Arbitration CAS 2022/A/8886 World Anti-Doping Agency (WADA) v. Portuguese Anti-Doping Authority (ADoP) & Daniel Eduardo Moreira Silva, award of 5 July 2023

Panel: Mr Romano Subiotto KC (United Kingdom), Sole Arbitrator

Cycling
Doping (ABP's abnormalities)
Admissibility of WADA's appeal
Standing to be sued
Establishment of the violation
Burden of proof
Ineligibility period for a second violation

1. **Pursuant to Article 13.1.3 in conjunction with Article 13.2.3 of the 2021 World Anti-Doping Code (WADC), WADA has a right of appeal directly to CAS against a decision taken by a national anti-doping authority if no other party has appealed the final decision within the national anti-doping authority's process.**

2. **A party has standing to be sued (*"legitimation passive"*) if it has some stake in the dispute because it is personally obliged by the disputed right at stake or something is sought against it. The Portuguese Anti-Doping Law (ADoP ADR) and the WADC do not limit which parties may be named as respondents in an appeal (they only specify which parties may appeal). In this respect, a respondent is affected by an appealed decision that did not granted the latter's request for relief and, consequently, said respondent that would be affected again in case the appealed decision were to be confirmed has therefore standing to be sued.**

3. **Article 3(2)c of the 2015 ADoP ADR provides that it is a breach of anti-doping rules by sportsmen to use a prohibited substance or method, demonstrated by conclusions resulting from longitudinal profiles, including data collected under the biological passport of the sports practitioner. Where the sequences in the athlete's biological passport (ABP) is found to be abnormal at >99.9% by an expert panel, it means that it is highly likely that the athlete doped.**

4. **It is the very nature of an ABP case that the exact time, location and context of the use of doping products or methods will not be known. Such a requirement would make the ABP system, which is a fundamental pillar of the fight against doping, completely impractical and useless. Moreover, blood manipulation is an intentional form of doping. It is both repeated and sophisticated and simply cannot occur by negligence. In any event, blood doping involves the use of either non-specified Prohibited Substances, such as rEPO, or Prohibited Methods (such as blood transfusions). As a**

result, the athlete bears the burden, in accordance with Article 61(2) of the 2015 ADoP ADR, to establish that the anti-doping rule violation was not intentional.

5. If an athlete's violation treated as a first violation would have triggered a four-year period of ineligibility, the sanction to be imposed for the athlete's second violation according to Article 65(1) of the 2015 ADoP ADR, should therefore be eight years (i.e. twice four years).

I PARTIES

1 The World Anti-Doping Agency ("WADA" or the "Appellant") is an independent international anti-doping agency, constituted as a private law foundation under Swiss Law. WADA has its registered seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada. WADA's aim is to promote and coordinate the fight against doping in sport internationally.

2 The Portuguese Anti-Doping Authority ("ADoP" or the "First Respondent") is the National Anti-Doping Organization of Portugal and a Signatory of the World Anti-Doping Code ("the WADC").

3 Mr Daniel Eduardo Moreira Silva (the "Athlete" or the "Second Respondent") is a 36-year-old national-level cyclist from Portugal at the start of the proceedings.

4 The Appellant, the First and Second Respondent are jointly referred to as the "Parties".

II FACTUAL BACKGROUND

5 In May 2016, the Athlete tested positive for an anabolic steroid (oxandrolone) and was sanctioned with a two-year ineligibility period starting from 28 May 2016.

6 This appeal relates to the second anti-doping violation committed by the Athlete and arises in connection with abnormalities in his Athlete Biological Passport ("ABP"). From 11 August 2010 until 11 August 2018, the Athlete provided ten ABP blood samples, nine of which were valid and used in the evaluation process.

7 The Athlete's ABP was submitted to a panel of experts (the "Expert Panel") for review on an anonymous basis, which adopted an opinion on 26 May 2020 noting that the sequences in the Athlete's ABP were abnormal (at >99.9%), and concluding that *"it [was] highly likely that a prohibited substance or prohibited method [had] been used and that it [was] unlikely that the passport [was] the result of any other cause"*.

