



**Arbitration CAS 2013/A/3077 World Anti-Doping-Agency (WADA) v. Ivan Mauricio Casas Buitrago & Colombian Olympic Committee (COC), award of 4 December 2013**

Panel: Prof. Christopher Vedder (Germany), Sole Arbitrator

*Cycling*

*Refusal to submit to doping control*

*Restrictive interpretation of compelling justification*

*Measure of the sanction*

1. As determined in the case law of CAS, the defence of a *compelling justification* is to be interpreted restrictively to the effect that, whenever physically, hygienically and morally possible, the sample be provided despite objections by the athlete. Refusal of the athlete to submit to sample collection because he already has urinated, despite the request of the doping control officer to hydrate and wait for another urination, is not compelling justification.
2. For an anti-doping rule violation committed in the form of refusing to submit to sample collection, Article 10.3.1 of the WADA Code provides for a fixed sanction of two years of ineligibility with the only exception of mitigating or aggravating circumstances according to Articles 10.5 and 10.6 of the WADA Code. Refusal of the athlete to submit to sample collection, although selected for doping control, and, against the advice of the DCO to wait for another urination, is made intentionally and in the awareness of the circumstances, which excludes the application of mitigating circumstances.

**A. SUMMARY OF THE FACTS**

**I. The Parties**

1. The World Anti-Doping-Agency (“WADA” or “Appellant”) is a Swiss private law foundation with its seat in Lausanne, Switzerland, and its headquarters in Montréal, Canada. WADA is the anti-doping organization that possesses the authority and responsibility to implement the World Anti-Doping Code (“WADA Code”) world-wide.
2. Mr. Ivan Mauricio Casas Buitrago (the “Athlete” or “First Respondent”) is a professional cyclist from Tunja, Columbia who is affiliated with the Colombian Cycling Federation (“CCF”) holding a UCI licence.

3. The General Disciplinary Commission of the Colombian Olympic Committee (“GDC” or “Second Respondent”) is, according to Article 9 of the Resolution no. 473 adopted by the Executive Committee of the Colombian Olympic Committee (“COC”) on 13 August 2011, the body, established by the Law 845 of 2003, which is responsible for appeals against decisions adopted on the national level in doping-related matters. According to para. 13 of the Whereas clause of Res. 473, the GDC is a private organisation.

## II. The Facts

1. *Refusal to submit to doping control on 29 May 2012*
4. On 29 May 2012, the Athlete competed in the national cycling event “Vuelta Antioquia” in Medellin, Colombia. After the competition, the names of ten cyclists were placed on a billboard at the finish line of the race informing them that they were to provide a doping-control urine sample. The Athlete was among these selected cyclists, however, he never submitted to the urine test.
5. The chaperone got the information that the Athlete was already in the hotel and tried to contact him there. He was informed by the Athlete’s coach that the Athlete was in his room. The chaperone knocked on the door. The coach went in, but did not let the chaperone enter the room. Sometime later, the Athlete and the coach came out. The Athlete told the chaperone that he already had taken a shower and urinated. They went to the Doping Control Station (“DCS”), situated in the same hotel.
6. At the DCS, the Athlete stated that, according to him, the notification did not meet the standards of the WADA Code and the UCI. He further stated that he had urinated already. He was told by the Doping Control Officer (“DCO”) to hydrate and to wait until he was able to urinate again. Then he had a phone conversation with his medical doctor and refused to submit to the sample collection, signed the Doping Control Form (“DCF”), and left the DCS.
7. On 27 September 2012, the Disciplinary Commission (“DC”) of the CCF acquitted the Athlete of all allegations.
8. The National Anti-Doping Agency of Colombia (“NADA”) appealed that decision, according to Article 16 of Res. 473, before the GDC. By decision rendered on 18 December 2012, the GDC concluded that, by refusing to submit to the doping control without justification, the Athlete committed an Anti-Doping Rule Violation (“ADRV”) and imposed an eleven-month period of ineligibility upon him. Both the DC and the GDC, by virtue of Article 9 of Res. 473, were designated competent bodies to hear doping-related disputes.
9. Upon request made by WADA on 14 January 2013, the NADA sent the file to WADA on 21 January 2013.
10. WADA appealed the decision of the GDC by submitting the Statement of Appeal dated 6 February 2013 to the CAS.

