CAS 2024/A/10892 USADA v. Aaron Keith

CONSENT AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr. Massimo Coccia, Law Professor and Attorney-at-law, Rome, Italy
Arbitrators:	Mr. Jeffrey Mishkin, Attorney-at-law, New York City, NY, United States of America
	Mr. Jeffrey G. Benz, Barrister, London, United Kingdom
Ad hoc Clerk:	Ms. Giulia Vigna, Attorney-at-law, Rome, Italy

in the arbitration between

USADA, United States of America
Represented by Messrs. Jeff T. Cook, USADA General Counsel, and Spencer Crowell, USADA Olympic & Paralympic Counsel, Colorado Spring, CO, United States of America

Appellant

and

Aaron Keith, United States of America
Represented by Mr. Howard L. Jacobs, Attorney-at-Law, Westlake Village, CA, United States of America

Respondent

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I. PARTIES

1. The Appellant, the United States Anti-Doping Agency ("USADA") is an independent anti-doping agency headquartered in Colorado Springs, Colorado, and recognized by the World Anti-Doping Agency as the national anti-doping organization for the United States of America.

2. The Respondent, Mr. Aaron Keith (the "Athlete") is a 53-year-old paralympic athlete in the sport of para cycling who maintained an active USA Cycling membership between 31 December 2019 and 31 December 2024.

3. The Appellant and the Respondent will collectively be referred to as the "Parties".

II. FACTUAL BACKGROUND

4. On 17 January 2024, USADA selected the Athlete for out-of-competition testing and collected the urine sample n. 223516v. The Athlete's urine sample was sent to the WADA-accredited laboratory in Los Angeles, California ("17 January Sample").

5. On 9 February 2024, USADA notified the Athlete that the results of the analysis of the 17 January Sample "*do not indicate the presence of any Prohibited Substance and/or Method*" specifying that in any case said sample would be retained as USADA could "*retest or reanalyze any Sample in accordance with the applicable rules*".

6. On 29 February 2024, USADA selected the Athlete for out-of-competition testing and collected the urine sample n. 256184v ("29 February Sample").

7. On 19 April 2024, USADA notified the Athlete that the 29 February Sample had been reported as an Adverse Analytical Finding ("AAF") "*because the IRMS analysis reflected values consistent with the administration of an anabolic agent of exogenous origin*" and imposed a provisional suspension against him.

8. On 25 April 2024, the Athlete requested the analysis of the B sample of the 29 February Sample.

9. On 14 May 2024, USADA notified the Athlete that the analysis of the B Sample confirmed the presence of an anabolic agent of exogenous origin in his 29 February Sample.

10. On 21 May 2024, the Athlete sent to USADA a letter to explain the circumstances surrounding his positive test. He submitted that the latter was more likely than not "*the result of contamination of the NOW Sports Beta-Alanine supplement with androstenedione and testosterone that were not disclosed on the label*".

11. On 18 June 2024, USADA notified the Athlete that the 17 January Sample had been reported as an AAF, as IRMS analysis had confirmed that it was positive for an anabolic agent of exogenous origin. The Athlete then requested the analysis of the B sample.

12. On 9 July 2024, the Athlete confirmed to USADA via his attorney that he had qualified for the 2024 Paralympic Games and requested an expedited hearing.

13. On 10 July 2024:

- USADA notified the Athlete that the analysis of the B Sample confirmed the presence of an anabolic agent of exogenous origin in his 17 January Sample;

- USADA charged the Athlete with Anti-Doping Rule Violations ("ADRVs") for the Presence and Use of an anabolic agent under Articles 2.1 and 2.2 of the UCI Anti-Doping Rules and Articles 2.1 and 2.2 of the World Anti-Doping Code based on the AAFs deriving from his 17 January and 29 February Samples.

- USADA informed the dispute resolution center "New Era ADR" that the Athlete had requested a hearing before an arbitrator.

14. On 2 August 2024, an expedited hearing was held before Ms. Cameron Myler, arbitrator appointed by New Era ADR (the "Sole Arbitrator").

15. On 4 August 2024, the Sole Arbitrator issued the operative part of the award, imposing a four-month ineligibility period on the Athlete and finding as follows (the "Appealed Decision"):

> "*a. Dr. Keith has met his burden of demonstrating that the ADRV was not intentional, so the default starting sanction is two years;*
>
> *b. Using the framework set forth in CAS 2013/A/3327 Marin Cilic v. International Tennis Federation, the Arbitrator considered objective factors to determine whether Dr. Keith's level of fault is light (0-8 months), normal (8-16 months), or considerable (16-24 months) and subjective factors to determine where a sanction should fall within a given category of fault. The objective factors in this case support a finding that Dr. Keith's level of fault is light and therefore the period of ineligibility should fall in the range of zero to eight months. Based on the subjective factors, a period of ineligibility of four months is appropriate in this case;*
>
> *c. The date on which the period of ineligibility commenced shall be April 19, 2024, the date on which Dr. Keith accepted the provisional suspension in this matter; and*
>
> *d. Dr. Keith is disqualified from any results obtained on and after January 17, 2024, through the commencement of his provisional suspension on April 19, 2024.*"

16. The fully reasoned award was never delivered by the Sole Arbitrator.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 23 September 2024, in accordance with Articles R47 and R48 of the 2023 edition of the Code of Sport-related Arbitration (the "CAS Code"), the Appellant filed its Statement of Appeal against the Respondent with respect to the Appealed Decision.