8 The Expert Panel evaluated the Athlete's explanations, several expert reports and additional information with respect to abnormalities in his ABP. On 10 March 2021, the Expert Panel

confirmed its assessment that *"the profile [was] highly likely the result of blood doping"* and that it was *"unlikely that the profile [was] the result of a medical condition, altitude exposure or any other confounding factor"*.

9 Following the opinion of the Panel of experts, ADoP charged the Athlete (the "Charge") on 29 March 2021.

10 On 10 January 2022, the Anti-Doping Disciplinary College of ADoP (the "ADDC") found that the Charge was null and void due to the lack of indication whether the violation was intentional or committed negligently, and acquitted the Athlete (the "Appealed Decision").

11 The ADDC also considered that the Charge had *"no mention of the subjective element and that, in criminal and/or administrative offence proceedings, the absence of such a reference renders the indictment null and void"*.

12 The ADDC added that *"the conditions were not in place for the [Athlete] to fully exercise his fundamental right of defence"*, which is provided for by the Portuguese Code of Criminal Procedure (CRP) and the General Regime of Administrative Offenses (RGCO), because the Charge did not mention whether the anti-doping rule violation ("ADRV") was intentional.

13 The ADDC stated further that the *"simple reference to the opinion of the panel of experts does not satisfy the legal requirements, given that the Statement of Charge does not contextualize, locate and precisely identify the unlawful acts committed; it is not articulated, with a factual and chronological development, and, furthermore, it does not describe the facts well individualized, i.e., it does not satisfy the guarantees of defence emerging from article 32 of the [Code of Criminal Procedure]"*.

III PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14 On 13 May 2022, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), in accordance with the CAS Code of Sports-related Arbitration (the "CAS Code"), against the First and Second Respondents. In addition, the Appellant requested to submit the present case to a Sole Arbitrator.

15 On 13 June 2022, the Appellant filed its Appeal Brief with the CAS.

16 On 4 July 2022, the First Respondent filed its Answer.

17 The Second Respondent did not file any Answer within the prescribed deadline.

18 On 8 August 2022, the CAS Court Office informed the Parties that the Panel appointed to decide on the present matter is constituted as follows:

Sole Arbitrator: Mr Romano Subiotto, K.C., Avocat in Brussels, Belgium, and Solicitor-Advocate in London, United Kingdom.

19 On 13 September 2022, the CAS Court Office informed the Parties, on behalf of the Sole Arbitrator, who had considered WADA's and the First Respondent's respective positions, and in view of the Athlete's silence, that the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing.

20 On 3 October 2022, the Court Office, on behalf of the Sole Arbitrator, issued an order of procedure (the "Order of Procedure") in the present proceeding, reflecting, amongst other, that the Sole Arbitrator could adopt an Award based on the Parties' written submissions.

21 On 4 October 2022, the First Respondent returned a signed copy of the Order of Procedure.

22 On 10 October 2022, the Appellant returned a signed copy of the Order of Procedure.

23 On 11 October, the CAS Court Office noted that the Second Respondent had not returned a signed Order of Procedure within the prescribed time limit.

IV SUBMISSIONS OF THE PARTIES

A The Appellant's Position

24 WADA argues, first, that the well-established case law of the CAS confirms that sanctions for anti-doping rule violations are disciplinary sanctions imposed by sports associations and are, as such, subject to civil law and must be clearly distinguished from criminal penalties, as confirmed also by the Swiss Federal Tribunal. Therefore, the reliance by the ADDC in the Appealed Decision on the Portuguese criminal and administrative procedures, which are clearly not applicable to anti-doping proceedings, was wholly misguided.

25 Second, WADA adds that the Athlete's right of defence in the proceedings before the ADDC were manifestly safeguarded:

- The Athlete was represented by a lawyer from the beginning of the process, upon receipt of the 19 June 2020 letter informing him of the Adverse Passport Finding (the "APF").

- The Athlete submitted a significant number of reports and explanations in response to the First Joint Expert Opinion to seek to explain abnormalities in his ABP Blood Profile.

- The Athlete filed detailed written submissions to the ADDC after receipt of the notification of the APF and the Charge. He named a number of witnesses, who were afforded the possibility to testify before the ADDC.

26 WADA therefore submits that the Athlete was evidently aware of the accusations levelled against him and of his right to defend himself, and that the ADDC's contention that the

Athlete's right of defence was limited because the Charge did not mention whether the violation was intentional must be rejected.