2. *Anti-Doping Rule Violation in 2008*

11. Prior to the events which took place on 29 May 2012 the Athlete, according to a decision of the DC dated 28 August 2008, committed a first ADRV. The DC found that the Athlete, by testing positive for 19-norandrosterone which, as a nandrolone metabolite, is a prohibited substance, had committed an ADRV and imposed a two-year period of ineligibility upon him.
12. However, as late as in July 2013, it became known to WADA that the decision of the DC adopted in 2008 was annulled by a resolution by the same DC of the CCF, issued on 14 March 2009.

**III. Proceedings before the CAS**

1. *Appointment of the Sole Arbitrator*

13. According to Article R54 of the Code of Sports-related Arbitration (the “Code”), a Sole Arbitrator is to be appointed if the parties agree or the President of the Appeals Arbitration Division so decides.
14. The Appellant, in its Statement of Appeal dated 6 February 2013, requested the dispute to be decided by a Sole Arbitrator. By letter of 15 April 2013, the Parties were informed that the President of the Appeals Arbitration Division had decided to appoint a Sole Arbitrator. Therefore, Dr. Christoph Vedder was properly appointed Sole Arbitrator.

2. *Non-participation of Respondent*

15. By letter of the CAS Court Office, dated 8 February 2013, the Respondents were duly informed of the appeal against the decision of the GDC of 18 December 2012 and were served with the Statement of Appeal. The Appeal Brief, dated 13 February 2013, was sent to Respondents under letter of 15 February 2013. DHL delivery reports prove that the Statement of Appeal and the Appeal Brief were properly served on both Respondents.
16. All other procedural steps were duly communicated to the Respondents by the CAS Court Office, as well. Respondents have been advised of their procedural rights in accordance with the Code, in particular, according to R55 of the Code, to submit an Answer.
17. However, neither the Athlete nor the GDC filed an Answer or respond otherwise in the course of these appeal proceedings.
18. On 2 September 2013, the CAS Court Office, by facsimile, received a document in Spanish language which represents a decision of the DC of the CCF related to the First Respondent. The document was not accompanied by a cover letter nor was the sender revealed. The CAS Court Office asked the Parties to inform the CAS which party provided such document, and to provide an English translation. The Appellant informed the CAS that it did not file the document, and no reply was received from the Respondents. As a consequence, by letter dated

18 September 2013, the Court Office informed the Parties that such document would not be admitted to the file.

19. According to Article R55 para. 2 of the Code, if the Respondent fails to submit its response, *“the Panel may nevertheless proceed with the arbitration and deliver an award”*. The Sole Arbitrator proceeded accordingly.
3. *“Paper only” proceedings*
20. By letter, dated 26 March 2013, Appellant requested the award to be rendered based on the parties’ written submissions, without a hearing.
21. After having duly examined the Appellant’s Statement of Appeal and Appeal Brief together with the exhibits attached and all other documents and submissions made by Appellant, the Sole Arbitrator deemed *“himself to be sufficiently well informed”* in the sense of Article R57 para. 2 of the Code and decided not to hold a hearing.
4. *Staying of the proceedings*
22. By letter dated 19 July 2013, Appellant informed the Arbitrator that it had filed an appeal with the CAS against the decision, dated 14 March 2009, to annul the decision of the DC by which, on 28 August 2008, a period of ineligibility of two years was imposed upon the First Respondent for a first ADRV (CAS 2013/A/3259). Therefore, Appellant requested to stay the pending proceedings until an arbitral award was rendered in the proceedings related to the decision to annul the decision rendered in 2008.
23. By decision of 30 July 2013, the proceeding was stayed accordingly.
24. However, by letter dated 23 August 2013, the Appellant informed the Arbitrator that it had withdrawn the second appeal for procedural reasons because, according to the rules in force in 2008, WADA had no right of appeal. Furthermore, the Appellant submitted that, due to the fact that the decision of 2008 had been annulled, the refusal to submit to sample collection on 29 May 2012 constitutes a first ADRV and, accordingly, amended its prayers for relief to the effect that First Respondent should be sanctioned with a two-year period of ineligibility.
25. By letter dated 28 August 2013, the Parties were informed that the stay had been lifted.
26. On 15 October 2013, the Appellant filed an executed copy of the Order of Procedure in this appeal confirming that its right to be heard had been respected. Neither Respondent filed such document and otherwise did not participate in the course of the proceedings. At no time did either Respondent raise a procedural objection that their right to be heard and to be treated equally had not been respected

