

**IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER THE ANTI-DOPING RULES OF
BRITISH WEIGHT LIFTING**

Before:

Kate Gallafent QC

B E T W E E N:

UK ANTI-DOPING

Anti-Doping Organisation

and

ADRIAN CANAVERAL

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. This is the decision of the Anti-Doping Tribunal appointed pursuant to Article 5.1 of the 2019 Rules of the National Anti-Doping Panel (“the Procedural Rules”) and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 (“the ADR”), which were adopted in their entirety by British Weight Lifting (“BWL”) on the same date.

Background Facts

2. On 4 February 2019 Mr Canaveral was charged with an Anti-Doping Rule Violation (ADRV) in breach of Article 2.3 of the ADR for refusing or failing to submit to Sample collection after notification of Testing as authorised in the ADR, without a compelling justification.
3. At the time that Mr Canaveral was asked to submit to Sample collection, 19 September 2018, he was subject to a four-year period of Ineligibility from all Code-compliant sports which had been imposed (with his agreement) on 27 June 2017, backdated to start on 9 October 2016, as a result of a ‘Presence’ offence pursuant to ADR Article 2.1.
4. After the imposition of this ban UKAD wrote to Mr Canaveral on 31 July 2017 setting out his obligations during the period of Ineligibility:

“Whereabouts obligations during your ban

Please note that Article 10.12.3 of the UK Anti-Doping Rules states that:

“An Athlete who is Ineligible shall remain subject to Testing and must provide whereabouts information (as applicable) for that purpose during the period of Ineligibility.”

This means that you may be tested by UKAD or another anti-doping organisation with jurisdiction to test you at any time throughout your ban. If you wish to return to sport at the end of your ban you must make yourself available for this Testing by telling us where you can be located for that purpose. This information is referred to as your Whereabouts Information.

The only Whereabouts Information that UKAD requires from you is your usual residential address.”

5. UKAD also identified the option for Mr Canaveral of retiring from Sport, as well as the consequences if he failed to notify UKAD of any decision to do so:

“Retiring from Sport

If you wish to retire then you do not need to make yourself available for Testing during your ban. You must do this by formally retiring from Weightlifting by completing the enclosed form and returning it to UKAD. You can do this anytime you choose. If you retire, you undertake not to be involved in sport in any capacity whatsoever and you will not be subject to Testing. Any remaining period of your ban will be put on hold.”

[...]

Example Five: you are serving a ban that runs from 1 January 2015 to 31 December 2016. At some point during your ban you decide that you do not want to return to sport when your ban expires but instead wish to retire.

You fail to advise UKAD of this.

UKAD attempts to test you during the course of your ban (because it does not know you have retired). When the UKAD testing officers arrive, you tell them that you have retired and refuse to provide a sample. Unless you can prove that you have indeed retired, you risk having disciplinary action taken against you in respect of that refusal.”

6. The proforma “Response Form: Whereabouts or Retirement” enclosed with that letter provided, in relation to retirement:

“I acknowledge receipt of your letter dated 31 July 2017 which informed me that I remain eligible to be tested during my ban and that I may be required to submit Testing at any time during that period.

I wish to retire from Weightlifting (and all other sport). I hereby notify you that I am retiring with immediate effect. I understand that this means that I will no longer be subject to Testing and that my ban will be paused until I notify UKAD in writing that I wish to come out of retirement. [...]

Print name.....

Signed.....(Athlete)

Date....."

