Arbitration CAS 2021/A/8529 World Anti-Doping Agency (WADA) v. International Boxing Association (IBA) & Rohan Polanco Emiliano, award of 16 May 2023

Panel: Mr James Drake KC (United Kingdom), President; The Hon. Michael Beloff KC (United Kingdom); Prof. Jan Paulsson (France)

Boxing
Doping (whereabouts failures)
Admissibility of the Answer without proper filing
Requirements to fulfill for an athlete to be "duly notified" of its inclusion in the RTP
Determination of the applicable sanction

1. **As per Article R31 of the CAS Code, a party's submission must be filed in the required number of copies by courier or uploaded onto the CAS e-filing platform within the time stipulated by the relevant provision to be considered valid. However, there is no rule in the CAS Code that a respondent loses the right to be a party to the proceedings and/or defend itself in the subsequent stages of the proceedings if it files a late Answer. It may be in the interests of justice and fairness that a respondent be permitted to be heard by admitting a late Answer (noting that the respondent can make the same points in oral submissions at the hearing and that it can be of some utility to the CAS panel to have the Answer available in writing and in advance of the hearing).**

2. **In order for an athlete to be "duly notified" of his/her inclusion in a Registered Testing Pool (RTP) and of the consequent requirements in accordance with the International Standard for Testing and Investigations, the International Federation (IF) or Anti-Doping Organization (ADO) has to send out a notice in the terms required by the applicable rule. In doing so, the IF/ADO is perfectly entitled to use one or other of the international languages, and certainly entitled to use English, it being the most widely spoken language. There is no additional obligation on the IF or ADO to find out in what language(s) the new RTP entrant is proficient in and the level of that proficiency and to issue the required notice in that language or languages. This would manifestly impose a significant burden on the IF/ADO and one which would be extremely difficult, if not impossible, to discharge. If this were the intention of the drafter of the rules, then clear language to such effect would and should have been used.**

3. **By way of general principles, CAS panels have calibrated the degrees of fault according to three levels as "significant" (16-24 months, with a midpoint of 20 months), "normal" (8-16 months, with a midpoint of 12 months) and "light" 0-8 months, with a midpoint of 4 months). These principles were adapted to whereabouts failures, in light of the different possible period of ineligibility of 12-24 months. Thus (albeit using slightly different labels) the levels of fault were calibrated as "high" (20-24 months, with a midpoint of 22 months), "medium" (16-20 months, with a midpoint of 18 months), and "low" 12-16 months, with a midpoint of 14 months).**

I. THE PARTIES

1. The Appellant is the World Anti-Doping Agency ("WADA"), a Swiss private law foundation with its seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada. It is an international independent organisation created in 1999 to promote and monitor the fight against doping in all its forms. It is the author of the World Anti-Doping Code ("WADC").

2. The First Respondent, the International Boxing Association (the "IBA"), is the world governing body for the sport of Olympic boxing, commonly known as "amateur boxing", and is an international federation (or "IF") within the meaning of the WADC. As a signatory of the WADC, the IBA has enacted the IBA Anti-Doping Rules (the "IBA ADR"). (Two different editions of the IBA ADR apply to this appeal; where there is no reason to identify which, it will simply be referred to as the "IBA ADR".) The IBA has delegated the implementation of its anti-doping program to the International Testing Agency ("ITA"). The IBA was formerly known as the Amateur International Boxing Association and the "AIBA".

3. The Second Respondent is Mr Rohan Polanco Emiliano (the "Athlete"). He was born in October 1998 in the Dominican Republic. He was an amateur international-level boxer and was ranked fifth in the world by the IBA but has now turned professional (and is therefore no longer governed by the IBA). The Athlete was included in the IBA's registered testing pool ("RTP") on 30 January 2020 based on the IBA's assessment that the Athlete was a potential contender to participate in the Olympic Games Tokyo 2020 (the "Tokyo Games"), which at that time were due to be held in July and August 2020. In the event, the Tokyo Games were postponed and were held from 23 July to 9 August 2022. In those circumstances, despite the fact that the Athlete turned professional in September 2020 he was maintained in the RTP in the lead up to the (rescheduled) Tokyo Games. The Athlete competed in the Men's Welterweight division at the Tokyo Games, finishing in ninth place.

II. FACTUAL BACKGROUND

4. This appeal concerns three 'whereabouts failures' alleged to have been committed by the Athlete within a 12-month period, so as to amount to an anti-doping rule violation ("ADRV") under Article 2.4 of the IBA ADR. Throughout this Award, these shall be referred to collectively as the "Filing Failures" and respectively as the "First Filing Failure", the "Second Filing Failure" and the "Third Filing Failure".

A. The RTP Letter

5. The Athlete was informed of his inclusion in the RTP (described in paragraph 3 above) by way of an email from the IBA dated 30 January 2020 to the Dominican Boxing Federation or "FDB" (the national federation for amateur boxing for the Dominican Republic) informing the FDB that certain of its athletes, including the Athlete, had been included in the IBA's RTP and, amongst other things, asked the FDB to *"immediately inform the above mentioned athletes about their inclusion in the [IBA] RTP and all resulting consequences"* and to confirm by email that they had

done so. Attached to the email was a pro-forma letter from the ITA headed *"Registered Testing Pool Inclusion"*, addressed to *"Dear RTP athlete"* and dated 30 January 2020 (the "RTP Letter").

6. The RTP Letter explained the nature of the whereabouts regime and the RTP, the deadline dates for the quarterly whereabouts filings, the nature of the whereabouts information that must be submitted, and the sanctions for non-compliance. Because of the importance of this document in this appeal, its material contents are here set out in full (emphasis in original). (As referred to therein, "ADAMS" is an acronym for WADA's Anti-Doping Administration and Management System, a web-based system that centralises doping control-related information including, in particular, athlete whereabouts information.)

"Dear RTP athlete,

We write to you on behalf of the International Boxing Association ("AIBA").

***This letter is a notification of your inclusion in the Registered Testing Pool of the International Boxing Association**. Please read this letter very carefully as it conveys important information about the obligations resulting from your inclusion in the AIBA RTP and consequences thereof.*

Whereabouts information is an indispensable tool to allow Anti-Doping Organisations (ADO) to locate athletes at any time and place and to conduct test without advance notice, which is a key aspect of an effective anti-doping program.

As an elite athlete, we need your contribution to preserve the integrity of Boxing.

AIBA Registered Testing Pool inclusion and corresponding obligations

In accordance with the World Anti-Doping Code and its International Standards published by the World Anti-Doping Agency (WADA), as well as with the AIBA Anti-Doping Rules, the AIBA identifies each year the athletes to be included in the RTP for the purpose of its anti-doping testing program. RTP Athletes are subject to specific requirements.

As an AIBA RTP athlete, you are required to submit information of your whereabouts to the AIBA. The exact contents of the information required are detailed in Annex A of this letter.

Whereabouts filings are submitted through the online database ADAMS, in the manner explained in Annex A.

The information you enter into ADAMS is shared with the ITA, WADA and other anti-doping organisations that have jurisdiction to test you in order to facilitate the planning of out-of-competition tests. The information you provide will solely be used for anti-doping purposes and is treated in strict confidentiality.

Please note that you will remain in the AIBA RTP until you are informed by the AIBA / ITA that this is no longer the case, or if you officially retire from competition. …

Deadlines for submitting your Whereabouts Filings

Whereabouts filings are submitted on a quarterly basis. Deadlines for submission during the period of inclusion are defined by AIBA / ITA as follows

Yearly Quarters	*Submission Deadlines*
Q1: 1 January – 31 March	*15th December*
Q2: 1 April – 30 June	*15th March*
Q3: 1 July – 30 September	*15th June*
Q4: 1 October – 31 December	*15th September*

Submitting your whereabouts filings in a timely manner is essential, as late filings may lead to official warnings and sanctions. Note: all AIBA athletes have an obligation to be available for testing at any time and place and to comply with any request for testing by any anti-doping organization with testing jurisdiction.

Whereabouts Information required

Athletes in the AIBA RTP are required to provide complete and accurate whereabouts information for each day of the quarter to enable any ADO to locate them for testing, including but not limited to the 60-minute time slot period.

At a minimum, you must include the following information in your whereabouts submission:
1. An up-to-date mailing address and email address where correspondence may be sent to you for formal purposes
2. One daily specific 60-minute time slot between 5am and 11pm
3. Your overnight residential address for each day of the quarter. This is the place where you will be staying overnight (e.g. home, temporary lodging, hotel, etc.)
4. Your training whereabouts (training venue address and training schedules)
5. Your competition details (venue, address and schedule)
6. Any and all regular activities that are part of your regular routine (training at the gym, regular physio sessions, school, work, etc.)
7. Your traveling schedule
8. Any additional information deemed necessary to enable any ADO intending to locate you for Testing

Sanctions for Non-Compliance

• It is of upmost importance that you submit your required Whereabouts information by the deadline provided by the AIBA / ITA. If you do not submit your whereabouts by the deadline provided by the AIBA, or you submit incomplete or inaccurate whereabouts, you will be liable for a FILING FAILURE and will receive an official letter from the AIBA / ITA notifying you of this.

• It is also very important that you submit accurate and complete information about your whereabouts and that you update this information as soon as you know of any change in plan, so that the ADO can locate you for testing on any day, and at any time. Please note that:

i. If inaccurate or incomplete whereabouts information in ADAMS results in an unsuccessful attempt to test you out-of-competition during your 1-hour testing slot, you will be liable for a MISSED TEST and will receive an official letter from the AIBA / ITA notifying you of this.

ii. If inaccurate or incomplete whereabouts information in ADAMS results in an unsuccessful attempt to test you out-of-competition outside of your 1-hour testing slot, you may be liable for a FILING FAILURE and in such case will receive an official letter from the AIBA / ITA notifying you of this.

• In each case, the procedure laid down in the International Standard for Testing and Investigations (ISTI)3 will be followed to determine whether a Missed Test or a Filing Failure will be recorded against you.

• Any combination of three Missed Tests and/or Filing Failures committed within a 12-month period shall constitute an Anti-Doping Rule Violation for which the sanction is two years, subject to reduction down to a minimum of one year, depending on the Athlete's degree of Fault (first offence) or more (for second and subsequent offences). See Articles 2, 4, 10.2 and 10.7 of the AIBA's Anti-Doping Rules.

• Please note that depending on the specific facts also a single Whereabouts Failure could amount to an Anti-Doping Rule Violation under Article 2.3 (Evading Sample Collection) and/or Article 2.5 (Tampering or Attempted Tampering with Doping Control).

• You may wish to have a third party (e.g. coach or agent) assist you in complying with these whereabouts requirements and choose to delegate the submission of some or all of your Whereabouts Filing to this person. If you would like to do so, please contact us at AIBA@ita.sport

• However, please note that you remain at all times personally responsible for any failure to comply with the requirements of the AIBA Anti-Doping Rules. The fact that you delegate the task to someone else who fails to carry it out properly does not release you from your liability. …

Notices and Communications

As mentioned above, the ITA has been granted full authority to act and take all necessary measures and/or decisions on behalf of the AIBA, in the implementation of the delegated aspects of the AIBA anti-doping program.

Please note that any communication or letter sent by the ITA on behalf of the AIBA shall be deemed to be sent directly by the AIBA.

Anti-Doping Contact Information:
Laura Malet
Testing Officer
International Testing Agency
ITA, Avenue de Rhodanie 58, CH-1007 Lausanne
p : +41 21 612 12 International Boxing Association
e : AIBA@ita.sport

Once again, we urge you to take your responsibilities as an elite international-level athlete very seriously. Please do not hesitate to contact us with any question you may have. We thank you in advance for your cooperation on this matter and commitment to the fight for a clean sport! …".

7. The RTP Letter appended three documents: (1) *"ANNEX A – HOW TO SUBMIT YOUR WHEREABOUTS"*, and (2) *"ANNEX B – HOW TO MODIFY AND UPDATE WHEREABOUTS INFORMATION USING SMARTHONE APPLICATION OR SMS"* and (3) an "Acknowledgement Form".

8. ANNEX A to the RTP Letter was in the following form:

*"**ANNEX A - HOW TO SUBMIT YOUR WHEREABOUTS***

• Go to the address: https://adams.wada-ama.org. Enter your username and password provided by the AIBA / ITA to access the online database system.

• If you are a first time ADAMS user:
o Select your 3 security questions and save corresponding answers. Answers must be at least 6 characters long. Answers are case-sensitive
o Accept the data protection document by entering your birthday and password provided by the AIBA / ITA. Press "Accept"
o Enter the email address in which you will receive a login temporary code
o Validate your email address by entering the received code. Press "Confirm"
o Create a new password. Your current password is the one provided by the AIBA / ITA. Your new password must contain at least 1 CAPITAL letter, 1 number and one special character (e.g. !,£,@)

• If you are a first time 2 Factor-Authentication user:
o Review the screen and select the option "Configure 2FA with TOPT" (If you do not wish to activate the 2FA, select "I want to opt out". You will be prompted to consent to a legal disclaimer in order to login)
o Install or open (if already installed) your two-Factor authentication application on your mobile device or computer: Authy, Google authenticator (Android and iOS) or Microsoft authenticator (Android or iOS)
o Use the app to scan the provided QR code (like you are taking picture of the QR code) or enter manually the displayed manual code
o Enter the generated code by your App. Then, enter your new password and validate

• Enter your TOPT code

• Skip mobile phone confirmation.

• To help you fill out your calendar correctly and efficiently, you can consult the ADAMS training and user guides available on the WADA website [with a hyperlink to the guide for athletes], particularly:
o ADAMS Whereabouts Tutorial - online video [with a hyperlink to the video]
o ADAMS Whereabouts Quick Reference Guide (which is attached to this letter)

*• Once you have filled everything out in ADAMS and submitted your whereabouts, ensure that your ADAMS page clearly states "**SUBMITTED**" next to the relevant quarter (Q1, Q2, Q3 or Q4), in the menu on the left under "Whereabouts".*

• Remember that your whereabouts must be written in Latin characters

• Be as precise as possible to enable unannounced tests (do not expect a phone call!). Please supply entrance pass codes to buildings and give clear directions to the buildings/rooms in order to ensure access for the doping control officers.

• It is important that the information is accurate at all times so REMEMBER TO UPDATE your whereabouts as soon as you are aware of a change in your schedule or if a change of address is applicable.

• In the unlikely event that ADAMS is not available online, you should email us your whereabouts update to AIBA@ita.sport (marked "Private and Confidential" and in as much detail as required by the International Standard for Testing)".

9. The Acknowledgement Form was in the following form:

"Acknowledgement Form

To be filled out and signed by the athlete and returned to us by email (AIBA@ita.sport):

*Name (First Last):*_____
*Email address:*_____
*Home address:*_____
*Telephone number (home/mobile):*_____
*Coach's name:*_____
I hereby confirm that I have read and understood the letter of notification and that:

• I understand that I am part of the AIBA International Registered Testing Pool;

• I am aware that I must submit my whereabouts in ADAMS and will be liable for a Filing Failure if I do not comply or if I submit either late, inaccurate or incomplete whereabouts information; if I am unavailable for testing due to inaccurate whereabouts information given for a period outside of the 60-minute time slot, this may also constitute a Filing Failure;

• I understand that I will be liable for a Missed Test if I am unavailable for testing during the 60-minute time slot specified in my Whereabouts Filing at the location specified for that time slot;

• I understand that any combination of three Missed Tests and/or Filing Failures committed within a twelve-month period shall constitute an anti-doping rule violation for which the sanction is a period of Ineligibility of two years, subject to reduction down to a minimum of one year, depending on the Athlete's degree of Fault.

• I further understand that depending on the facts, a single Whereabouts failure could also amount to an Anti-Doping Rule Violation under Article 2.3 (Evading Sample Collection) and/or Article 2.5 (Tampering or Attempted Tampering with Doping Control).

• I understand and agree that any Personal Data collected or otherwise processed as a result of or in connection with my inclusion in the AIBA RTP will be used in the context of the AIBA anti-doping program and will be shared with authorized third parties (for instance ITA, Sample Collection Authorities, Doping Control Officers, other Anti-Doping Organisations, Major Events Organisers, etc.).

• I understand that my Personal Data will solely be used for anti-doping purposes and will be treated in strict confidentiality.

□ I have an ADAMS account, with active username and password

□ I do not have an ADAMS account / I need an ADAMS username and password

(please tick the appropriate box)

Signature: _____

Date: _____*".*

10. The Athlete completed, signed and dated the acknowledgement form on 20 February 2020. He provided an email address and a home address and telephone number, and also the name of his coach. He also checked the box indicating that he did not have an ADAMS account and needed an ADAMS user name and password.

B. The First Filing Failure

11. As can be seen from the RTP Letter, the deadline imposed by the IBA for Q4 (quarters will be referred to as Q1, Q2, Q3, and Q4) whereabouts information was 15 September 2020. (This is not the same deadline as is set forth in the IBA ADR, which was the day before the first day of the relevant quarter, as to which see below.)

12. On 4 September 2020, the IBA sent a reminder to the Athlete (to the email address provided by him in the Acknowledgment Form) as to the requirement for him to file his Q4 whereabouts information. The reminder was in the following terms:

"Reminder

Dear RTP athlete,

This is to remind you that whereabouts for the upcoming quarter four - 2020 (October –November – December) must be filed in ADAMS by 15 September 2020, at the latest. If you have already provided your whereabouts information for the next quarter, we thank you very much for doing so and please ignore this email.

It is reminded that when providing whereabouts information, the following elements must be included:

- *An up-to-date mailing address and email address where correspondence may be sent to you for formal purposes*
- *One daily specific 60-minute time slot between 5am and 11pm*
- *Your overnight residential address for each day of the quarter. This is the place where you will be staying overnight (e.g. home, temporary lodging, hotel, etc.)*
- *Your training whereabouts (training venue address and training schedules)*
- *Your competition details (venue, address and schedule)*
- *Any and all regular activities that are part of your regular routine (training at the gym, regular physio sessions, school, work, etc.)*
- *Your traveling schedules*
- *Any additional information deemed necessary to enable any ADO intending to locate you for Testing*

If your upcoming calendar has not yet been finalized, please provide the information to the best of your knowledge before 15 September 2020. You will then have to update your whereabouts as soon as you become aware of a schedule change.

If your whereabouts filings are not submitted by 15 September 2020, an apparent Filing Failure may be issued against you.

If you are in fact retiring from international competition and are of the view that you should no longer be included in a Registered Testing Pool, please inform us without delay.

Please note that "Athlete Central" app is available for download and use from the Apple Store and Google Play. "Athlete Central" is WADA's new App that facilitates the provision of whereabouts information into ADAMS. FAQ regarding the "Athlete Central" app can be found here.

We would also like to inform you that WADA issued an ADO guidance and Question and Answer (Q&A) document that addresses athlete queries regarding anti-doping in light of the current COVID-19 pandemic. We encourage you to consult these documents in case of any questions or concerns related to the ongoing testing.

Should you have any questions or if you experience any technical issues with ADAMS, please do not hesitate to contact us. …".

13. The IBA sent (once again to the Athlete's email address) a further reminder on 15 September 2020 (which was headed *"Third Reminder"* but appears, on the evidence before the Panel, to be the second reminder) which was in the same terms as the previous reminder but added (emphasis as per original) *"**PLEASE NOTE THAT THE DEADLINE TO SUBMIT WHEREABOUTS IS 15 SEPTEMBER 2020, AT THE LATEST**"* and *"**We urge you to provide the information without any further delay**".*

14. The IBA sent (to the Athlete's email address) what was called a *"Last Reminder"* on 22 September 2020 in substantially the same terms as the previous.

