



Arbitration CAS 2016/A/4655 International Association of Athletics Federations (IAAF) v. All Russia Athletics Federation (ARAF) & Stanislav Emelyanov, award of 7 April 2017

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Ken Lalo (Israel); Mr Jeffrey Benz (USA)

Athletics (race walking)

Doping (rEPO)

CAS jurisdiction according to IAAF Rule 38.19

Applicable law to procedural and substantive issues respectively

Proof of use of a prohibited substance despite the lack of confirmation of presence in the B sample

Determination of the period of ineligibility for an intentional second offence

1. The applicable 2016 IAAF Rules expressly permit anti-doping rule violation cases to be filed directly with the CAS as a sole instance adjudicatory body. In this regard, IAAF Rule 38.19 provides that cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of all the relevant stakeholders i.e. the IAAF, the Athlete, WADA and any Anti-Doping Organisation (ADO) that would have had a right to appeal a first hearing decision to CAS.
2. As a general rule, the procedural issues should be governed by the regulations in force at the time of the procedural act in question, whereas the substantive aspects of the proceedings are governed by the regulations in force at the time of the alleged anti-doping violations, subject to the possible application of *lex mitior*.
3. The body of evidence available can allow to consider that the use of a prohibited substance is established despite the lack of confirmation of presence in the B sample. Several factors may indeed explain why an athlete's B-sample did not confirm the findings of the A-sample: the low volume of urine left in the sample; endogenous slow-acting proteases degrading the prohibited substance; the lack of satisfactory explanation as to why the DCO had to wait hours before being able to conduct the doping test; and finally and importantly the very high dilution of the athlete's urine sample. Those factors show that the only manner in which the athlete could have urine samples with specific gravities almost equivalent to water is as a consequence of having consumed significant amounts of water during the day and prior to the doping control in an attempt to rapidly excrete the prohibited substance as well as substantially dilute the urine sample.
4. An athlete who failed to show the origin of the prohibited substance in his sample, failed to explain about his activities on the day of testing resulting in the testing delay, failed to provide explanations as to the highly susceptible diluted urine samples, and

failed to present credible evidence demonstrating that the anti-doping rule violation was not intentional according to the applicable rules must be sanctioned with a four-year ineligibility period under IAAF Rule 40.2 for a breach of IAAF Rule 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method). In case it is the athlete's second anti-doping rule violation, in accordance with IAAF Rule 40.8(a)(iii), the applicable period of ineligibility to be imposed is eight years. Furthermore, all the competitive results obtained by the athlete from the positive anti-doping testing through the commencement of his suspension period are disqualified.

I. THE PARTIES

1. The Claimant, the International Association of Athletics Federations ("IAAF"), is the international federation governing the sport of Athletics worldwide. It has its registered seat in Monaco.
2. The First Respondent, the All Russian Athletics Federation ("ARAF"), is the national governing body for the sport of Athletics in Russia. ARAF is a member federation of the IAAF but currently suspended from membership, and has its registered seat in Moscow, Russia.
3. The Second Respondent, Stanislav Emelyanov (the "Athlete"), is a Russian athlete specialising in the Athletics discipline of race walking, a member of ARAF and part of the IAAF Registered Testing Pool.

II. FACTUAL BACKGROUND

4. The Athlete was first sanctioned by ARAF, in accordance with IAAF rules, on 15 December 2012, for an anti-doping rule violation in relation to the Athlete's Biological Passport ("ABP"). The Athlete was sanctioned with a period of ineligibility of two years.
5. Subsequently, the Athlete underwent an out-of-competition urine doping test in Saransk, Russia, on 2 June 2015. The doping test produced three diluted samples (#2977622, #2977631, and #2977629). The analysis of the Athlete's 629 A-sample revealed the presence of recombinant erythropoietin ("rEPO"). The 622 and 631 A-samples did not reveal presence of rEPO.
6. On 10 July 2015, the IAAF notified the Athlete of the positive test result, and informed him of his right to request the analysis of the 629 B-sample and the A-sample Laboratory Documentation Package. On 15 July 2015, the Athlete voluntarily accepted a provisional suspension and requested the analysis of the B-sample and the full A-sample Laboratory Documentation Package.

7. On 17 August 2015, the 629 B-sample was tested at the WADA-accredited laboratory in Cologne, Germany. The Athlete did not attend the analysis in person but was represented by Mr. Terentyev Vasily. The B-sample did not confirm the A-sample's results. The B-sample laboratory report from Cologne (the "B-sample Report") stated that *"no EPO signal could be detected, neither for endogenous EPO nor for rhEPO (EPO no-show sample). The different results of the B-sample compared to the A-sample maybe due to the very low protein content in the samples in combination with assumed slow-acting protease activities and the normal variance of the used method"*.
8. On 25 September 2015, the IAAF informed ARAF that the analysis of the B-sample had not confirmed the A-sample's results and, therefore, the IAAF decided to terminate proceedings brought under IAAF Rule 32.2 (a) – *Presence of a Prohibited Substance or Prohibited Method*. However, the IAAF stated that it may open proceedings against the Athlete under IAAF Rule 32.2 (b) – *Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*; IAAF Rule 32.2 (c) – *Evading, Refusing or Failing to Submit to Sample Collection*; IAAF Rule 32.2 (e) – *Tampering or Attempted Tampering with any part of Doping Control*; and/or IAAF Rule 32.2 (i) – *Complicity*.
9. On 28 April 2016, following a request by the IAAF, the Swiss Laboratory for Doping Analysis in Lausanne, Switzerland, issued its report on the Athlete's samples (the "Swiss Report"). This report responds to questions posed by the IAAF regarding the discrepancy between the Athlete's A- and B-samples.
10. On 3 May 2016, the IAAF informed the Athlete that it asserted that the Athlete had committed an anti-doping rule violation under IAAF Rule 32.2(b) – *Use or Attempted Use of a Prohibited Substance or Prohibited Method* and/or IAAF Rule 32.2(e) – *Tampering or Attempted Tampering with any part of a Doping Control*. The Athlete was given seven days to provide an explanation for the anti-doping rule violation.
11. On 9 May 2016, the Athlete indicated in a letter to the IAAF that he disputed the anti-doping violation. On 18 May 2016, the Athlete indicated in a letter to the IAAF that he could not explain why the density of his urine appeared so low in his samples.
12. On 19 May 2016, the IAAF confirmed the charges brought against the Athlete and informed him of his right to a hearing. Due to the suspension of the ARAF, the Athlete was given a choice to have the case heard by the Court of Arbitration for Sport ("CAS") either on the basis of Rule 38.3 of the IAAF Competition Rules – before a Sole Arbitrator of the CAS sitting as a first instance hearing panel, or on the basis of Rule 38.19 of the IAAF Competition Rules – before a CAS Panel at a single hearing, with the agreement of the World Anti-Doping Agency ("WADA") and any other anti-doping organisations with a right of appeal, but the decision rendered would not be subject to an appeal (other than to the Swiss Federal Tribunal).
13. On 31 May 2016, the Athlete informed the IAAF that he wished to have a single hearing before a CAS Panel under Rule 38.19 of the IAAF Competition Rules.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. In accordance with Articles R47, R48, and R51 of the Code of Sports-Related Arbitration (the “Code”), the Appellant filed its request for arbitration (to be considered as its Statement of Appeal and Appeal Brief) on 8 June 2016.
15. In accordance with Article R55 of the Code, the Second Respondent filed his answer on 1 September 2016.
16. Pursuant to Article R55 of the Code, the First Respondent did not file an answer.
17. On 24 October 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division and in accordance with Article R54 of the Code, confirmed the Panel in the procedure as follows.