18. On 24 October 2024, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief.

19. On 10 December 2024, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the matter would be constituted by Mr. Massimo Coccia, as President, and by the arbitrators Mr. Jeffrey Mishkin, nominated by the Appellant, and Mr. Jeffrey G. Benz, nominated by the Respondent.

20. On 13 December 2024, in accordance with Article R55 of the CAS Code, the Respondent filed his Answer.

21. On 17 December 2024, the CAS Court Office notified the Parties of the appointment of Ms. Giulia Vigna, attorney-at-law in Rome, Italy, as *ad hoc* clerk.

22. On 20 December 2024, the Panel held with the counsel for the Parties a case management conference by online video connection and agreed to schedule the hearing on 10 and 11 March 2025 in Los Angeles, California.

23. On 25 February 2025, the CAS Court Office provided the Parties with an Order of Procedure, which was signed and returned by both Parties on 28 February 2025.

24. On 10 March 2025, the hearing was held at the JAMS facilities in Los Angeles, California.

25. In addition to the Panel, the *ad hoc* clerk (attending online) and the CAS Counsel Mr. Giovanni Maria Fares, the following people attended the hearing:

    (i) <u>For the Appellant</u>:

    - Mr. Jeff T. Cook, USADA General Counsel;
    - Mr. Spencer Crowell, USADA Olympic and Paralympic Counsel;
    - Ms. Muriel Ossip, USADA Legal Assistant (attending online);

    (ii) <u>For the Respondent</u>:

    - Mr. Aaron Keith, Respondent;

- Mr. Howard Jacobs, Counsel for Respondent.
- Mr. Roland Wiley, Counsel for Respondent;
- Ms. Nastassia Tiangco, Counsel for Respondent.

26. During the first day of hearing, the Panel invited the Parties to discuss a possible settlement in accordance with Article R56 of the CAS Code. After a recess, the Parties announced that they had reached a settlement agreement, which was subsequently confirmed in writing as reported below.

IV. JURISDICTION

27. Article R47 of the CAS Code provides as follows in its relevant part:

> "*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*."

28. The Appellant submits that the jurisdiction of the CAS is based on Section 17(b) of the USADA Protocol for Olympic and Paralympic Movement Testing (the "USADA Protocol"), providing as follows:

> "*Subject to the filing deadline for an appeal filed by WADA as provided in Article 13.2.3.5 of the Code, the final award by the arbitrator(s) may be appealed to the CAS within twenty-one (21) days of issuance of the final reasoned award or when an award on eligibility without reasons is deemed final as set forth below. If the arbitrators issue an award on eligibility without reasons, such award shall be deemed final for purposes of appeal to CAS on the earlier of (a) issuance of the final reasoned award by the arbitration panel, or (b) thirty (30) days from issuance of the award without reasons.*"

29. The Respondent does not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

30. It follows that this CAS Panel has jurisdiction to render this award.

V. ADMISSIBILITY

31. 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".

32. Under Section 17(b) of the USADA Protocol (see *supra* at para. 28) "*the final award by the arbitrator(s) may be appealed to the CAS within twenty-one (21) days of issuance of the final reasoned award or when an award on eligibility without reasons is deemed final*".

33. Under the same article, in case an award is rendered without reasons, "*such award shall be deemed final for purposes of appeal to CAS on the earlier of (a) issuance of the final reasoned award by the arbitration panel, or (b) thirty (30) days from issuance of the award without reasons*".

34. In the present case, the operative part of the Appealed Decision was issued on 4 August 2024. As the reasoned award was never issued, the Appealed Decision became final on 3 September 2024.

35. The Appellant timely lodged its appeal on 23 September 2024, i.e. within the 21-day time limit provided by Section 17(b) of the USADA Protocol.

36. Moreover, the appeal complies with the requirements of Articles R47 and R48 of the CAS Code and no objections were raised by the Respondent.