15. On 28 September 2020, the IBA emailed the Athlete as follows: *"Dear Rohan, I noted that your whereabouts are still not submitted although the deadline was on the 15th of September. Do you require any assistance? Do you have an access problem?".*

16. The same day, i.e., 28 September 2020, the Athlete logged in to ADAMS. He entered a mailing address for Q4 but did not provide any other whereabouts information.

17. The Athlete returned to ADAMS on 1 October 2020. On that date, he entered the following whereabouts information for the period of 1 October 2020 to 16 November 2020: a 60-minute time slot for testing; an overnight accommodation address; and a regular activity address. He did not provide any information for the period 17 November 2020 to 31 December 2020.

18. The ADAMS system will not allow an athlete to submit incomplete information; only when the information is complete will the user be able to press/ click the submit button in order to submit the information. As a result, because his whereabouts filing was not complete, the Athlete was not able to submit the information that he had provided and, as at 1 October 2020, the partial information entered by the Athlete into ADAMS was not visible to the IBA (or any other ADAMS user).

19. On 2 October 2020, the Athlete logged in to ADAMS once again and inputted the remaining required whereabouts information and then submitted his whereabouts information (i.e., by pressing/ clicking the submit button). It is common ground that, as at 2 October 2020, the Athlete's whereabouts information for Q4 2020 was complete.

20. On 6 October 2020, the ITA sent to the Athlete a letter headed *"Notification of Apparent Filing Failure"* (emphasis in original).

"Dear Rohan Polanco Emiliano,

We are hereby notifying you of an apparent failure to comply with the Whereabouts requirements of the International Boxing Association ("AIBA") Anti-Doping Rules ("ADR"), in particular your failure to provide complete Whereabouts information by the relevant deadline for the fourth quarter of 2020 [i.e. October to December 2020]. You are part of the AIBA Registered Testing Pool ("RTP") and you were informed of the obligation to provide Whereabouts information for each quarter by the relevant deadline (i.e. 15th September 2020 for quarter 4).

As you are aware, this situation constitutes an apparent Filing Failure under Article 5.6 of the AIBA ADR and Article I.3 of the WADA International Standard for Testing and Investigations ("ISTI").

Consequences of having a Filing Failure recorded against you:

According to the information in our possession, if recorded, this will be your First Whereabouts Failure in the last 12-months.

Please note that one Whereabouts Failure (Missed Test or Filing Failure) does not ordinarily constitute an Anti-Doping Rule Violation. However, in accordance with Articles 2.4 and 10.3.2 of the AIBA ADR, any combination of three Missed Tests and/or Filing Failures committed within a 12-month period shall constitute an Anti-Doping Rule Violation for which the sanction is usually two years.

We therefore kindly request you to:

***Comment in writing and in English on your apparent Filing Failure by 20 October 2020**, specifying:*

i. Either that you accept having committed a Filing Failure, in which case a Whereabouts Failure will be recorded against you; or

ii. That you believe that you have not committed a Filing Failure, in which case please provide detailed explanations as well as any evidence or documents on which you seek to rely upon, in your explanation.

Please note that without a response from you within the above-mentioned deadline, it will be deemed that you accept having committed a Filing Failure and, consequently, a Whereabouts Failure will be recorded against you.

In case you provide any explanations, we will assess whether each of the elements of a Filing Failure is present and we will inform you of the outcome.

Lastly, it is reiterated that the present communication merely constitutes a notice of apparent Whereabouts Failure. A decision on whether to record this apparent failure will be taken upon receipt of your explanations, or in the absence of a reply, once the abovementioned deadline has expired.

Should you have any questions on the content of this letter, please do not hesitate to contact the ITA by email at whereabouts@ita.sport. …".

21. On 8 October 2020, in response to the ITA notification dated 6 October 2020, the Athlete provided an explanation for his delay as follows:

"Santo Domingo, D.N.
October 08, 2020

Sirs
International Testing Agency
ITA
Lausanne, Switzerland

Dear Sirs:

Hereby I am communicating with you to present my formal excuse for not having submitted the report on my whereabouts on time before September 15, 2020, I could not do it because I am in the United States and did not have access to a computer to be able to access my username and to be able to fulfill [sic] my commitment, due to inconveniences caused by covid 19. I thank you in advance for your understanding in the face of my fault and the commitment that it will not happen again, I say goodbye".

22. By letter dated 8 April 2021 headed *"Notification of Recorded Filing Failure"* the ITA sent (by email) to the Athlete notice that, having taken into account the Athlete's explanation for his failure to meet the deadline for the filing of whereabouts information for Q4 2020, it had nonetheless decided that the failure was to be recorded as a first whereabouts failure under Article 2.4 of the IBA ADR. The letter stated as follows:

"Dear Rohan Polanco Emiliano,

We refer to our letter dated 6 October 2020, notifying you of an apparent Filing Failure, in particular your failure to provide Whereabouts information by the relevant deadline for the fourth quarter 2020 – [October to December 2020], and inviting you to provide an explanation within the set deadline.

We acknowledge receipt of your explanations on 8 October 2020 and we thank you for your cooperation with this matter.

After evaluating your explanation and taking into consideration the circumstances of the matter, the International Testing Agency ("ITA") has decided to ***Record the Filing Failure*** *against you in accordance with Article I.3.6 of the International Standard for Testing and Investigations ("ISTI").*

In particular, it is not challenged that, due to inconveniences caused by the COVID-19 pandemic, before 15 September 2020 you were in the United States and did not have access to a computer to be able to access your username. That said, based on the information in our possession, on 4, 15 and 22 September 2020 you were reminded of the obligation to submit the Whereabouts Filings for the fourth quarter of 2020, and thereafter you failed to reply to our email dated 28 September 2020, by means of which we asked you whether you needed technical assistance to submit your Whereabouts Filings for the upcoming quarter. Consequently, the ITA finds that you had enough time to timely submit in ADAMS your Whereabouts Filings for the fourth quarter

of 2020, or alternatively you could have diligently requested assistance to find alternative ways for the quarterly submission.

Accordingly, the ITA finds that you were unable to establish that no negligent behaviour on your part caused or contributed to your failure to submit accurate and complete Whereabouts information. Therefore, the ITA has decided to record this Filing Failure.

According to information in our possession, this will be the ***First*** *Whereabouts Failure to be recorded against you in the last 12 months. In accordance with Articles 2.4, 10.3.2 of AIBA Anti-Doping Rules, any combination of three Missed Tests and/or Filing Failures committed within a 12-month period shall constitute an Anti-Doping Rule Violation for which the sanction is two years, generally speaking.*

It is your responsibility as an athlete to provide accurate and complete Whereabouts information by the established deadline. Therefore, in order to avoid the repetition of a Filing Failure in the future, we would like to remind you that the quarterly information ***must be correctly updated at the very latest by the 15th of the month preceding the start of the relevant quarter*** *(e.g. for October to December 2020 the Whereabouts must be submitted at the latest by 15 September 2020).*

Please note that you have the right to request an administrative review of this decision within ***seven (7)*** *days of the date of this letter if you deem that this Filing Failure was not a result of your negligence. If requested, the review will be conducted by a person not previously involved in the assessment of this matter who will determine whether all of the elements of a Whereabouts Failure as per the ISTI are fulfilled. If you do not reply within the set deadline, this decision to record the Filing Failure will become final without any further notice.*

We remind you that it is your responsibility as an athlete to be available for testing at any time at any place, including during the 60-minute time slot indicated in the Whereabouts information. We reiterate that you are required to update your Whereabouts when necessary (including providing any detail which may be relevant to access a selected location). If you have last minute changes in your plan, you can update your accurate information via SMS, via a smartphone application or even by email. We therefore ask you to remain vigilant and to always provide the most accurate Whereabouts information, including the Overnight Accommodation, 60-minute time slot and any Regular Activities, which shall also detail all training sessions and routines.

Please be informed that the ITA has been granted full authority to act and take all necessary measures and/or decisions on behalf of the AIBA, in the implementation of the delegated aspects of the AIBA anti-doping program, including the management of Whereabouts Failures. Please note that any communication or letter sent by the ITA on behalf of the AIBA shall be deemed to be sent directly by the AIBA.

Should you have any questions on the content of this letter, please do not hesitate to contact the ITA. …".

C. The Second Filing Failure

23. On 2 December 2020, an attempt was made to conduct a doping control on the Athlete at the address provided by him in ADAMS for that day in Santo Domingo, Dominican Republic. The doping control officer (the "DCO") completed an 'Unsuccessful Attempt Report Form' that same day, in which the DCO noted that *"The boxer told me by telephone 'I'm in the United States*

I couldn't travel because of COVID'". The DCO also recorded that he telephoned the Athlete's manager who *"told me that 'The boxer couldn't travel because he tested positive for Coronavirus, he's in America, he planned to come on vacation, but he couldn't"*.

24. On 14 December 2020, the ITA sent (by email) to the Athlete a *"Notification of Apparent Filing Failure"* in respect of the unsuccessful attempt of 2 December 2020. The Athlete was told that *"The Doping Control Officer was not able to find you to carry out an unannounced out-of-competition test on/at"* 2 December 2020 between 18:55 and 21:35 at the Athlete's address in Santo Domingo and that *"this situation constitutes an apparent Filing Failure under Article 5.6 of the [IBA ADR] and Article 13.6 of the WADA International Standard for Testing and Investigation"*. As before, the Athlete was asked to accept the failure or, if he considered that there was no failure, to provide an explanation.

25. The Athlete provided his explanation on 16 December 2020 as follows:

"The undersigned, Rohan Polanco Emiliano, athlete of the Dominican Federation of Amateur Boxing of the Dominican Republic (FEDOBOXA) bearer of identity document 402-2683790-0, I have not made a failure in the presentation, because I am in the United States of America, where I was tested for covid-19 and it was detected, so my return to the Dominican Republic was postponed, until Monday December 14 that I return. I enclose the documents in which I guarantee that I could not be present when the doping control officer was carried out an out-of-competition test without prior notice on December 2, 2020.

I am currently in the concentration of the Olympic Bubble which is taking place at the Dominican Olympic Committee Hostel, with a view to the Tokyo 2021 qualifiers.

Respectfully,

Rohan Polanco Emiliano".

26. The documents provided by the Athlete were (a) a positive result dated 7 November 2020 for a test taken the day before and (b) a negative result dated 12 December 2020 for a test taken the day before.

27. On 30 April 2021, the ITA sent (by email) to the Athlete a *"Notification of Recorded Filing Failure"* in respect of the unsuccessful attempt of 2 December 2020. It was said that, after evaluating the Athlete's explanation, it was nevertheless decided to record a filing failure against the Athlete on the basis that *"Whilst it is not challenged that, on 6 November 2020, you tested positive for COVID-19 and your return to Dominican Republic was thus delayed until 14 December 2020, this information was not indicated in your Whereabouts Filings"*. The Athlete was also told that *"this will be the **Second** Whereabouts Failure to be recorded against you in the last 12 months"* (emphasis in original).

28. On 5 and 17 May 2021, the FDB, on behalf of the Athlete, requested an administrative review of the IBA's decision to record this Second Filing Failure.

29. In a reasoned decision dated 9 June 2021, Mr Adam Klevinas (the person appointed by the ITA to conduct the administrative review) dismissed the Athlete's challenge and upheld the recording of the Second Filing Failure.

D. The Third Filing Failure

30. As is set forth in the RTP Letter, the Athlete was required to provide his whereabouts information for Q2 of 2021 prior to 15 March 2021.

31. On 3 March 2021, the IBA sent (as before) a reminder to the Athlete in respect of the 15 March 2021 deadline.

32. On 5 March 2021, the Athlete forwarded the IBA reminder to the FDB.

33. On 6 March 2021, in an email to the IBA (with a copy to the Athlete) the FDB sent the following information as to the whereabouts of the Athlete:

"Dear Sirs,

The Dominican Federation of Amateur Boxing, makes use of its knowledge to send you the whereabouts of the athlete RTP Rohan Polanco during the quarter 2 - 2021 (April - May - June).

From March 1 to March 14, Las Galeras Samaná, Aparta Hotel El Pelicano, Jimmy Hendrix Street.

From March 15 to March 28, Albergue Olímpico Santo Domingo. From March 29 to April 19 Bogotá Colombia. Hotel Park 63.

April 20 to May 5 Albergue Olímpico, Ensanche la Fe, Santo Domingo.

May 6 to May 16. Buenos Aires, Argentina, avenida Carlos Pellegrini 551, 1009.

Any other information you need feel free to contact us".

34. On 8 March 2021, the IBA responded to the FDB (with a copy to the Athlete), thanking the FDB for the information but reminding the FDB that *"whereabouts must be submitted in Adams. The deadline for Q2 submission is 15th of March".*

35. There followed a similar exchange by which on 11 March 2021 the FDB added to the information previously provided with this entry: *"Practice schedule Gimnasio Centro Olímpico Juan Pablo Duarte 8:00 to 11:00 AM and 2:00 - 6:00 PM"* and on 12 March the IBA noted that *"Mr Polanco has to submit his whereabouts through Adams".*

36. On 12 March 2021, the IBA informed the FDB that the Athlete had to submit his whereabouts information through ADAMS.

37. On 15 March 2021, both the Athlete and the FDB sent emails to the IBA with some further whereabouts information.

38. On 31 March 2021, the IBA sent (by email) to the Athlete what was headed *"Last Reminder"* for Q2. The email is in substantially the same form as the reminder set forth above at [12]. It began by saying *"It appears that you have **NOT** yet submitted your whereabouts in ADAMS for the*

upcoming quarter 2 – 2021 (April – May – June). ***PLEASE NOTE THAT THE DEADLINE TO SUBMIT WHEREABOUTS WAS 15 MARCH 2021. We urge you to provide the information without any further delay****"*. The email then set forth the required elements for whereabouts information.

39. On 14 April 2021, the ITA sent (by email) to the Athlete a *"Notification of Apparent Filing Failure"* in respect of the failure to provide complete whereabouts information by the deadline for Q2. The Athlete was informed that *"if recorded, this will be your Third Whereabouts Failure in the last 12 months"*. Once again, the Athlete was asked to accept the failure or, if he considered that there was no failure, to provide an explanation.

40. By email dated 16 April 2021, the FDB (which had been copied on the notification) said this:

"We make use of this to send you as required the Whereabouts filings for the second quarter of 2021 of Rohan Polanco:

- March 29 to April 19 Bogotá Colombia. Hotel Park 63.

- April 20 to July 10 Albergue Olímpico Dominicano, Ensanche la Fe, Santo Domingo".

41. On 21 April 2021, the FDB set out its position to the ITA. It was said, in summary, that the information that had been provided thus far (as per the above correspondences) was sufficient to discharge the Athlete's whereabouts obligations and that there had been no filing failure.

42. On 23 June 2021, the ITA sent (by email) to the Athlete a *"Notification of Recorded Filing Failure"* in respect of the filing failure for Q2 2021. It was said that, after evaluating the Athlete's explanation, it was nevertheless decided to record a filing failure. It was said that the Athlete had not met his obligation *"to submit his whereabouts information via ADAMS within the relevant deadline, including amongst others, a 60-minute time slot, your overnight accommodation and your regular activities for each day of the upcoming quarter"*, to update his whereabouts filings as soon as necessary, and to be available and accessible for testing at the location indicated in your whereabouts information. The information provided in emails did not meet that obligation.

43. By letter undated but sent on 28 June 2021, the Athlete requested an administrative review of the decision to record the filing failure.

44. In a reasoned decision dated 30 June 2021, Mr Adam Klevinas (once again appointed by the ITA to conduct the administrative review) dismissed the Athlete's challenge and upheld the recording of the Third Filing Failure.

45. By letter dated 11 July 2021, the ITA, acting on behalf of the IBA, sent to the Athlete what was headed *"Notice of Charge – Anti-Doping Rule Violation under Article 2.4 of the AIBA ADR / 3 Whereabouts Failures within a 12-month period"* (the "Notice of Charge"). The Notice of Charge informed the Athlete that the ITA was asserting that the Athlete had committed an ADRV under Article 2.4 of the IBA ADR by reason of three whereabouts failures within a 12-month period and that he was provisionally suspended with immediate effect and until the resolution of the matter (which suspension included the Tokyo Olympic Games). The three whereabouts

failures were said to have taken place on the following dates: 1 October 2020, 2 December 2020 and 1 April 2021.

III. THE DECISION OF THE IBA

46. On 13 July 2021, the FDB requested, on the Athlete's behalf, a provisional hearing in respect of the alleged ADRV. On the same day, the FDB and the ITA met virtually to discuss the procedural directions for the provisional hearing, at which meeting the FDB provided additional information in relation to the First Filing Failure.

47. By letter dated 14 July 2021, the ITA informed the Athlete in its so called "Operative Decision" that, in light of the additional information provided by the Athlete, the First Filing Failure *"should not have been recorded"* and that, accordingly, the provisional suspension would be lifted with immediate effect so that the Athlete was free to participate in the Tokyo Olympic Games *"without delay"*.

48. By letter date 19 November 2021, the ITA, for the IBA, informed the Athlete in its so called *"Reasoned Decision"* that *"an ADRV under Article 2.4 of the [IBA ADR] against [the Athlete] will not be brought forward as an ADRV since one Whereabouts Failure should not have been recorded"*.

49. In the Reasoned Decision, the ITA said:

"After review of the explanations submitted by the National Federation and further review of the information contained in the ADAMS accounts, it appears that the Athlete had in fact provided his Whereabouts information for the 4th Quarter 2020 on 28 September and/or 1st October 2020, at latest. Due to an IT specificity of the ADAMS system, the Athlete's Whereabouts Information was however only made available to the ITA/AIBA on 2nd October 2020.

More precisely, due to his default ADAMS account settings, Anti-Doping Organisations could not see the Athlete's Whereabouts Filings, even if properly filed by the Athlete, until the Athlete clicked on a "submit" button.

The Athlete formally submitted his Whereabouts information on 2nd October 2020, that is when they became visible to the ITA/AIBA. That said, after closer review of the Athlete's ADAMS account, it appears that the information for 1st October 2020 was duly filed out, meaning that the information was entered before 2nd October 2020 considering that the ADAMS system does not allow for retroactive changes once a day is over.

Considering the activity logs dated 28 September and 1st October 2020, it cannot be ruled out that the Athlete duly provided his whereabouts filings on 28th September 2020, which is prior to the date set out in Article B.1.3.A) of the ISRM.

In the context of the prosecution of a 2.4 ADRV, the burden of proof to establish that all the requirements for declaring a Whereabouts Failure sits with the Anti-Doping Organisation and the standard of proof is comfortable satisfaction of the hearing panel. Considering the abovementioned timeline, it is the ITA's opinion that the requirement of B.2.1.b) ISRM (Athlete failed to comply with the requirement by the applicable deadline) would not be satisfied.

Moreover, since the Athlete was new to the ADAMS system and had never been expressly made aware of the "submission" intricacy and access rights, the ITA finds that he cannot be held negligent with regards to the failure to click on the "submit" button in ADAMS before 2nd October 2021, especially when it comes to a first Filing Failure.

In light of the above, the First Filing Failure should not have been recorded, reason why an ADRV for 2.4 of the AIBA ADR is not being brought forward. …".