President: Mr Romano F. Subiotto Q.C., Solicitor-Advocate in Brussels, Belgium and London, United Kingdom

Arbitrators: Mr Ken E. Lalo, attorney-at-law in Gan-Yoshiyya, Israel
Mr Jeffrey G. Benz, attorney-at-law in Los Angeles, USA

18. On 5 and 10 January 2017, the Appellant and Second Respondent signed and returned the order of procedure to the CAS Court Office. The First Respondent neither signed the document nor objected to its contents.
19. In accordance with Article R57 of the Code, an oral hearing was held in Lausanne, Switzerland, on January 12, 2017. The Panel was assisted by Mr. Brent J. Nowicki, CAS Managing Counsel, and Mr. Magnus Wallsten, *ad hoc* Clerk, and joined by the following persons:

For the IAAF:

- Mr Ross Wenzel, Counsel.
- Mr Nicolas Zbinden, Counsel.

For the Athlete:

- Mr Artem Patsev, Counsel.
- Mr Stanislav Emelyanov, by video-conference.

20. The Panel heard the testimony of the following expert witnesses:
 - Prof. Martial Saugy, expert in anti-doping analysis, called by the IAAF.
 - Dr. Nicolas Leuenberger, expert in anti-doping analysis (EPO analysis in particular), called by the IAAF.
 - Dr Douwe De Boer, expert in anti-doping analysis, called by the Athlete, by video-conference.

21. Before the hearing was concluded, all parties expressly stated that they did not have any objection to the constitution and conduct of the Panel or to the procedure adopted by the Panel and that their right to be heard has been respected.
22. The Panel has carefully taken into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. JURISDICTION

23. The 2016-2017 IAAF Competition Rules (which are applicable because the Appellant's Request for Arbitration was filed on 8 June 2016) expressly permit anti-doping rule violation cases to be filed directly with the CAS as a sole instance adjudicatory body.
24. Rule 38.19 of the 2016-2017 IAAF Competition Rules stipulates that *"Cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had a right to appeal a first hearing decision to CAS"*.
25. In addition, Rule 42.5 of the 2016-2017 IAAF Competition Rules states:

"In any case arising out of an International Competition or involving an International-Level Athlete or his Athlete Support Personnel, the following parties shall have the right to appeal to CAS:
 - (a) the Athlete or other Person who is the subject of the decision being appealed;*
 - (b) the other party to the case in which the decision was rendered;*
 - (c) the IAAF;*
 - (d) the National Anti-Doping Organisation of the Athlete or other Person's country of residence or where the Athlete or other Person is a national or licence holder;*
 - (e) the IOC or the International Paralympic Committee, as applicable (where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including a decision affecting eligibility for the Olympic Games or Paralympic Games or a result obtained at the Olympic or Paralympic Games); and*
 - (f) WADA".*
26. The IAAF, the Athlete, WADA, ARAF, and the Russian Anti-Doping Agency ("RUSADA") all expressly consented to the Athlete's case being heard directly by CAS without a prior hearing in accordance with Rule 38.19 of the IAAF Competition Rules.
27. Consequently, CAS has jurisdiction over the present case.

V. ADMISSIBILITY

28. Neither the Code nor the 2016-2017 IAAF Competition Rules provide a specific time limit within which to file this first instance appeal procedure or identify the date on which it could have been filed.
29. Rule 38.3 of the 2016-2017 IAAF Competition Rules provides:
- “If the Member fails to complete a hearing within two months, or, if having completed a hearing fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with the CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal)”.*
30. Rule 38.19 of the 2016-2017 IAAF Competition Rules establishes that *“Cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had the right to appeal a first hearing decision to CAS”.*
31. The Panel notes that, pursuant to Rule 42.15 of the 2016-2017 IAAF Competition Rules, the standard time-limit for an appeal to CAS is 45 days from receipt of the decision to be appealed. An additional time limit of 15 days is granted to the appellant to file its appeal brief, which gives a total of maximum 60 days to refer a case in full to the CAS.
32. On 19 May 2015, the Claimant informed the Athlete of his right to a CAS hearing, which he requested pursuant to Rule 38.19 of the 2016-2017 IAAF Competition Rules on 31 May 2016. The Claimant filed its request for arbitration with the CAS on 8 June 2016 (eight days after the Athlete requested a hearing) which the Panel finds to be a reasonable and timely period for purposes of the admissibility of this Request for Arbitration.
33. Finally, pursuant to Rule 47 of the IAAF Rules, the statute of limitation for anti-doping rule violation proceedings is *“ten years from the date on which the anti-doping rule violation is asserted to have occurred”.*
34. As a result, the Panel concludes that this Request for Arbitration is admissible, because the anti-doping control that resulted in the Athlete’s positive A-sample test for rEPO occurred on 2 June 2015 and the Claimant filed its Request for Arbitration on 8 June 2016.