27 As to the fact that the charge should have precisely identified the "unlawful acts", WADA points out that it is the very nature of an ABP case that the exact time, location and context of the use of doping products or methods will not be known. Such a requirement would make the ABP system, which is a fundamental pillar of the fight against doping, completely impractical and useless. An anti-doping organisation is never in a position, and cannot be required, to set out in the Charge precisely how the violation was committed, even in a normal 'presence' case. WADA points to the CAS case law in support, including case CAS 2016/O/4481.

28 Third, WADA affirms that the Athlete's degree of fault or intent is plainly irrelevant to the establishment of an anti-doping rule violation of Use. Article 2.2.1 of the 2015 WADA Code ("2015 WADC"), which corresponds to Article 3(2)(c) of the 2015 ADoP ADR, expressly provides that *"it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method"*. Moreover, Article 3(2)(c) of the 2015 ADoP ADR sets out that an ADRV can be established based specifically on conclusions resulting from longitudinal profiles, including the athlete's ABP, and other analytical information, with no reference to the athlete's degree of fault or intent. The question of whether the ADRV was committed intentionally or by negligence is only relevant to the assessment of the resulting consequences.

29 Fourth, WADA points to Article 61(2) of the 2015 ADoP ADR, which specifies that in *"the case of violation of anti-doping rules provided in paragraphs a) to c), h) and i) of paragraph 2 of article 3 [i.e. including Article 3(2)(c)], relating to prohibited non-specific substances, it shall be presumed that it was committed with intent, unless the sportsperson demonstrates that it was done with negligence, without prejudice to the possibility of eliminating or reducing the suspension period"*. Therefore, even the applicable rules make clear that the violation was presumed intentional, which makes the ADDC's conclusion regarding the alleged lack of indication as to whether the violation was intentional or committed negligently even less understandable.

30 Notwithstanding the above, WADA notes that, per Article 13.1.1 of the 2015 WADC, the scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker. The same article in the 2021 WADC further clarifies that any party to the appeal may even submit new evidence, legal arguments and claims that were not raised in the first instance hearing. Therefore, the Panel's scope of appeal in the present matter is not limited to the question of validity of the Charge, and the Panel shall decide on the merits of the Athlete's case, which makes the question of the validity of the Appealed Decision somehow redundant.

31 WADA requests the CAS to rule as follows:

- The appeal of WADA is admissible.

- The decision dated 10 January 2022 rendered by the Anti-Doping Disciplinary College of ADoP in the matter of Daniel Eduardo Moreira Silva is set aside.

- Daniel Eduardo Moreira Silva is found to have committed an anti-doping rule violation under Article 3(2)(c) of the 2015 ADoP ADR.

- Daniel Eduardo Moreira Silva is sanctioned with an eight-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility effectively served by Daniel Eduardo Moreira Silva before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

- All competitive results obtained by Daniel Eduardo Moreira Silva from and including 28 May 2018 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

- The arbitration costs shall be borne by ADoP or, in the alternative, by the Respondents jointly and severally.

- WADA is granted a significant contribution to its legal and other costs.

B The First Respondent's Position

32 ADoP argues, first, that it should not be a Respondent in this case, on the grounds that it has no decision-making authority in connection with anti-doping rule violations and did not adopt the Appealed Decision, and that it is entirely independent from the ADDC, so that the Appealed Decision cannot therefore be attributed to AdoP.

33 ADoP fully agrees that Mr Daniel Eduardo Moreira Silva should have been sanctioned, and confirmed this in the final report that it issued in accordance with Article 58-A n. 8 of Law 111 /2019, 10 September, which altered Law 38/2012, 28 August.

34 ADoP requests the CAS to rule as follows:

- The decision to acquit the athlete for formal reasons was not rendered by ADoP;

- ADoP cannot render decisions in anti-doping rule violations;

- ADC is fully independent from ADoP, and it has to be, according to the rules set out in the Code;

- ADoP, in the final report that issued stated that the athlete should be sanctioned;

- Arbitration costs should not be borne by ADoP.

