including the following direction:

"Athlete to make herself available for the imaging of her phone(s) (at a time and place to be agreed) in the week beginning 10 January 2022 and by no later than Friday, 14 January 2022."

31. On 23 December 2021 the Athlete's lawyer responded in the following terms:

"For the proposal on:

Athlete to make herself available for the imaging of her phone(s) (at a time and place to be agreed) in the week beginning 10 January 2022 and by no later than Friday, 14 January 2022. We do not accept this. This is because Parties have joined issues on the demand given to the Athlete. And the fact that the charge on this is not totally withdrawn or removed.

At this stage, the Athlete has filed in her answers on this issue and conceding to your proposal on this issue will be prejudicial to her."

32. The same day, WA responded as follows:

"...I should add that at no point did we (nor could we) offer to drop the Rule 5.7.7 and Rule 5.7.3 charges in exchange for later phone imaging: to the contrary, we made it clear that any eventual compliance may only be relevant to sanction.

If we do not hear further from you by 5pm CET today, we will assume that the imaging refusal is maintained, and we will send the other agreed directions to Sport Resolutions, explaining that there has been a further refusal to phone imaging. We also will be drawing this refusal to the attention of the tribunal at the eventual hearing, including for the purposes of assessing sanction."

33. Later that same day, the Athlete responded as follows:

"I note your comment on the Athlete's inability to concede [sic] to your proposal on imaging. I also note that AIU is posed to push for the very severe penalty against the Athlete to ensure the Athlete will no longer compete considering her current age.

However, it is important to note that the Athlete did not refuse to produce her phone for imaging and this cannot also be used for the current proceedings that is ongoing. It must be noted that the Athlete has filed her response to the case you served on her. If and when the issue of the second request is mentioned in your reply brief, we shall require time to respond to this new issue which is not contained in [sic] the answer we served.

As you are aware our response is limited to the processes served on the Respondent and anybody's [sic] new addition to it will require us to also make further submissions on it.

Therefore, my take is that you proceed with the points we have agreed on and [sic] leave out the one we did not agree to. Our inability to agree to your [sic] proposal is not a refusal. Since AIU has indicated that they will proceed on the charge already preferred against the Respondent, it is our humble [sic] view that any other further inquiry will be prejudicial to the Respondent."

34. In light thereof, on 24 December 2021 further Directions were issued including fixing the hearing by video conference call on 31 January 2022.

35. The Athlete filed her Answer Brief to the EPO Charge dated 7 January 2022 ("the EPO Answer Brief").

36. In consequence, the AIU filed its Reply Brief dated 24 January 2022 (“the AIU Reply”) together with further evidence, including material concerning proceedings in the USA by the FBI against a man named Eric Lira (“Lira”) (see paragraphs 44-49 below).

37. The hearing before the Tribunal on 31 January 2022 was conducted in accordance with Rule 8.11 ADR and by Zoom video conference call. It was attended as follows:

Sport Resolutions (Secretariat to the Disciplinary Tribunal):

- Kylie Brackenridge (Senior Case Manager)

World Athletics:

- Adam Taylor – Counsel for World Athletics
- Tony Jackson - AIU – Deputy Head of Case Management
- Huw Roberts – Solicitor

Witnesses:

- Dr Tiia Kuranne
- Dr Hans Geyer
- Dr Günter Gmeiner

Athlete:

- Ms Blessing Okagbare
- Chinedu Udora - Athlete’s Counsel

Witness:

- Dr Isuajah Chukwuka Emmanuel

38. The Doping Control Officer Katerina Horakova was required to attend but, in the event, no one had questions for her and she did not give 'live' evidence.

39. The hearing followed the timetable essentially agreed between the parties, save for modest amendments by the Tribunal. It was recorded.

40. Following opening submissions on behalf of WA and the Athlete, Ms Okagbare was the first witness from whom the Tribunal heard. She was not asked any questions by her Counsel. Mr Taylor asked questions of her. She did not accept the AAF from the Second Sample. She denied receiving any injection before either sample was taken. She denied knowing Lira. She said she declined to hand over her telephone as the contents were private. She denied refusing because she knew it contained incriminating messages. She said she had not read the part of her Answer Brief in which it was said she appeared to have no objection to sharing the content of her mobile telephone with the AIU (paragraph 5.5 thereof).

41. Dr Hans Geyer was not asked any questions. The remaining expert witnesses were heard concurrently but seriatim.

42. What follows is a synopsis of the parties' respective cases and of the material before the Disciplinary Tribunal. It does not include every submission advanced in their respective pleadings and other documents, though all of that material, and the evidence during the hearing, has been considered by Tribunal in reaching this Decision.

(3) World Athletics' Case

43. In summary the AIU's case was that the AAFs arose from the Athlete taking multiple serious Prohibited Substances which it said were, supported by expert evidence obtained by the AIU, administered only by injection and which are extremely challenging

for anti-doping laboratories to detect. The AIU argued that the AAFs supported its case that the Athlete was “*engaged in a sophisticated doping scheme that was targeted specifically towards her participation at the Tokyo 2020 Olympic Games*”. It argued that in those circumstances, the Athlete’s ADRVs were egregious and so justified the application of Aggravating Circumstances in accordance with Rule 10.4 ADR and the imposition of a period of Ineligibility of six years.

44. Further, the AIU submitted that its evidence established that the Athlete had failed to comply with the Demand and failed to cooperate with its investigation, which would have led to the discovery of evidence of further ADRV by her and at least one other person. Thus her refusal to comply with the Demand and her failure to cooperate with the AIU investigation under the ADR were submitted to be additional serious and substantial breaches of the ADR, warranting an additional (i.e. consecutive) period of Ineligibility of at least six years. In this respect it also relied upon material concerning proceedings in the USA by the FBI against a man named Eric Lira, served with the AIU Reply. It is therefore necessary to summarise those proceedings (“the Lira Charges”).

45. On 12 January 2022, the US Attorney’s Office for the Southern District of New York issued a press release concerning the filing of criminal charges publicly against Lira. Those charges relate to the distribution of prohibited substances to two athletes for the purpose of cheating at the 2020 Olympic Games held in Tokyo in the summer of 2021. The AIU exhibited to its Reply a copy of the Sealed Complaint sworn and filed in the said court (“the FBI Complaint”)¹.

46. WA’s case was that one of those athletes, known as “Athlete 1” in the FBI Complaint is Blessing Okagbare. The basis for the claimed identification was that many of the facts known to WA as proved by evidence in this case, are identical to facts set out in the FBI Complaint.