37. It follows that the Appellant's appeal is admissible.

VI. THE PARTIES' AGREEMENT

38. On 11 March 2025, the Respondent signed a form labelled "*United States Anti-Doping Agency – Acceptance of Sanction*". The latter was submitted to the CAS by the Parties and its terms are embodied in full in this Consent Award (boldface parts as in the original):

"*I, Aaron Keith, accept the following sanction as a result of an anabolic agent of exogenous origin in my Sample #223516V, collected out-of-competition on January 17, 2024, and my Sample #256184V, collected out-of-competition on February 29, 2024. I acknowledge that I have violated the "Applicable Rules," including the U.S. Anti-Doping Agency ("USADA") Protocol for Olympic and Paralympic Movement Testing (the "Protocol"), the United States Olympic & Paralympic Committee ("USOPC") National Anti-Doping Policy ("USOPC NADP") and the International Cycling Union ("UCI") Anti-Doping Rules, all of which have adopted the World Anti-Doping Code (the "Code"), and I accept the following:*

- *A 14-month period of ineligibility as described in the UCI Anti-Doping Rules and Article 10.2 of the Code, beginning on the day I accept a sanction, with credit for the 4-month period of ineligibility I served from April 19, 2024 to August 19, 2024;*

- *Disqualification of any competitive results between January 17, 2024 and April 19, 2024 including forfeiture of any medals, points, and prizes, consistent with the UCI Anti-Doping Rules and the Code;*
- *A 14-month prohibition, beginning on the day I accept a sanction, with credit for the 4-month period of prohibition I served from April 19, 2024 to August 19, 2024, against participation in any capacity in a competition or activity authorized or organized by any Code Signatory, including any benefits I receive from the USOPC, Code Signatory's member organization, or a club or other member organization of a Code Signatory's member organization, or in competitions authorized or organized by any professional league or any international- or national-level event organization (e.g., the National Collegiate Athletic Association ("NCAA")) or any elite or national-level sport activity funded by a governmental agency during my ineligibility, as described in the UCI Anti-Doping Rules, Article 10.14.1 of the Code and Section 7 of the USOPC NADP; and*
- *All other sanctions and or consequences which may be required by the Applicable Rules, including but not limited to, any fines, costs, return of prize money or other financial consequences. I understand that USADA agrees to cover costs billed by the Court of Arbitration for Sport for the appeal in this matter, CAS 2024/A/10892, but that each party remains responsible for its own attorney's fees and costs.*

I do not contest the above sanction determined by USADA under the UCI Anti-Doping Rules and Articles 2.1 and 2.2 of the Code because a Prohibited Substance was found in my urine Samples, and I have agreed to the violations and resulting sanction. I knowingly and voluntarily waive any further right to contest or challenge my violations, my period of ineligibility, the disqualification of my results, the processing of my Samples, and the Laboratory's determination regarding my Samples. I further waive my right to a CAS hearing and reasoned decision.

I understand that USADA will communicate my acceptance to US Paralympics and USA Cycling who will impose this sanction, and to the World Anti-Doping Agency ("WADA"), UCI, the International Testing Agency ("ITA"), and the USOPC.

Should I ever be found to have committed an additional anti-doping rule violation, I understand that the period of ineligibility for such further rule violation will be increased as provided in the Code, due to my acceptance of this sanction for my anti-doping rule violations identified above. Furthermore, nothing in this agreement prevents USADA from seeking a lengthier period of ineligibility and/or disqualification of results prior to January 17, 2024, based on evidence which USADA may currently have in its possession or later acquire.

In the event it is determined that I participated in any capacity in a competition or activity authorized or organized by any Signatory, Signatory's member organization, or a club or other member organization of a Signatory's member organization, or in competitions

authorized or organized by any professional league, or any international-level or national-level event organization, or any elite or national-level sporting activity funded by a governmental agency during my period of ineligibility, I understand that a new period of ineligibility equal in length to the original period of ineligibility will be added to the end of the original period of ineligibility.

Because this sanction includes loss of any results I obtained between January 17, 2024 and April 19, 2024, I understand that it could therefore affect my status or placement on a team for which I have qualified or could qualify in whole or in part based on my results at any competition for which my results have been disqualified. It is my sole responsibility to investigate and determine the effect of this sanction on my eligibility for future competitions or teams. I understand and accept that entities other than the USOPC, UCI, US Paralympics, and USA Cycling will give effect to this sanction including, but not limited to, the International Paralympic Committee ("IPC"), signatories to the Code, the NCAA, National Association of Intercollegiate Athletics, or any clubs, member associations or affiliates of the USOPC, US Paralympics, or USA Cycling, if applicable. I understand and accept that it is my obligation to investigate the effect of this sanction on me by other entities.

I also understand that my anti-doping rule violations could affect the results of any team on which I competed on January 17, 2024 or in a subsequent competition and that it is also my responsibility to consider the impact (if any) of my acceptance of sanction on my team's results.