50. In this Award, unless it is necessary to refer to either one individually, the Operative Decision and the Reasoned Decision shall be referred to collectively as the "IBA Decision".

IV. THE APPEAL BEFORE THE COURT OF ARBITRATION FOR SPORT

51. By a Statement of Appeal dated 27 December 2021 and filed with the CAS on the same date in accordance with Articles R47 and seq. of the CAS Code of Sports-related Arbitration (the "CAS Code"), WADA instituted this appeal against the IBA Decision. In its Statement of Appeal, WADA nominated The Hon. Michael J. Beloff KC as arbitrator.

52. WADA filed its Appeal Brief on 2 February 2022 in accordance with Article R51 of the CAS Code.

53. On 3 February 2022, the CAS Court Office informed the Respondents that their Answers were to be submitted within 20 days, i.e., by 23 February 2023.

54. On 17 February 2022, the Athlete requested an extension of time of 10 days, until 7 March 2021, which request was granted by the CAS Court Office on 23 February 2022.

55. On 22 February 2022, the Athlete nominated Professor Jan Paulsson as arbitrator, which nomination was agreed by the IBA on 23 February 2022.

56. On 7 March 2022, the Athlete requested a further extension of time of four days until 11 March 2022, which request was likewise granted (upon the consent of all Parties). The Answer was thus due to be filed by 11 March 2022.

57. On 10 March 2022, the IBA filed its Answer.

58. On 11 March 2022, the Athlete sent his Answer to the CAS Court Office by email.

59. On 15 March 2022:

    (a) The CAS Court Office acknowledged receipt of the IBA's Answer by email and by courier and the Athlete's Answer "by email only on 11 March 2022". It further asked the Parties to say whether or not they would prefer a hearing to be held in this matter. The Athlete did so prefer, see (b)below while the IBA left it to the discretion of the Panel.

(b) The Athlete informed the CAS Court Office that he would prefer a hearing and that he would *"promptly file his Answer and Appeal Brief by courier and kindly requests the CAS Court Office to accept his material for* filing*"*.

60. On 16 March 2022:

(a) The CAS Court Office confirmed receipt of the Athlete's letter and, inter alia, asked the other Parties to comment on what was said therein.

(b) The CAS Court Office on behalf of the Deputy President of the CAS Appeals Arbitration Division, and pursuant to Article R54 of the CAS Code, informed the Parties that the Panel in this reference would be constituted by The Hon. Michael J Beloff KC, Professor Jan Paulsson and Mr James Drake KC (as president).

61. On 17 March 2022, WADA provided its comments on the Athlete's letter of 15 March 2022 stating inter alia as follows:

"It is noted that the [Athlete] *filed his* [Answer] *solely by email on 11 March 2022, and that on 15 March 2022 … he then stated his intention to file a hard-copy by courier and a copy by e-filing. …*

It would therefore appear that the Second Respondent did not comply with the relevant deadline as per R31, in that he did not file a hard-copy by courier, and he did not file a copy by e-filing, either by the deadline of 11 March 2022 (as granted by the CAS in its letter of 7 March 2022) or by the first subsequent business day of 14 March 2022.

…

The Appellant's position on this issue is that, despite the Second Respondent missing the relevant deadline, the Appellant is content for (a) the arbitration to proceed against the Second Respondent, and (b) the Second Respondent's Answer and accompanying exhibits to be admitted to the court record. It is envisaged that the Second Respondent would be able to make the same points in oral submissions at a hearing as are set out in his Answer brief, and it might therefore be useful for the Panel to have those submissions in written format. …".

62. On 18 March 2022, the IBA provided its comments on the Athlete's 15 March 2022 letter. It noted that the Athlete's filing was *"indeed tardy"* and that, in other cases, CAS had found that a late filing of an Answer did not *"preclude the party from pleading during the hearing"*. The IBA took the position that it deferred to the Panel's decision on the admissibility of the Athlete's Answer.

63. On 22 March 2022, on behalf of the Panel, the CAS Court Office informed the Parties that the Panel had decided to admit the Athlete's Answer dated 11 March 2022 to the record, pursuant to Article R56 of the CAS Code, with the reasons for such decision to be explained in the final Award.

64. On 24, 27 and 28 April 2022, the Parties signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Panel, which noted, inter alia, that the Athlete relied

on on Articles 13.1.3, 13.2.1, and/or 13.2.3.1 of the IBA ADR as conferring jurisdiction on the CAS and that the jurisdiction of the CAS was not contested by the Respondents and was confirmed by the signature of the Order of Procedure.

65. On 12 July 2022, Tyr LLP – which (by James Bunting, Alexandria Matic and Erika Meneses) had represented the Athlete from the outset of this appeal on a *pro bono* basis – informed the CAS, the Panel and the other Parties that it *"has withdrawn from its pro bono representation of"* the Athlete and that the Athlete is *"is now self-represented in this matter"*.

66. The hearing was scheduled to take place on 14 July 2022. In advance of the hearing, all Parties, the Athlete included, were sent the link by which to join the hearing remotely. The Athlete did not, however, join the hearing remotely. At the start of the hearing on 14 July 2022, the Panel delayed commencement of the appeal for a short period of time so as to enable the Athlete additional time to participate. After hearing submissions from the other Parties as to the most appropriate course to take in light of the absence of the Athlete, the Panel noted that: (a) the Athlete had been represented by Tyr LLP up until just prior to the hearing; (b) the Athlete had been given a fair opportunity to appear; (c) the hearing had long been fixed; (d) the Athlete had the support of the IBA; and (e) the other Parties wished to continue with the hearing. Taking all of those matters into account, the Panel decided that it was appropriate for the hearing to proceed as arranged.

67. The scheduled hearing therefore took place on 14 July 2022, conducted remotely via Webex. The following people took part in the hearing:

(a) The Panel:

- Mr James Drake KC, President
- The Hon. Michael J Beloff KC, Co-Arbitrator
- Professor Jan Paulsson, Co-Arbitrator

(b) WADA:

- Mr Ross Wenzel, General Counsel, WADA
- Mr Nicolas Zbinden, Counsel
- Mr Adam Taylor, Counsel
- Mr Alexandre Csuzdi-Vallée, Legal Counsel, WADA
- Ms Emma Stobart, Paralegal
- Mr Emmanuel Gomes, WADA "ADAMS Specialist"

(c) The IBA:

- Ms Dominique Leroux-Lacroix, Head of Legal Affairs, IBA
- Ms Cristina Pers, Legal Counsel, IBA

(d) The Athlete:

- There was no appearance by or for the Athlete at the hearing

(e) CAS Court Office:

- Ms Andrea Sherpa-Zimmermann, CAS Counsel

V. THE PARTIES' SUBMISSIONS

68. Set out below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence adduced in these proceedings. While the Panel has considered all the of matters submitted by the Parties, reference is made in this Award only to the those matters considered necessary to explain the reasoning and decision.

A. The Applicable Rules

69. The rules applicable to this appeal were common ground between the Parties, namely those set forth in the IBA ADR, taking into account that the Filing Failures in this appeal straddle two different versions of the IBA ADR.

B. WADA's Submissions

70. WADA challenges the IBA Decision. WADA submitted that there have been three whereabouts failures within a 12-month period such that there has been a breach of Article 2.4 of the IBA ADR. WADA calls for a period of ineligibility imposed *"towards the very top end of the 12-24 month bracket"* and for disqualification of the Athlete's results between the date of the Third Filing Failure on 1 April 2021 and the imposition of the provisional suspension on 11 July 2021.

a) The First Filing Failure

71. It was WADA's submission that, in light of the chronology of events set forth above, there was a clear failure on the part of the Athlete in respect of the First Filing Failure and that WADA was able to show, to the comfortable satisfaction of the Panel, that each of the requirements for a filing failure had been met.

72. The IBA ADR 2020 applicable to the First Filing Failure provided in clear terms what information was required of the Athlete and when in his whereabouts filings. According to those rules, the Athlete was required to provide the following information:

(a) a complete mailing address where correspondence may be sent to the Athlete for formal notice purposes;

(b) for each day during the following quarter, the full address of the place where the Athlete will be staying overnight (e.g., home, temporary lodgings, hotel, etc);

(c) for each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g., school), as well as the usual time- frames for such regular activities; and

(d) the Athlete's competition schedule for the following quarter, including the name and address of each location where the Athlete is scheduled to compete during the quarter and the date(s) on which he/she is scheduled to compete at such location(s); and

(e) for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Athlete will be available and accessible for testing at a specific location.

73. The rules also provided that it was the Athlete's responsibility to ensure that he provided all of the information required in his whereabouts filing accurately and in sufficient detail to enable any anti-doping agency ("ADO") wishing to do so to locate the Athlete for testing on any given day in the quarter at the times and locations specified by the Athlete in his whereabouts filing for that day, including but not limited to during the 60-minute time slot specified for that day in the whereabouts filing.

74. The rules also set down the four requirements that WADA must establish in order to make out a filing failure against the Athlete as follows:

(a) One, that the Athlete was duly notified (i) that he had been designated for inclusion in an RTP; (ii) of the consequent requirement to make whereabouts filings; and (iii) of the consequences of any failure to comply with that requirement.

(b) Two, that the Athlete failed to comply with that requirement by the applicable deadline.

(c) Three, in the case of a second or third filing failure in the same quarter, that he was given notice in accordance with Article I.5.2(d) [of the International Standard for Testing and Investigation ("ISTI 2020")] of the previous filing failure, and (if that filing failure revealed deficiencies in the whereabouts filing that would lead to further filing failures if not rectified) was advised in the notice that in order to avoid a further filing failure he must file the required whereabouts filing (or update) by the deadline specified in the notice (which must be no less than 24 hours after receipt of the notice and no later than the end of the month in which the notice is received) and yet failed to rectify that filing failure by the deadline specified in the notice.

(d) Four, that the Athlete's failure to comply was *"at least negligent"*.

75. As to the first requirement, on the face of the RTP Letter it is clear that the Athlete was notified of his inclusion in the RTP, which letter made clear his requirement to make whereabouts filings and the consequences of failing to comply. The first requirement was therefore met.

76. As to the second requirement, the Athlete failed to input or submit any whereabouts information by the required deadline, that being by the end of the last day before the first day of Q4. The ADAMS evidence shows that the Athlete accessed ADAMS on 28 September 2020 but did not input any whereabouts information, save for a mailing address. The Athlete did not access ADAMS again until after the deadline, on 1 October 2020, when he inputted limited information only. For example, the information on 1 October 2020 did not include any information for the period from 17 November to 31 December 2020. He finally inputted the remaining required information on 2 October 2020. Furthermore, the Athlete did not formally submit through ADAMS any information, including the limited information entered on 1 October 2020, until after the end of the previous quarter deadline, on 2 October 2020.

77. The IBA was aware that the Athlete had not submitted his information until 2 October 2020, but decided that the Athlete had not been notified of the requirement to submit the information through ADAMS, and therefore he could not have failed to comply with it. This was factually and legally wrong, for the following reasons:

(a) Primarily, the Athlete could not submit the whereabouts filing until all the information was inputted into ADAMS. He had not inputted all of the information until 2 October 2020. Prior to this, it would have been obvious to him that he had not done enough, that the information was partial, and that, accordingly, no submission was possible. He would have seen dates and text in ADAMS highlighted in red, the submit button would not have been available, and ADAMS would have told him that the status was *"not submitted"* as well as what information was missing.

(b) The Athlete had been notified explicitly of the need to submit the information in ADAMS rather than just inputting it. This was explained in the RTP Letter. The IBA should have been aware of this, as it sent him this letter.

(c) There is no requirement specified within Article I.3.6(a) of ISTI 2020 that an athlete must be notified when he enters an RTP that he has to submit the information in ADAMS rather than just input it. In the circumstances, there was no defence available to the Athlete that he had not failed to comply under Article I.3.6(b) of ISTI 2020 because he had not been notified under Article I.3.6(a) of ISTI 2020 as to how he must comply.

(d) The core principle of the whereabouts regime is that athletes must give access to the whereabouts information to the ADO so that it can conduct spot-tests. That is what the provisions seek to ensure. A failure to *submit* whereabouts information that has been privately *inputted* into ADAMS has the same effect of limiting anti-doping testing of athletes as would be the case if an athlete did not input anything at all.

(e) The Athlete would have practically known to press submit because he would have done so in the past when he managed to submit his Q1, Q2 and Q3 whereabouts filings.

(f) In any event, the ADAMS data revealed he had not submitted anything by the Q4 filing deadline.

78. The second requirement was therefore met: the Athlete failed to file his required whereabouts information by the deadline.

79. The third requirement does not apply with respect to the First Filing Failure, as this was the Athlete's first filing failure within the quarter.

80. As to the fourth requirement, given that the Athlete was notified of the requirements yet failed to comply with them, the rules provide for a presumption that the Athlete was negligent. In order to rebut that presumption, the Athlete must prove that *"no negligent behaviour on his/her part caused or contributed to the failure"*. This is a very strict test. The Athlete cannot satisfy it, as he was *"entirely negligent"* for the following reasons:

(a) The Athlete failed to input any whereabouts information before the end of 30 September 2020, despite accessing ADAMS on 28 September 2020 when the deadline had not yet expired. He then only inputted limited whereabouts information on 1 October 2020, after the deadline had expired. He would have realised that it was limited because it was missing entries for essentially half of the dates in the Q4 period. He then finally inputted further information and submitted the filing on 2 October 2020, two days after the expiry of the deadline. He was therefore not locatable for testing on 1 October 2020 at all.

(b) The Athlete had been sent multiple reminders prior to the deadline explicitly stating what information needed to be included in the filing. That information was also repeated in the RTP Letter which he received. The Athlete failed to pay any or proper attention to that information.

(c) The Athlete had also been specifically told in the RTP Letter and the Whereabouts Quick Reference Card of the need to submit the information. He did not pay any or proper attention to it.

(d) Compounding the Athlete's negligence, this failure arose out of the Q4 filing. The Athlete was placed in the RTP at the start of 2020, so had already completed (and managed to press submit on) three other whereabouts filings by this stage. He therefore had considerable prior experience and knowledge of all the information that was required in order to submit a complete whereabouts filing. He is also an experienced, high-profile athlete, an Olympic competitor on the international stage. He therefore should be held to a higher standard of care, as per CAS 2017/A/5015 & 5110 (at paras. 187-188):

"An athlete bears a personal duty of care in ensuring compliance with anti-doping obligations. The standard of care for top athletes is very high in light of their experience, expected knowledge of anti-doping

rules, and public impact they have on their particular sport. It follows that a top athlete must always personally take very rigorous measures to discharge these obligations".

(e) The Athlete gave no relevant explanation for the First Filing Failure, merely stating that he had been in the USA without access to a computer. Even if that were true, he managed to access a computer and ADAMS on 28 September 2020, but simply failed to carry out the task. In any event, he presumably had a mobile phone with him but choose not to avail himself of the smartphone application for updating whereabouts or the use of text messaging in emergency situations. The explanation therefore does not assist the Athlete.

81. All requirements being satisfied, the First Filing Failure was committed by the Athlete and should have been validly recorded against him.

b) The Second Filing Failure

82. The rules governing the Second Filing Failure are the same as for the First Filing Failure (as set out in paragraph [74] above).

83. As to the stated requirements:

(a) The first requirement is met with respect to the Second Filing Failure for all the same reasons as for the First Filing Failure. The Athlete was "duly notified" of the required matters by the RTP Letter.

(b) The second requirement is met in that the Athlete failed to comply with his whereabouts filing requirements. In particular, the Athlete failed to keep his whereabouts information up to date as required by Article I.3.5. of ISTI 2020. The Athlete failed to update his whereabouts from the Dominican Republic address in ADAMS to his address in the USA. The unsuccessful attempt to test him occurred on 2 December 2020. He returned a positive COVID test in the USA on 7 November 2020. He had self-evidently been in the USA for a period of time before that date. He therefore did not update the filing until long after he had become aware of the change in circumstances, and certainly not "as soon as possible", it being 25 days between the positive COVID test and the unsuccessful attempt. The information was not updated to be correct at any point prior to (or even on) that day.

(c) The third requirement was met. The Athlete was notified on the First Filing Failure on 6 October 2020, before the events relating to the Second Filing Failure of 2 December 2020.

(d) The fourth requirement was met. For all of the reasons relating to the First Filing Failure, the Athlete was presumed to be negligent, and the facts showed him to be negligent. There was a *"total disregard"* by the Athlete of his whereabouts responsibilities by the Athlete. The Athlete had ample time and opportunity, before and during his COVID episode, to update his whereabouts information to reflect the fact that he was in the United States.

c) The Third Filing Failure

84. The IBA ADR 2021 apply to the Third Filing Failure, but the structure is almost exactly the same. The four requirements are set forth in Article B.2.1 of the International Standard for Results Management ("ISRM 2021") and are in substance the same as for the First and Second Filing Failures (as set out at paragraph [74] above).

85. As to the requirements:

(a) The first requirement is met for the same reasons as for the First Filing Failure. The Athlete was "duly notified" of the required matters by the RTP Letter.

(b) The second requirement is satisfied in that the Athlete failed to comply with his whereabouts filing requirements. The Athlete did not provide a complete whereabouts filing for Q1 2021 until the end of April 2021, beyond the deadline. The FDB and the Athlete did provide certain information before the deadline, but that information was not inputted into ADAMS or submitted via ADAMS, as required. Nor was the information complete – for example, no 60-minute slots for testing had been provided.

(c) The third requirement is satisfied. The Athlete was notified of the Second Filing Failure on 14 December 2020, before the events relating to the Third Filing Failure.

(d) The fourth requirement is met. By this point in time, the Athlete had committed two whereabouts failures and should have been on *"high alert"* in relation to compliance with the third. Inexplicably, however, the Athlete decided not to use ADAMS but to send what information he did provide by email, despite the various request from the IBA to submit the information via ADAMS. The Athlete was *"deeply negligent"*.

d) The Sanctions

86. Given that, as set out above, the Athlete committed three whereabouts failures within a 12-month period and therefore committed an Article 2.4 ADRV pursuant to the IBA ADR the position was as set forth in IBA ADR Article 10.3.2; i.e., that the applicable period of ineligibility is two years, subject down to a reduction down to a minimum of one year, depending on the Athlete's degree of fault.

87. An athlete's degree of fault in an ADRV case of Article 2.4 IBA ADR is to be assessed by reference to all three of the whereabouts failures, as per CAS 2020/A/7526 & 7559: *"Moreover, given that the ADRV is composed of the three different Whereabouts Failures that form part of the First Charge, the Panel will have to assess the Athlete's degree of Fault taking into account the circumstances pertaining to all of them"*.

88. The Athlete abdicated his whereabouts responsibilities, and his fault was significant. In particular:

(a) The information supplied was entirely inadequate and had the effect of frustrating the IBA's ability to spot-test the Athlete as part of a functioning anti-doping regime. The IBA was unable to locate him to test him for nearly a whole month in relation to the Third Filing Failure, and on the first days of the quarter in relation to the First Filing Failure.

(b) The failures arose through the Athlete's repeated inability to take responsibility for his whereabouts obligations, to consider diligently (or even at all) the clear instructions provided to him on numerous occasions about use of ADAMS and the information required. He repeatedly failed to learn from his earlier mistakes, despite having been able to submit a valid whereabouts filing for Q1 to Q3 in 2020. He failed to consider and/or act on numerous reminder emails. He failed to consider other submission methods of which he had been notified, such as the dedicated smartphone application or the use of SMS texts in emergency situations.