¹ Exhibit 6, pp488-498 Hearing Bundle.

47. On 2 August 2021, the Athlete's mobile telephone was reviewed by US Customs and Border Protection on her return to the USA from Tokyo.

48. The FBI Complaint sets out highly incriminating text and voice messages by "Athlete 1" with a contact named "*Eric Lira Doctor*" in 2020 and 2021. The messages included:

- a. "Athlete 1" asking Lira for vials or doses of EPO and hGH.
- b. "Athlete 1" querying the quantity of drugs she would need for herself and "Athlete 2".
- c. "Athlete 1" sending to Lira a list of drugs that she wanted, including hGH and EPO.
- d. On 13 June 2021, "Athlete 1" queried in a message sent to Lira whether she was safe to take a test following a particular dosage, and because she was not sure, she "*just let them go so it will be a missed test*"².
- e. On 22 June 2021 "Athlete 1" told Lira that she was pleased with her 100m time ("*10.63...with a 2.7 wind*") and whatever he had done was working well.

49. Those messages are clearly about the commercial supply (i.e. for money) by Lira of hGH and EPO to "Athlete 1" and the use thereof for performance-enhancing purposes. That was known to be contrary to the ADR as is clear from the discussion of her missed test.

50. On 14 January 2022 WA sent a Notice of Investigation letter to the Athlete concerning the potential ADRVs of Evading sample collection (Rule 2.3) and Tampering (Rule 2.5)³. That Notice was based on its assertion that Blessing Okagbare is "Athlete 1". The AIU is currently investigating these matters. I note her email response:

"As i had earlier responded to you on this issue, i did [sic] was in my room on the 13th of June, 2021, and did not hear or see the DCO. Though that I ensured that my phone was available in

² p501 Hearing Bundle.

³ibid

case there was a need to reach me on my mobile phone, i had no knowledge that the DCO was at my door on that day.

On the demand to provide copies of messages referred to in the unsealed Complaint against Lira, i did not have any such conversation or message with Lira at any time on or around 13 June, 2021 to the best of my knowledge and do not have it on my phone.”⁴

(4) The Athlete’s case

51. She denied the ADRVs. She denied taking Prohibited Substances by injection or at all. In support of her denials, she pointed to her long history of ‘negative’ tests, including ten of the twelve she underwent between 16 April 2021 and 30 July 2021.

52. In respect of the Rule 2 ADRVs, her case, is summarised thus in paragraph 2.13 of her Answer brief:

“The Respondent shall contend in her answer brief that the Adverse Analytical Findings shown in Sample A and B result of her blood test collected on the 19th of July 2021 as well as that of Sample A urine test result for the EPO are unreliable and erroneous as she did not take /inject the hGH or the EPO.”

53. The Athlete’s challenges to the hGH results are essentially as follows:

- a. The Athlete’s samples were kept at high temperatures of 24 to 10°C and then 9 to 6°C prior to their receipt by the Lausanne laboratory.
- b. Her samples were stored by the laboratory at “below -15°C” when the 2014 GH Guidelines specified “approximately -20°C”, and therefore the laboratory did not follow the Technical Document.
- c. There were issues with the measurement uncertainty used by the Lausanne laboratory in its hGH analytical procedures.

⁴ p504 Hearing Bundle.

54. In accordance with the EPO Answer Brief and during the hearing, the Athlete made the following challenges to the EPO AAF:

- a. The urine samples collected on 6 June 2021 and 18 June 2021 were negative for EPO, implying that her use of EPO commenced within the 48 hours before the urine sample collected on 20 June 2021, which would have been 'irrelevant with no physiological benefit'.
- b. The collection vessel used for the urine was not in accordance with the ISTI 2021.
- c. The negative quality control in the SAR-PAGE analytical procedure was in fact positive.
- d. Various concerns about lack of documentation and lack of credible dating.

55. She relied upon the evidence of Dr Emmanuel in support of her case on the Rule 2 ADRV charges.

56. In relation to the Demand, her case was that there was "compelling justification" for her refusal to submit her mobile telephone to the AIU namely:

- a. It had conducted itself "*in such a manner that affected their impartiality in the entire process and in the confidentiality of her privacy trusted in their care.*"
- b. She had no trust in the AIU following its role in leaking to the Nigerian press the result of the analysis of her B sample.
- c. She had informed the AIU that her mobile telephone had been "*collected and checked at the Airport upon her return to the United States from Tokyo Olympics*"⁵.

57. She said other than issues around her mobile telephone, she had not refused to comply or cooperate with the AIU. It was submitted that the USADA material in connection with

⁵ §4.4 Answer Brief.

Lira relied upon by WA was hearsay and so was inadmissible against her⁶. She denies she is “Athlete 1”.

E. ANTI-DOPING RULE VIOLATIONS

(1) Rules

58. Rule 2.1 ADR specifies that the Presence of a Prohibited Substance or its Metabolites or Markers is an Anti-Doping Rule Violation. Rule 2.2 ADR also provides that the Use of a Prohibited Substance is an Anti-Doping Rule Violation.

59. Rule 2.1.1 and Rule 2.2.1 ADR establish that the Athlete is strictly liable for the Presence of a Prohibited Substance or its Metabolites or Markers in her samples and the Use of a Prohibited Substance or Prohibited Method. It is not necessary for the AIU to establish the Athlete’s intent, Fault, negligence or knowing Use of a Prohibited Substance in the context of Rule 2.1 or Rule 2.2.

60. Rule 3.1 ADR provides that the AIU (on behalf of World Athletics) shall have the burden of establishing that an Anti-Doping Rule Violation has been committed to the comfortable satisfaction of the Tribunal.

61. Rule 3.2 ADR states that facts relating to ADRVs may be established by any reliable means. In that respect, and given the issues raised by the Athlete, it is to be noted that Rule 3.2.3 ADR provides that WADA accredited laboratories and other laboratories approved by WADA are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories (“ISL”) unless the Athlete rebuts this presumption by demonstrating, on the balance of probabilities, that a departure from the ISL occurred “*that could reasonably have caused the AAF*”. Therefore, the Athlete must establish both (1) a departure from the ISL procedures which (2) could reasonably have caused the AAF.

⁶ §5.3, *Ibid*.

62. Rule 5.7 ADR gives the Integrity Unit the power to conduct investigations into matters that may evidence or lead to the discovery of evidence of Anti-Doping Rule Violations.