C The Second Respondent's Position

35 The Second Respondent did not file an Answer to the Appeal.

V JURISDICTION

36 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 Appellant 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".*

37 WADA relies on Article 76(4) of the 2021 Portuguese Anti-Doping Authority's Anti-Doping Rules, and on Article 13.1.3 in conjunction with Article13.2.3 of the 2021 WADC, as conferring jurisdiction on the CAS.

38 The Sole Arbitrator therefore finds that CAS holds jurisdiction to decide on the present matter. Moreover, the Sole Arbitrator notes that the jurisdiction of the CAS is not contested by the Second Respondent, and is confirmed by the Appellant's and First Respondent's signature of the Order of Procedure.

39 Pursuant to Article 57 of the CAS Code, the Sole Arbitrator has full power to review the facts of this case and the relevant law and the manner in which it has been applied.

VI ADMISSIBILITY

40 Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

41 Pursuant to Article 13.1.3 in conjunction with Article 13.2.3 of the 2021 WADC, WADA has a right of appeal against the Appealed Decision directly to CAS if no other party has appealed the final decision within ADoP's process.

42 Article 13.2.3.5 of the 2021 WADC states that *"[t]he filing deadline for an appeal filed by WADA shall be the later of: (a) twenty-one days after the last day on which any other party having a right to appeal could have appealed, or (b) twenty-one days after WADA's receipt of the complete file relating to the decision"*.

43 On 6 April 2022, the Appealed Decision with a summary in English was communicated to WADA. Following a case file request on 21 April 2022 in respect of the Appealed Decision, WADA received elements of the case file from ADoP on 23 April 2022.

44 WADA filed its Statement of Appeal on 13 May 2022 and its Appeal on 13 June 2022. As a result, WADA's Appeal is admissible.

VII APPLICABLE LAW

45 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

46 The Anti-Doping Disciplinary College of ADoP ("ADDC") rendered the Appealed Decision in application of the Portuguese Anti-Doping Law (Law No. 38/2012, of 28 August, with amendments) ("2015 ADoP ADR").

47 On 30 November 2021, *i.e.*, before the Appealed Decision was rendered, a new Anti-Doping Law was adopted in Portugal ("2021 ADoP ADR"). It came into force 15 days after its publication and replaced the 2015 ADoP ADR.

48 According to Article 76(4) of the 2021 ADoP ADR, *"[i]n the absence of a challenge to the TAD, the WADA may directly challenge the decisions referred to in paragraph 1 to CAS, in accordance with the Terms of the World Anti-Doping Code"*.

49 The Sole Arbitrator finds that this Appeal relates to the abnormalities in the Athlete's ABP based on the samples provided in the period from July 2016 until August 2018, *i.e.* when the 2015 ADoP ADR was in force. As a result, the 2015 ADoP ADR in force at the time of the abnormalities in the Athlete's ABP apply to the substance of this matter. The 2021 ADoP ADR and the 2021 WADA Code ("2021 WADC") in force at the time the Appealed Decision apply to the procedural aspects of this matter.

50 Furthermore, the ABP Guidelines are also applicable because this Appeal relates to an anti-doping rule violation in connection with abnormalities in the ABP.

VIII MERITS

A ADoP as First Respondent

51 ADoP argues that it should not be a Respondent in this case because it cannot take decisions, including the Appeal Decision, in connection with anti-doping rule violations, and that the ADDC, which is entirely independent, has the full authority to adopt such decisions, including the Appealed Decision.

52 The Sole Arbitrator recalls the consistent case law of the CAS that a party has standing to be sued (*"legitimation passive"*) if it has some stake in the dispute because it is personally obliged by the disputed right at stake or something is sought against it (*ex. multis*: CAS 2018/A/5888, para. 183; CAS 2006/A/1206, paras. 4-5). The Sole Arbitrator finds that the First Respondent has a stake in the present Appeal, in line with the CAS jurisprudence. This reflects the following considerations in particular:

- The ADoP ADR and the WADC do not limit which Parties may be named as respondents in an appeal (they only specify which Parties may appeal and not against whom the appeal must be directed).

- The First Respondent has the results management responsibility in Portugal and therefore bears the responsibility for the Appealed Decision, even if it was issued by an independent Tribunal.

- The First Respondent submitted the case against the Athlete to the ADDC for prosecution and participated as a party in the proceedings before it.