(c) In relation to the First Filing Failure, the Athlete inexplicably failed to enter anything in ADAMS timeously despite accessing the system within the deadline.

(d) In relation to the Second Filing Failure, the Athlete was not, for a considerable period of time, where he had stated he was going to be. There appears to be no good reason why one bout of COVID-19 confirmed nearly a month before the unsuccessful attempt would have prevented the Athlete from carrying out a basic update of his whereabouts Information, and across such a long period of time.

(e) In relation to the Third Filing Failure, the Athlete should have been on red alert following his previous failures, but he appears to have done virtually nothing to ensure that history did not repeat itself.

89. By way of comparison, in CAS 2020/A/7526 & 7559, where a period of ineligibility two years was awarded, the panel held the following (at paragraphs 210 and 211):

"The Athlete's account of the above incidents tells a story of a "series of unfortunate events" which not only is unconvincing, but also clearly shows her patent disregard of, and cavalier approach to, her whereabouts obligations.

The Panel is of the view that such a reckless approach cannot be tolerated or in any way justified. Indeed, the whereabouts regime is a fundamental means to detect doping practices in sport, as it enables the location of athletes for unannounced out-of-competition testing, which are crucial in the fight against doping (cf. CAS 2014/A/2 […], para. 21)".

90. In view of the above, bearing in mind the Athlete's level of fault, any reduction should be minimal, and the period of ineligibility imposed should therefore be *"towards the very top end of the 12-24 month bracket"*.

91. WADA sought disqualification of the Athlete's results between the date of the Third Filing Failure on 1 April 2021 and the imposition of the provisional suspension on 11 July 2021. According to WADA, the Athlete's fault is significant enough to justify this measure, and it is

in point of law for the Athlete to meet the burden of proof to establish that fairness requires his results to be maintained. WADA does not seek disqualification of the results obtained by him after the IBA Decision was issued and the provisional suspension was lifted on 14 July 2021.

e) Relief

92. WADA sought the following relief:

"WADA respectfully requests the CAS Appeals Division to rule as follows:

1. The Appeal of WADA is admissible.

2. The Operative Decision of 14 July 2021 and/or the Reasoned Decision of 19 November 2021 rendered by the International Boxing Association, through its mandated agent the International Testing Agency, in the matter of Rohan Polanco Emiliano, are set aside.

3. Rohan Polanco Emiliano is found to have committed an anti-doping rule violation pursuant to Article 2.4 of the IBA ADR 2020 and/or the IBA ADR 2021.

4. Rohan Polanco Emiliano is sanctioned with a period of ineligibility of between one and two years starting on the date on which the CAS Appeals Division award enters into force. Any period of provisional suspension effectively served by Rohan Polanco Emiliano before the entry into force of the CAS Appeals Division award shall be credited against the total period of ineligibility to be served.

5. All competitive results obtained by Rohan Polanco Emiliano from and including 1 April 2021 until 11 July 2021 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. In the alternative to Requests 3 to 5, the CAS Appeals Division will remit the matter back to the International Boxing Association and order it to prosecute Rohan Polanco Emiliano for an Article 2.4 anti-doping rule violation arising out of the factual matters contained within this appeal, including by the reissue to Rohan Polanco Emiliano of a Notice of Charge within 30 days from the date of the CAS Appeals Division award.

7. The Respondents are ordered, jointly and severally, to bear the arbitration costs, if any, of these proceedings.

8. The Respondents are ordered, jointly and severally, to make a substantial contribution to WADA's legal and other costs in connection with these proceedings".

C. The IBA's Submissions

93. The IBA agreed with the analysis put forward by WADA as to the applicable rules and agreed that, in particular, WADA must be able to show four requirements in respect of each of the alleged Filing Failures.

94. The IBA differed, however, as to whether the rules had been complied with by the Athlete in all the circumstances of this case in relation to the First Filing Failure. The IBA did not seek to challenge the Second and Third Filing Failures.

a) The First Filing Failure

95. The principal submission on the part of the IBA with respect to the First Filing Failure was that *"at no point in time should [the First Filing Failure] … have been considered as a breach of the regulations. But for the truncated ADAMS access of International Federations, IBA would not have brought forward the potential Filing Failure in the first place and Mr. Polanco would not have been charged with a potential Article 2.4 ADRV"*. For the IBA, *"this strike should not have been pursued in the first place, let alone be recorded"*.

96. Of the four essential requirements for a filing failure:

(a) The IBA accepted that the first requirement was met: i.e., that the Athlete was properly notified of his inclusion in the RTP and of his ensuing obligations.

(b) The IBA submitted that the second requirement was not met since the Athlete provided sufficient whereabouts information to allow for testing without advance notice and that there were no gaps in the information provided by the Athlete.

(c) The IBA accepted that third condition did not apply to the First the Filing Failure since it was the Athlete's first 'offence'.

(d) The IBA submitted that the fourth requirement was not met since the Athlete *"fulfilled his duty of care"*.

97. As to the second requirement, the IBA developed its submissions in the following way.

98. The second requirement is that *"the Athlete failed to comply with that requirement by the applicable deadline"* (Article I.3.6.b) of ISTI 2020). The IBA accepts that the information entered into ADAMS by the Athlete was as has been described above.

99. The deadline to provide whereabouts information for the next three months is *"prior to the first day of the quarter"* as per Article I.3.1 of ISTI 2020 and Article 4.8.8.2 of ISTI 2021. Whereabouts filings in ADAMS are set on the GMT time zone. IFs, such as the IBA, being located in Central European Standard Time (GMT+1), usually rely on the GMT time zone to assess whether athletes have complied with the filing deadlines and to issue apparent filing failures. In light of the fact that RTP athletes are across the world, working on GMT time necessarily creates bias. Athletes located in time zones ahead of the GMT time zone have up to 12 hours additional to file whereabouts filings since those will not be flagged by the IF when running reports for late submissions in ADAMS. For example, an athlete located in Vladivostok (time zone UTC +10) may file whereabouts until 9:59 local time and will not be flagged since it will be 23:59 GMT in ADAMS.

100. Even if the arbitrariness of the ADAMS setting to GMT does not absolve the Athlete in this case, since he in fact entered useful whereabouts information at 9:00am local time EDT on 1 October 2020 when his formal deadline was at the latest 30 September 2020 23:59 EDT, the bias should be kept in mind when assessing a filing failure case which rests on a 9-hour delay.

101. The failure to comply with the requirement must be assessed against the purpose of the whereabouts requirements. As spelled out in Article 4.8.1 of ISTI 2020: *"Whereabouts information is not an end in itself, but rather a means to an end, namely the efficient and effective conduct of No Advance Notice Testing"*. "No Advance Notice Testing" is defined as: *"Sample collection that takes place with no advance warning to the Athlete and where the Athlete is continuously chaperoned from the moment of notification through Sample provision"*.

102. In 2010, WADA issued a policy entitled *"Whereabouts Requirements – Introductory Note"* further elaborating the purpose of whereabouts information as follows:

"It is also important for Anti-Doping Organisations to keep in mind that the object of requiring whereabouts information is to find Athletes and collect Samples from them, not to penalize them for Filing Failures and Missed Tests. Consequently, the requirements described in the Code, the IST, and the Guidelines should be applied fairly and practically, with that objective in mind".

103. The IBA accepts that this policy does not have legal status and does not supersede the ISTI or ISRM. The policy is nonetheless the *"rationale"* behind the whereabouts system, as has been reiterated by WADA itself: see CAS A2/2014, 1 December 2014, para. 8.

104. The core obligation of RTP athletes as set forth in Article I.3.4 of ISTI 2020 reiterates that the purpose of the whereabouts system is:

"[to] *ensure that they provide all the information required in a Whereabouts Filing accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in his/her Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing. More specifically, the Athlete must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Athlete at the location"*.

105. This is also echoed in the definition of 'filing failure' itself, which is: *"A failure by the Athlete to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing …"*.

106. The whereabouts requirements do not entail that athletes must provide hour-for-hour location. This is specified in Comment to Article I.1.1.b) of ISTI 2020:

"After extensive consultation with stakeholders with substantial whereabouts experience, the view was taken that the best way to maximize the chances of finding the Athlete at any time, while providing a reasonable and appropriate mitigation of "24/7" Missed Test liability, was to combine the best elements of each system, i.e., requiring disclosure of whereabouts information on a "24/7" basis, while limiting exposure to a Missed Test to a 60-minute time slot".

107. For such purpose, when changes to schedules occur, RTP athletes are required to update their 60-minute timeslot *"as soon as possible after the circumstances change, and in any event prior to the 60-minute time slot specified in his/her filing for the day in question"* (Article I.3.5 of ISTI 2020). This means that the 60-minute timeslot may be provided or updated to ADOs *"last-minute"* and the athletes will not be liable for a whereabouts failure.

108. Moreover, night testing is not allowed unless valid grounds exist (Article 4.5.5 of ISTI 2020) and there were no reasons justifying overnight sample collection for the Athlete. In any event, the Athlete had provided an overnight accommodation covering the night of 30 September to 1 October and then his 60-minute timeslot for the morning of the 1 October 2020.

109. The Athlete was allowed to provide his whereabouts information for Q4 up until 30 September 23:59, regardless of the reminders to provide the information earlier sent by IBA to the Athlete over the course of September 2020.

110. In light of the above, the question to be answered is not *"Did the Athlete file his 3-month calendar by 23:59 on 30 September 2020?"* but rather: *"Did the Athlete fail to provide accurate and complete whereabouts filing that enabled the Athlete to be located for testing on any given day in the quarter?"*.

111. The IBA submit that the answer to that latter question is: no, for the following reasons. The Athlete filed an overnight accommodation for 30 September 2020. The location for the 30 September 2020 logically applies to the morning of 1 October 2020. On 1 October 2020 at 9:25 EDT, the Athlete indicated that he would be specifically available for testing from 10:00 to 11:00 EDT at a detailed location assigned for his 60-minute timeslot, then that he would be training, again with a complete address and schedule, and then he provided the details of his overnight accommodation.

112. Moreover, RTP athletes are not expected to file a precise 3-month calendar in advance. Instead, the ISTI (Comment to Article I.3.4. of ISTI 2020) states that:

"Where an Athlete does not know precisely what his/her whereabouts will be at all times during the forthcoming quarter, he/she must provide his/her best information, based on where he/she expects to be at the relevant times, and then update that information as necessary in accordance with Article I.3.5".

113. This means that, whilst the Athlete should have filed some whereabouts information for the period 17 November 2020 through to the end of Q4 prior to the start of the Q4, the inaccuracy of such data should not have been held against him when considering a filing failure for late submission on 1 October 2020.

114. The fact that the Athlete only filed whereabouts information for the last half of Q4 47 days instead of 48 days ahead of time has no bearing on the Athlete's fulfilment of his responsibility to provide *"all of the information required in a Whereabouts Filings accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in his/her Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts"* (Article

I.3.4 of ISTI 2020). The delay had no material impact on his availability and IBA's ability to test the Athlete without prior notice.

115. Athletes are not liable for missing a formal quarter deadline when there are in fact no gaps between the days. This is the rationale set forth in Article 4.8.8.2 of ISTI 2021 confirming that non-compliance with formal deadlines when those are set prior to the beginning of the quarter is not a filing failure. Moreover, Article I.1.1.a) of ISTI 2020 states that *"a failure to* [make quarterly Whereabouts Filings] *may be declared a Filing Failure"*, thereby showing that not all late quarter submissions will be considered as filing failures. For this reason, the First Filing Failure should not have been pursued in the first place.

116. The fourth requirement is not met either since the Athlete fulfilled his duty of care as explained below.

117. The IBA accepts that, given that the Athlete was duly informed of the RTP inclusion and the requirement to file quarter whereabouts information, then the presumption of negligence applies. It is therefore for the Athlete to rebut the presumption, on the balance of probabilities. The IBAC submits that the Athlete has done so here.

118. CAS 2020/A/7528 at [46] provides guidance on the negligence test and makes it clear that the whereabouts regime is not grounded on strict liability:

"Put another way, there is no strict liability here, but rather, there must be a measure of negligence – a lack of due care – in respect of the Athlete's failure before the Athlete can be held liable. The Panel notes that this standard is separate, and different, from the standard of "significant fault" that applies under the WADC and its implementing legislation in determining whether there should be a reduction of a sanction".

119. Therefore, the facts that the whereabouts filing was effected nine hours past the deadline and/or that the information was not accessible to the IBA between 1 and 2 October 2020 do not, in itself, establish the Athlete's liability. Nor is there is any evidence that the Athlete intentionally withheld his whereabouts information between 1 and 2 October 2020.

120. According to the well-established CAS caselaw in anti-doping matters, the standard of care comprises both subjective and objective factors (CAS 2013/A/3327 & 3335):

"The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities. […] Matters which can be taken into account in determining the level of subjective fault can for example be: an athlete's youth and/or inexperience; language or environmental problems encountered by the athlete; the extent of anti-doping education received by the athlete (or the extent of anti-doping education which was reasonably accessible the athlete)".

121. WADA argues that the Athlete's expected standard of care should be elevated to that of high profile and seasoned athletes, such as Norwegian cross-country skier Theresa Johaug. WADA submits that the higher duty of care is justified insofar as the Athlete is *"an experienced, high-*

profile athlete, in the sense of being an Olympic competitor on the international stage" and has *"considerable prior experience and knowledge"* of the whereabouts requirement.

122. The IBA submits that WADA's characterisation of the Athlete is *"disconnected from reality"*. While it is right to say that the Athlete and Ms Johaug are international-level athletes and that the Athlete participated in one edition of the Olympic Games, that is the extent of their common character. The Athlete was 21 years-old at the time and, save for the information provided in the RTP letter, the Athlete did not receive any training on the ADAMS platform. The Athlete has *"barely participated"* in IBA international events over the past years and has instead been involved in the professional boxing system, which does not apply the WADC nor the whereabouts requirements.

123. The Athlete was only included in the RTP and maintained for a longer period than the initial seven months due to the postponement of the Tokyo Games to 2021. The Athlete did not even compete in Olympic qualifiers to secure a position in the Tokyo Games. In other words, he was not immersed in the Olympic Movement and the anti-doping regulations. In light of the foregoing, the Athlete's duty of care is no more that standard, and certainly not elevated.

124. Nor, according to the IBA, is it right to submit, as WADA does, that the ADAMS system is *"bulletproof"*. WADA relies on the so-called built-in safeguards in ADAMS which should have alerted the Athlete of the non-compliance of his filings. According to WADA, the fact that the information in ADAMS was still in red and not in green would prevent the Athlete from claiming that he was not negligent.

125. However, the IBA submits that ADAMS does not always behave according to its textbook. In this context, the IBA asked the ITA to report any issues it encountered when reviewing the quarter submissions for the current quarters. Based on a sample of quarter submissions over one day for two of its partners, the ITA has provided IBA with the following examples of "glitches" in ADAMS:

(a) In one instance, the whereabouts information for the second quarter 2022 was in green and has been successfully submitted on 2 February 2022, but the whereabouts filing was empty.

(b) In another, the whereabouts filing for the first quarter 2022 was successfully submitted on 26 December 2021 yet mandatory information, such as the daily 60-minute time slot and complete days during the quarter are missing.

126. In any event, considering the Athlete's recent inclusion in the RTP inclusion, and the fact that he does not read English, the Athlete could not be expected to understand the intricate ADAMS settings requiring the two-step approach to filing whereabouts information. The IBA does not suggest that the Athlete should be freed from his RTP obligations because he does not understand English. There are numerous CAS cases to the effect that failure to understand a language does not absolve an athlete in anti-doping matters. But, as provided for in CAS 2013/A/3327 & 3335), a language hurdle is to be taken into account when assessing the degree of fault.

127. As noted by WADA, the default setting in ADAMS is that whereabouts filings for the upcoming quarter will only be made accessible to the IFs once the athlete submitted the information by pressing the "submit" button. Athletes have the option to change this default setting so as to provide IF access to their whereabouts information as soon as it is entered, rather than just upon being submitted. There is no evidence that the Athlete was aware of this option and, given the Athlete's lack of knowledge of the English language, this cannot be presumed. Moreover, given that the Athlete had limited experience with ADAMS, fairness dictates that he should have been put on notice of the need to ensure that the information was submitted and the consequences of any failure to do so.

128. In this regard, the CAS panel in 2021/ADD/18 held that, before recording a whereabouts failure for insufficient in detail information (which led to an unsuccessful mission to collect a sample without prior notice), the fact that the Athlete had already been expressly warned about the specific issue was relevant. It is particularly telling that the panel found that the warning was appropriate for a *"high-profile and well-educated International-Level Athlete"* who had been providing whereabouts information for seven years. It follows therefore that it was all the more appropriate here for a less experienced athlete.

129. Moreover, the filing failure at stake is the first one committed by the Athlete. CAS panels have found that the level of awareness and caution expected from athletes when as to whereabouts obligations increases as the strikes are recorded against the Athletes. The Athlete was by that test not in a category expected to be on "red alert" when completing information in ADAMS for Q4.

130. The IBA recognises that the CAS panel in CAS 2020/A/7526 & 7599 held that a *"clerical mistake"* (in that case, a typographical error in the address provided which led to an unsuccessful attempt to test the athlete) *"should not be treated lightly, otherwise it would be all too easy for a deceitful athlete to repeatedly dodge out-of-competition or consequences of a Whereabouts Failure by similar 'clerical errors'"*.

131. Nevertheless, that case should be understood in its context. The case concerned a track-and-field sprinter, world champion at the time. She had been filing whereabouts for three years and had committed four whereabouts failures within 13 months. The CAS panel held that the athlete did not rebut the presumption of negligence for the following reasons: she had received specific anti-doping training; she had delegated her whereabouts tasks to her NF; and she had two recent whereabouts failures, so requiring greater attention by her. Given that, in light of Article 1.6.4.a) of ISTI 2020 whereby athletes remain ultimately responsible for compliance with RTP obligations, the panel there held that the clerical mistake should not be forgiven. These circumstances are a long way away from the facts and matters relating to the Athlete with respect to the First Filing Failure.

132. The IBA accepts that CAS 2020/A/7559 and CAS 2006/A/1165 emphasise that the strict enforcement of the whereabouts requirements is important to maintain effective no advance notice out-of-competition testing. Indeed, this is the reason why the IBA had recorded the First Filing Failure against the Athlete when it was believed that the whereabouts information had not been provided for 1 October 2020 (meaning that there was a full day missing). That

said, the IBA does not consider that the First Filing Failure undermines the purpose of the no advance notice out-of-competition testing and, for this reason, the strike should not be confirmed. The context here is altogether different to the above two cases which concerned two experienced and high-profile athletes who were not available for testing on numerous occasions and related not to missed doping tests but only to missed filing deadlines.

133. In summary, the Athlete's alleged failure was not *"at least negligent"* for the following factors: i) the Athlete's limited exposure to ADAMS; ii) lack of training with the ADAMS platform; iii) ADAMS intricacies and its variable performance; iv) the fact that this was his first whereabouts failure; v) that the whereabouts filing was provided nine hours late; vi) that accurate and sufficient information was provided for 30 September 2020, 1 October and 2 October 2020 to enable any ADO to locate him for no advance notice out-of-competition testing. In the latter respect, it should be noted that the Athlete was successfully tested without advance notice on 10 occasions between 25 August 2020 to 25 July 2021, including 25 October 2020 during Q4.

b) The Second Filing Failure

134. The IBA does not challenge the Second Filing Failure.

c) The Third Filing Failure

135. The IBA does not challenge the Third Filing Failure.

d) The Sanctions

136. The IBA's position on sanctions is that, should the ADRV be confirmed, the IBA defers to the Panel to establish the quantum of the period of ineligibility. In light of the matters put forward in relation to the First Filing Failure, the IBA submits that a sanction in the lower bracket should be imposed.