63. Rule 5.7.3 ADR states:

“Athletes and other Persons must co-operate fully with investigations conducted pursuant to this Rule 5 (and in cases of refusal or failure to do so without compelling justification, Rule 12 shall apply).”

64. Rule 5.7.4 ADR provides:

“The Head of the Integrity Unit may at any stage (including after the Notice of Charge) make a written demand (Demand) to an Athlete or other Person to provide the Integrity Unit with any information, record, Rule or thing in their possession or control that the Head of the Integrity Unit reasonably believes may evidence or lead to the discovery of evidence of an anti-doping rule violation or other breach of these Anti-Doping Rules.”

65. Rule 5.7.5 ADR further provides that the Head of the Integrity Unit may require an Athlete to provide (or procure to the best of their ability the provision by any third party) for inspection copying and/or downloading any records or files in hard copy or electronic format and/or any electronic storage device which the Head of the Integrity Unit reasonably believes may contain relevant information.

66. Rule 5.7.7 ADR states that where the Head of the Integrity Unit reasonably believes that a demand relates to any information, record, Rule or thing that is capable of being damaged, altered, destroyed or hidden, then the Athlete must comply immediately with a Demand so that the evidence can be preserved. It also states that any electronically stored information or electronic storage device is deemed as being capable of being so damaged, altered, destroyed or hidden. Therefore, an Athlete is obliged to comply immediately with a Demand where it relates to any electronically stored records/information or any electronic storage devices pursuant to Rule 5.7.7.

67. The recipient of a Demand has a right to make an objection to the Demand by requesting a review by the chairperson of the Disciplinary Tribunal within seven days (Rule 5.7.7(c) ADR). That does not obviate the requirement to comply with the Demand and immediately provide any information, record, or thing to the integrity unit in order to preserve the evidence. The Athlete made no such request.

68. Rule 12 provides:

“Where an Athlete or other Person (i) refuses or fails without compelling justification to comply with any provision of these Anti-Doping Rules but such refusal or failure does not fall within any of the anti-doping rule violations defined in Rule 2; or (ii) engages in offensive conduct towards a Doping Control official or other Person involved in Doping Control that does not otherwise constitute Tampering as defined in Rule 2.5, the Athlete or other Person shall not be deemed to have committed an anti-doping rule violation and they shall not be subject to any of the Consequences set out in Rules 9 and 10. However, disciplinary proceedings may be brought against the Athlete or other Person before the Disciplinary Tribunal and they may be provisionally suspended (or may accept a voluntary suspension) pending the outcome of such proceedings. If after considering the matter the Disciplinary Tribunal finds that there has been a refusal or failure without compelling justification to comply with these Anti-Doping Rules, or that the Athlete or other Person has engaged in offensive conduct towards a Doping Control official or other Person involved in Doping Control, then it will impose such sanctions and subject to such conditions as it sees fit (which may include, without limitation, a period during which the Athlete or other Person shall not be eligible to participate in the sport of Athletics and Disqualification of the Athlete's results, with all resulting consequences including the forfeiture of titles, awards, medals, points and prize money). The Athlete or other Person will receive credit for any period of provisional suspension served provided it has been respected.”

69. In summary therefore, Rule 12 enables disciplinary proceedings to be brought where an athlete or other person refuses or fails without compelling justification to comply with any provision of the ADR.

70. The phrase “compelling justification” appears in both Rule 5.7.3 and Rule 12.1. It is not defined in the ADR nor the WADA Code from which it derives. The words have their

ordinary meaning. Justification is an acceptable reason for an act or a way of behaving. Compelling qualifies justification and means what it says. It may not be especially helpful to use synonyms to demonstrate the meaning of the ordinary word “compelling”. In the context of both Rules 5.7.3 and 12, an objective assessment of the justification is required.

71. The threshold is therefore high. The policy reasons that apply for construing the phrase “compelling justification” extremely narrowly in the context of (for example) Rule 2.3⁷, apply equally in the present context. Otherwise, athletes will be able to avoid, without good reason, their responsibility to cooperate with anti-doping investigations and the purposes thereof thwarted or frustrated without good reason.

(2) hGH ADRVs

72. The starting point is that the Athlete did not dispute the presence of hGH in the Second Sample, which was confirmed by the B Sample analysis. She has no valid Therapeutic Use Exemption (“TUE”) which would justify the presence of hGH in her Sample.

73. It is necessary to refer to the following technical documents:

1. 2014 WADA Guidelines for “HUMAN GROWTH HORMONE (hGH) ISOFORM DIFFERENTIAL IMMUNOASSAYS FOR DOPING CONTROL ANALYSES” (“2014 GH Guidelines”).
2. WADA Technical Document TD2021GH as of 1 April 2021 (“TD2021GH”).

74. Dealing seriatim with the Athlete’s challenges, the first concerns the Sample temperatures in transit:

- a. Dr Isuajah Chukwuka Emmanuel asserts that “*the sample was consistently transported at a temperature above 6.5C as against the preferred 4C or below according to guideline*”. As the AIU correctly observed, he makes no reference to which guideline he was relying upon. To the extent that he is referring to the 2014

⁷ see IAAF v Kipyegon Bett SR/Adhocsport/178/2018/SR/Adhocsport/212

GH Guidelines, it is no longer in force. In any event, and aside from it being out of force, the reference to 4°C is a reference to the storage temperature of sample aliquots when in the laboratory, not sample transportation conditions.

- b. Further, TD2021GH contains no specific temperature requirements for transportation. It only requires that “*blood samples should have been kept in a refrigerated state (shall not be frozen) following collection and during transportation to the Laboratory*”. The DCO, Ms Horakova explained – in her unchallenged statement - that she put the blood samples into a portable coolbox and then she moved them into a refrigerator at her house, prior to sending them in cold storage to the laboratory. This is also confirmed by the temperatures recorded in the temperature log set out within the LDP.
- c. The recommendation of TD2021GH for refrigeration during transport was therefore followed.
- d. Also, there are no specific temperature requirements for blood transportation in a variety of other relevant technical standards and documents.
- e. Accordingly, there is no substance in this challenge.
- f. In any event, any such breach, could not have had a causative effect. The available scientific evidence establishes that high temperature could only have caused degradation of the Sample and could not create the key isoform leading to the positive result.

75. Secondly, the Sample temperatures at the Lausanne laboratory:

- a. This challenge is without merit. The TD2021GH states: “*the following conditions are recommended: For short-term storage (up to three (≤ 3) months) at approximately – 20C*”.
- b. The laboratory practice of below -15°C is within that recommendation. In any event it is just that: a recommendation, not a mandatory requirement. There was no departure from the TD2021GH.