- The First Respondent is affected by the Appealed Decision as the ADDC did not grant the First Respondent's request for relief and, consequently, would be affected again in case the Appealed Decision were to be confirmed.

- The First Respondent is also affected by the Appeal because the Appellant seeks full compliance with the ADoP ADR, the rules which the First Respondent, as the institution responsible for anti-doping enforcement in Portugal, is responsible to protect and enforce. The fact that the First Respondent does not dispute the Appellant's position on the merits is irrelevant to the issue of whether the First Respondent is affected by the Appeal.

53 The Sole Arbitrator concludes that the ADoP was correctly cited as a Respondent in this case.

B Anti-doping Violation

54 Article 3(2)c of the 2015 ADoP ADR provides that it is a breach of anti-doping rules by sportsmen or their support staff, as appropriate […] the use or attempt to use a prohibited substance or a method prohibited by a sports practitioner, demonstrated by [….] by

conclusions resulting from longitudinal profiles, including data collected under the biological passport of the sports practitioner.

55 Article 61(2) of the 2015 ADoP ADR provides that, in the case of violation of anti-doping rules provided in paragraphs a) to c), h) and i) of paragraph 2 of article 3, relating to prohibited non-specific substances, it shall be presumed that it was committed with intent, unless the sportsperson demonstrates that it was done with negligence, without prejudice to the possibility of eliminating or reducing the suspension period under the terms of the provisions of article 67 2015 ADoP ADR.

56 Article 67(2) of the 2015 ADoP ADR provides that the sportsman or other person may eliminate his suspension period, if proved that he or she was not at fault or negligent with respect to an anti-doping rule violation.

57 The Sole Arbitrator recalls that the Athlete's ABP was submitted to the Expert Panel for review, on an anonymous basis, which was of the view that the sequences in the Athlete's ABP were abnormal at >99.9%, meaning that it is highly likely that the Athlete doped. The Expert Panel evaluated the Athlete's explanations, several expert reports and additional information with respect to these abnormalities in his ABP, and confirmed its assessment.

58 The Sole Arbitrator can also but agree with WADA's submission that it is the very nature of an ABP case that the exact time, location and context of the use of doping products or methods will not be known. Such a requirement would make the ABP system, which is a fundamental pillar of the fight against doping, completely impractical and useless. An anti-doping organisation is never in a position, and cannot be required, to set out precisely how the violation was committed, even in a normal 'presence' case.

59 Furthermore, WADA submits, without being contested, that blood manipulation is an intentional form of doping. It is both repeated and sophisticated and simply cannot occur by negligence. In any event, blood doping would involve the use of either non-specified Prohibited Substances, such as rEPO, or Prohibited Methods (such as blood transfusions). As a result, the Athlete would bear the burden, in accordance with Article 61(2) of the 2015 ADoP ADR, to establish that the anti-doping rule violation was not intentional, which he has clearly not done.

60 The Sole Arbitrator agrees with this analysis and finds it established that an intentional doping violation in the form of an irregular ABP has occurred.

C Sanctions

i. Ineligibility

61 It is recalled that, in May 2016, the Athlete tested positive for an anabolic steroid (oxandrolone) and was sanctioned with a two-year ineligibility period starting from 28 May 2016, and that the doping violation in this case concerns a finding by the Expert Panel that nine samples provided between 11 August 2010 and 11 August 2018 and used in the

evaluation process showed abnormalities in the Athlete's ABP because *"it [was] highly likely that a prohibited substance or prohibited method [had] been used and that it [was] unlikely that the passport [was] the result of any other cause"*.

62 The Athlete committed a first violation on 28 May 2016, involving the presence of oxandrolone, and was notified of this violation on 20 January 2017. ABP abnormalities are established beyond that date, namely in 2018. WADA argues that the doping violation at issue in these proceedings must therefore be considered as a second violation. The Sole Arbitrator agrees.

63 Article 65(4) of the 2015 ADoP ADR provides that multiple violations are considered to be those that occur within a time interval of 10 years from the date on which the first violation occurred.

64 Article 65(1) of the 2015 ADoP ADR provides that an athlete's second anti-doping rule violation will result in a period of ineligibility that shall be greater of six months, one-half of the period of ineligibility for the first ADRV or twice the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.