7. In the Doping Control Form ('DCF') completed on 19 September 2018 the Doping Control Personnel records Mr Canaveral as having told him that *"he recalled seeing a letter - following his notifying the sport of his retirement – that he would no longer be eligible for testing."* Mr Canaveral endorsed and signed the DCF stating: *"I received a letter confirming my retirement from the sport. I remember the retirement letter confirmed I was not going to be tested within my ban and that I was allowed to come back after the ban was over which I don't think I will ever do."*
8. Prior to charging Mr Canaveral UKAD sought to investigate the matter and asked him to attend an interview, to which Mr Canaveral's response on 4 October 2018 was *"is an interview really necessary? I sign [sic] and sent my retirement letter years ago and that made it clear I was not going to get tested again."*
9. UKAD repeated the invitation to an interview, noting that neither it nor the BWL had any record of a retirement or correspondence suggesting as much, in response to which Mr Canaveral stated that *"When the two UKAD representatives came for a sample of me I made it clear I signed my retirement letter and sent it several months back. I do remember very clear that the letter said that if I sign my retirement from the sport I will not get tested anymore as clearly, I retired"* (7 November 2018).
10. In response to the charge Mr Canaveral responded on 15 February 2019: *"I am sorry but I don't think I still have that delivery slip with me anymore, I sent my retirement letter months ago. I had a look around and I couldn't find anything."*
11. On 9 April 2019 UKAD asked *"is there any way that you can demonstrate that you retired? In particular I note that you refer to having a delivery slip in your possession. If this is a reference to a recorded delivery (and it would seem to be so), then it should be possible to go back to the post office and obtain records of the delivery."* Mr Canaveral did not respond.

Procedure

12. Following the Charge being made, the Secretariat to the NADP, Sport Resolutions, first contacted Mr Canaveral on 10 May 2019. He was subsequently offered pro-bono assistance, informed of my appointment and attempts were made to organise a directions hearing taking into account his availability, but he did not respond. Sport Resolutions used the email address that UKAD had previously used in communicating with Mr Canaveral.
13. In the absence of any response by Mr Canaveral in relation to a proposed directions hearing, on 4 June 2019, rather than hold an oral directions hearing, I invited UKAD to propose written draft directions to which Mr Canaveral would have 7 days to respond. UKAD provided draft directions on 13 June 2019, to which no response was received by Mr Canaveral.
14. On 25 June 2019 I issued directions which required:
 - 14.1. Mr Canaveral to file his response to the charge, and confirm whether he wished the case to be determined at a hearing or on the papers, by 4pm on 2 July 2019;
 - 14.2. The parties to mutually exchange all evidence upon which they would seek to rely at the hearing by 4pm on 14 July 2019; and
 - 14.3. The parties to mutually exchange their written submissions, including copies of any previous arbitral awards or decisions upon which they wished to rely by 4pm on 30 July 2019.
15. Mr Canaveral did not file any response to the charge by 2 July 2019, or at all.
16. In accordance with the directions UKAD provided copies of the evidence on which it intended to rely on 14 July 2019. Mr Canaveral did not provide any evidence.
17. Prior to the 30 July 2019 deadline UKAD requested an extension of time of two weeks in which to file its written submissions, due to seasonal absences from the office and a number of deadlines, which I granted.

18. On 5 August 2019 Sport Resolutions wrote to Mr Canaveral, having heard nothing from him since 10 May 2019, notifying him that in the absence of his engagement in this matter and pursuant to Art. 8.5 of the Procedural Rules, in the absence of his engagement in this matter it would continue to proceed to conclusion. Mr Canaveral was reminded that his written submissions were then due on 13 August 2019, and that if he wished to file any evidence (notwithstanding him not having done so by the deadline) he should submit it together with an explanation for not having done so on the same date. Mr Canaveral was informed that if he did not provide any submissions and/or evidence this matter would proceed to be determined on the basis of the evidence and submissions of UKAD alone. Mr Canaveral was provided with hard copies of all the evidence received by UKAD, for which he had previously received an electronic link.
19. This letter was sent using the Royal Mail's "Track and Trace" service and was signed for by "Adrian" at 11.02am on 6 August 2019.
20. UKAD served their written submissions and authorities on 13 August 2019, as part of which they applied to rely upon additional evidence. Nothing was received on that date from Mr Canaveral.
21. On 14 July 2019 I directed that Mr Canaveral have 7 days in which to respond to that application, and Sport Resolutions posted him hard copies of all documents filed by UKAD, from an abundance of caution.
22. Mr Canaveral did not respond.
23. In these circumstances I am satisfied that Mr Canaveral was provided with proper notice of the fact that the Tribunal would proceed to determine the matter on the basis of UKAD's evidence and submissions alone if he did not provide any evidence and/or submissions. In circumstances where neither party had requested an oral hearing (and Mr Canaveral had failed to comply with the initial direction that he indicate whether or not he wished there to be such a hearing), I am satisfied that his non-engagement with the process, in circumstances where he had been informed that it would go ahead without him in the absence of him submitting evidence and/or submissions, does not prevent the Tribunal from proceeding to determine the case on the papers in his absence.