VI. APPLICABLE LAW AND REGULATIONS

35. The IAAF and Athlete both submit that the procedural issues should be governed by the regulations in force at the time of the procedural act in question. Therefore, the procedural aspects of the current proceedings are governed by the 2016-2017 IAAF Rules.

36. Similarly, the IAAF and Athlete submit that the substantive aspects of these proceedings are governed by the regulations in force at the time of the alleged anti-doping violations, subject to the possible application of *lex mitior*. The IAAF also submits that the IAAF Rules in force in 2015 and the 2016-2017 IAAF Rules are materially the same in their effects, both reflect the 2015 WADA Code and provide for the same violations and sanctions.
37. The doping control took place in 2015, and as a result, the 2015 IAAF Rules are applicable to the substance of the current proceedings.
38. However, the Athlete and IAAF disagree as to the subsidiarity of IAAF Rules and Monegasque law.
39. The IAAF submits that Article R58 of the Code provides:
"The panel 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 or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".
40. Rule 42.23 of the 2016-2017 IAAF Rules provides:
"In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations)".
41. Rule 42.24 of the 2016-2017 IAAF Rules further provides:
"In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise".
42. Rule 30.1 of the 2016-2017 IAAF Rules also states that:
"the Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation or accreditation".
43. The IAAF maintains that, as the Athlete is part of the IAAF Registered Testing Pool, he should be considered as an International-level Athlete for the purposes of the IAAF Rules, and thus bound by such rules. Consequently, the IAAF rules and regulations, in particular the IAAF Rules and the IAAF Anti-Doping Regulations, are the applicable rules in the present case. Monegasque law should apply on a subsidiary basis.
44. The Athlete, with reference to Rule 42.24 of the 2016-2017 IAAF Rules, argues that Monegasque law may not be applied on a subsidiary basis but must be the governing law in the present case, in particular with regard to evaluating and construing the general legal issues,

such as evidence, the standard of proof, fault, and reliability. The IAAF Rules should be applied on a subsidiary basis.

45. In accordance with Article R58 of the Code, and recent CAS precedents, it is clear that the IAAF Rules provide for the application of the IAAF Constitution, Rules and Regulations, including the Anti-Doping Regulations to any CAS disputes involving the IAAF. Moreover, the Athlete is an International-level Athlete under the IAAF Rules and part of the IAAF Registered Testing Pool, thus bound by the IAAF Anti-Doping Regulations.
46. Consequently, the Panel considers that the IAAF Rules apply to the present matter and Monegasque law should apply on a subsidiary basis.

VII. SUBMISSIONS OF THE PARTIES

A. Claimant's Submissions and Requests for Relief

a) *Submissions*

47. The IAAF submits that the Athlete has infringed Rule 32.2(b) and/or 32.2(e) of the IAAF Rules.

aa) *Rule 32.2(b) – Use or Attempted Use of a Prohibited Substance or a Prohibited Method*

48. Rule 32.2(b) of the IAAF Rules forbids the Use or Attempted Use of a Prohibited Substance or Prohibited Method. According to the IAAF rules, Use is defined as the “*utilisation, application, ingestion, injection or consumption by any means whatsoever of a Prohibited Substance or Prohibited Method*”.
49. Additionally, the commentary to Article 2.2 of the WADA Code, states “*it has always been the case that Use or Attempted Use of Prohibited Substance or Prohibited Method may be established by any reliable means [...] such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish 'Presence' of a Prohibited Substance under Article 2.1.*

For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of the B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organisation provides a satisfactory explanation for the lack of confirmation in the other Sample”.

50. The IAAF states that the presence of rEPO had been found in the Athlete's A-sample, as indicated in the Swiss Report. Under section S2 of the WADA 2015 Prohibited List, rEPO is a Prohibited Substance in- and out-of-competition. However, the Athlete's B-sample did not confirm the results of the A-sample analysis. The IAAF, relying on the Swiss Report, argues that there are several explanations for this:

- 1) The insufficient volume of urine left for the B-sample analysis;
 - 2) Endogenous slow-acting proteases which would have degraded the rEPO in the B-sample; or
 - 3) The simple passage of time given the very low concentration of rEPO; or any combination thereof.
51. The IAAF also puts forward that all the Athlete's samples were heavily diluted and that such dilution lessens its concentration. A weakly concentrated sample complicates the process for an anti-doping laboratory to detect a prohibited substance.
52. In addition, the IAAF submits that the following factual elements support the assertion that the Athlete used the prohibited substance:
- The Athlete's sample did not contain any EPO at all, either endogenous or exogenous. The Swiss Report stated that *"a lack of endogenous EPO is known to occur after an administration of exogenous EPO. When EPO is administered, the body reacts by stopping the production of endogenous EPO (negative feed-back loop effect). At the end of a course of EPO, it is perfectly plausible that no or very little exogenous EPO is detected (since the administration was stopped) and the body has not started excreting endogenous EPO yet, in which event no endogenous EPO would be detected"*.
 - At least six race walkers (including the Athlete) that were tested on 2 June 2015, at the Saransk centre reported adverse analytical findings for EPO.
 - The samples provided by the Athlete in Saransk were all heavily diluted, with a specific gravity of 1.002, 1.003, and 1.009 respectively. The IAAF contends that this level of dilution, in particular the 1.002 sample, is nearly unprecedented in doping samples, as it is close to the specific gravity of water itself.
 - The samples of the other athletes tested that day in Saransk presented similar levels of dilution.
 - The Athletes ABP was reset following his first anti-doping violation for blood doping. Since his return to competition on 14 December 2014, the Athlete provided one ABP sample on 15 October 2015. The IAAF contends that this sample may be an indication of blood doping since the Athlete's return to competition. The 15 October 2015, sample produced a haemoglobin level of 16.8 which was higher than any of the eleven values reported in the Athlete's previous ABP. This sample produced an off-score of 118.20, which the IAAF considers as significant.
 - The Doping Control Officer ("DCO") arrived on site in Saransk at 6:30a.m. on 2 June 2015 to conduct the tests. No athlete could be found. The DCO tried to call all the concerned athletes but none of them answered their phones. It was only at 6:00p.m. that the athletes appeared in person and could be tested.
 - The former Director of the Saransk centre, Viktor Kolesnikov, was suspended by RUSADA at the end of 2014 for possessing blood transfusion equipment at the centre.