76. Finally, the Lausanne laboratory analytical procedures:

- a. The challenge to the validity of the hGH AAF is also, with respect, misconceived for these reasons.
 - i. There was no challenge to the B-sample analysis, which was in good agreement with the A-sample analysis.
 - ii. The measurement uncertainty of the assay ("the MU") is addressed in the Lausanne laboratory's ISO/IEC 17025 accreditation. It is not required to produce method validation data relating to the confirmation procedure as that process has already been assessed and approved as part of the accreditation procedure.
 - iii. In any event, the laboratory has only to estimate the MU based on its laboratory validation data, which it has done (TD2021GH, § 2.1).
 - iv. Further, TD2021GH makes clear that, in relation to the relative combined standard uncertainty of the assay ($uc, \%$), the maximum allowed values (uc_{max}) are 20% for values close to the Decision Limits. In this case, as set out in the Test Report in the Laboratory Documentation Package, $uc, \%$ was estimated by the laboratory at 10% for Kit1 and 8% for Kit2, well within the permitted 20%.
 - v. The actual recorded analytical values included rec/pit ratios considerably in excess of the Decision Limits. In particular, the Kit 1 ratio was 2.87 as against a Decision Limit of 1.63.
 - vi. Once more the Athlete advanced no causative effect of the claimed departures.

77. Therefore, the Athlete has not established any departure from the International Standard for Testing and Investigations ("ISTI") or the ISL that could reasonably have caused the hGH AAF. The AAF was not challenged on any other basis. Therefore, and in accordance with the strict liability principle established by Rule 2.1.1 and Rule 2.2.1, the Tribunal is comfortably satisfied that the Athlete has committed the following ADRVs:

- a. Presence of hGH in the Second Sample, pursuant to Rule 2.1; and

- b. Use of hGH pursuant to Rule 2.2.

(3) EPO ADRVs

78. The Athlete did not dispute the presence of EPO in the First Sample. She has no valid TUE which would justify the presence of EPO in her Sample.

79. Addressing seriatim the Athlete's challenges, the first concerned the claimed relevance of the urine samples of 6 and 18 June 2021 which were said to be negative for EPO. There is nothing in this since they were not tested for EPO.

80. Secondly, the collection vessel used for the urine was said to not be in accordance with the ISTI 2021:

- a. The substance of this complaint appears to be that "*the collection vessel used for the urine test of 20th June 2021 was neither covered nor sealed with any form of tamper proof as was required by the ISTI*"⁸.
- b. The correct starting point is Article 6.3.4 of the ISTI 2021 which states that the sample collection authority shall use "Sample Collection Equipment systems" which have a Tamper evident sealing system. Therefore, only the system as a whole requires tamper-evident sealing function.
- c. The sample collection equipment system as a whole, and specifically the A and B bottles, must have tamper-proof lids because they are going to be taken away for testing, out of the athlete's sight and control. In this case, the system had one: the A and B bottles had standard tamper-proof lids. The sample collection vessel into which an athlete urinates does not also need its own tamper-evident sealing system built in, because the ISTI requires an athlete to have hands-on control of the sample collection vessel at all times from urination until transfer of the urine into the A and B bottles.

⁸ §2.5, EPO Answer Brief.

- d. Next the unchallenged evidence of Femi Ayorinde, the DCO on 20 June 2021. He said:
- i. He offered the Athlete a choice from three or four sealed sample collection vessels and lids, that the vessels and their lids come in separate sections of a sealed plastic bag.
 - ii. She satisfied herself as to the integrity of the equipment (ie. non-tampered seals), that the Athlete provided a urine sample and sealed the vessel with the lid.
 - iii. She then divided the sample into the A and B bottle kits.
- e. It is therefore inconceivable that an open vessel of urine would have been placed back into a plastic bag.
- f. Further, the Athlete signed the Doping Control Form and commented on there: "IT IS FINE". As an experienced athlete who had undergone many doping controls, she would not have done so had she had concerns at all about the procedure.

81. Thirdly, it was said that the negative quality control ("NQC") in the SAR-PAGE analytical procedure was in fact positive:

- a. With respect, this is wrong. The NQC result is normal within the SAR-PAGE analysis for rEPO. It matches with the examples of NQCs in both the WADA TD2014EPO - Harmonization of Analysis Reporting of Erythropoiesis stimulating agents (ESAs) by Electrophoretic Techniques and the WADA TD2022EPO - Harmonization of Analysis and Reporting of Erythropoietin (EPO) and other EPO-Receptor Agonists (ERAs) by Polyacrylamide Gel Electrophoretic (PAGE) Analytical Methods.
- b. Furthermore, the Athlete's sample result also matches the examples of EPO-positive result as seen in those TDs⁹.

⁹ see Dr Hans Geyer, Dr Christian Reichel and Dr Gunter Gmeiner statements

- c. The SAR-PAGE analysis data were also sent for independent analysis by WADA-designated independent experts. Dr Christian Reichel and Dr Günter Gmeiner from the Seibersdorf doping control laboratory confirmed the results.
- d. Besides, the Athlete advanced no causative effect of the claimed anomaly.

82. Finally, concerns raised about the lack of documentation and lack of credible dating:

- a. There is nothing in this complaint. The analytical part of the confirmation procedure began with the sample preparation on 5 August. It was concluded on 7 August. On 9 August, the results were submitted to densitometric evaluation. That was the confirmation procedure, and it accords with standard procedure.
- b. There is no basis for the Athlete's assertion that "*the laboratory have obviously withheld documentations [sic] of the Respondent's sample A analysis which are adverse to them*" and it is rejected.

83. Therefore, the Athlete has not established any departure from the ISTI or the ISL that could reasonably have caused the EPO AAF. The AAF was not challenged on any other basis. Therefore, and in accordance with the strict liability principle established by Rule 2.1.1 and Rule 2.2.1, the Tribunal is comfortably satisfied that the Athlete has committed the following ADRVs:

- a. Presence of EPO in the First Sample, pursuant to Rule 2.1; and
- b. Use of EPO pursuant to Rule 2.2.