#### IV. The Parties' Submissions

1. *Appellant*

27. According to Appellant, the WADA Code applies by reference through Articles 2 and 4 of Res. 473. With regard to the merits, the Appellant refers to the decision of the GDC which found that the Athlete's submissions were not true and no compelling justification existed. Appellant submits that the Athlete's defence, that he was not notified on the billboard at the finish line and the sample collection was not in line with WADA standards, is contradicted by the consistent reports of the chaperone, the DCO, and the UCI International Commissioner. Appellant refers to the fact that the Athlete was the only one of 10 cyclists selected for doping control after the race who refused to provide a sample.
28. With regard to the sanction to be imposed for the ADRV committed on 29 May 2012, the Appellant submits that the express refusal to provide the sample was an intentional behaviour which excludes that *no or no significant fault or negligence* occurred and, therefore, the standard sanction of two years is to be imposed.

2. *Respondents*

29. Although the Respondents did not make submissions at all, the Arbitrator takes into consideration what the Athlete had submitted in his defence before the GDC. According to his Supplementary Report to the DCF of 29 May 2012, the Athlete submitted that "*the protocol did not meet ICU or WADA standards*". According to that statement, there was no list displayed at the billboard at the finish line and the chaperone notified him long after the race, and the selection was not made at random.

#### V. Relief Sought

30. In its Appeal Brief of 13 February 2013 WADA requested the Arbitrator to rule:

- "1. *The Appeal of Wada is admissible.*
2. *The decision rendered on 18 December 2012 by the General Disciplinary Commission of the Colombian Olympic Committee in the matter of Mr. Ivan Mauricio Casas Buitrago is set aside.*
3. *Mr Ivan Mauricio Casas Buitrago is sanctioned with a period of ineligibility to be set between 8 years and a life-ban, starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by the Athlete before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*
4. *All competitive individual results obtained by Mr Ivan Mauricio Casas Buitrago from 29 May 2012 through the commencement of the applicable period of ineligibility shall be annulled.*
5. *WADA is granted an award for costs*".

31. Following the withdrawal of its appeal against the annulment of the decision which, originally, had determined a first ADVR in 2008, Appellant, in its submission dated 23 August 2013, amended its prayers for relief as follows:

*“3. Mr Ivan Mauricio Casas Buitrago is sanctioned with a two-year period of ineligibility, starting on the date on which the CAS Award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by Mr Ivan Mauricio Casa Buitrago before the entering into force of the CAS Award, shall be credited against the total period on ineligibility to be served”.*

## **B. THE LEGAL ANALYSIS**

### **I. Jurisdiction of the CAS**

32. Article R47 of the Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body ... insofar as the statutes or regulations of the said body so provide ... and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

33. According to Article 16 of Res. 473 adopted by the Executive Committee of the COC, which constitutes the Anti-Doping rules to be applied by the GDC and the disciplinary commissions of the national federations, WADA has the right to appeal from decisions rendered by national bodies in doping matters, even at the first instance, directly before the CAS without the need to appeal before the GDC.
34. The decision of the GDC represents a decision of a sports-related body. Article 16 of Res. 473 grants WADA the right to appeal from that decision and, as required by Article R47 of the Code, the internal remedies available on the national level actually have been exhausted. The Colombian NADA had appealed the decision of the DC before the GDC. Therefore, the CAS has jurisdiction to hear this appeal.

### **II. Admissibility**

35. Article 17 of Res. 473, which concerns an appeal lodged by WADA, provides a deadline of 21 business days from the date of receipt of the entire file by WADA. As WADA received the file on 21 January 2013, the time limit to file a statement of appeal expired on 11 February 2013. WADA submitted its Statement of Appeal on 6 February 2013.
36. The formal requirements for the Statement of Appeal and the Appeal Brief, provided for in Articles R48 and R51 of the CAS Code, have been fulfilled by Appellant. Therefore, the appeal is admissible.