137. As to the disqualification of results, the IBA agrees with WADA that no results should be disqualified after July 2021. Otherwise, there are no IBA results to disqualify for the period of 2020 and up until the Tokyo Games.

e) Relief

138. The IBA sought the following relief:

"The ITA, on behalf of IBA, hereby respectfully requests the Panel to conclude as following:

i. *IBA's Answer is admissible;*

ii. *WADA's appeal is dismissed;*

iii. *IBA's Operative Decision is upheld.*

iv. *WADA's request at point 6 of its prayers of relief according to which "CAS Appeals Division to remit the matter back to IBA and order it to prosecute Rohan Polanco for an 2.4 ADRV" is dismissed.*

v. *WADA is ordered to bear the arbitration costs, if any, of these proceedings.*

vi. *WADA is ordered to make a substantial contribution to IBA' legal and other costs arising from these proceedings".*

D. The Athlete's Submissions

139. By his Answer, the Athlete submitted that the criteria for establishing a filing failure have not been met to the comfortable satisfaction of the Panel for any of the three alleged Filing Failures. The Athlete agreed as to the applicable rules but disagreed as to their application.

140. As the background to his submissions, the Athlete gave evidence by way of a witness statement, which evidence may be summarised in the following way.

(a) The Athlete is 23 years old, from the Dominican Republic.

(b) He speaks Spanish. He does not speak, write, read or understand English. *"I do not even have a working understanding of English".*

(c) The first time he *"was notified about the documents relating to the alleged filing failures was when the documents were explained to me by"* my legal representatives.

(d) He forwarded all of the emails from the IBA and ITA to the FDB. No one from the FDB or the IBA or the ITA or WADA ever called me to speak about the alleged filing failures.

(e) *"No one explained to me that I was one filing failure away from an [ADRV] and I had no notice of this. If someone had explained this to me I would have been on high alert. I would have found someone who could explain to me in Spanish what the requirements were for me to file information, taken steps to understand the process and procedure for filing information about where I was going to be, and ensured that this was done either by me or by someone on my behalf".*

(f) He did not see the RTP Letter (and the attachments) at the time. Nor would he have been able to understand them because the documents are in English.

(g) He is *"aware"* that the acknowledgement form appended to the RTP Letter is signed by him. *"I do not remember signing this form but I confirm that my handwriting appears on the signature line".* He was in training at that time in Santo Domingo.

(h) *"It was common for staff from Fedoboxa to provide me with paperwork to sign in connection with my participation in sport and I would do so, trusting that the federation understood the relevance of any documents it put before me and that any important information would be explained to me"*.

(i) He did not and does not understand what it says because it is in English. He does not recall anyone explaining it to him.

(j) He has a *"limited"* understanding of ADAMS. He himself had never before entered information into ADAMS; he does not know who entered the information for Q1-Q3 2020, but it was likely FDB.

(k) His first anti-doping test took place in August 2020 in Massachusetts. *"The test was conducted by a young man who did not speak any Spanish. I relied on my roommate to translate the testing officer's requests and instructions. I tested negative, as I have on all my anti-doping tests to date"*.

(l) The First Filing Failure arose in circumstances where he had *"no knowledge of the process around reporting my whereabouts reporting obligations"*. He was in training in Massachusetts. He now understands that ITA send four reminder emails in respect of the Q4 filing. *"I acknowledge that these notifications are addressed to my email account. Importantly, I could not (and do not) understand what these emails say because they are written in English. Whenever I receive an email in English from ITA or IBA, my usual practice is to forward the email to Fedoboxa …"*. He did so for the first two emails but does not recall whether he forwarded the latter two, but may not have done because FDB were copied on the emails in any event.

(m) He does not *"have any personal knowledge of the circumstances surrounding the submission of my whereabouts information to ADAMS between late September and early October 2020*.

(n) In relation to the letter dated 8 October 2020 offering an explanation for the Q4 failure, he accepts that the letter was attached to an email sent from his email account *"but I did not write this letter nor was I asked to review or approve it. I believe that this email and letter were prepared by Kenia* [Pereyra, an administrator at FDB] *without speaking to me or reviewing or discussing the documents with me"*. Ms Pereyra had asked for access to his email account, which he had provided.

(o) In relation to the Second Filing Failure, the missed test in December 2020, he was in the US when he contracted COVID on 7 November 2020. He changed his travel plans and booked a return ticket to the Dominican Republic for 14 December 2020. He did not inform FDB.

(p) FDB sent an explanation on my behalf on 16 December 2020. He did not review it or approve it. He trusted that FDB would help him to resolve things.

(q) He did not have *"a detailed understanding as to how the missed test was being handled"*. No one explained to him that he now had two filing failures and that one more would result in an ADRV. If all that had been explained *"I would have been vigilant to ensure that my information was populated and up to date"*.

(r) As to the Third Filing Failure, by March 2021 FDB had retained a Dr Ramirez as team doctor and he was *"told to report my whereabouts information to him directly"*.

(s) Throughout March 2021, FDB sent several emails to the IBA with his whereabouts information.

(t) He did not send the email dated 15 March 2021. He did not write it, nor was he asked to review or approve it.

(u) The IBA had knowledge of my location throughout Q2 2021. The IBA completed three anti-doping tests during this time.

(v) He did not understand that a filing failure had been recorded against him.

(w) Finally, the Athlete asked the Panel to consider the *"totality of my experience"*. He now understands that *"technical requirements to report my whereabouts through ADAMS were inconsistently complied with, this was never done with deliberate intent or disregard for the anti-doping system. I did not understand the system of rules and obligations that were never communicated to me in a language that I understand. It was always a responsibility that I was genuinely unaware of. If I had been notified of my non-compliance and if I had been educated about my responsibilities, I would have complied with them"*.

a) The First Filing Failure

141. As to the First Filing Failure, the Athlete's submissions may be summarised in the following way.

(a) As to the first requirement, that of notification, the Athlete was not *"duly notified"* according to the requirements of Article I.3.6 of Annex I to the ISTI 2020. According to the evidence, the Athlete never understood the content of any of the letters sent to his email account by the IBA because the letters they were written in English, a language which the Athlete neither reads nor speaks. *"Duly"* is an adverb that at law means *"in a proper manner; in accordance with legal requirements"*. For the Athlete, who does not understand English and who is a national of the Dominican Republic where the national language is Spanish, due notification or service should have been in Spanish. No attempt was made to discern the Athlete's native language or his proficiency in English, despite being aware that the Athlete came from a non-English speaking country. He signed the acknowledgement form because his NF told him to do so *"without understanding what he said"*. Moreover, the Athlete received no anti-doping training, against a core principle of the WADC. Newly added to the RTP, the Athlete *"should have been the focus of anti-doping education programs"*. As a result of these twin failures, the Athlete *"had no understanding of or reason to ask questions about his anti-doping obligations"*. Notification to the Athlete *"must be made in Spanish, as a matter of due process"*. The failure to do so meant that he was not *"duly notified"* of that the Athlete was duly notified (i) that he had been designated for inclusion in an RTP, (ii) of the consequent requirement to make whereabouts filings; and (iii) of

the consequences of any failure to comply with that requirement. The first requirement has not been met.

(b) As to the second requirement, compliance, for the reasons advanced by the IBA, the Athlete complied with his filing obligations with respect to the alleged First Filing Failure.

(c) As to the third requirement, it is accepted that it does not apply to the First Filing Failure.

(d) As to the fourth requirement, in the circumstances described in his witness statement, the Athlete was not negligent.

b) The Second Filing Failure

142. As to the Second Filing Failure, the Athlete's submissions may be summarised in the following way.

(a) As to the first requirement, for the same reasons as set forth in relation to the First Filing Failure, the Athlete was not *"duly notified"* according to the requirements of Article I.3.6 of Annex I to the ISTI 2020.

(b) As to the second requirement, it is accepted that the Athlete did not comply with his whereabouts obligations.

(c) As to the third requirement, no issue is taken by the Athlete with respect to notice of the prior filing failure.

(d) As to the fourth requirement, once again, in the circumstances described in his witness statement, the Athlete was not negligent.

c) The Third Filing Failure

143. As to the Third Filing Failure, the Athlete's submissions may be summarised as follows. (For this filing failure the relevant requirements are set forth in Annex B.2 of ISRM 2021 (headed "Requirements for a Potential Filing Failure or Missed Test").

(a) For all the same reasons as set forth above, the Athlete was not *"duly notified"*.

(b) As to the second requirement, once again no issue is taken, and the Athlete accepts that there was a want of compliance.

(c) As to the third requirement, for the reasons explained above, effective notice was not given to the Athlete as was required pursuant to Article B.2.1(c) of ISRM 2021, which provides as follows:

"In the case of a second or third Filing Failure, that they were given notice, in accordance with Article B.3.2(d), of the previous Filing Failure, and (if that Filing Failure revealed deficiencies in the

Whereabouts Filing that would lead to further Filing Failures if not rectified) was advised in the notice that in order to avoid a further Filing Failure they must file the required Whereabouts Filing (or update) by the deadline specified in the notice (which must be within 48 hours after receipt of the notice) and yet failed to rectify that Filing Failure by the deadline specified in the notice".

(d) In this respect, the decision in CAS 2011/A/2499 identifies the importance of the obligation upon an ADO to give notice to the athlete him or herself and not just to the athlete's NF.

(e) As to the fourth requirement, in the circumstances described in his witness statement, the Athlete was not negligent.

d) Sanctions

144. The principal submission on the part of the Athlete is that, for the reasons set out above, the ADRV has not been made out to the comfortable satisfaction of the Panel and that, therefore, no sanctions should be imposed.

145. In the alternative, the Athlete submits that if an ADRV is established in this case then it is *"of the most technical nature and will serve none of the purposes of the anti-doping movement"*. If a sanction is to be imposed, it should be reduced below the minimum one-year period of ineligibility pursuant to *"the international doctrine of proportionality"* (as was applied in SDRC 18-0291)) on the basis that the *"truly exceptional circumstances"* of this case require its application.

e) Relief

146. The Athlete sought the following relief:

"59. Rohan respectfully requests that the Panel order as follows:

(a) WADA's Appeal is dismissed.

(b) Rohan Polanco Emiliano is found to have not committed an anti-doping rule violation pursuant to Article 2.4 of the IBA ADR 2020 and/or the IBA ADR 2021.

(c) In the alternative to Requests (a) – (b), that: (i) the Rohan be reprimanded.

(d) Rohan is awarded costs to cover any expenses or disbursements associated with this proceeding (legal counsel is acting on a pro bono basis)".

VI. JURISDICTION OF THE CAS

147. Article R47 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Player has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

148. WADA relies on Articles 13.1.3, 13.2.1, and/or 13.2.3.1 of the IBA ADR as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondents and is confirmed by the signature of the Order of Procedure in this matter.

149. The Panel, therefore, confirms that CAS has jurisdiction to decide this appeal.

VII. ADMISSIBILITY OF THE APPEAL

150. As to admissibility, the following matters were common ground:

(a) pursuant to Article 13.6.1 of the IBA ADR 2021, WADA had a deadline of 21 days from receipt of the Reasoned Decision;

(b) WADA received the documents relating to the case file on 8 and 18 December 2021;

(c) WADA's deadline to appeal was therefore 8 January 2022 at the earliest; and

(d) WADA's Statement of Appeal was filed with the CAS within that time.

151. It was common ground between the Parties (as confirmed in the signed Order of Procedure) that this appeal is for those reasons admissible.

152. The Panel, therefore, confirms that the appeal is admissible.

VIII. PROCEDURAL ISSUES

153. As noted above, an issue arose as to the timeliness of the Athlete's Answer and, as also noted above on 22 March 2022, the Parties were informed that the Panel had decided to admit the Athlete's Answer dated 11 March 2022 to the record, pursuant to Article R56 of the CAS Code, with the reasons for such decision to be explained in the final Award.

154. The reasons for doing so are as follows.

155. Article R31 of the CAS Code provides (in relevant part) that a party's submissions *"must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address*

(procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic email by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit".

156. It is apparent from the chronology of events set out above (and appears to be common ground) that the Athlete did not comply with the requirements of Article R31 of the CAS Code in that, whilst he emailed his Answer to the CAS Court Office on the due date, 11 March 2022, he did not follow that with filing it and the required number of copies by courier or uploaded onto the CAS e-filing platform within the time stipulated or at all. The provision set forth in Article R31 of the CAS Code was therefore not met.

157. There is, however, no rule in the CAS Code that a respondent loses the right to be a party to the proceedings and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a late Answer: see CAS 2019/A/6463. Indeed, Article R55 of the CAS Code provides that *"If the Respondent fails to submit its answer by the stated deadline, the Panel may nevertheless proceed with the arbitration and deliver an award".* As a result, as WADA and the IBA noted, it would have been open to the Athlete to make the same points in oral submissions at the hearing as are set out in his Answer, and it was therefore of some utility to the Panel to have those submissions in writing and in advance of the hearing.

158. In any event, in this case, despite the Athlete's failure to comply with the CAS Code, WADA was content for the arbitration to proceed and for the Athlete's Answer (and exhibits) to be admitted to the court record in the usual way; and, for its part, the IBA was content to defer to the Panel on this matter.

159. The Panel therefore took the view, that, in the circumstances of this case, it was in the interests of justice and fairness that the Athlete be permitted to be heard in this way.

IX. APPLICABLE LAW

160. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

161. It was common ground between the Parties as to the rules applicable to this appeal. The starting position is that the applicable rules are those set forth in the IBA ADR. However, because the Filing Failures in this appeal straddle two different versions of the IBA ADR, the position is as follows:

(a) Article 2.4 of the IBA ADR 2020 provides that: *"Any combination of three (3) missed tests and/or filing failures, as defined in the* ***International Standard for Testing and Investigations****, within a twelve (12) month period by an Athlete in a Registered Testing Pool".*

(b) Article 2.4 of the IBA ADR 2021 provides that: *"Any combination of three (3) missed tests and/or filing failures, as defined in the* ***International Standard for Results Management****, within a twelve (12) month period by an Athlete in a Registered Testing Pool".*

(c) As to the substantive aspects of the dispute: (a) the IBA ADR 2020 are applicable to the Athlete's conduct prior to 1 January 2021, i.e., to the First and Second Failures; and (b) the IBA ADR 2021 are applicable to conduct thereafter, i.e., to the Third Filing Failure.

(d) The IBA ADR 2020 incorporate by reference the provisions of the ISTI 2020.

(e) The IBA ADR 2021 incorporate by reference the provisions of the ISTI 2021 and the ISRM 2021.

(f) As to the procedural aspects of the dispute: the IBA ADR 2021 are applicable generally.

162. Accordingly, ISTI 2020 is applicable to the First and Second Filing Failures whilst the ISTI 2021 and ISRM 2021 apply to the Third Filing Failures.

A. The Rules Applicable to the First and Second Filing Failures

163. As to the rules applicable to the First and Second Filing Failures, Article 2.4 of the IBA ADR 2020 provides that: *"Any combination of three (3) missed tests and/or filing failures, as defined in the* ***International Standard for Testing and Investigations****, within a twelve (12) month period by an Athlete in a Registered Testing Pool".*

164. A *"filing failure"* is defined in ISTI 2020 (Article 3.2) as follows:

> *"A failure by the Athlete (or by a third party to whom the Athlete has delegated the task) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing or to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete, all in accordance with Article I.3 of the International Standard for Testing and Investigations".*

165. The defined terms therein are as follows:

(a) Athlete: *"Any person who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by the National Anti-Doping Organization). …".*

(b) Testing: *"The parts of the Doping Control process involving test distribution planning, Sample collection, Sample handling, and Sample transport to the laboratory".*

(c) Whereabouts Filing: *"Information provided by or on behalf of an Athlete in a Registered Testing Pool that sets out the Athlete's whereabouts during the following quarter, in accordance with Article I.3 of the International Standard for Testing and Investigations".*

166. Articles I.3 of ISTI 2020 is found with Annex I. By way of introduction, Article I.1 provides that an athlete who is in an RTP is required:

"to make quarterly Whereabouts Filings that provide accurate and complete information about the Athlete's whereabouts during the forthcoming quarter, including identifying where he/she will be living, training and competing during that quarter, and to update those Whereabouts Filings where necessary, so that he/she can be located for Testing during that quarter at the times and locations specified in the relevant Whereabouts Filing, as specified in Article I.3. A failure to do so may be declared a Filing Failure; and to specify in his/her Whereabouts Filings, for each day in the forthcoming quarter, one specific 60-minute time slot where he/she will be available at a specific location for Testing, as specified in Article I.4".

167. Article I.3 of ISTI 2020 is headed *"Whereabouts Filing Requirements"* and sets out the information that must be submitted in a whereabouts filing and the consequences upon failing to do so as follows:

"I.3.1 On a date specified by the Anti-Doping Organization collecting an Athlete's Whereabouts Filings – which date shall be prior to the first day of each quarter (i.e., 1 January, 1 April, 1 July and 1 October, respectively) – an Athlete in a Registered Testing Pool must file a Whereabouts Filing that contains at least the following information:

a) a complete mailing address where correspondence may be sent to the Athlete for formal notice purposes. Any notice or other item mailed to that address will be deemed to have been received by the Athlete five working days after it was deposited in the mail;

[Comment to I.3.1(a): For these purposes, the Athlete should specify an address where he/she lives or otherwise knows that mail received there will be immediately brought to his/her attention. An Anti-Doping Organization is encouraged also to supplement this basic provision with other notice and/or "deemed notice" provisions in its rules (for example, permitting use of fax, email, SMS text or other methods of service of notice; permitting proof of actual receipt as a substitute for deemed receipt; permitting notice to be served on the Athlete's National Federation if it is returned undelivered from the address supplied by the Athlete). The aim of such provisions should be to shorten the results management timelines.]

b) details of any impairment of the Athlete that may affect the procedure to be followed in conducting a Sample Collection Session;

c) specific confirmation of the Athlete's consent to the sharing of his/her Whereabouts Filing with other Anti-Doping Organizations that have Testing Authority over him/her;

d) for each day during the following quarter, the full address of the place where the Athlete will be staying overnight (e.g., home, temporary lodgings, hotel, etc);

e) for each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g., school), as well as the usual time- frames for such regular activities; and

[Comment to I.3.1(e): This requirement applies only to activities that are part of the Athlete's regular routine. For example, if the Athlete's regular routine includes training at the gym, the pool and the track, and regular physio sessions, then the Athlete should provide the name and address of the gym,

track, pool and physio in his/her Whereabouts Filing, and then set out his/her usual routine, e.g., "Mondays: 9-11 gym, 13-17 gym; Tuesdays: 9-11 gym, 16–18 gym; Wednesdays: 9–11 track, 3-5 physio; Thursdays: 9- 12 gym 16-18 track; Fridays: 9-11 pool 3-5 physio; Saturdays: 9-12 track, 13-15 pool; Sundays: 9-11 track, 13-15 pool".