84. In relation to the findings in respect of the Rule 2.1 and 2.2 ADRVs the following should be noted. Those conclusions are based on the scientific and expert evidence. In that respect, Dr Isuajah Chukwuka Emmanuel is a medical doctor who described himself also as "*laboratory physician*". He has never worked in a dedicated anti-doping laboratory and although he said he had been an expert witness before could not remember how many times. That is to be contrasted with the experts relied upon by the AIU, whose evidence the Tribunal preferred for the reasons set out.

85. Further, in relation to the Rule 2.1. and 2.2 charges the Athlete has not demonstrated anywhere the causative effect of the alleged departures. As the AIU rightly characterised her defence it was never more specific than 'there was a departure, therefore the results are unreliable'. This is both unscientific and forensically inadequate to address the AAFs.

86. It also follows that the conclusions on the Rule 2.1 and 2.2 ADRVs are not dependent or based on the evidence relating to the Lira Charges. However, the Tribunal's findings as explained below in respect thereof (see paragraphs 110-111) serve to corroborate significantly these conclusions.

(4) Rules 5.7.3, 5.7.7 and Rule 12

87. In this case the core elements of the alleged violations are as follows:

- a. The AIU Demand was made of the Athlete pursuant to and in accordance with Rule 5.7.4 ADR; and
- b. The Athlete without compelling justification refused or failed to immediately comply with that Demand.

88. The Demand is exhibit 16 to the WA Brief. It was issued by email to the Athlete on 15 September 2021 during an interview with the AIU representatives relating to its wider investigation into the hGH and EPO AAFs. Given the material in the possession of the AIU, including the AAFs, there was a proper evidential and investigative basis for making the Demand.

89. The Demand was issued pursuant to the ADR, specifically Rules 5.7.4, 5.7.5 and 5.7.7 thereof. It required of her:

"Therefore, in accordance with Rule 5.7.5, you are hereby issued with this Demand which requires you to provide the following information to the Integrity Unit for inspection, copying and/or downloading:

2.5.1. any records or files in hard copy or electronic format, that may contain information of relevance to the investigation (including, but not limited to, documentation, emails, correspondence, communications and messages);

2.5.2. your electronic storage devices and cloud-based servers (including but not limited to computers, hard drives, tapes, disks, mobile telephones, laptop computers, tablets, and other mobile storage devices, and any communications platforms that you use such as e-mail, SMS, WhatsApp, Telegram, Signal or any others); and

2.5.3. your passwords, login credentials and other identifying information required to access the electronically stored records that are referred to above.”

90. She did not challenge it by proper procedure and was obliged to comply with it.

91. The Athlete refused to and did not comply with the Demand immediately or at all; specifically, she refused repeatedly in the interview to provide her mobile telephone to representatives of the AIU for copying (imaging) in accordance with the Demand. To take one example, she said:

“This, this issue is gonna solve itself the way it’s gonna solve itself. Not by me but by the people that did it themselves, and I’m not gonna sit here and actually entertain any of this anymore. I’m not giving you my phone and that’s it. We have an interview and we’re going through the interview and you told me I made it clear that this interview was done, and that’s why you choose to take my phone because, what (inaudible 76:11) supposed to call me here and say, “Oh yeah I took this and I took that and this is it.” I don’t have any information for you, but I don’t feel like giving you my phone is part of this interview as ... That’s my right, and I don’t think that’s part of this, for the AIU to ask me for my phone.”¹⁰

92. The Athlete has never permitted the AIU to have access to or to copy the content of her mobile telephone or given it access thereto. She was right that the FBI imaged her

¹⁰ p255 Hearing Bundle.

mobile telephone. That is proved by a letter dated 28 October 2021 from Victor Burgos, USADA Chief Investigative Officer¹¹. That is no answer to the Charge because the obligation created by the Demand is to provide access to and permit imaging by the AIU.

93. The Athlete's various contentions that she did not trust the AIU and/or it had leaked information to the Nigeria Guardian do not, when viewed objectively, amount to "compelling justification" for her refusal to submit her mobile telephone to the AIU. The Nigeria Guardian did not publish the result of her B-sample, it only said that the newspaper had learnt that the B-sample "*came out with the same result*". It did not "*expressly state*" that someone in the AIU had leaked the information to the press, it only said that "*a source close to World Athletics*" explained that she had started her four-year ban "*long ago*". In any event, there is no evidence that the AIU did leak information to the press in Nigeria or at all.

94. She also stated that the refusal was justified on the basis that she was informed by email of an unauthorised access of her ADAMS account from the USA while she was in Slovakia. This is irrelevant. The AIU was referred to in the email from the WADA ADAMS team as the body that the Athlete might wish to contact to reset her password or to discuss the new sign-in. The email was not suggesting that the AIU had itself signed into her ADAMS account from the USA. That too is a spurious explanation and does not get close to being a "compelling justification" for her refusal.

95. Furthermore, her claim that it was an invasion of her privacy is not a compelling justification. If that were sustainable as a justification, it would frustrate entirely the efficacy of Rule 5.7.7.

¹¹ p283, Hearing Bundle.

96. For all of those reasons the Tribunal is comfortably satisfied that none of the matters advanced by the Athlete individually or cumulatively justify her refusal to comply with the Demand and to cooperate with the AIU's investigation.

97. It follows that the Tribunal is comfortably satisfied that the Athlete refused without compelling justification to comply immediately with a Demand as required by Rule 5.7.7. In failing to comply with the Demand she also failed without compelling justification to cooperate fully with the investigation as required by Rule 5.7.3. Rule 12 is thereby engaged.

98. Once more these conclusions are not dependent or based upon the evidence relating to the Lira Charges. However, the Tribunal's findings as explained below in respect thereof (see paragraphs 110-111) serve to significantly corroborate these conclusions.

F. CONSEQUENCES

(1) Rules 2.1 and 2.2 ADRVs

99. Rule 10.2 ADR provides the sanction to be imposed for Anti-Doping Rule Violations under Rule 2.1 and Rule 2.2:

"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:

10.2.1 Save when Rule 10.2.4 applies, the period of Ineligibility will be four years where:

(a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional."

100. This is the Athlete's first ADRV.

101. The effect of Rule 10.9.3(a) ADR is that the hGH and EPO ADRVs fall to be considered together as one single first ADRV. The sanction imposed shall be based on the violation that carries the more severe sanction.

102. EPO and hGH are both non-Specified Prohibited Substances. The period of Ineligibility shall therefore be four years, unless the Athlete can establish that the Anti-Doping Rule Violations were not intentional.