### III. Applicable Law

37. According to Article R58 of the Code, the Arbitrator shall decide the dispute

*“according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled ...”.*

38. As Res. 473 represents an *applicable regulation* of the COC and the Colombian Law 1207 of 2008, through which the International Convention Against Doping in Sports enacted by the UNESCO was approved by the Colombian legislator, is a domestic law of the country of Colombia, both sets of rules apply to the dispute before the Arbitrator. The WADA Code applies by reference through both Articles 2 and 4 of Res. 473 and various references contained in the Law 1207 refer to the UNESCO Convention which, on its turn, incorporates the WADA Code.

### IV. The Merits

39. As provided for by Article R57 para. 1 of the Code, the Arbitrator *“has the full power to review the facts and the law”*. Therefore, it has to be examined, first, whether or not the Athlete’s refusal to submit to the doping control on 29 May 2012 constitutes an ADRV and, second, which sanction shall be imposed on the Athlete.

#### 1. *The ADRV committed on 29 May 2012*

40. According to Article 4 of Res. 473 in conjunction with Article 2 para. 3 of the UNESCO Convention which, together with the WADA Code, was introduced into Colombian law by Law 1207 of 2008, the refusal to submit to a doping-control test *“without compelling justification to submit to Sample collection after notification as authorized in applicable anti-doping rules”* constitutes an ADRV. This rule, in an identical wording, reflects Article 2.3 of the WADA Code.

#### a. Refusal

41. Undisputedly and confirmed by both the DCF and his Supplementary Report, the Athlete refused to submit to the sample collection.

#### b. No Compelling Justification

42. Furthermore, there was no *compelling justification* for the Athlete to refuse. As determined in the case law of CAS, the defence of a *compelling justification* is to be interpreted restrictively to the effect *“that, whenever physically, hygienically and morally possible, the sample be provided despite objections by the athlete”* (CAS 2005/A/925, para. 75).

43. In his Supplementary Report of the day of the sample collection, *i.e.* 29 May 2012, the Athlete stated that, according to him, the protocol followed for the doping control did not meet UCI

or WADA standards. In particular, the Athlete alleged that there was no list displayed on the billboard at the finish line and the selection was not made at random.

44. Based on the testimonies of the coordinator Isabel Cristina Giraldo, the chaperone, Mr. Jhonathan Stike Rua, the DCO, Dr. José J. Aristizabal, and the UCI International Commissioner and Inspector of anti-doping controls, Mr. Stefan Herrera, the GDC, in its decision of 18 December 2012, concluded that the Athlete's allegation that he was not selected, "*is not true*" (para. 3 of the *Legal Grounds*). Furthermore, based on various testimonies including the one of Mr. Stike, the GDC stated that the Athlete, when he arrived at the DCS, explained that he already had urinated and, despite the request of the DCO to wait for another urination, refused to submit to the sample collection. The testimonies confirmed that the Athlete called his medical doctor who apparently told him not to submit to the sample collection. As a result, the GDC held that there was no compelling justification for refusing to submit to the sample collection after having been notified and taken to the DCS by the chaperone.
45. The determinations and conclusions reached by the decision of the GDC are not binding upon the Sole Arbitrator in the appeals proceedings, which, according to Article 57 para.1 of the Code, are *de novo* proceedings. However, after having examined all of the submissions of Appellant and the witnesses' reports attached in the exhibits by Appellant, there is no reason to believe that the GDC came to an erroneous conclusion with regard to the circumstances of the Athlete's refusal to submit to a doping-control test.
46. The reports of the persons mentioned above which have been provided as exhibits to the Appeal Brief as written testimonies, establish that the Athlete was selected and listed on the billboard and the reports of both the DCO, Dr. José Aristizabal, and the UCI Commissioner Stefan Herrera correspondingly confirm that the Athlete was advised to hydrate and to give the sample later, but refused to provide a sample apparently on his doctor's order. From these facts the Arbitrator concludes that no compelling justification was present.
47. Therefore, Appellant has proved to the *comfortable satisfaction* of the Arbitrator in the sense of Article 3.1 of the WADA Code that the Athlete committed an ADRV.
48. By refusing to submit to the sample collection after the race on 29 May 2012, the Athlete committed an ADRV according to Article 4 of Res. 473 in conjunction with the Law 1207 of 2008 which incorporates Article 2 para. 3 of the UNESCO Convention, which coincides with Article 2.3 of the WADA Code, into Colombian law.