If the Athlete is not currently training, he/she should specify that in his/her Whereabouts Filing and detail any other routine that he/she will be following in the forthcoming quarter, e.g., his/her work routine, or school schedule, or rehab routine, or other routine, and identify the name and address of each location where that routine is conducted and the time-frame during which it is conducted.]

f) the Athlete's Competition schedule for the following quarter, including the name and address of each location where the Athlete is scheduled to compete during the quarter and the date(s) on which he/she is scheduled to compete at such location(s).

I.3.2 Subject to Article I.3.3, the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Athlete will be available and accessible for Testing at a specific location.

[Comment to I.3.2: The Athlete can choose which 60-minute time slot between 5 a.m. and 11 p.m. to use for this purpose, provided that during the time slot in question he/she is somewhere accessible by the DCO. It could be the Athlete's place of residence, training or Competition, or it could be another location (e.g., work or school). An Athlete is entitled to specify a 60- minute time slot during which he/she will be at a hotel, apartment building, gated community or other location where access to the Athlete is obtained via a front desk, or doorman, or security guard. In addition, an Athlete may specify a time slot when he/she is taking part in a Team Activity. In either case, however, any failure to be accessible and available for Testing at the specified location during the specified time slot will be a Missed Test.]

I.3.3 As the sole exception to Article I.3.2, if (but only if) there are dates in the relevant quarter in which the Athlete is scheduled to compete in an Event (excluding any Events organized by a Major Event Organization), and the Anti- Doping Organization that put the Athlete into the Registered Testing Pool is satisfied that enough information is available from other sources to find the Athlete for Testing on those dates, then the Anti-Doping Organization that put the Athlete into the Registered Testing Pool may waive the Article I.3.2 requirement to specify a 60-minute time-slot in respect of such dates ("In- Competition Dates"). If each of the International Federation and a National Anti-Doping Organization put the Athlete into its Registered Testing Pool, the International Federation's decision as to whether to waive that requirement in respect of In-Competition Dates will prevail. If the requirement to specify a 60-minute time slot has been waived in respect of In-Competition Dates, and the Athlete has specified in his/her Whereabouts Filing a series of dates on which he/she anticipates being In-Competition (and as a result has not specified a 60-minute time slot for those dates), if he/she is then knocked out of the Competition before the end of those dates, so that the remaining dates are no longer In-Competition Dates, he/she must update his/her Whereabouts Filing to provide all the necessary information for those dates, including the 60-minute time slot specified in Article I.3.2.

I.3.4 It is the Athlete's responsibility to ensure that he/she provides all of the information required in a Whereabouts Filing accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in his/her Whereabouts Filing for that day, including but not limited to during the 60-minute time

slot specified for that day in the Whereabouts Filing. More specifically, the Athlete must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Athlete at the location. A failure to do so may be pursued as a Filing Failure and/or (if the circumstances so warrant) as evasion of Sample collection under Code Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5. In any event, the Anti- Doping Organization shall consider Target Testing of the Athlete.

[Comment to I.3.4: For example, declarations such as "running in the Black Forest" are insufficient and are likely to result in a Filing Failure. Similarly, specifying a location that the DCO cannot access (e.g., a "restricted-access" building or area) is likely to result in a Filing Failure. The Anti-Doping Organization may be able to determine the insufficiency of the information from the Whereabouts Filing itself, or alternatively it may only discover the insufficiency of the information when it attempts to test the Athlete and is unable to locate him/her. In either case, the matter should be pursued as an apparent Filing Failure, and/or (where the circumstances warrant) as an evasion of Sample collection under Code Article 2.3, and/or as Tampering or Attempting to Tamper with Doping Control under Code Article 2.5.

Where an Athlete does not know precisely what his/her whereabouts will be at all times during the forthcoming quarter, he/she must provide his/her best information, based on where he/she expects to be at the relevant times, and then update that information as necessary in accordance with Article I.3.5.]

I.3.5 Where a change in circumstances means that the information in a Whereabouts Filing is no longer accurate or complete as required by Article I.3.4, the Athlete must file an update so that the information on file is again accurate and complete. In particular, the Athlete must always update his/her Whereabouts Filing to reflect any change in any day in the quarter in question (a) in the time or location of the 60-minute time slot specified in Article I.3.2; and/or (b) in the place where he/she is staying overnight. The Athlete must file the update as soon as possible after the circumstances change, and in any event prior to the 60-minute time slot specified in his/her filing for the day in question. A failure to do so may be pursued as a Filing Failure and/or (if the circumstances so warrant) as evasion of Sample collection under Code Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5. In any event, the Anti-Doping Organization shall consider Target Testing of the Athlete.

[Comment to I.3.5: The Anti-Doping Organization collecting the Athlete's Whereabouts Filings should provide appropriate mechanisms (e.g., phone, fax, Internet, email, SMS) to facilitate the filing of such updates.

It is the responsibility of each Anti-Doping Organization with Testing Authority over the Athlete to ensure that it checks for any updates filed by the Athlete prior to attempting to collect a Sample from the Athlete based on his/her Whereabouts Filing. For the avoidance of doubt, however, an Athlete who updates his/her 60-minute time slot for a particular day prior to the original 60-minute slot must still submit to Testing during the original 60-minute time slot, if he/she is located for Testing during that time slot.]

I.3.6 An Athlete may only be declared to have committed a Filing Failure where the Results Management Authority establishes each of the following:

a) that the Athlete was duly notified (i) that he/she had been designated for inclusion in a Registered Testing Pool; (ii) of the consequent requirement to make Whereabouts Filings; and (iii) of the Consequences of any Failure to Comply with that requirement;

b) that the Athlete failed to comply with that requirement by the applicable deadline;

[Comment to I.3.6(b): An Athlete fails to comply with the requirement to make Whereabouts Filings (i) where he/she does not make any such filing, or where he/she fails to update the filing as required by Article I.3.5; or (ii) where he/she makes the filing or update but does not include all of the required information in that filing or update (e.g. he/she does not include the place where he/she will be staying overnight for each day in the following quarter, or for each day covered by the update, or omits to declare a regular activity that he/she will be pursuing during the quarter, or during the period covered by the update); or (iii) where he/she includes information in the original filing or the update that is inaccurate (e.g., an address that does not exist) or insufficient to enable the Anti-Doping Organization to locate him/her for Testing (e.g., "running in the Black Forest").]

c) in the case of a second or third Filing Failure in the same quarter) that he/she was given notice, in accordance with Article I.5.2(d), of the previous Filing Failure, and (if that Filing Failure revealed deficiencies in the Whereabouts Filing that would lead to further Filing Failures if not rectified) was advised in the notice that in order to avoid a further Filing Failure he/she must file the required Whereabouts Filing (or update) by the deadline specified in the notice (which must be no less than 24 hours after receipt of the notice and no later than the end of the month in which the notice is received) and yet failed to rectify that Filing Failure by the deadline specified in the notice; and

[Comment to I.3.6(c): The requirement is to give the Athlete notice of the first Filing Failure in the quarter and an opportunity to avoid a subsequent one, before a subsequent Filing Failure may be pursued against him/her that quarter. But that is all that is required. In particular, it is not necessary to complete the results management process with respect to the first Filing Failure before pursuing a second Filing Failure against the Athlete.]

d) that the Athlete's Failure to Comply was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that he/she was notified of the requirements yet failed to comply with them. That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his/her part caused or contributed to the failure".

168. An issue arose at the hearing as to the correct interpretation of sub-paragraph Article I.3.6(d) of ISTI 2020 which, on its face, refers to the defined term "Failure to Comply", which is itself defined in ISTI 2020 as *"A term used to describe anti-doping rule violations under Code Articles 2.3 and/or 2.5".*

169. Accordingly, read literally according to the defined term, the failure to comply does not include any failure to comply with Article 2.4 of the WADC. It was common ground as between WADA and the IBA that the reference to the defined term "Failure to Comply" in the sub-paragraph could only be a typographical error and that, given its context, it should read as meaning 'failure to comply' with the obligations to make timely whereabouts filings as per I.3.6(b) of ISTI 2020. The Panel agrees with that construction; indeed, no other interpretation makes any sense. It is noted that, in support of that view, the error has been corrected in ISTI 2021/ ISRM 2021, where the text speaks of *"failure to file".*

B. The Rules Applicable to the Third Filing Failure

170. As to the Third Filing Failure, as noted above, Article 2.4 of the IBA ADR 2021 provides that: *"Any combination of three (3) missed tests and/or filing failures, as defined in the* ***International Standard for Results Management****, within a twelve (12) month period by an Athlete in a Registered Testing Pool".*

171. A *"filing failure"* is defined in ISRM 2021 (by Article 3.6) as follows:

> *"A failure by the Athlete (or by a third party to whom the Athlete has delegated the task) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing or to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete, all in accordance with Article 4.8 of the International Standard for Testing and Investigations and Annex B.2 of the International Standard for Results Management".*

172. The defined terms therein are as follows:

(a) Athlete: *"Any person who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by the National Anti-Doping Organization). …".*

(b) Testing: *"The parts of the Doping Control process involving test distribution planning, Sample collection, Sample handling, and Sample transport to the laboratory".*

(c) Whereabouts Filing: *"Information provided by or on behalf of an Athlete in a Registered Testing Pool that sets out the Athlete's whereabouts during the following quarter, in accordance with Article I.3 of the International Standard for Testing and Investigations".*

173. Article 4.8 of ISTI 2021 is headed *"Collecting whereabouts information"* and it provides, in relevant part only, as follows:

> *"4.8.1 Whereabouts information is not an end in itself, but rather a means to an end, namely the efficient and effective conduct of No Advance Notice Testing. Therefore, where an Anti-Doping Organization has determined that it needs to conduct Testing (including Out-of-Competition Testing) on particular Athletes, it shall then consider how much information it needs about the whereabouts of those Athletes in order to conduct that Testing effectively and with no advance notice. The Anti-Doping Organization must collect all of the whereabouts information that it needs to conduct the Testing identified in its Test Distribution Plan effectively and efficiently. In addition, the amount of whereabouts information requested shall be proportional to the whereabouts pool and the amount of times the Anti-Doping Organization intends to test the Athlete.*
>
> *4.8.2 In accordance with Code Articles 5.5 and 14.5, Anti-Doping Organizations may collect whereabouts information and shall use ADAMS to conduct effective Doping Control. As a result, such information shall be automatically available through ADAMS to WADA and other relevant Anti-Doping Organizations with overlapping Testing Authority. This information shall:*
>
> *a) Be maintained in strict confidence at all times;*
>
> *b) Be used for purposes of planning, coordinating or conducting Doping Control;*

c) Be relevant to the Athlete Biological Passport or other analytical results;

d) Support an investigation into a potential anti-doping rule violation; and/or

e) Support proceedings alleging an anti-doping rule violation.

…

4.8.6 Registered Testing Pool

4.8.6.1 The top tier is the Registered Testing Pool and includes Athletes that are subject to the greatest amount of Testing and are therefore required to provide whereabouts in accordance with Article 4.8.6.2. Athletes in the Registered Testing Pool shall be subject to Code Article 2.4 Whereabouts Requirements.

An International Federation or a National Anti-Doping Organization shall consider the following criteria for including Athletes into a Registered Testing Pool:

a) Athletes who meet the criteria listed in Articles 4.5.2 and 4.5.3;

b) Athletes whom the International Federation or National Anti-Doping Organization plans to Test at least three (3) times per year Out-of-Competition (either independently or in agreed coordination with other Anti-Doping Organizations with Testing Authority over the same Athletes);

c) Athletes that are part of the Anti-Doping Organization's Athlete Biological Passport haematological module program as required by the TDSSA;

d) Athletes in a Testing pool who fail to comply with the applicable whereabouts requirements of that pool;

e) Athletes for whom there is insufficient whereabouts information available for an International Federation or National Anti-Doping Organization to locate them for that Testing from other sources;

f) Athletes in a Team Sport who are not part of Team Activities for a period of time (e.g., during the off-season); and

g) Athletes who are serving a period of Ineligibility.

[Comment to 4.8.6.1: Following consideration of points a) to g) above and once the Athletes in the Registered Testing Pool are determined, the International Federation or the National Anti-Doping Organization shall plan, independently or in agreed coordination with other Anti-Doping Organizations, to test any Athlete included in the Registered Testing Pool a minimum of three (3) times Out-of-Competition per year.]

4.8.6.2 An Athlete who is in a Registered Testing Pool shall:

a) Make quarterly Whereabouts Filings that provide accurate and complete information about the Athlete's whereabouts during the forthcoming quarter, including identifying where they will be living, training and competing during that quarter, and to update those Whereabouts Filings where necessary, so that they can be

located for Testing during that quarter at the times and locations specified in the relevant Whereabouts Filing, as specified in Article 4.8.8. A failure to do so may be declared a Filing Failure; and

b) Specify in their Whereabouts Filings, for each day in the forthcoming quarter, one specific 60-minute time slot where they will be available at a specific location for Testing, as specified in Article 4.8.8.3. This does not limit in any way the Athlete's Code Article 5.2 obligation to submit to Testing at any time and place upon request by an Anti-Doping Organization with authority to conduct Testing on them. Nor does it limit their obligation to provide the information specified in Article 4.8.8.2 as to their whereabouts outside that 60-minute time slot. However, if the Athlete is not available for Testing at such location during the 60-minute time slot specified for that day in their Whereabouts Filing, that failure may be declared a Missed Test.

[Comment to 4.8.6.2(b): The purpose of the 60-minute time slot is to strike a balance between the need to locate the Athlete for Testing and the impracticality and unfairness of making Athletes potentially accountable for a Missed Test every time they depart from their previously-declared routine.]

4.8.6.3 Anti-Doping Organizations with authority to conduct Testing on an Athlete in a Registered Testing Pool shall conduct Out-of-Competition Testing on that Athlete using the Athlete's Whereabouts Filing. Although Code Article 2.4 Whereabouts Requirements include the provision of a 60-minute time slot, Testing shall not be limited to the 60-minute time slot provided by the Athlete. To ensure Out-of-Competition Testing is unpredictable to the Athlete, Anti-Doping Organizations shall also consider other whereabouts information provided e.g., regular activities to test the Athlete.

4.8.6.4 An International Federation or National Anti-Doping Organization that maintains a Registered Testing Pool shall use ADAMS to ensure that:

a) The information provided by the Athlete is stored safely and securely;

b) The information can be accessed by (i) authorized individuals acting on behalf of the International Federation or National Anti-Doping Organization (as applicable) on a need-to-know basis only; (ii) WADA; and (iii) other Anti-Doping Organizations with authority to conduct Testing on the Athlete in accordance with Code Article 5.2; and

c) The information is maintained in strict confidence at all times, is used exclusively for the purposes set out in Code Article 5.5 and is destroyed in accordance with the International Standard for the Protection of Privacy and Personal Information once it is no longer relevant.

…

4.8.7 Entering and leaving a Registered Testing Pool

4.8.7.1 The International Federation or National Anti-Doping Organization (as applicable) shall notify each Athlete designated for inclusion in its Registered Testing Pool of the following:

a) The fact that they have been included in its Registered Testing Pool with effect from a specified date in the future;

b) The whereabouts requirements with which they shall therefore comply;

c) The Consequences if they fail to comply with those whereabouts requirements; and

d) That they may also be tested by other Anti-Doping Organizations with authority to conduct Testing.

[Comment to 4.8.7.1: This notification may be made through the National Federation or National Olympic Committee where the International Federation/National Anti-Doping Organization considers it appropriate or expedient to do so and ordinarily shall be made reasonably in advance of the Athlete being included in the Registered Testing Pool. The notice shall also explain what the Athlete needs to do in order to comply with the Code Article 2.4 Whereabouts Requirements (or refer them to a website or other resource where they can find out that information). Athletes included in a Registered Testing Pool shall be informed and should be educated so that they understand the whereabouts requirements that they must satisfy, how the whereabouts system works, the consequences of Filing Failures and Missed Tests, and their right to contest Filing Failures and Missed Tests that have been asserted against them.

Anti-Doping Organizations should also be proactive in helping Athletes avoid Filing Failures. For example, many Anti-Doping Organizations systematically remind Athletes in their Registered Testing Pool of quarterly deadlines for Whereabouts Filings, and then follow up with those Athletes who have still not made the necessary filing as the deadline approaches. However, Athletes remain fully responsible for complying with the filing requirements, irrespective of whether or not the Anti-Doping Organization has provided them with such support.]

…

4.8.7.3 An Athlete who has been included in a Registered Testing Pool shall continue to be subject to the Code Article 2.4 Whereabouts Requirements unless and until:

a) They have been given written notice by each Anti-Doping Organization that put them in its Registered Testing Pool that they are no longer designated for inclusion in its Registered Testing Pool; or

b) They retire from Competition in the sport in question in accordance with the applicable rules and gives written notice to that effect to each Anti-Doping Organization that put them in its Registered Testing Pool.

4.8.8 Whereabouts Filing Requirements

4.8.8.1 Anti-Doping Organizations shall review Athletes Whereabouts Filings to ensure they are submitted in accordance with Articles 4.8.8.2 and 4.8.8.3.

4.8.8.2 The Anti-Doping Organization collecting an Athlete's Whereabouts Filings may specify a date prior to the first day of each quarter (i.e., 1 January, 1 April, 1 July and 1 October, respectively) when an Athlete in a Registered Testing Pool shall file a Whereabouts Filing that contains at least the following information:

[Comment to 4.8.8.2: To facilitate planning and readiness for Testing on the first day of the quarter (as countenanced in Article 4.8.8.2), Anti-Doping Organizations may require that whereabouts information is submitted on a date which is the 15th of the month preceding the quarter. However, no consequences for a failure to submit prior to the first day of the quarter shall apply.]

a) A complete mailing address and personal e-mail address where correspondence may be sent to the Athlete for formal notice purposes. Any notice or other item mailed to that address will be deemed to have been received by the Athlete seven (7) days after it was deposited in the mail and immediately when notification of a sent e-mail receipt is generated/obtained (subject to applicable law);

[Comment to 4.8.8.2(a): For these purposes, the Athlete should specify an address where they live or otherwise know that mail received there will be immediately brought to their attention. An Anti-Doping Organization is encouraged also to supplement this basic provision with other notice and/or "deemed notice" provisions in its rules (for example, permitting use of fax, email, SMS text, approved social networking sites or applications or other methods of service of notice; permitting proof of actual receipt as a substitute for deemed receipt; permitting notice to be served on the Athlete's National Federation if it is returned undelivered from the address supplied by the Athlete). The aim of such provisions should be to shorten the Results Management timelines.]

b) Specific confirmation that the Athlete understands that their Whereabouts Filing will be shared with other Anti-Doping Organizations that have authority to conduct Testing on them;

c) For each day during the following quarter, the full address of the place where the Athlete will be staying overnight (e.g., home, temporary lodgings, hotel, etc.);

d) For each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g., school), as well as the usual time frames for such regular activities; and

[Comment to 4.8.8.2 (d): This requirement applies only to activities that are part of the Athlete's regular routine. For example, if the Athlete's regular routine includes training at the gym, the pool and the track, and regular physio sessions, then the Athlete should provide the name and address of the gym, pool, track and physio in their Whereabouts Filing, and then set out their usual routine, e.g., "Mondays: 9-11 gym, 13-17 gym; Tuesdays: 9-11 gym, 16-18 gym; Wednesdays: 9-11 track, 3-5 physio; Thursdays: 9-12 gym, 16-18 track, Fridays: 9-11 pool, 3-5 physio; Saturdays: 9-12 track, 13-15 pool; Sundays: 9-11 track, 13-15 pool". If the Athlete is not currently training, they should specify that in their Whereabouts Filing and detail any other routine that they will be following in the forthcoming quarter, e.g., their work routine, or school schedule, or rehab routine, or other routine, and identify the name and address of each location where that routine is conducted and the time frame during which it is conducted.