53. The IAAF submits that Rule 32.2(b) of the IAAF Rules simply requires that the deciding body be comfortably satisfied, on the basis of all reliable evidence, that the Athlete has used a prohibited substance. In this instance, the Athlete's A-sample was found positive for rEPO and that EPO could not have been anything other than exogenous EPO.
 54. Moreover, the IAAF contends that the overwhelming contextual evidence shows that the Athlete was part of a doping scheme in Saransk (including the heavy dilution of the urine, obstruction of the DCO, and the suspension of the former Director of the Saransk centre). After the Athlete's two-year ban due to an anti-doping rule violation for blood doping, the Athlete's renewed ABP, which contains only one sample, is allegedly already highly suspicious.
 55. The IAAF argues that all the evidence presented above is reliable and leaves no doubt that the Athlete used rEPO in Saransk and therefore breached Rule 32.2(b) of the IAAF Rules.
- ab) Rule 32.2(e) – Tampering or Attempted Tampering with any part of Doping Control*
56. Additionally, the IAAF submits that the dilution of the Athlete's sample constitutes an anti-doping violation under either Rule 32.2(b), as alleged above, or under Rule 32.2(e) of the IAAF Rules.
 57. Rule 32.2(e) of the IAAF Rules forbids Tampering or Attempted Tampering with any part of Doping Control. Tampering is defined in the IAAF Rules as "*Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly, obstructing, misleading or engaging in any fraudulent conduct to alter results or to prevent normal procedures from occurring*". The definition of Doping Control provides that it pertains to "*all steps and processes from test distribution through to ultimate disposition of any appeal, including [...] Sample collection*".
 58. The IAAF argues that when the Tampering is specifically aimed at altering the integrity and validity of Samples collected during Doping Control, the conduct may also be considered as a Prohibited Method under point M2.1 of the WADA Prohibited List. Examples provided by WADA of a violation of point M2.1 includes "*urine substitution and/or adulteration, e.g. proteases*". Use of a Prohibited Method is sanctioned under Rule 32.2(b) of the IAAF Rules.
 59. The IAAF provides that in the *de Bruin* case, de Bruin's sample was found to contain a level of whisky that would have been fatal if ingested and therefore must have been added to the sample after the fact as a masking agent. The CAS found de Bruin guilty of the use of a Prohibited Method.
 60. The IAAF puts forward that the Athlete's samples in Saransk were heavily diluted, with a specific gravity of 1.002, 1.003, and 1.009, respectively. The Swiss Report stated that these values could be considered "*as exaggerated diluted samples*" and compares these to the specific gravity of water. The IAAF finds that a value of 1.002 is extraordinary and that, as the Swiss Report concluded, such diluted urine "*is likely a way to avoid rEPO detection*".

61. Additionally, the IAAF provides further contextual elements as evidence that the dilution of the Athlete's samples were meant to avoid detection of the rEPO:

- The samples of all the other athletes tested on the same day as the Athlete in Saransk were also severely diluted, attesting to a concerted effort to prevent detection.
- It was only after approximately twelve hours on site in Saransk that the DCO was able to test the athletes. Furthermore the athletes, and their entourage, were trying to avoid or defer the doping controls to avoid detection.

62. The IAAF submits that, in view of the above, the Athlete intentionally diluted his urine seeking to avoid detection of the rEPO in his body, in violation of Rule 32.2(b) and/or 32.2(e) of the IAAF Rules.

ac) Period of Ineligibility

63. The IAAF states that the Athlete was sanctioned in 2013 in respect of his first anti-doping violation for blood doping. In this instance, the IAAF argues that the Athlete has in the present case committed a second anti-doping violation.

64. Rule 40.8(a) of the IAAF Rules provides that:

“For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

- (i) Six months;*
- (ii) One-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Rule 40.7; or*
- (iii) Twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation without taking into account any reduction under Rule 40.7”.*

65. The IAAF submits that Rule 40.8(a)(iii) should apply, which would require determining the sanction applicable to the second anti-doping violation. The IAAF puts forward that the second anti-doping violation is comprised of two violations, Use and Tampering.

66. According to Rule 40.2 of the IAAF Rules:

“the period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method) [...] shall be as follows, subject to potential reduction or suspension pursuant to Rules 40.5, 40.6 or 40.7:

(a) The period of Ineligibility shall be four years where:

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

67. Rule 40.4(a) of the IAAF Rules also provides for a period of ineligibility of four years in the event of a violation of Rule 32.2(e) of the IAAF Rules. The IAAF argues that the Athlete committed the Tampering violation before being notified of the Use violation (and vice versa). Therefore, in accordance with Rule 40.8(d)(i) of the IAAF Rules, the violations should be considered together as one single violation and the sanction imposed should be based on the violation that carries the more severe sanction.
68. Regarding the Use violation, the IAAF contends that as rEPO is not a Specific Substance, the Athlete should be sanctioned with a four-year ineligibility period, unless he can establish that the anti-doping rule violation was not intentional. In order to satisfy the burden of establishing a lack of intention, the IAAF states that the Athlete must first establish how the prohibited substance came to be present in his system, and that the Athlete cannot show that the violation was unintentional if he cannot explain the conduct leading to the positive test.
69. The IAAF argues that the Athlete has, at the time of the Request for Arbitration, not adduced any evidence on the origin of the prohibited substance. The IAAF also submits that rEPO is a prohibited substance that is prevalent among endurance athletes (such as race walkers) with several performance enhancing benefits. The IAAF notes that no fewer than six Russian race walking athletes (including the Athlete) who underwent a doping test at the Saransk centre on 2 June 2015, reported adverse analytical findings for EPO. These athletes, including the Athlete, had extremely diluted urine, which, the IAAF alleges, indicates a deliberate and concerted attempt to prevent detection of the prohibited substance.
70. As the Athlete has not explained the origin of the rEPO in his sample, the IAAF submits that he has not met the burden of proof required to demonstrate that the anti-doping violation was not intentional. Additionally, according to the IAAF, all of the circumstances of the case indicate that the anti-doping rule violation was intentional.
71. Consequently, the IAAF considers that the Athlete should be sanctioned with a four-year ineligibility period for the Use violation.
72. With respect to the Tampering violation, whether it is considered a breach of Rule 32.2(b) or (e) of the IAAF Rules, the IAAF submits that the Athlete should also be sanctioned with a four-year ineligibility period. The IAAF contends that the evidence shows that the Athlete's conduct was intentional and aimed at preventing detection of the rEPO contained in his system. As a result, the IAAF claims that the appropriate sanction for the Athlete's second anti-doping violation should be four years.
73. As a result, the IAAF states that the applicable period of ineligibility to be imposed on the Athlete, according to Rule 40.8(a)(iii), is eight years. Pursuant to Rule 40.11 of the IAAF Rules, the period of ineligibility should begin on the date of the final hearing decision, i.e. the CAS Award.

ad) Disqualification

74. The IAAF submits that, as the Athlete's positive sample was collected on 2 June 2015, the Athlete's results must be disqualified from such date through the commencement of the ineligibility period to be imposed by CAS in accordance with Rule 40.9 of the IAAF Rules:

"In addition to the automatic Disqualification of the Athlete's individual results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained by the Athlete from the date the positive Sample was Collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money".

b) Requests for Relief

75. The Claimant requests the Panel to rule as follows:

- 1) *CAS has jurisdiction to decide on the subject matter of this dispute;*
- 2) *The Request for Arbitration of the IAAF is admissible.*
- 3) *The Athlete is found guilty of an anti-doping rule violation in accordance with Rule 32.2(b) and/or 32.2(e) of the IAAF Rules.*
- 4) *A period of ineligibility of eight years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete in respect of the present violation until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.*
- 5) *All competitive results obtained by the Athlete from 2 June 2015 through to the commencement of the ineligibility period are disqualified, with all resulting consequences (including forfeiture of any titles, awards, profits, prizes and appearance money).*
- 6) *Any arbitration costs are borne entirely by the Respondents.*
- 7) *The IAAF is awarded a significant contribution to its legal costs.*

B. The Second Respondent's Submissions and Requests for Relief

a) Submissions

76. The Athlete submits that the IAAF has not met its burden of proof in showing that the Athlete had committed an infringement of either Rule 32.2(b) or 32.2(e) of the IAAF Rules.
77. The Athlete argues that the IAAF's claims against him are much more serious than a simple doping matter and that the IAAF must thus meet a heightened standard of proof. Pursuant to Rule 33.1 of the IAAF Rules, the standard of proof should be much greater than a mere balance of probability but a little less than proof beyond a reasonable doubt. However, the Athlete submits that the standard of proof to be applied must be that of beyond a reasonable

doubt as the ban sought by the IAAF is of eight years (and would probably lead to the end of the Athlete's professional career).

78. The Athlete further argues that he must only meet a balance of probabilities standard of proof when presenting his case and supporting evidence, according to Rule 33.2 of the IAAF Rules.
79. The Athlete purports that it is very difficult for a tribunal to measure the probabilities of a case down to 1%, and that due care must be given not to sanction an innocent individual. Moreover, the Athlete provides that according to the Supreme Court of Oregon in the United States, the standard of clear and convincing evidence, *"that is, free from confusion, fully intelligible, distinct and establish to the jury that the defendant intended to deceive the plaintiff or did so with a reckless disregard for the truth"* (Riley Hill General Contractor, Inc. v Tandy Corp), imposes a higher burden of persuasion than a balance of probabilities standard. Accordingly, mere allegations or inferences, not being supported by clear and direct evidence, are insufficient to meet the comfortable satisfaction standard required. It would be insufficient to infer that something may have happened or that a violation may have been committed, or that an individual's unidentified actions may constitute a violation.
80. The Athlete states that the IAAF has erroneously stated as a fact that the Athlete's sample was positive for EPO, when it should rather be considered to be negative. Any attempts from the IAAF to receive an explanation from the Athlete as to how the prohibited substance (rEPO) entered the Athlete's system is at odds with the results of the B-sample test. Additionally, the Athlete states that the IAAF has argued two mutually exclusive points: (1) rEPO was detected in the Athlete's sample, and the Athlete failed to explain its origin; and (2) the rEPO was not detected in the Athlete's sample, and the athlete has attempted to prevent such detection. Moreover, the Athlete points to inconsistencies in the IAAF's claims that the Athlete's sample did contain rEPO, followed by claims that the Athlete's sample did not contain any EPO at all, either endogenous or exogenous.
81. Regarding the Swiss Report produced by the Swiss Laboratory for Doping Analysis in Lausanne, Switzerland, the Athlete points to the email of 15 September 2015 from Dr Hans Geyer which accompanied the original B-sample Report from Cologne, Germany that stated, *inter alia*:

"Results:

[...]

3. in sample 629 no fast-acting and slow-acting protease activities were detected most probably due to the small remaining urine volume

4. all three samples showed a very low protein content

[...]

Interpretation of results:

In the two additional samples of sample 629, slow acting protease activities could be detected. Most probably also sample 629 contains such activities, which could not be proven due to a small remaining urine volume. The detected slow-acting protease activities are most likely originating from endogenous proteases”.