103. The Athlete denied the ADRVs. She did not advance any explanation for either AAF. She did not put before the Tribunal any evidence that the ADRVs were not intentional. In any event, in circumstances where EPO and hGH are administered solely by injection¹², it is difficult to reach any conclusion other than they were committed intentionally. Therefore, the minimum sanction is a starting point of four years.

104. The AIU relies upon Rule 10.4 ADR in seeking an additional period of Ineligibility of two years. Rule 10.4 specifies that where Aggravating Circumstances are present, then the period of Ineligibility may be increased by a period of up to two (2) years depending on the seriousness of the violation(s) and the nature of the Aggravating Circumstances, unless the Athlete can establish that she did not knowingly commit the ADRV.

105. Aggravating Circumstances is defined in the ADR as follows:

“Aggravating Circumstances: Circumstances involving, or actions by, an Athlete or other Person that may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed

¹²Professor Martial Saugy, pp276 and p278 Hearing Bundle

multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.”

106. The Aggravating Factors present in this case include the following:

- a. Presence of multiple (two) Prohibited Substances, namely hGH and EPO on different occasions.
- b. Use of the same two Prohibited Substances on multiple occasions. In that respect, the Tribunal accepts the unchallenged evidence of Professor Martial Saugy is that EPO and hGH must be administered repeatedly to have any benefit¹³.
- c. They were both taken intentionally and plainly as part of an organised doping regime. That much is apparent without consideration of the Lira Charges material, particularly the FBI Complaint.

107. The AIU's case was that the Athlete was the individual known as "Athlete 1" in the FBI Complaint and was liaising with Lira to purchase and use hGH and EPO in 2020 and 2021. She denied being "Athlete 1" and sending such messages. The Tribunal has given appropriate weight to her denials. She also protested that the FBI Complaint was hearsay. In that regard it is correct to observe that:

- a. The source material, such as the original messages, has not been supplied. There is, for example, no download of her mobile telephone.
- b. The content of the FBI Complaint is untested, in the sense the primary witnesses have not given statements or oral evidence to the Tribunal.

¹³ Ibid.

108. However, Rule 8.11 ADR states:

“The Panel shall not be bound by judicial rules governing the admissibility of evidence. Instead, facts relating to an anti-doping rule violation or other breach of the Anti-Doping Rules may be established by any reliable means, including admissions. The Panel shall apply the burdens and standards of proof and the methods of establishing facts and presumptions as described in Rule 3 of these Anti-Doping Rules.”

109. The admissibility of evidence and its weight is a matter for the Tribunal. In that respect, the messages are contained in a court document, the content of which was sworn on oath before a judge to be true and accurate. That is reliable evidence. But, those messages only have relevance as against the Athlete if she is part of the conversation. Put another way, she is “Athlete 1”.

110. The Tribunal is comfortably satisfied that the Athlete is the “Athlete 1” named in the FBI Complaint. The available evidence to establish that is compelling. It includes:

- a. At an address in Jacksonville, Florida a parcel addressed to “Athlete 1” was found. It contained hHG. The sender was “Mr Lira”. His number on the parcel matched the number saved in “Athlete’s mobile telephone as “Eric Lira Doctor” when it was examined by the FBI following her stop by Customs officers upon her return from the Olympic Games¹⁴.
- b. On 13 June 2021, “Athlete 1” queried in a message sent to Lira whether she was safe to take a test following a particular dosage, and because she was not sure about it she *“just let them go so it will be a missed test”*¹⁵. The AIU attempted to test the Athlete during the Athlete’s specified 60-minute time slot (05:00-06:00) at an address in Jacksonville, FL, USA on 13 June 2021 in accordance with the information specified in the Athlete’s Whereabouts information in ADAMS for that date. The Athlete was unavailable for Testing, which resulted in a Missed Test being confirmed against her.

¹⁴ PP439, 452 Hearing Bundle

¹⁵ P501 Hearing Bundle

- c. “Athlete 1” underwent blood doping control in Slovakia on 19 July 2021, where they were preparing for the Tokyo Olympics. So did the Athlete.
- d. That doping control Sample returned a positive result for hGH, as did the Athlete’s.
- e. “Athlete 1” was provisionally suspended from Olympic competition on 30 July 2021, including from the upcoming women’s 100m semi-final event due to take place at the Tokyo Olympics, as was the Athlete¹⁶.

111. All of which explains and is no doubt the derivation of the following. The letter from Victor Burgos, USADA Chief Investigative Officer to AIU dated 28 October 2021, which confirmed the FBI had imaged the Athlete’s mobile telephone also said this:

“I am aware that Ms. Okagbare’s mobile device contained text messages in which Ms. Okagbare discusses procuring and using human growth hormone and EPO. The messages also indicate that Ms. Okagbare procured, or attempted to procure, prohibited substances for at least one other person, an athlete preparing for the 2020 Tokyo Olympic Track and Field trials, scheduled for July 2021.”¹⁷

112. Looking at the Rule 2.1 and 2.2 ADRVs in the context of her being “Athlete 1” establishes beyond peradventure that this was systematic and sustained doping with the Olympic Games an obvious target. While the Tribunal appreciates that the Presence and Use ADRVs are part and parcel of the same conduct and the Presence and Use of multiple (two) Prohibited Substances are not unusual or uncommon features of ADRV cases, such egregious conduct does amount to Aggravating Circumstances meriting an additional period of Ineligibility. Having regard to all the features including proportionality or totality of the overall sanction, the appropriate period of Ineligibility is one additional year concurrent in respect of the Rule 2.1 and 2.2 ADRVs.

¹⁶ On or about July 30, 2021 (that is, the same date as Athlete 1’s provisional suspension) Athlete 1 messaged Lira, “Call me urgently. . . [t]hey said one of my result came out positive on HGH . . . I don’t understand.” Athlete 1 then sent Lira a copy of a test result reflecting the positive test result for hHG resulting from her July 19, 2021, blood sample.

¹⁷ P283 Hearing Bundle.

113. Therefore, the period of Ineligibility is five years imposed concurrently on each of the Rule 2.1 and Rule 2.2 ADRVs.

114. The Tribunal accepts that the Athlete did not compete after 31 July 2021 when she was Provisionally Suspended. Pursuant to Rule 10.13 the Athlete is credited with that period of suspension already served. Therefore, the period of Ineligibility of five years imposed in respect of the Rule 2.1 and Rule 2.2 ADRVs will commence on 31 July 2021 and expire at midnight on 30 July 2026.