I understand that Article 10.1 of the Code and the anti-doping rules of certain International Federations permit disqualification of results obtained prior to Sample collection or an attempt at Sample collection and/or prior to the occurrence of an anti-doping rule violation, particularly where the collection, attempted collection or occurrence of a rule violation occurred in connection with an Event, consisting of more than a single Competition. It is my responsibility to investigate the possibility that certain of my prior competitive results could be disqualified under Article 10.1 of the Code and/or the rules of my International Federation and I accept that such disqualification may be a consequence of my acceptance of sanction.

I also understand and accept that under the Protocol, my doping violations and the resulting sanction will be publicly announced.

I understand that in accordance with the Code, the Protocol and the USOPC NADP, I shall during the period of my ineligibility remain subject to testing, which includes – if placed in the registered testing pool at USADA's discretion – completing quarterly whereabouts filings and promptly updating USADA regarding any changes in my whereabouts information so that I can be tested. I understand that any failure to comply with my whereabouts obligations during my period of ineligibility may extend my period of ineligibility and may subject me to further anti-doping rule violations and additional sanctions.

My current address and contact information are set forth below. I agree that in addition to any applicable sanctions for Whereabouts Failures provided for in the Code and the WADA International Standard for Testing and Investigations, my period of ineligibility for the

instant anti-doping rule violation will be extended for a period of time equal to any period in which I have failed to comply with my obligation to provide whereabouts information to USADA, if required to do so.

I understand if I retire during my period of ineligibility that, pursuant to Article 5.6.2 of the Code, which is incorporated into the Applicable Rules noted above, my sanction will be tolled until such time that I advise USADA in writing of my return from retirement. In order to regain eligibility, I understand that I must repay all prize money forfeited as a result of my anti-doping rule violations or any violation of the prohibition on participation during my period of ineligibility. I must also comply with the requirements of other applicable reinstatement testing rules during the period of my suspension. It is my responsibility to understand and comply with additional reinstatement obligations of my International Federation, National Governing Body and the USOPC, if applicable.

I understand that in accordance with the Code and the International Standard for Education, I must participate in and successfully complete an education and/or rehabilitation program designated by USADA. I understand that if I do not complete the educational and/or rehabilitation programs it could affect my eligibility status once my sanction has concluded.

BY SIGNING BELOW, I AFFIRM THAT I HAVE READ AND FULLY UNDERSTAND THIS ACCEPTANCE OF SANCTION AND AGREE TO THE ABOVE TERMS. AND ALL OTHER PROVISIONS IN THE CODE, THE PROTOCOL, THE USOPC NADP AND THE ANTI-DOPING RULES OF MY INTERNATIONAL FEDERATION THAT RELATE TO MY ANTI-DOPING RULE VIOLATIONS."

VII. RATIFICATION OF THE PARTIES' AGREEMENT BY THE CAS

39. Under Article R56, third paragraph, of the CAS Code, "*Any settlement may be embodied in an arbitral award rendered by consent of the parties*".

40. Under Swiss law, an arbitral tribunal seated in Switzerland has the power to issue an award embodying the terms of the parties' settlement (see CAS 2019/A/6083,6261; see also A. RIGOZZI, E. HASLER, *Article R56 CAS Code* in M. ARROYO, ed., *Arbitration in Switzerland – The Practitioners' Guide*, 2nd edition, Alphen aan den Rijn, 2018, p. 1654).

41. The arbitral tribunal's ratification of said settlement and embodiment in a consent award serves the purpose of vesting the agreement with a *res judicata* effect and enabling the enforcement of said agreement worldwide.

42. The Parties have requested that the Settlement Agreement be embodied in a consent award.

43. In this respect, the Panel has the task of reviewing the terms of the Settlement Agreement in order to verify its *bona fide* nature as well as its compliance with public policy principles and/or mandatory rules of the law applicable to the dispute.

44. In the present case, the Panel is persuaded (i) that, based on the evidence on file and on the Parties' statements at the hearing, the Settlement Agreement represents a *bona fide* settlement of the dispute between the Parties, and (ii) that no public policy principle or mandatory rule of law is violated by the Settlement Agreement.

45. The Panel directs the Parties to fully comply with the terms of the Settlement Agreement, thereby making it unnecessary to consider any other request submitted by the Parties.

46. Accordingly, all further or different prayers for relief are dismissed.

VIII. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Settlement Agreement submitted to the CAS within the arbitral proceedings *CAS 2024/A/10892 USADA v. Aaron Keith* on 20 March 2025 is hereby ratified by the Panel with the consent of the Parties, and its terms are incorporated into this Consent Award.
2. The arbitral procedure *CAS 2024/A/10892 USADA v. Aaron Keith* is terminated and deleted from the CAS roll.
3. (…).
4. (…).
5. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 27 August 2025

THE COURT OF ARBITRATION FOR SPORT

Massimo Coccia
President of the Panel

Jeffrey Mishkin
Arbitrator

Jeffrey G. Benz
Arbitrator

Giulia Vigna
Ad hoc Clerk