24. So far as the composition of the Tribunal is concerned, UKAD's position is that they are content for the matter to be determined on the papers by me sitting as a sole arbitrator. The President of the National Anti-Doping Panel has determined that in the circumstances set out above, the matter is suitable for determination by a sole arbitrator pursuant to Article 5.1 of the Procedural Rules.

Issues

Jurisdiction

25. At the time of Mr Canaveral's ADRV in 2016 he was a registered member of the BWL and, as such, agreed to be bound by the BWL Articles, Regulations and any policy and procedures issued by BWL from time to time, which included the ADR. He ceased to be a member of the BWL on 16 December 2016. He has never sought to argue that the lapse of his membership affected UKAD's jurisdiction over him (and, indeed, agreed to the imposition of the four-year period of Ineligibility after his membership had lapsed); rather, his case is that he subsequently retired, as a result of which he was no longer subject to Testing.
26. Article 1.4 of the ADR ("Retirement") provides that *"each Athlete or other Person shall continue to be bound by and comply with these Rules unless and until he/she is deemed under the NGB's rules to have retired from sport so that he/she is longer subject to the NGB's authority. Where an Athlete is in the National Registered Testing Pool or Domestic Pool at the time of such retirement, he/she must also send written notice to UKAD of such retirement."* (Article 1.4.1)
27. The BWL does not have any rules setting out the process by which an athlete can retire from sport, but UKAD have submitted that the process for retirement in Mr Canaveral's case was made clear to him in its letter of 31 July 2017. Whilst I accept that that letter did indeed inform Mr Canaveral how he could retire from sport, I note that, in principle, the issue under Article 1.4.1 of the ADR is the circumstances in which an athlete is deemed to have retired from sport under the NGB's rules, rather than what he might have been told by UKAD (if different). I also note that he was not

in a Registered Testing Pool in 2018, and therefore written notice to UKAD was not required under Article 1.4.1 of the ADR, notwithstanding what was said in its letter.

28. In any event, however, there clearly must be evidence of at least some form of communication from Mr Canaveral to some organisation connected with the governance of the sport of Weightlifting in relation to retirement for him to be deemed to have retired for the purposes of Article 1.4.1 of the ADR.
29. As set out above, at the time of the attempted Sample collection Mr Canaveral indicated that he had notified the sport of his retirement, and that, subsequently, he had received a letter confirming his retirement. So far as alleged notification by Mr Canaveral is concerned, UKAD's evidence is that Mr Canaveral has never communicated his retirement to it (and, in particular, that a copy of the form enclosed with its letter of 31 July 2017 completed by Mr Canaveral was never received by it), nor by the International Weightlifting Federation, the Federación Española de Halterofilia or the BWL, each of which had confirmed to UKAD that they had never received any such communication from Mr Canaveral, either at all, or on the subject of retirement.
30. Mr Canaveral first suggested that he had, at some point, had a 'delivery slip' relating to the letter in February 2019, five months after the attempted Sample collection. He did not respond to UKAD's requests to seek confirmation with the postal provider, or indeed respond any further to UKAD's communications.
31. In all the circumstances I am not satisfied, on a balance of probabilities, that Mr Canaveral notified the 'sport' of his retirement. I note that, on Mr Canaveral's case, it is not just one letter that cannot be located (his letter to the 'sport') but two, the other being confirmation from the 'sport' that he had retired. Even if his letter to the sport could no longer be located, if such a letter had been received by any of the potentially relevant organisations, it would have been expected that a copy of a response letter to Mr Canaveral would have been located by one of those organisations had it ever been sent. The absence of either letter, and of any evidence of an attempt by Mr Canaveral to track the recorded / registered delivery of his letter, leads to the inevitable conclusion that Mr Canaveral had not retired from the sport by 19 September 2018.