In the case of a Team Sport or other sport where competing and/or training are carried out on a collective basis, the Athlete's regular activities are likely to include most, if not all, Team Activities.]

e) The Athlete's Competition/Event schedule for the following quarter, including the name and address of each location where the Athlete is scheduled to compete during the quarter and the date(s) and time(s) at which they are scheduled to compete at such location(s).

4.8.8.3 Subject to Article 4.8.8.4, the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Athlete will be available and accessible for Testing at a specific location.

[Comment to 4.8.8.3: The Athlete can choose which 60-minute time slot between 5 a.m. and 11 p.m. to use for this purpose, provided that during the time slot in question they are somewhere accessible by the DCO. It could be the Athlete's place of residence, training or Competition, or it could be another location (e.g., work or school). An Athlete is entitled to specify a 60-minute time slot during which they will be at a hotel, apartment building, gated community or other location where access to the Athlete is obtained via a front desk, or security guard. It is up to the Athlete to ensure accessibility to their selected 60-minute location with no advance warning to the Athlete. In addition, an Athlete may specify a time slot when they are taking part in a Team Activity. In either case, however, any failure to be accessible and available for Testing at the specified location during the specified time slot shall be pursued as a Missed Test.]

…

4.8.8.5 It is the Athlete's responsibility to ensure that they provide all of the information required in a Whereabouts Filing as outlined in Articles 4.8.8.2 and 4.8.8.3 accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in their Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing.

a) More specifically, the Athlete shall provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Athlete at the location with no advance notice to the Athlete. A failure to do so may be pursued as a Filing Failure and/or (if the circumstances so warrant) as evasion of Sample collection under Code Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5. In any event, the Anti-Doping Organization shall consider Target Testing of the Athlete.

…

4.8.8.6 Where a change in circumstances means that the information in a Whereabouts Filing is no longer accurate or complete as required by Article 4.8.8.5, the Athlete shall file an update so that the information on file is again accurate and complete. The Athlete must always update their Whereabouts Filing to reflect any change in any day in the quarter in question in particular; (a) in the time or location of the 60-minute time slot specified in Article 4.8.8.3; and/or (b) in the place where they are staying overnight. The Athlete shall file the update as soon as possible after they become aware of the change in circumstances, and in any event prior to the 60-minute time slot specified in their filing for the relevant day. A failure to do so may be pursued as a Filing Failure and/or (if the circumstances so warrant) as evasion of Sample collection under Code Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5. In any event, the Anti-Doping Organization shall consider Target Testing of the Athlete.

[Comment to 4.8.8.6: The Anti-Doping Organization collecting the Athlete's Whereabouts Filings should provide appropriate mechanisms (e.g., phone, fax, Internet, email, SMS, approved social networking sites or applications) to facilitate the filing of such updates. It is the responsibility of each Anti-Doping Organization with authority to conduct Testing on the Athlete to ensure that it checks for any updates filed by the Athlete prior to attempting to collect a Sample from the Athlete based on their Whereabouts Filing. For the avoidance of doubt, however, an Athlete who updates their 60-minute time slot for a particular day prior to the original 60-minute slot must still submit to Testing during the original 60-minute time slot, if they are located for Testing during that time slot.]

…

4.8.14 Whereabouts Responsibilities

4.8.14.1 Notwithstanding any other provision of Article 4.8:

…

4.8.14.3 An Athlete may choose to delegate the task of making their Whereabouts Filings (and/or any updates thereto) to a third party, such as a coach, a manager or a National Federation, provided that the third party agrees to such delegation. The Anti-Doping Organization collecting the Athlete's Whereabouts Filings may require written notice of any agreed delegation to be filed with it, signed by both the Athlete in question and the third party delegate.

…

4.8.14.4 In all cases, however, including in the case of Athletes in Team Sports:

a) Each Athlete in a Registered Testing Pool remains ultimately responsible at all times for making accurate and complete Whereabouts Filings, whether they make each filing personally or delegates the task to a third party. It shall not be a defence to an allegation of a Filing Failure that the Athlete delegated such responsibility to a third party and that third party failed to comply with the applicable requirements; and

b) Such Athlete remains personally responsible at all times for ensuring they are available for Testing at the whereabouts declared on their Whereabouts Filings. It shall not be a defence to an allegation of a Missed Test that the Athlete delegated responsibility for filing their whereabouts information for the relevant period to a third party and that third party failed to file the correct information or failed to update previously-filed information so as to ensure that the whereabouts information in the Whereabouts Filing for the day in question was current and accurate. …".

174. In turn, Annex B of ISRM 2021 provides for *"Results Management for Whereabouts Failures"*. Article B.2 sets forth the *"Requirements for a Potential Filing Failure or Missed Test"* and provides in relevant part as follows:

B.2.1 An Athlete may only be declared to have committed a Filing Failure where the Results Management Authority establishes each of the following:

a) That the Athlete was duly notified: (i) that they had been designated for inclusion in a Registered Testing Pool; (ii) of the consequent requirement to make Whereabouts Filing; and (iii) of the Consequences of any Failure to Comply with that requirement;

b) That the Athlete failed to comply with that requirement by the applicable deadline;

[Comment to Article B.2.1(b): An Athlete fails to comply with the requirement to make Whereabouts Filing (i) where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or (ii) where they make the filing or update but do not include all of the required information in that filing or update (e.g. they do not include the place where

they will be staying overnight for each day in the following quarter, or for each day covered by the update, or omit to declare a regular activity that they will be pursuing during the quarter, or during the period covered by the update); or (iii) where they include information in the original filing or the update that is inaccurate (e.g., an address that does not exist) or insufficient to enable the Anti-Doping Organization to locate them for Testing (e.g.,"running in the Black Forest").]

c) In the case of a second or third Filing Failure, that they were given notice, in accordance with Article B.3.2(d), of the previous Filing Failure, and (if that Filing Failure revealed deficiencies in the Whereabouts Filing that would lead to further Filing Failures if not rectified) was advised in the notice that in order to avoid a further Filing Failure they must file the required Whereabouts Filing (or update) by the deadline specified in the notice (which must be within 48 hours after receipt of the notice) and yet failed to rectify that Filing Failure by the deadline specified in the notice; and

[Comment to Article B.2.1(c): All that is required is to give the Athlete notice of the first Filing Failure and an opportunity to avoid a subsequent one, before a subsequent Filing Failure may be pursued against them. In particular, it is not necessary to complete the Results Management process with respect to the first Filing Failure before pursuing a second Filing Failure against the Athlete.]

d) That the Athlete's failure to file was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that they were notified of the requirements yet did not comply with them. That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to the failure. …".

C. Burden and Standards of Proof

175. The provisions relating to the burden and standard of proof are the same across the two sets of rules. Pursuant to Article I.5.5. of ISTI 2020 (and its equivalent provision in Article B.3.5 of the ISRM 2021), the burden of proof on WADA to establish an ADRV is to the comfortable satisfaction of the Panel:

"I.5.5 An Athlete alleged to have committed a Code Article 2.4 anti-doping rule violation shall have the right to have such allegation determined at a full evidentiary hearing in accordance with Code Article 8. The hearing panel shall not be bound by any determination made during the results management process, whether as to the adequacy of any explanation offered for a Whereabouts Failure or otherwise. Instead, the burden shall be on the Anti-Doping Organization bringing the proceedings to establish all of the requisite elements of each alleged Whereabouts Failure to the comfortable satisfaction of the hearing panel. If the hearing panel decides that one (or two) Whereabouts Failures(s) have been established to the required standard, but that the other alleged Whereabouts Failure(s) has/have not, then no Code Article 2.4 antidoping rule violation shall be found to have occurred. However, if the Athlete then commits one (or two, as applicable) further Whereabouts Failure(s) within the relevant 12-month period, new proceedings may be brought based on a combination of the Whereabouts Failure(s) established to the satisfaction of the hearing panel in the previous proceedings (in accordance with Code Article 3.2.3) and the Whereabouts Failure(s) subsequently committed by the Athlete".

176. Where the Athlete has the burden to rebut a presumption or establish facts, the standard of proof is to a balance of probabilities pursuant to Article 3.1 IBA ADR 2020 and 2021:

"IBA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IBA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability".

177. As noted, the First and Second Filing Failures are governed by the IBA ADR 2020 and ISTI 2020 while the Third Filing Failure is governed by the IDA ADR 2021, together with ISTI 2021 and ISRM 2021. There are differences, but none is material to the present appeal. It is therefore sufficient for the purposes of this appeal to say that the applicable rules may be summarised in the following way.

(a) The Athlete was required to provide certain specified items of information by a certain date (see next paragraph) before each quarter. These items included the following non-exclusive list:

- A complete mailing address where correspondence may be sent to the Athlete.
- For each day during the coming quarter, the full address of the place where the Athlete would be staying overnight.
- For each day during the coming quarter, the name and address of each location where the Athlete was going to train or work or conduct any other regular activity, with time frames.
- The Athlete's schedule of competition for the coming quarter, including the name and address of each competition location, together with dates and times.
- One specific 60-minute time slot for each day (between 5.00am and 11.00pm) during the quarter where the Athlete would be available for testing.

(b) The date by which this information is to be provided is said to be *"on a date specified by the [ADO] collecting an Athlete's Whereabouts Filings – which shall be prior to the first day of each quarter …"* (see Article I.3.1 of ISTI 2020; and to similar effect Article 4.8.8.2 of ISTI 2021). The Parties proceeded on the basis that the deadline was the end of the day prior to the first day of the quarter. For the sake of this appeal, the Panel is prepared to proceed on that basis but notes that, on the proper construction of the rules, the applicable deadline for the filing of an athlete's whereabouts information appears to be by the end of the date specified by the ADO collecting the information, in this case the IBA.

(c) The rules expressly provided that it was the Athlete's responsibility to ensure that he provided this information *"accurately and in sufficient detail to enable any [ADO] … to locate [him] for testing on any given day in the quarter at the times and locations specified"*.

(d) A filing failure, as defined, is a failure by an athlete to provide this information in a timely way or, alternatively, a failure to update information previously provided so that it remains accurate and complete.

(e) The requisite elements of a filing failure are four in number, as follows (while not all are in issue with respect to each Filing Failure):

- One, that the Athlete was duly notified of the following matters: (i) that he had been designated for inclusion in an RTP; (ii) of the consequent requirement to make whereabouts filings; and (iii) of the consequences of any failure to do so.

- Two, the Athlete failed to comply with the requirement to make whereabouts filings by the applicable deadline.

- Three, with respect to the Second and Third Filing Failures, that the Athlete was given the required notice (that is, notice that of the previous filing failure, and (if that previous filing failure revealed deficiencies in the whereabouts filing that would lead to further filing failures if not rectified) was advised in the notice that in order to avoid a further filing failure he must file the required whereabouts filing (or update) by the deadline specified in the notice[1]) and yet the Athlete failed to rectify that previous filing failure by the deadline specified in the notice.

- Four, that the Athlete's failure to meet his filing requirements was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that they were notified of the requirements yet did not comply with them. The Athlete may rebut the presumption by establishing that no negligent behaviour on his part caused or contributed to the failure.

(f) The burden of proving all of the requisite elements with respect to each alleged filing failure is on WADA.

(g) The standard of proof is to the comfortable satisfaction of the Panel, bearing in mind the seriousness of the allegation.

(h) If the presumption of negligence arises, the Athlete bears the burden of rebutting that presumption.

(i) The standard of proof on the Athlete to rebut the presumption is the balance of probabilities.

[1] ISTI 2020 provides that the deadline shall be no less than 24 hours; ISTI 2021 and ISRM 2021 provide for a period of 48 hours. Nothing in this case turns on the difference.

X. MERITS

178. The Panel notes that, while it has carefully considered all of the submissions made and evidence adduced by the Parties, the Panel only addresses below those matters which it considered necessary to decide the dispute.

179. In summary, the Panel's task is to decide whether, on the evidence and according to the applicable rules, there has been a filing failure on the part of the Athlete with respect to each of the alleged three Filing Failures.

180. A threshold issue arises as to the evidence. It is the Athlete's position (as set out in some detail in his witness statement) that: (a) he does not read, write or understand English; (b) he may have received but never read and never understood the various correspondences sent to him by the IBA in relation to his whereabouts obligations; (c) while he accepts that it is his signature on the "Acknowledgement Form" appended to the RTP Letter (see below), he does not remember signing and he did not and does not understand what it says because it is in English and no one has explained it to him; and (d) the emails sent from his email account (in English) were not sent by him but by an FDB administrator.

181. WADA does not accept the Athlete's position and, given his absence from the hearing, the Athlete's evidence in support of it could not be tested in cross-examination. For the same reason, the Panel did not have the benefit of seeing and hearing, and assessing, the Athlete as he gave evidence. In those circumstances, the Panel was obliged to proceed on the basis that the documents, including, most materially, those signed and sent by the Athlete, provide a fair and accurate record of the chronology of events and should be accepted by the Panel as meaning what they say.

182. In particular, the Panel notes that the Athlete (with or without assistance, in the Panel's view it does not matter) completed, signed and dated the acknowledgement form on 20 February 2020 and in doing so provided an email address and a home address and telephone number, and the name of his coach; the Athlete also checked the box indicating that he did not have an ADAMS account and needed an ADAMS user-name and password. In the Panel's view, it follows that the Athlete must, *prima facie*, be taken as having confirmed (*inter alia*) the following things:

(a) He had read and understood RTP Letter.

(b) He understood that he was part of the RTP.

(c) He was aware that he was required to submit his whereabouts information in ADAMS and that he would be held be liable for a filing failure if he failed to do so or if he submitted submit either late, inaccurate or incomplete whereabouts information.

(d) He understood that any combination of three filing failures within a 12-month period would constitute an ADRV for which the sanction is a period of ineligibility of two years, subject to reduction down to a minimum of one year, depending on his degree of fault.

183. Importantly, the Athlete in his written statement accepted that the signature on the acknowledgment form was his. In the Panel's view, the evidential burden shifted to him to prove that he was unaware of the content of the document which he admittedly signed. The Panel finds that he failed to discharge that burden. Cognisant as he must necessarily have been on the basis of his written statement alone that such unawareness was the lynchpin of his factual defence, the Athlete declined to support it by oral testimony at the hearing of which he had been given ample notice. He called no witness from FDB to support his contention in his written statement that *"It was common for staff from Fedoboxa to provide me with paperwork to sign in connection with my participation in sport and I would do so, trusting that the federation understood the relevance of any documents it put before me and that any important information would be explained to me"* or to explain precisely what happened on the date he signed the acknowledgment letter.

184. In the Panel's view, it would be a reasonable inference that the Athlete's failure in such circumstances to give oral testimony himself and adduce such corroborative evidence sprung from a recognition that it would not correspond with the truth.

185. The Panel has set out above in elaborate detail the factual and documentary chronology in relation to the Filing Failures. It is on the findings made in this factual account, including its conclusion on the lack of weight to be place on the Athlete's written statement, that the Panel will determine whether the Filing Failures have been made out.

A. Liability

a. The First Filing Failure

186. Has WADA discharged its burden, to the required standard, with respect to the required elements? In issue as to the First Filing Failure are requirements one, two and four as described above.

1. Requirement One

187. Was the Athlete duly notified of the following matters: (i) that he had been designated for inclusion in an RTP; (ii) of the consequent requirement to make whereabouts filings; and (iii) of the consequences of any failure to do so?

188. It was WADA's case that this requirement was met by (at least) the RTP Letter. The IBA agreed. The Athlete disagreed. The Athlete accepted that the matters that were to be notified were set forth in the RTP Letter which he received but contended that, in order to be "duly" notified, the notification had to be in a language that was understood by the Athlete – namely Spanish – and that sending the RTP Letter to him in English was insufficient. It was said that "duly" is an adverb and qualifies the manner in which notification is to be made by imposing an obligation on the IBA to discern the native language of the Athlete and send the required notice to him in that language and/or to make sure that Athlete was proficient in English before sending notices to him in the English language.

189. In the Panel's view, this argument advanced by the Athlete is misconceived and misunderstands the rules. According to the Shorter Oxford English Dictionary, the word "duly" means *"in due manner, order, form or season; correctly, properly, fitly, punctually, sufficiently"*. At its root is the word "due", which means *"that [which] ought to be done"; fitting, proper, rightful, appropriate"*. The Panel accepts that this meaning suits the context. In the Panel's view, the term *"duly notified"* takes its meaning in the rules from the earlier stated obligation on the part of the IF or ADO to notify an athlete when that athlete enters an RTP.

190. Article I.2.1 of ISTI 2020 states:

"The International Federation or National Anti-Doping Organization (as applicable) must notify each Athlete designated for inclusion in its Registered Testing Pool of the following

(a) *the fact that he/she has been included in its Registered Testing Pool with effect from a specified date in the future;*

(b) *the whereabouts requirements with which he/she must therefore comply; and*

(c) *the Consequences if he/she fails to comply with those whereabouts requirements"*.

191. The obligation in Article I.2.1 of ISTI 2020 is mandatory. The IF/ADO *"must"* do as provided for therein. Properly understood, therefore, *"duly notified"* means that this mandatory obligation has been satisfied; i.e., the IF/ADO has sent out the required notice in the required terms. Critically, it means no more than that. It certainly does not add an additional obligation on the IF or ADO to find out in what language(s) the new RTP entrant is proficient in and the level of that proficiency and to issue the required notice in that language or languages. This would manifestly impose a significant burden on the IF/ADO and one which would be extremely difficult, if not impossible, to discharge. If this were the intention of the drafter of the rules, then clear language to such effect would and should have been used. On its proper construction, therefore, all that is required is for the IF/ADO to send to an athlete a notice with the elements as set forth above (per Article I.2.1 of ISTI 2020). In doing so, the IF/ADO is perfectly entitled to use one or other of the international languages, and certainly entitled to use English, it being the most widely spoken language.

192. It is, therefore, the Panel's view that, in light of the run of correspondence with the Athlete as has been limned above, it is clear that the Athlete has been *"duly notified"* of the required matters. Accordingly, the first requirement for a filing failure has been met.

2. Requirement Two

193. Did the Athlete fail to comply with the requirement to make whereabouts filings by the applicable deadline? This involves an assessment as to what information was submitted by the Athlete and when. As to the timing, as noted above, the deadline by which the Athlete was required to file his information was that specified by the IBA, namely 15 September 2020. Nonetheless, because the Parties all agreed that the applicable date was the end of the day before 1 October 2020 the Panel will treat 30 September 2020 as the relevant deadline.

194. There is no issue between the Parties as to what information was filed or when. It is described above in some detail. This is the chronology:

(a) On 28 September 2020, the Athlete logged in to ADAMS. He entered a mailing address for Q4 but did not provide any other whereabouts information.

(b) On 1 October 2020, the Athlete entered certain information for the period 1 October 2020 to 16 November 2020: a 60-minute time slot for testing; an overnight accommodation address; and a regular activity address. On that occasion, the Athlete did not provide any information for the period 17 November 2020 to 31 December 2020.