## 2. *Sanction*

49. According to Article 14 of Res. 473, "*the sanctions to be imposed for anti-doping violations are set forth in Articles 10, 11 and 12 of the World Anti-Doping Code*".
50. For an ADRV committed in the form of refusing to submit to sample collection, Article 10.3.1 of the WADA Code provides for a fixed sanction of two years of ineligibility unless the conditions of Articles 10.5 or 10.6 of the WADA Code are met.



51. The decision of 18 December 2012 by which the GDC imposed upon the Athlete a period of ineligibility of 11 month contravenes Article 10.3.1 WADA Code. The GDC neither addressed Articles 10.5 or 10.6 of the WADA Code, nor provided any reason for its ruling with respect to the length of the period of ineligibility imposed.
52. Article 10.3.1 of the WADA Code provides for a fixed sanction of two years of ineligibility with the only exception of mitigating or aggravating circumstances according to Articles 10.5 and 10.6 of the WADA Code. According to Article 10.5.1 of the WADA Code, the otherwise applicable sanction can be eliminated in total if the Athlete can establish that he bears *no fault or negligence*. In the present case, the Athlete intentionally refused to submit to testing and without compelling justification, which excludes that he bears *no fault or negligence*.
53. In case of *no significant fault or negligence*, according to Article 10.5.2. of the WADA Code, the period of ineligibility may be reduced but the reduced sanction may be no less than one-half of the period of ineligibility otherwise applicable, *i.e.* 12 month in the case of the Athlete. The *Comment* to Articles 10.5.1 and 10.5.2 of the WADA Code expressly states that these provisions apply “*only in case where the circumstances are truly exceptional*”. Although selected for the doping control, the Athlete left the finish area of the race without being accompanied by the chaperone, took a shower and urinated in his hotel room, and, after arrival in the DCS, and, which is particularly decisive, against the advice of the DCO to wait for another urination, refused to submit to the sample collection apparently on the advice of his medical doctor. All this was made intentionally and in the awareness of the circumstances. The conditions set forth in Article 10.5.2 of the WADA Code are not fulfilled and do not justify the GDC’s 11-month sanction.
54. The conditions provided in Articles 10.5.3, 10.5.4, and 10.5.5 of the WADA Code for other mitigating and for aggravating circumstances under Article 10.6 of the WADA Code are not met.
55. As the decision rendered by the DC on 28 August 2008 which determined that the First Respondent committed an ADRV in 2008 and was sanctioned by a period of ineligibility of two years, was later annulled, the conditions for multiple ADRVs set forth in Article 10.7.1 of the WADA Code are not met.
56. Upon request of the Sole Arbitrator, the Appellant submitted that, based upon its knowledge, the Athlete did not serve any period of suspension, voluntarily accepted or imposed on him, or any period of ineligibility, following the decision of the GDC dated 18 December 2012.

### C. CONCLUSIONS

57. The Athlete committed an ADRV in the form of *refusing or failing without justification to submit to sample collection after notification* in the sense of Article 2.3 of the WADA Code which applies by reference.

58. In the absence of mitigating circumstances, according to Article 10.3 of the WADA Code, a period of ineligibility of two years shall be imposed on the Athlete which, according to Article 10.9 of the WADA Code, will commence on the date of the issuance of this Award. The Athlete neither served a period of suspension voluntarily accepted nor was he ever suspended or served a period of ineligibility following the challenged decision of the GDC dated 18 December 2012.
59. According to Article 10.8 of the WADA Code, all competitive results including any medals, points or prizes the Athlete may have obtained from the date the ADRV occurred, *i.e.* 29 May 2012, through the commencement of the period of ineligibility, *i.e.* the date of the pronouncement of this Award, are disqualified.

### **ON THESE GROUNDS**

#### **The Court of Arbitration for Sport rules that:**

1. The decision rendered by the General Disciplinary Commission on 18 December 2012 is set aside as far as the determination of the sanction imposed on Mr. Ivan Mauricio Casas Buitrago is concerned.
2. Mr. Ivan Mauricio Casas Buitrago is declared ineligible to compete for a period of two years which shall commence on the day of the issuance of the present Award.
3. All competitive results, medals, points, and prizes obtained by Mr. Ivan Mauricio Casas Buitrago from 29 May 2012 to the issuance of the present Award are disqualified.
4. (...)
5. (...)
6. All other or further claims are dismissed.