Accordingly, he remained subject to the obligations in respect of providing a Sample under the ADR.

The Charge

32. In order to sustain the charge UKAD must establish, to my comfortable satisfaction, that:
 - 32.1. Mr Canaveral was properly notified of the Testing;
 - 32.2. Such Testing was authorised under the ADR; and
 - 32.3. Either
 - 32.3.1. He refused to provide the Sample required and such refusal was intentional; or
 - 32.3.2. He failed to provide the Sample required and such failure was intentional or negligent. (see comment to WADA Code Article 2.3)
33. If UKAD do so, the burden shifts to Mr Canaveral to prove a possible "*compelling justification*" (see e.g. *WADA v CONI, FIGC, Mannini, Possanzini, CAS 2008/A/1557* at §73 and *Fazekas v IOC, CAS 2004/A/714* at §68).
34. So far as notification is concerned, I accept that it is clear that Mr Canaveral was properly notified, in accordance with the ADR and International Standard for Testing and Investigations, that he was required to provide a Sample for the purposes of drug-testing. Not only is that the evidence of the Doping Control Personnel ("DCP") who attended his home on 19 September 2018 that they informed him of this orally, but he signed boxes 8 and 9 of the DCF to confirm that he was required to report for Doping Control immediately to provide a Sample(s), and that refusal or failure to comply may constitute an ADRV.
35. I also accept that UKAD had authority to test by virtue of ADR Article 10.12.3.

36. Equally, I accept that Mr Canaveral both refused and failed to provide a Sample. The DCP certified on the DCF that Mr Canaveral had refused or failed to submit to Sample collection, for the reason that he "*signed retirement letter after the ban*", which information Mr Canaveral certified was accurate and correct by signing the Athlete Certification section of the DCF.
37. As the CAS explained in *Azevedo v FINA, CAS 2005/A/925*: "*the logic of Anti-Doping tests and the DC rules demands and expects that, whenever physically, hygienically and morally possible, the sample be provided despite objections by the athlete. If that does not occur, athletes would systematically refuse to provide samples for whatever reasons, leaving no opportunity for testing*".
38. The next issue is whether Mr Canaveral's refusal or failure to provide a Sample was intentional for the purposes of ADR Article 2.3.
39. UKAD's position appears to be that Mr Canaveral's assertion that he had retired from sport prior to being asked to provide a Sample may be relevant to the issue of intention, based on the reasoning of another Tribunal in a decision which has been provided to me in a heavily redacted version (*UKAD v XX*). In that case the Tribunal found that the athlete had not retired for the purposes of the ADR as the formal requirements for retirement had not been met, but considered that when considering the issue of intention it should "*delve into*" the issue of whether the athlete reasonably considered that they were actually retired.
40. I note that the Tribunal in *UKAD v XX* did not give any reasons for adopting this approach, nor identify any decisions or other guide to interpretation (such as comments to the WADA Code) which support it, and in its written submissions UKAD does not identify any either. I also find the Tribunal's conclusion that the charge in that case was not made out was based on the fact that the sample collection had been voided "*coupled*" with the athlete's lack of intention difficult to understand. That suggests that either of those findings by themselves would have been insufficient to defeat the charge, but that together they did so, which approach makes little sense under the framework of the ADR.
41. I do not find it necessary to decide in this case whether the Tribunal's approach in *UKAD v XX* is legally sound (particularly given the extent of the redactions which