(2) Rule 5.7.3 and 5.7.7 Violations

115. Pursuant to Rule 12.1 the Tribunal may impose such sanctions and conditions as it sees fit. Those may include, without limitation, a period during which the Athlete or other Person shall not be eligible to participate in the sport of Athletics and Disqualification of the Athlete's results, with all resulting consequences including the forfeiture of titles, awards, medals, points and prize money.

116. CAS has endorsed the importance of sports governing bodies establishing rules which require persons to cooperate in investigations and subject them to sanctions for failing to do so. The reasons are obvious. There are the sound policy reasons of seeking to eradicate doping in sport. In the absence of any coercive powers of investigation (such as law enforcement may have), anti-doping organisations such as the AIU would otherwise be dependent on the agreement or consent of such persons. That is rarely forthcoming. Given their limited investigatory powers, such provisions are a powerful and reasonable means by which to compel cooperation with investigations. The purpose of the investigative provisions of the ADR, including the requirement to provide electronic storage devices to the AIU immediately as set out in Rule 5.7.7, is to give the AIU the best possible chance of discovery/preservation of evidence of an ADRV.

117. A failure by an athlete or person to cooperate fully with an AIU investigation and any consequential breach of Rule 12 is serious. Such a failure undermines the very nature

of the investigatory provisions of the Rules and frustrates and undermines the AIU's ability to fulfil its mandate to protect the integrity of the sport of athletics. That is the gravamen of the breach.

118. The AIU's case was that the Athlete refused to explain her own actions and to cooperate with the Demand because she is the individual known as "Athlete 1" and was liaising with Lira to purchase and use hGH and EPO in 2020 and 2021. To give access to her mobile telephone would have been to reveal those messages and that offending by her and others.

119. For the reasons set out above (paragraphs 110), the Tribunal is comfortably satisfied that the Athlete is the "Athlete 1" named in the FBI Complaint. The Tribunal is comfortably satisfied that the true reason that the Athlete refused to surrender her mobile telephone is that it contained widespread incriminating information of her possession and use of Prohibited Substances, as well as the (at the lowest) possible commission of ADRVs by others. Her refusal to comply with the Demand and failure to cooperate with the investigation denied the AIU the discovery of evidence of the possible commission of further ADRVs by her as well as others. It is also clear that not only has the Athlete failed to fully co-operate with the AIU investigation and comply with the Demand, she lied in these proceedings.

120. The Tribunal was assisted by the following decisions relied upon by the AIU. In *Professional Tennis Integrity Officers ("PTIOs") v. Barlaham Zuluaga Gaviria* similarly the tennis player refused to provide his mobile telephone to investigators upon demand issued in the context of the Tennis Anti-Corruption Programme ("TACP"). The Anti-Corruption Hearing Officer, Prof Richard H. McLaren, concluded that the player's conduct inter alia failing to cooperate with the investigation and to provide his mobile telephone pursuant to a demand amounted to conduct of the most serious nature and imposed the maximum sanction possible under the TACP, a period of ineligibility of three years. In *World Athletics v. Elena Orlova* SR/305/2019 the Disciplinary Tribunal imposed a period of Ineligibility of six years upon Ms Orlova for, inter alia, her failure to

comply with a Demand to provide her mobile telephone to the AIU. In *IAAF v. Elena Ikonnikova* SR/Adhocsport/262/2019 the Disciplinary Tribunal imposed a period of Ineligibility of eight years upon Ms Ikonnikova for, inter alia, her failure to comply with a Demand to provide her mobile telephone to the AIU.

121. Every case turns on its own facts. The factors in this case make her breaches of Rules 5.7.3 and 5.7.5 ADR especially serious. It is axiomatic that a person who fails to comply with the ADR in this way should not benefit from a lighter sanction for non-compliance, than if an offence under the ADR had been discovered through the investigation. It is noted that in this case the Athlete has not prevented by her refusal the discovery of the commission by her of ADRVs contrary to Rules 2.1 and 2.2.
122. However, it is erroneous for the Athlete to submit that since the FBI have scanned her mobile telephone, no purpose is served by Rules 5.7.3, 5.7.7 and 12 ADR and that her refusal is of no consequence. The AIU has no criminal enforcement powers and it is not automatically entitled to receive anything from the FBI. The right to request telephone imaging, carry out its own investigations and bring proceedings, with appropriate sanctions imposed therefore remains important in its role in protecting the integrity of the sport of athletics. Further, she and others may have committed further ADRVs such as evading sample collection, trafficking and/or tampering. She has been served with a Notice in respect of further investigations in that regard.
123. In respect thereof, the Tribunal imposes a period of Ineligibility of five years to be served consecutively to the periods imposed in respect of the Rule 2.1 and Rule 2.2 ADRVs.
124. In determining the appropriate period of Ineligibility for her failure to comply with the Demand the Tribunal has had proper regard to the principle of proportionality and totality. It has been careful to avoid any 'double-counting' of her commission of the Rule 2.1 and 2.2 ADRVs when assessing the seriousness of her non-compliance with the Demand.

125. Standing back the overall period of ten years of Ineligibility is proportionate to the totality of her offending.

126. According to Rule 12.1 the Athlete will receive credit for any period of provisional suspension served provided it has been respected. In this case that period has been credited in respect of the period imposed for the Rule 2.1 and 2.2 ADRVs. It cannot be credited twice.

(3) Disqualification of results and other consequences

127. Rule 10.10 ADR provides:

“In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete 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, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes.”

128. In accordance with Rule 10.10 the Athlete’s competitive results obtained from 20 June 2021 (the date that the First Sample was collected) through to the commencement of the Provisional Suspension on 31 July 2021 shall be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes. The Tribunal is comfortably satisfied that fairness does not require otherwise.

G. COSTS

129. Rule 10.12.1 ADR states:

“Where an Athlete or other Person is found to have committed an anti-doping rule violation or other breach of these Anti-Doping Rules, the Disciplinary Tribunal or CAS (or, in cases where Rule 8.5.6 applies, the Integrity Unit), taking into account the proportionality principle, may

require the Athlete or other Person to reimburse World Athletics for the costs that it has incurred in bringing the case, irrespective of any other Consequences that may or may not be imposed.”

130. WA sought a “significant contribution” to its costs.

131. It is not proportionate to make any order for costs and therefore no order is made.

H. RIGHT OF APPEAL

132. This decision may be appealed to the Court of Arbitration for Sport (“CAS”), located at Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Rules 13.2.1 and 13.2.3 ADR.

133. In accordance with Rule 13.6.1 ADR the parties shall have 30 days from receipt of this decision to lodge an appeal with the CAS.