82. The Athlete puts into question the reliability of the Swiss Report as the email of September 15, 2015 from Dr Hans Geyer accompanying the B-sample Report stated that “[t]he detected slow-acting protease activities are most likely originating from endogenous proteases. Therefore no indication of a manipulation of the Saransk samples with proteases is given. For manipulation purposes rather the use of (synthetic) fast-acting proteases is expected”. The Athlete compares this with the IAAF’s submission that “[t]he evidence shows that the Athlete’s samples in Saransk were heavily diluted, with a specific gravity of 1.002, 1.003 and 1.009 respectively. The Report found that these values could be considered ‘as exaggerated diluted samples’ and provides the example of water as a comparison, which has a specific gravity of 1.003. A value of 1.002 is thus absolutely extraordinary. The Report concludes that such diluted urine ‘is likely a way to avoid rEPO detection”.
83. The Athlete argues that the samples collected were an anomaly as the A-sample returned a positive result for rEPO but the B-sample returned a negative result and was diluted to the extent that its specific gravity was allegedly even lower than that of water in the case of one sample.
84. The Athlete refers to the opinion it requested of Dr Douwe De Boer on the matters related to the Athlete’s sample (the “Opinion”). The Opinion provided that “[t]he external expert was asked to perform an overall interpretation of the SPECIFIC GRAVITY and EPOETIN results obtained from urine sample analysis under the specific conditions documented. The sample were collected at June 2nd, 2015. Based on the information supplied, it can be concluded that in this stage the set of conditions leading to any scenario is merely speculation based on circumstantial evidence.

No specific data were presented to the external expert in respect with a specific blood sample also collected at June 2nd, 2015. If a suspicion of an AAF or a manipulation existed based on the analysis of urine samples collected at the same day, the question remains why no additional or supplementary evidence was presented through analysis of the respective blood sample. It also prevents the external expert to evaluate that based on the blood sample there was any indication of a manipulation or none.

Independent of the scenarios, the consequence is clear. If the urine B-sample analysis for EPOETIN does not confirm the A-sample analysis and although it is rare, then the athlete has not violated article 2.1 of the 2015 World Anti-Doping Code”.

aa) Reason for the Athlete’s samples’ low specific gravity

85. The Athlete argues that the reason for the Athlete’s samples’ low specific gravity is due to the fact that he had drunk a large quantity of water on the day of the test as a result of the physical training he had undertaken that day. The Athlete also provides the weather conditions of that day, based on the data received from the Mordovian Centre for Hydrometeorology and Environmental Monitoring, with an air temperature of 24°C, soil temperature of 34°C, humidity of 98%, and atmospheric pressure of 741mm HG. As a consequence, the Athlete consumed a lot of water.

86. The Athlete further argues that the samples provided during the doping test between 7:50p.m. and 10:20p.m. show an increase in specific gravity and an increase in volume. The Athlete states that a large consumption of water as a result of training does not constitute the use of a prohibited substance or method.
- ab) Circumstantial evidence presented by the IAAF*
87. The Athlete contends that the IAAF relies on circumstantial evidence, such as:
- Six race walkers from the same Saransk centre were tested the same day (2 June 2015) and reported adverse analytical findings for EPO;
 - Their samples were all heavily diluted, like the Athlete's;
 - The Athlete's blood sample of 14 October 2015 characterized as "highly suspicious";
 - The Athlete only appeared in person for the doping test after some "obstructive actions" presumably made by some unknown persons; and
 - The former director of the Saransk centre, Mr Kolesnikov, was suspended by RUSADA at the end of 2014 for possessing blood transfusion equipment.
88. The Athlete argues that he should not in any way be considered as responsible for other athletes and their own misconduct. The Athlete is adamant that he did not commit a doping violation and does not know why the other six athletes' samples were heavily diluted or why they waived their right to open their B-samples as the Athlete is not their coach or a member of their personnel or team.
89. The Athlete argues that the scope of this arbitration is very specific and limited to the urine sample collected on 2 June 2015. The references made by the IAAF to the blood sample collected on 13 October 2015 is irrelevant. The Athlete also notes that the blood sample was collected 4.5 months after the urine sample, further reducing any relevance it may have.
90. The Athlete also notes that he cannot in any way be responsible for someone else's misconduct and/or "obstructive actions" made, if any, towards the DCO. The Athlete contends that he arrived at the Saransk centre at 6:00p.m. as this was the start of his testing window, and that he was eager to follow the procedure correctly to avoid any allegation of a doping violation. Furthermore, the Athlete was not obliged to appear anywhere at 6:00a.m., and consequently, the DCO's request for the Athlete to be present at the Saransk centre in 30 minutes was illegal and ill-founded. In that respect, the Athlete notes that the IAAF did not choose to pursue a claim against the Athlete under Rule 32.2(c) of the IAAF Rules (Evading, Refusing, or Failing to Submit to Sample Collection).
91. Lastly, the Athlete argues that the IAAF's reliance on the former director of the Saransk centre's, Mr Kolesnikov, 4-year ban by WADA for possession of prohibited equipment in December 2014, is mistaken. The former director, who had never been the Athlete's coach, personnel, doctor, or any other team member, had already been sanctioned prior to the Athlete's test and is therefore not a relevant factor for the current proceedings. Moreover, the

Athlete notes that he had only met the former director a few times, and they did not discuss blood transfusions or any other prohibited methods.

ac) Conclusions

92. The Athlete concludes by stating that the IAAF has not established to a sufficient degree that an anti-doping rule violation has occurred. The IAAF has not established that the Athlete had committed any misconduct which could possibly lead to an anti-doping rule violation. The IAAF's assertions and request for the Athlete to be suspended for a period of eight years is not plausible and unfounded. Accordingly, the IAAF's claim should be dismissed.

b) Requests for Relief

93. The Second Respondent requests the Panel to rule as follows:

- 1) *This Answer deemed admissible.*
- 2) *The IAAF's Request for arbitration shall be rejected.*
- 3) *The claims raised by the IAAF shall be dismissed.*
- 4) *The IAAF shall bear the entirety of the arbitration costs.*
- 5) *The IAAF is ordered to pay Mr Stanislav Emelyanov a contribution towards the legal and other costs incurred by him in the framework of this proceeding, in an amount to be determined at the discretion of the Panel.*

VIII. MERITS

94. The Claimant submits that the Athlete infringed Rule 32.2(b) and/or 32.2(e) of the IAAF Rules.

a) Rule 32.2(b) – Use or Attempted Use of a Prohibited Substance or a Prohibited Method

95. The Athlete underwent a doping control in Saransk on 2 June 2015. His A-sample tested positive for rEPO, however, the Athlete's B-sample did not confirm the results of the A-sample. The laboratory indicated that in the B-sample no EPO signals could be detected, *"neither for endogenous EPO nor for rhEPO"*.
96. Rule 32.2(b) of the IAAF Rules provides that *"(i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part to be demonstrated for Use of a Prohibited Substance or a Prohibited Method"*. And *"(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti-doping rule violation to be committed"*.