inevitably make it more difficult to follow the Tribunal's reasoning), given that I find that in any event, the evidence before me does not demonstrate that if Mr Canaveral believed that he had retired that belief was reasonable, in the circumstances set out above. However, in principle I have considerable reservations as to whether it is, not least as Article 2.3 of the ADR makes express provision for a defence based on "*compelling justification*" which is where, in my view, the issue of the athlete's reasons for refusing to provide a Sample properly fall to be considered.

42. There are two further competing approaches to the issue of "*intention*" under Article 2.3. First, the approach of the Disciplinary Panel in *IAAF v Bett* (SR/AdhocSport/178/2018, SR/AdhocSport/212/2018), which applied "*the natural and ordinary meaning of the term*", namely, "*that the athlete deliberately declined to give a sample*" (§62). If that approach is followed in this case, it is clear Mr Canaveral did deliberately decline to give a sample, in full knowledge of the consequences of him not doing so, and his refusal / failure was therefore intentional.
43. The other approach was adopted by a different NADP Tribunal in the case of *UKAD v Burrell* (SR/NADP/987/2017), in which the Tribunal applied the definition of "*intentional*" at Article 10.2.3 of the ADR to Article 2.3 of the ADR. Again, I do not consider it necessary or appropriate to consider the correctness of that approach, particularly as I have not heard argument directly on the issue (and UKAD has not advanced any submissions as to which of these approaches should be preferred), but it does seem to me that that approach may be justified. Although on its face Article 10.2.3 defines the term "*intentional*" "*as used in Articles 10.2 and 10.3*", with the implication that that definition is not applicable to other Articles of the ADR, Article 10.3 of the ADR applies to an ADRV under Article 2.3 of the ADR. This means that if "*intention*" under Article 2.3 of the ADR is construed by reference to the natural and ordinary meaning of the term, the Tribunal would apply one approach to the issue of intentionality when considering whether the charge was proved, then a different approach in considering the appropriate sanction. This issue should be considered in another case where both parties are represented.
44. However, it is not necessary for me to do so as I accept UKAD's submission that even if the definition of "*intentional*" under Article 10.3 of the ADR is applied to Article 2.3 of

the ADR, Mr Canaveral knew that there was a significant risk that his conduct might constitute an ADRV and manifestly disregarded that risk.

45. I therefore find that Mr Canaveral's refusal was intentional within the meaning of Article 2.3 of the ADR, and in any event he failed to provide the Sample and was negligent in doing so given the absence of any reasonable belief that he had retired.
46. The onus then falls on Mr Canaveral to establish "*compelling justification*" for not providing the Sample. The only potential justification advanced by Mr Canaveral is that he believed that he had retired.
47. The consistent jurisprudence is that the concept of "*compelling justification*" must be construed extremely narrowly, and only truly exceptional circumstances should be allowed to justify refusal to submit to testing (see e.g. *Wium v IPC*, IPC Management Committee decision dated 7 October 2005, para 3; *WADA v CONI, FIGC, Mannini, Possanzini*, CAS 2008/A/1557, para 80 ('by using the qualification "*compelling*", the wording of Article 2.3 underscores the strictness with which the justification needs to be examined')). There will not be "*compelling justification*" for not providing a Sample where it remains "*physically, hygienically and morally possible*" for the athlete to do so (*Brothers v FINA*, CAS 2016/A/4631, paras 78-79).
48. In Mr Canaveral's case, there is no evidence that he was deprived of his rationality and cognitive senses, thereby presenting physical and moral hindrances to going ahead with the test (see *Brothers*). On the contrary, it is clear from the DCF that he was fully cognitively engaged with the process, and there was no physical reason for him not to go ahead with the test. I therefore find that there was no "*compelling justification*" for his refusal / failure to provide a Sample.
49. The Charge against Mr Canaveral is therefore proved.