(c) On 2 October 2020, the Athlete entered his required whereabouts information for the remainder of the quarter, which he then submitted (and which then, and only then, became visible to the IBA).

195. On any view, it is plain that the Athlete did not provide all of the required information before the end of the day on 30 September 2020. Accordingly, the second requirement is met.

3. Requirement Four

196. Was the Athlete's failure to meet his filing requirements at least negligent? For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that he was notified of the filing requirements but failed to comply with them. The Athlete may rebut the presumption by establishing that no negligent behaviour on his part caused or contributed to the failure.

197. It is at once clear that, in light of the Panel's determination that the Athlete was properly notified of his whereabouts filing requirements, the presumption that the Athlete was negligent arises. This was the position argued for by WADA and accepted by the IBA. The issue therefore is whether the Athlete has rebutted that presumption by establishing -- by evidence -- that no negligent behaviour on his part caused or contributed to his failure.

198. The short answer is that the Athlete has not done so. Without repeating the Panel's approach to the evidence (as set out at paragraph [180]ff above), the Panel notes the following matters:

(a) The RTP Letter (and attachments) set out the whereabouts obligations in chapter and verse such that the Athlete should have been in no doubt as to what was required.

(b) The Athlete was seemingly able to enter his information in ADAMS for the Q1, Q2 and Q3 2020 without difficulty.

(c) Both before and after the IBA deadline of 15 September 2020, the IBA went out of its way to send to the Athlete a number of reminders:

- The IBA sent a reminder on 4 September 2020 which set out in some detail what was required of him as well as informing the Athlete of the "Athlete Central" application that

was available which would facilitate the provision of whereabouts information into ADAMS. The IBA also appended a guidance and question / and answer document that addressed athlete queries in relation to anti-doping in light of the current COVID-19 pandemic. The IBA invited the Athlete to contact them should he have any questions or concerns.

- The IBA sent a further reminder on 15 September 2020 which, as noted above, stated *"**PLEASE NOTE THAT THE DEADLINE TO SUBMIT WHEREABOUTS IS 15 SEPTEMBER 2020, AT THE LATEST**"* and *"**We urge you to provide the information without any further delay**"*.

- The IBA sent to the Athlete a yet further reminder on 22 September 2020.

- On 28 September 2020, the IBA emailed the Athlete noting that he had not submitted his whereabouts information and asking him, in terms, whether he required any assistance and whether he was having any problems accessing ADAMS.

(d) No doubt in response to the last prompt, the Athlete logged into ADAMS on 28 September 2020 and yet, on that occasion, entered no more than a mailing address for Q4.

(e) The Athlete logged back into ADAMS on 1 October 2020. On that date, he entered the whereabouts information for the period 1 October 2020 to 16 November 2020 but did not provide any information for the period 17 November 2020 to 31 December 2020. It would, or should, have been apparent to him that his information was incomplete and that it was not possible to 'submit' the information and complete his filing.

(f) It was only on 2 October 2020 – after any possible version of the deadline -- that the Athlete inputted the remaining required whereabouts information and was able to complete his submission.

(g) The Athlete offered an explanation for his failure to the effect that he was in the US and without access to a computer. It is difficult to understand how the Athlete was able to obtain access to a computer on 28 September 2020 when he first logged in to ADAMS and again on 1 and 2 October 2020 but not on 29 or 30 September 2020. As was submitted by WADA, there are in any event other means by which an athlete can obtain access to ADAMS, not least via a smartphone.

199. Accordingly, the fourth requirement of negligence on the part of the Athlete is met.

200. It follows, therefore, that the Panel is comfortably satisfied that WADA has discharged its burden of proving each of the essential elements of the First Failing Failure.

b. The Second Filing Failure

201. As to the Second Filing Failure, it is the Athlete's position that, of the essential requirements, the first and fourth have not been met. In contrast, both WADA and the IBA contend that each of the four requirements has been met.

202. The facts relating to the Second Filing Failure are set forth above in some detail and require no rehearsal here save for noting as follows.

(a) The Second Filing Failure relates to Q4 2020 and involves a missed doping test and a failure to update whereabouts information.

(b) On 2 December 2020, a DCO called at the Santo Domingo address given by the Athlete in his whereabouts filing for that day in an attempt to conduct a doping control test on the Athlete. The Athlete was absent. He was in the United States. The DCO telephoned the Athlete and the Athlete told him that he was in the US and could not travel due to COVID. The DCO also called the Athlete's manager and was told the same thing.

(c) When called upon for his explanation as to his absence, the Athlete explained that he was in the US, he had tested positive for COVID and his return to the Dominican Republic had been postponed until 14 December 2020.

(d) The documents provided by the Athlete to support his explanation were (a) a positive result dated 7 November 2020 for a test taken the day before and (b) a negative result dated 12 December 2020 in respect of a test taken the day before.

203. Against these (summarised) facts, have the essential requirements been met?

1. Requirement One

204. Was the Athlete duly notified of the following matters: (i) that he had been designated for inclusion in an RTP; (ii) of the consequent requirement to make whereabouts filings; and (iii) of the consequences of any failure to do so?

205. For all of the reasons set forth above in relation to the First Filing Failure, the Panel is satisfied that this requirement has also been met in relation to the Second Filing Failure.

2. Requirement Two

206. Did the Athlete failed to comply with the requirement to make whereabouts filings by the applicable deadline? In this context the requirement included an obligation pursuant to Article I.3.5 of ISTI 2020 to update his whereabouts information whenever a change in circumstances rendered the information previously provided inaccurate or incomplete.

207. This may be taken quite shortly, not least because the Athlete does not challenge this filing failure on this ground. It is clear that, as submitted by WADA, the Athlete failed to update his

whereabouts filing in order to reflect the fact that he was not at the address stated therein for 2 December 2020 but somewhere else. Accordingly, the second requirement is met.

3. Requirement Three

208. Was the Athlete notified of the First Filing Failure and its consequences? This has not been put in issue by the Athlete and in any event is satisfied here: the Athlete was given *"Notification of Apparent Filing Failure"* (as set forth in paragraph [20] above) on 6 October 2020, well prior to the events relating to the Second Filing Failure of 2 December 2020. Accordingly, this third requirement has been met.

4. Requirement Four

209. Was the Athlete's failure to meet his filing requirements at least negligent?

210. As in respect of the First Filing Failure, in light of the notification, it is to be presumed that the Athlete was negligent, and it is for the Athlete to rebut that presumption. The explanation offered by the Athlete as to that lapse was that he returned a positive COVID test in the USA on 7 November 2020 and was not able to travel. While that may be an explanation as to why he was not where he said he would be on 2 December 2020, it is no explanation as to why he did not update his whereabouts information so as to show that he was in the US during that period. In the circumstances, the presumption remains unrebutted.

211. Accordingly, the Panel is comfortably satisfied that WADA has discharged its burden of proving each of the required elements of the Second Failing Failure.

c. The Third Filing Failure

212. Once again, the facts relating to the Third Filing Failure are set forth above in some detail and there is no need to recount them again save for noting the following things.

(a) The Third Filing Failure relates to Q1 2021.

(b) The RTP Letter called upon the Athlete to provide his whereabouts information for Q1 2021 by 15 March 2021.

(c) On 3 March 2021, the IBA sent a reminder to the Athlete in respect of the 15 March 2021 deadline.

(d) On 5 March 2021, the Athlete forwarded the IBA reminder to the FDB.

(e) On 6 March 2021, the FDB emailed certain limited information in relation to the whereabouts of the Athlete (see paragraph [33] above).

(f) On 8 March 2021, the IBA replied to the FDB (with a copy to the Athlete), thanking the FDB for the information but reminding them that *"whereabouts must be submitted in Adams. The deadline for Q2 submission is 15th of March"*.

(g) On 11 March 2021, the FDB added to the information previously provided with this entry: *"Practice schedule Gimnasio Centro Olímpico Juan Pablo Duarte 8:00 to 11:00 AM and 2:00 - 6:00 PM"*.

(h) On 12 March 2021, the IBA informed the FDB that the Athlete had to submit his whereabouts information through ADAMS.

(i) On 15 March 2021, both the Athlete and the FDB sent emails to the IBA with some further whereabouts information.

(j) On 31 March 2021, the IBA sent (by email) to the Athlete what was headed "Last Reminder" for Q2. The email began by saying *"It appears that you have **NOT** yet submitted your whereabouts in ADAMS for the upcoming quarter 2 – 2021 (April – May – June). **PLEASE NOTE THAT THE DEADLINE TO SUBMIT WHEREABOUTS WAS 15 MARCH 2021. We urge you to provide the information without any further delay**"*. The email then set forth the required elements for whereabouts information.

(k) On 14 April 2021, the ITA sent (by email) to the Athlete a *"Notification of Apparent Filing Failure"* in respect of the failure to provide complete whereabouts information by the deadline for Q2. In this email, the Athlete was informed that *"if recorded, this will be your Third Whereabouts Failure in the last 12 months"*. Once again, the Athlete was asked to accept the failure or, if he considered that there was no failure, to provide an explanation.

(l) By email dated 16 April 2021, the FDB replied with certain whereabouts information for certain dates.

(m) On 21 April 2021, the FDB wrote to the ITA taking the position that the information that had been provided to date was sufficient to discharge the Athlete's whereabouts obligations and that there had been no filing failure.

(n) The ITA followed on 23 June 2021 with a *"Notification of Recorded Filing Failure"* in respect of the filing failure for Q2 2021.

213. Against that factual account, has WADA sustained its burden of proof of the four essential requirements with respect to the Third Filing Failure?

1. Requirement One

214. Was the Athlete duly notified?

215. Once again, for all of the reasons set forth above in relation to the First Filing Failure, this requirement has also been met in relation to the Third Filing Failure.

2. Requirement Two

216. Did the Athlete fail to comply with the requirement to make whereabouts filings by the applicable deadline?

217. It is clear that, as submitted by WADA and unchallenged by the Athlete, the Athlete failed to provide his whereabouts information by the deadline. True it is that the FDB and the Athlete provided certain information before the deadline but: (a) that information was not complete in that neither the FDB nor the Athlete provided all of the information called for by Article 4.8.8.2 of ISTI 2021, the most obvious example being that the Athlete failed to include, as he was required to do, for each day during the quarter one specific 60-minute time slot between 5:00am and 11:00pm each day where the Athlete was available and accessible for testing (as per Article 4.8.8.3 of ISTI 2021): and (b) the information so provided by or on behalf of the Athlete was not complete until late April 2021, well beyond the deadline.

218. In this respect, WADA complained that the Athlete had not met his whereabouts obligations because he did not log the information directly into ADAMS. It is certainly the case that the IBA asked, by the RTP Letter and subsequently, for the information to be entered directly into ADAMS. It is not clear, however, whether there is any positive obligation under the IBA ADR (or the ISTI 2020 or ISTI 2021 or ISRM 2021) upon an athlete to do so. In any event, there is no need to decide the point in this case given that there was a clear failure on the part of the Athlete to provide, by any means, all of the information that he was required to provide by the deadline.

3. Requirement Three

219. Was the Athlete notified of the First Filing Failure and its consequences? (For the Third Filing Failure, this obligation was slightly different than that for the earlier failures. As has been noted above, Article B.2.1(c) of ISRM 2021 imposed an obligation on the IBA to give notice to the Athlete, in accordance with Article B.3.2(d) of ISRM 2021. Nothing turns on the difference.)

220. WADA and the IBA say the Athlete was given *"Notification of Apparent Filing Failure"* (as set forth in paragraph [20] above) on 6 October 2020, well prior to the events relating to the Second Filing Failure of 2 December 2020 so that this requirement is satisfied. The Athlete says that no such notice was given for the same reasons as proffered in respect of the First Filing Failure; i.e., that notification was required to be in the Athlete's language and that it did not fulfil the IBA's notice obligation to send the notification in English.

221. For the same reasons as set forth above when this argument was deployed in respect of the First Filing Failure, the Panel disagrees. When one takes heed of the comment to Article B.2.1(c) of ISRM 2021 to the effect that all that was required was to give notice to the Athlete of his earlier failure *"and an opportunity to avoid a subsequent one"* before a further filing failure may be pursued against him, it is clear to the Panel that the notification given to the Athlete in relation to his prior filing failures was adequate and sufficient notification for the purposes of Article B.2.1(c) of ISRM 2021. There was, for all of the reasons already expressed, no obligation on the IBA to give that notice in the Athlete's language.

4. Requirement Four

222. Was the Athlete's failure to meet his filing requirements at least negligent?

223. The Athlete relied on the same matters as above in respect of the question of his negligence. Once again, however, by dint of effective notification of the whereabouts requirements, it follows that it is to be presumed that the Athlete was negligent, and it was for him to rebut that presumption by evidence.

224. In the Panel's view, the Athlete has not done so. By this stage, the Athlete had incurred two filing failures and thus was on notice that a third inside 12 months would render him liable to commit an ADRV. One would expect therefore the Athlete to have been extra careful to comply with his whereabouts requirements for Q1 2021. Instead, somewhat curiously, and putting to one side the fact that he did not enter the information into ADAMS but sent it via various emails, he was unable to provide his complete information by the stated deadline of 15 March 2021. Nothing offered by the Athlete in his witness statement (see [140] above) provides any measure of explanation as to why the deadline was missed.

225. Accordingly, the Panel is comfortably satisfied that WADA has discharged its burden of proving each of the essential elements of the Third Failing Failure.

d. Conclusion on Liability

226. It follows therefore that the Panel is comfortably satisfied that WADA has discharged its burden of proving each of the essential elements of the Three Failing Failures, all within a 12-month period, and that the Athlete did violate Article 2.4 of the applicable IBA ADR.

B. Sanctions

227. In light of its determination on liability, it is necessary for the Panel to consider sanctions.

228. The starting position is that, pursuant to IBA ADR Article 10.3.2, the applicable period of ineligibility is two years, subject to a reduction down to one year, depending on the Athlete's degree of fault.

229. Article 10.3.2 of the IBA ADR provides as follows:

> *"For violations of Article 2.4, the period of Ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the Athlete's degree of Fault. The flexibility between two years and one year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing".*

230. In this appeal there is no suggestion that there is such suspicious conduct on the part of the Athlete. It follows that the applicable period of ineligibility is two years, subject to a reduction down to one year, depending on the Athlete's degree of fault.

231. It is accepted that an athlete's degree of fault in an Article 2.4 ADRV case is to be assessed by reference to all three of the whereabouts failures, as per CAS 2020/A/7526 & 7559: *"Moreover, given that the ADRV is composed of the three different Whereabouts Failures that form part of the First Charge, the Panel will have to assess the Athlete's degree of Fault taking into account the circumstances pertaining to all of them"*. The Panel's task therefore is to assess the Athlete's conduct across all three Filing Failures.

232. By way of general principles, in CAS 2013/A/3327 & 3335, the CAS panel calibrated "Significant Fault" according to three levels as "significant" (16-24 months, with a midpoint of 20 months), "normal" (8-16 months, with a midpoint of 12 months) and "light" 0-8 months, with a midpoint of 4 months). These cases did not, however, concern whereabouts failures and the period of ineligibility was 0-24 months as opposed to the 12-24 months applicable to this appeal. As was noted in CAS 2021/A/7528 where these guidelines were adopted and adapted to whereabouts failures, CAS 2013/A/3327 & 3335 provides *"a helpful guide, though the calibration would necessarily be different here in light of the different possible period of ineligibility of 12-24 months; thus (albeit using slightly different labels) the following levels of fault would correspond to whereabouts cases: "high" (20-24 months, with a midpoint of 22 months), "medium" (16-20 months, with a midpoint of 18 months), and "low" 12-16 months, with a midpoint of 14 months)"*.

233. The IBA ADR (by Appendix 1) defines fault as follows:

"Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2".

234. The most important factors for the Panel in this context are as follows:

(a) The Athlete was not, as WADA has characterised him, an experienced, international athlete. He was, instead, relatively inexperienced, and certainly uneducated in the policy and methodology of the whereabouts requirements and in the operation of ADAMS.

(b) In relation to the First Filing Failure, the Athlete failed to enter his complete whereabouts information into ADAMS on a timely basis. The Athlete's explanation for doing so was that he was unfamiliar with the process by which information was entered. The Panel is prepared, in this context and for this failure, to give the Athlete the benefit of the doubt and to rate his degree of fault in respect of this failure as at the lighter end of the scale.

(c) In relation to the Second Filing Failure, the Athlete was not where he said he would be for a considerable period of time and yet, without any obvious reason and none put before the Panel, he failed to update his whereabouts information. His COVID may well have prevented him from travelling but it should not have prevented him from updating his whereabouts information, so the IBA knew where he was during that period. The Panel would rate that degree of fault as serious.

(d) In relation to the Third Filing Failure, the Athlete should have been on alert following his previous failures, but he appears to have taken a somewhat casual approach to the provision of his information, bypassing ADAMS and sending instead piecemeal information by piecemeal emails. It is difficult to understand why any athlete would behave in such a way when facing 'three strikes and you are out'. The Panel would rate that degree of fault as serious.

235. In view of the above, in the Panel's view the appropriate bracket for the Athlete's fault remains 'high' so that his period of ineligibility should fall in the range 20-24 months. The Panel takes the view that, upon taking into account the specific and relevant factors which go to explain the Athlete's departure from the standard of behaviour expected of him, the appropriate prepared is at the low end of that range, namely 20 months.

236. The Panel, therefore, imposes a period of ineligibility of 20 months. The period of ineligibility is to run from the date of this Award. Any period of provisional suspension already served by the Athlete shall be credited against the total period of ineligibility to be served.

237. As for disqualification, Article 10.10 of the IBA ADR provides:

"10.10 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes".

238. The Panel notes that WADA seeks disqualification of the Athlete's results between the date of the Third Filing Failure on 1 April 2021 and the imposition of the provisional suspension on 11 July 2021, but not disqualification of the results obtained by him after the IBA Decision was issued and the provisional suspension was lifted on 14 July 2021. The IBA did not cavil with that sanction and nor does the Panel.

C. Conclusion

239. In view of all the above considerations, the Panel holds and determines that the appeal brought by WADA should be upheld. In particular, the Panel is comfortably satisfied that the Athlete violated Article 2.4 of the IBA ADR.

240. The Athlete is sanctioned with a period of ineligibility of twenty (20) months from the date of this Award. Any period of provisional suspension already served by the Athlete shall be credited against the total period of ineligibility to be served.

241. All of the Athlete's competitive results from 1 April 2021 through to and including 11 July 2021 shall be disqualified, with all of the resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 December 2021 by the World Anti-Doping Agency against International Boxing Agency Association and Mr Rohan Polanco Emiliano with respect to the decision rendered by the International Boxing Agency Association on 19 November 2021 is upheld.

2. The decision of the International Boxing Association (comprised of an operative decision dated 14 July 2021 and a reasoned decision dated 19 November 2021), through its mandated agent the International Testing Agency, is set aside.

3. Mr Rohan Polanco Emiliano is found to have committed an anti-doping rule violation pursuant to Article 2.4 of the IBA ADR 2020 and/or the IBA ADR 2021.

4. Mr Rohan Polanco Emiliano is sanctioned with a period of ineligibility of twenty (20) months from the date of this Award. Any period of provisional suspension effectively served before the entry into force of this Award shall be credited against the total period of ineligibility to be served.

5. All competitive results obtained by Mr Rohan Polanco Emiliano from and including 1 April 2021 until 11 July 2021 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

(…)

9. All other or further requests for relief are hereby dismissed.