65 Articles 61 and 62 of the 2015 ADoP ADR provide that a violation of Article 3(2)(c) result in a period of ineligibility of four years where an anti-doping rule violation does not involve a Specified Substance, unless the Athlete can establish that the anti-doping rule violation was not intentional.

66 WADA submits that the Athlete's violation (if it were treated as a first violation) would have triggered a four-year period of Ineligibility. WADA submits that the sanction to be imposed for the Athlete's second violation should therefore be eight years (i.e. twice four years). The Sole Arbitrator agrees.

67 Article 69(1) of the 2015 ADoP ADR provides that the period of ineligibility should commence on the date of notification of the disciplinary decision from the first instance. However, Article 1 of the 2015 ADoP ADR provides that it adopts in the Portuguese internal order the rules established in the WADC. Yet, Article 10.11 of the 2015 WADC, which Article 69(1) of the 2015 ADoP ADR purports to implement, provides that the period of ineligibility commences on the date of the final hearing decision providing for ineligibility, i.e., the (final) CAS Award. Furthermore, Article 20.5.2 of the 2015 WADC provides that national anti-doping authorities undertake to adopt and implement anti-doping rules and policies which conform with the WADC. The First Respondent is a signatory of the WADC. As a result, the Sole Arbitrator finds that the period of ineligibility should commence on the date of this award.

68 Article 69(2) of the 2015 ADoP ADR provides that any previously served ineligibility period should be credited against the ineligibility period finally determined.

ii. Disqualification

69 Article 76 of the 2015 ADoP ADR32 provides that *"[i]n addition to the provisions of Article 74 [i.e. automatic Disqualification of the results in the Competition which produced the positive Sample], all other sports results achieved as of the date on which the positive sample was from the date on which the positive sample was collected, whether in competition or out of competition, or in which other anti-doping rule violations have occurred, shall be nullified with all the consequences resulting therefrom, until the commencement of the preventive suspension or the suspension, unless other treatment is required for reasons of fairness".*

70 WADA submits that, in other words, the 2015 ADoP ADR provides for the automatic disqualification of all results from the date of the anti-doping rule violation through the commencement of any period of provisional suspension. WADA submits that all results from 2 August 2016 must be disqualified as a matter of principle, because the first evidence of doping relates to the Athlete's sample 3 of 2 August 2016.

71 However, WADA notes that, as a result of the Athlete's first ADRV, his competitive results have been already disqualified from 28 May 2016 until 2 February 2017 (i.e. the date when he was provisionally suspended) and he was then ineligible until 27 May 2018. Given this background, WADA would therefore limit its request for disqualification of results from 28 May 2018 onwards. The Sole Arbitrator agrees with this computation.

72 WADA argues that the nature and severity of the violations and the clarity of the abnormalities mean that this is not a case that leaves any room for the application of the "fairness" exception under Article 76 of the 2015 ADoP ADR. The Sole Arbitrator agrees.

73 The Sole Arbitrator agrees and hereby finds that the Athlete committed an anti-doping rule violation under Article 3(2)(c) of the 2015 ADoP ADR, and determines that he is sanctioned with an eight-year period of ineligibility starting on the date of this Award. Any period of ineligibility effectively served by the Athlete before the entry into force of the CAS Award shall be credited against the total period of ineligibility to be served. All competitive results obtained by Daniel Eduardo Moreira Silva from and including 28 May 2018 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by WADA on 13 May 2022 against the decision of 10 January 2022 of the Anti-Doping Disciplinary College of the Portuguese Anti-Doping Authority is admissible.

2. The decision of 10 January 2022 of the Anti-doping Disciplinary College of the Portuguese Anti-Doping Authority is set aside.

3. Mr Daniel Eduardo Moreira Silva is sanctioned with an eight-year period of ineligibility starting on the date on which this Award enters into force. Any period of ineligibility effectively served by Daniel Eduardo Moreira Silva before the entry into force of the CAS Award shall be credited against the total period of ineligibility to be served.

4. All competitive results obtained by Daniel Eduardo Moreira Silva from and including 28 May 2018 up to the expiry of the period of ineligibility shall be invalidated, with all resulting consequences, including forfeiture of medals, points and prizes.

5. (…).

6. (…).