Consequences

50. This is Mr Canaveral's second ADRV, meaning his case is governed by Article 10.7.1 ADR, which provides:

"For an Athlete's or other Person's second Anti-Doping Rule Violation, the period of Ineligibility shall be the greater of:

(a) six months;

(b) one-half of the period of Ineligibility imposed for the first Anti-Doping Rule Violation without taking into account any reduction under Article 10.6; or

(c) twice the period of Ineligibility otherwise applicable to the second Anti-Doping Rule Violation treated as if it were a first violation [...]

51. The period at Article 10.7.1(b) of the ADR is two years. The period of Ineligibility under 10.7.1(c) falls to be calculated by reference to ADR Article 10.3.1, which provides:

"10.3.1 For an Anti-Doping Rule Violation under Article 2.3 or Article 2.5 that is the Athlete's ... first anti-doping offence, the period of Ineligibility shall be four years unless, in a case of failing to submit to Sample collection, the Athlete can establish that the commission of the Anti- Doping Rule Violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years."

52. I have already found that the commission of the ADRV was intentional, so the period of Ineligibility under Article 10.3.1 were it to have been Mr Canaveral's first ADRV would have been four years. By application of Article 10.7.1(c) the sanction is doubled to eight years.

53. UKAD has pointed out there have been cases in which a Tribunal has held that an athlete who has intentionally refused or failed to submit to testing might nevertheless have his ban reduced on grounds of No Significant Fault or Negligence (*Brothers v FINA*, CAS 2016/A/4631, paras 93-99; *ITF v Mak*, Independent Tribunal decision dated 7 November 2017, paras 84-86; CAS A4/2016 *Sarah Klein v. Australian Sports Anti-*

Doping Authority (ASADA) & Athletics Australia (AA)). Again, I do not find it necessary to reach a view on the legal correctness of this approach (and for the same I have already given in relation to the approach to "*intentional*" it would not be appropriate for me to do so in this case), but I would agree in any event that there is no factual basis in this case for a reduction of the length of the period of Ineligibility on the grounds of No Significant Fault or Negligence.

54. Article 10.11 of the ADR provides that the period of Ineligibility shall start on the date of the final decision providing for Ineligibility, or if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed, save in certain specified circumstances, none of which apply in this case. However, in my view Article 10.11 must be read together with Article 10.7. If the period of Ineligibility imposed for a second ADRV commenced on the date of the final decision then where that decision occurs during the period of Ineligibility imposed for the first ADRV, the actual period then served by an athlete for the second ADRV could vary significantly depending on the date of the hearing. In my view that cannot have been the intention of the drafters of the Code. I note that a number of governing bodies, such as the IAAF, have included provision in their anti-doping rules "for the avoidance of any doubt" to indicate that the second period of Ineligibility must be sequential to the first, and this approach does not appear to have been challenged. In my view it is clearly correct.
55. For the reasons set out above, I therefore find as follows:
- i. Mr Canaveral committed an Anti-Doping Rule Violation pursuant to Article 2.3 of the ADR, in that he intentionally refused (or intentionally failed) to provide a Sample after valid notification on 19 September 2018, without "compelling justification";
 - ii. The sanction for that Anti-Doping Rule Violation is the imposition of an eight-year period of Ineligibility under ADR Article 10.3.1;
 - iii. That period of Ineligibility runs consecutively to the current period of Ineligibility, and therefore starts on 9 October 2020 and ends on 8 October 2028.

56. Mr Canaveral has the right to appeal against this decision to an NADP Appeal Tribunal, following the procedures set out in the NADP Rules and in Article 13.7 of the ADR. The time to file an appeal to the NADP is 21 days from the date of receipt of the decision by Mr Canaveral.



Kate Gallafent QC
For and on behalf of the Tribunal
07 October 2019
London, UK



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