I. SUMMARY

134. For the reasons set out, The Tribunal:

- a. Finds the ADRVs contrary to Rules 2.1 and 2.2 ADR proved;
- b. Imposes a period of Ineligibility of five years concurrently on each of the Rule 2.1 and Rule 2.2 ADRVs;
- c. Finds that the Athlete failed to comply with the Demand and cooperate with the AIU investigation in breach of Rules 5.7.3 and 5.7.7 ADRV and imposes a consecutive period of Ineligibility of five years; and
- d. Therefore, imposes a total period of Ineligibility of ten years which commences on 31 July 2021.

135. The Tribunal also orders that the Athlete's results from and including 20 June 2021 are disqualified with all resulting consequences including forfeiture of any medals, titles, ranking points and prize and appearance money.

136. There is no order for costs.



Christopher Quinlan QC

Sole Arbitrator

14 February 2022

1 Paternoster Lane, St Paul's London EC4M 7BQ resolve@sportresolutions.com 020 7036 1966

Company no: 03351039 Limited by guarantee in England and Wales
Sport Resolutions is the trading name of Sports Dispute Resolution Panel Limited

www.sportresolutions.com



ENABLING FAIR PLAY

THE INDEPENDENT EXPERTS

Appendix 1

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF WORLD ATHLETICS

Before:

Christopher Quinlan QC (Chair)

BETWEEN:

World Athletics

Anti-Doping Organisation

-and-

Blessing Okagbare

Respondent

DIRECTIONS OF THE DISCIPLINARY TRIBUNAL

1. So far as is relevant at a Preliminary Meeting via telephone conference call on Friday 15 October 2021, I issued the following Directions:

1.1. By 17.00 CET on Friday 29 October 2021 the AIU is to submit brief with arguments on all issues that World Athletics wishes to raise at the hearing and witness statements from each fact and/or expert witness that the Integrity Unit intends to call at the hearing, setting out the evidence that World Athletics wishes the Panel to hear from the witness and enclosing copies of documents that the Integrity Unit intends to rely.

1.2. By 17.00 CET on Friday 12 November 2021 the Athlete is to submit answer brief addressing World Athletics' arguments and setting out arguments on issues that the Athlete wishes to raise at the hearing, as well as written witness statements from the Athlete and from each other witness (fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes the Panel to hear from

the witness and enclosing copies of documents upon which the Athlete intends to rely. The Athlete must also state by 12 November whether she wishes the Disciplinary Tribunal to comprise three members or to be determined by me sitting as sole arbitrator.

1.3. By 17.00 CET on Friday 26 November 2021, the AIU may submit a reply brief, responding to the Athlete's answer brief and produce any rebuttal witness statements and/or documents.

1.4. A hearing to take place by video conference starting at 14.00 CET on 09 December 2021.

1.5. The composition of the Disciplinary Tribunal will be determined as soon as possible after 12 November 2021.

I further direct

1.5. 7 days before the hearing, the AIU shall file a soft copy of the hearing bundle with the Tribunal and the parties shall agree and submit an indicative hearing schedule.

2. The Athlete did not comply with the Directions at paragraph 1.2 hereof. Instead on 12 November 2021 she emailed in these terms:

"I received the documents sent by Mr Tony Jackson.

I do not have any response or documents to be sent out for the chairs review at the moment. Whatever i have to present will be shared on or before the hearing."

3. In consequence on 16 November 2021 I issued the following Direction:

"The response from the athlete does not comply with my paragraph 1.2 of my Directions. By 16.00 on 18 November the athlete must comply with that paragraph or state the date upon which she wishes or will be in a position to comply".

4. The Athlete did not reply. I endeavoured to schedule a further Preliminary Hearing this week but was told by the Athlete she was not available until 02 December 2021, too close to the date of the substantive hearing, namely 09 December 2021. Therefore, I indicated that I would issue further Directions, a course both parties consisted to.
5. It is not acceptable for the Athlete to present her case for the first time close to or at the substantive hearing. To do so would mean the AIU had no reasonable opportunity to consider the same. The result of her doing so is likely to be an application by AIU for an adjournment and for costs against the Athlete. If such application were successful, it would also cause delay, which is in the interests of neither party.
6. On 25 November I directed as follows:
 - 6.1. I will determine this case as a sole arbitrator.
 - 6.2. By 16.00 (GMT) on 02 December 2021 the Athlete must submit her answer brief addressing World Athletics' arguments and setting out arguments on issues that the Athlete wishes to raise at the hearing, as well as written witness statements from the Athlete and from each other witness (fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes the Panel to hear from the witness and enclosing copies of documents upon which the Athlete intends to rely.
 - 6.3. If the Athlete cannot comply with the Direction on 6.2 she must file with Sport Resolutions an explanation in writing no later than 16.00 (GMT) on 26 November 2021.
 - 6.4. I release the AIU from the Direction in paragraph 1.3 hereof.

7. Today I have received an application from the Athlete seeking a “*two week extension*” for service of her case. That is opposed by the AIU.
8. There is some force in the AIU’s submissions. However, on balance I am prepared to grant the Athlete’s application. She should have one further chance to prepare her defence in this serious case. I therefore direct as follows:
 - 8.1. The hearing scheduled for 09 December 2021 is adjourned.
 - 8.2. By 16.00 GMT on Thursday 16 December 2021 the Athlete must submit her answer brief addressing World Athletics’ arguments and setting out arguments on issues that the Athlete wishes to raise at the hearing, as well as written witness statements from the Athlete and from each other witness (fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes the Panel to hear from the witness and enclosing copies of documents upon which the Athlete intends to rely.
 - 8.3. By 16.00 GMT on Thursday 23 December 2021, the AIU may submit a reply brief, responding to the Athlete’s answer brief and produce any rebuttal witness statements and/or documents.
 - 8.4. A hearing to take place by video conference during the week commencing 10 January 2022. The parties must supply to the Secretariat their availability for a hearing that week no later than 16.00 GMT on 3 December 2021.
 - 8.5. 7 days before the hearing, the AIU shall file a soft copy of the hearing bundle with the Tribunal and the parties shall agree and submit an indicative hearing schedule.
9. All submissions and supporting documentation shall be sent by email to the Secretariat and the Athlete and her representative in accordance with the timetable set out above.
10. Each party shall have liberty to apply (on reasonable notice) to vary these Directions

Christopher Quinlan QC
Disciplinary Tribunal Panel Chair
30 November 2021