97. The Swiss Report states that the A-sample “*very clearly contains recombinant erythropoietin and has no indication of endogenous EPO*”. The expert witnesses for the IAAF confirmed at the oral hearing that the rEPO in the Athlete’s A-sample could only be of an exogenous nature. In contrast, the Athlete and the Athlete’s expert witness failed to provide any substantiated explanation or other scenario for the Athlete’s A-sample returning a positive rEPO result.

98. The Swiss Report indicates that there are several possible reasons as to why the Athlete’s B-sample did not confirm the findings of the A-sample, namely a low volume of urine left in the sample, endogenous slow-acting proteases degrading the rEPO, and the passage of time resulting in the disappearance of EPO due to low concentrations in the sample. As per the Swiss Report, and in accordance with the commentary to Art. 2.2 of the 2015 WADA Code (which corresponds to Rule 32.2(b) of the IAAF Rules), these factors would support the finding of Use or Attempted Use of Prohibited Substance or Prohibited Method through “*other analytical information which does not otherwise satisfy all the requirements to establish ‘Presence’ of a Prohibited Substance under Article 2.1*”.

99. Moreover, as the IAAF submits, additional factual elements support the Athlete’s use or attempted use of a prohibited substance in contravention of Rule 32.2(b) of the IAAF Rules. In particular, the B-sample did not contain any EPO at all, either endogenous or exogenous. The Swiss Report, as well as the IAAF expert witnesses, stated that this is further evidence of the Athlete’s use of exogenous EPO prior to the urine test as “[a] *lack of endogenous EPO is known to occur after an administration of exogenous EPO. When EPO is administered, the body reacts by stopping the production of endogenous EPO (negative feed-back loop effect). At the end of a course of EPO, it is perfectly plausible that no or very little exogenous EPO is detected (since the administration was stopped) and the body has not started excreting endogenous EPO yet, in which event no endogenous EPO would be detected*”.

100. In addition to the scientific evidence and testimony provided, at least five other race walkers, tested on the same day and at the same centre, reported adverse analytical findings for EPO; the other race walkers that were tested had heavily diluted samples; the Athlete’s only ABP sample of 15 October 2015 had suspicious levels of haemoglobin; the DCO had substantial difficulty in carrying out the doping test; and the former Director of the Saransk centre had previously been suspended for possessing blood transfusion equipment at the centre. These elements by themselves do not confirm an anti-doping violation. However, they present a clear set of factors and conditions which corroborate a finding of Use or Attempted Use of Prohibited Substance or Prohibited Method under Rule 32.2(b) of the IAAF Rules.

101. On the other hand, the Athlete relies on the statements of Dr Hans Geyer in his email accompanying the original B-sample Report, which provides that “*In the two additional samples of sample 629, slow acting protease activities could be detected. Most probably also sample 629 contains such activities, which could not be proven due to a small remaining urine volume. The detected slow-acting protease activities are most likely originating from endogenous proteases. Therefore no indication of a manipulation of the Saransk samples with proteases is given. For manipulation purposes rather the use of (synthetic) fast-acting proteases is expected*”.

102. The B-sample Report itself states that “[i]n the B-sample 629 no EPO signals could be detected, neither for endogenous EPO nor for rhEPO (EPO no-show sample). The different results of the B-sample compared to the A-sample maybe due to the very low protein content in the samples in combination with assumed slow-acting protease activities and the normal variance of the used method”. Additionally, the Athlete relies on the Opinion, and testimony, of Dr Douwe De Boer which provides that any conclusions based on the available information “is merely speculation based on circumstantial evidence” and that “[i]f the urine B-sample analysis for EPOETIN does not confirm the A-sample analysis and although it is rare, then the athlete has not violated article 2.1 of the 2015 World Anti-Doping Code”.

103. The Panel notes that the statements found in the email of Dr Hans Geyer, the B-sample Report, and the Opinion do not contradict the findings in the Swiss Report as to the possible reasons why the B-sample did not confirm the Athlete’s A-sample. The B-sample report notes that the different results “maybe due to the very low protein content in the samples in combination with assumed slow-acting protease activities”. In fact, this is in line with the Swiss Report which also found that the endogenous slow-acting proteases in the urine degraded the rEPO in the B-sample.

104. Furthermore, the Panel did not receive a satisfactory explanation of why the DCO had to wait for some 12 hours before being able to conduct the doping test. The DCO arrived at the Saransk centre at 6:00a.m. The Athlete testified at the hearing that he usually stayed at the centre while his home was a few hundred metres from the centre. As a result, he could have been notified of the presence of the DCO in the morning and could easily have submitted to the test. In addition, the Athlete testified that he returned home to cook himself a meal at lunch time, after the morning training. This is again a point at which the Athlete could have been told of the DCO’s presence and easily submitted to the test. The Athlete testified that he then slept for some time at home before leaving for his afternoon training. As a result aside from the time spent training that day, the Athlete was very close to the DCO, and there is no plausible reason why the Athlete submitted to the test only in the late afternoon.

105. Finally and importantly, all of the Athlete’s samples were heavily diluted, with a specific gravity of 1.002, 1.003, and 1.009. In comparison, water has a specific gravity of 1.000 (with instruments measuring the specific gravity of water between 1.000-1.003). The Swiss Report characterized these values as “*exaggerated diluted samples*”, to the extent that one of the samples had a specific gravity incredibly close to water, and that such high levels of dilution “*is likely a way to avoid rEPO detection*”. Moreover, the samples collected by all other athletes on the same day at the Saransk centre were also severely diluted, and it took approximately twelve hours on site for the DCO to conduct the testing of the athletes.

106. The Athlete argues that these levels of dilution were simply as a result of the Athlete having consumed water during the course of the day following physical training. The Athlete noted in particular that the air temperature was of 24°C and soil temperature was of 34°C with 98% humidity. However, the Athlete testified at the hearing that he consumed only a total of approximately 3 litres of water while training that day, the rest of the water transported during his training walk being used to douse him in order to freshen him up. Moreover, the Athlete stated that he had urinated on at least one occasion during the day prior to the doping test.

This is not consistent with the evidence provided by the experts that huge quantities of water should be consumed in order to have such a diluted sample.

107. The highly abnormal dilution readings were characterized by the Swiss Report as *“likely a way to avoid rEPO detection”* and in accordance with the testimony of the IAAF expert witnesses, could only have resulted from a consumption of significant amounts of water. In addition, the IAAF expert witnesses explained that an athlete, who has trained hard during the course of a day, will normally sweat out two to three litres of water and that it was physiologically impossible for the Athlete to reach such levels of urine dilution when only having consumed three litres of water during his training.
108. Overall, the expert testimony provided at the oral hearing satisfied the Panel as to the reliability of the testing method, where results are documented, published, and peer reviewed. Moreover, the expert testimony explained the physiological process by which an athlete’s body and urine would be affected by varying levels of hydration throughout the course of a day and the impact which intense exercise would have upon the Athlete’s body.
109. As a result, the Athlete’s contention that he only consumed three litres of water on 2 June 2015 while training does not provide a credible explanation why all of the samples which the Athlete produced were heavily diluted, two of which were diluted to the extent that their specific gravity was almost that of water. In particular, the Athlete contradicted himself on several occasions when questions of fact were raised by the Panel and were inconsistent with his written submissions. Urine dilution is a well-recognized practice to avoid the detection of prohibited substances in urine samples by lowering their concentration in the sample, and thereby making it much more difficult to detect them. Additionally, excessive consumption of water is often a method to accelerate the excretion of substances by athletes prior to a doping control in order to reduce any amount of a Prohibited Substance found in the urine sample. However, in this case, the Athlete himself confirmed at the hearing that his consumption while training was not excessive.
110. Taking into account the body of evidence available to the Panel, the expert witness testimonies and reports concerning the adverse A-sample result, the Athlete’s own testimony, and the DCO’s mission report, the Panel considers that the only manner in which the Athlete could have urine samples with specific gravities of 1.002, 1.003, and 1.009 is as a consequence of having consumed significant amounts of water during the day and prior to the doping control in an attempt to rapidly excrete the Prohibited Substance as well as substantially dilute the urine sample.
111. Consequently, the Panel finds that the Athlete violated Rule 32.2(b) of the IAAF Rules by use of a Prohibited Substance, in this instance, rEPO.

b) Rule 32.2(e) – Tampering or Attempted Tampering with any part of Doping Control

112. Rule 32.2(e) of the IAAF Rules provides that *“Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing*

fraudulent information to the IAAF, Member or an Anti-Doping Organisation, or intimidating or attempting to intimidate a potential witness". Tampering is defined in the IAAF Rules as "Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly, obstructing, misleading or engaging in any fraudulent conduct to alter results or to prevent normal procedures from occurring".

113. In view of the Panel finding that the Athlete has violated IAAF Rule 32.2(b), and that the Athlete's sanction would not be affected by a finding of an infringement of Rule 32.2(e) of the IAAF Rules, the Panel does not need to assess whether the Athlete has also infringed Rule 32.2(e) of the IAAF Rules.

c) Period of Ineligibility

114. According to IAAF Rule 40.2:

"the period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method) [...] shall be as follows, subject to potential reduction or suspension pursuant to Rules 40.5, 40.6 or 40.7:

(a) The period of Ineligibility shall be four years where:

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

115. In view of the Athlete's submissions, the Athlete failed to adduce sufficient evidence to meet his burden to demonstrate that the anti-doping rule violation was not intentional. There was absence of any evidence as to the origin of the rEPO in the Athlete's A-sample, combined with problematic evidence and questionable explanations about the activities on the day of testing which have not allowed the DCO to meet the Athlete for twelve hours after arriving to the test site, as well as the highly susceptible diluted urine samples and a general lack of credible corroborated evidence supporting the Athlete's lack of intent.

116. Consequently, the Athlete must be sanctioned with a four-year ineligibility period under IAAF Rule 40.2 for a breach of IAAF Rule 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method).

117. IAAF Rule 40.8(a) states:

"For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

- (i) Six months;*
- (ii) One-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Rule 40.7; or*
- (iii) Twice the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation without taking into account any reduction under Rule 40.7".*

118. In accordance with IAAF Rule 40.8(a)(iii), the applicable period of ineligibility to be imposed on the Athlete is, therefore, eight years.
119. Pursuant to Rule 40.11 of the IAAF Rules, the period of ineligibility shall commence on the date on which this Award is rendered.

d) Disqualification

120. IAAF Rule 40.9 provides:

“In addition to the automatic Disqualification of the Athlete’s individual results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained by the Athlete from the date the 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 shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money”.

121. The anti-doping rule violation occurred on June 2, 2015. Consequently, the Athlete’s results are disqualified from June 2, 2015 through till the commencement of the Athlete’s ineligibility period, in this instance being the date this Award is rendered.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The claim filed by the International Association of Athletics Federations against the All Russia Athletics Federation and Mr Stanislav Emelyanov on 8 June 2016 is upheld.
2. Mr Stanislav Emelyanov has committed an anti-doping rule violation pursuant to Rule 32.2.(b) of the 2015 IAAF Competition Rules.
3. Mr Stanislav Emelyanov is sanctioned with an eight-year period of ineligibility starting on 7 April 2017.
4. All the competitive results obtained by Mr Stanislav Emelyanov from 2 June 2015 through the commencement of his suspension period on 7 April 2017 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.
- (...)
7. Any other motions or prayers for relief are rejected.