



2020/ADD/12 Badminton World Federation v. Clement Krobakpo

ARBITRAL AWARD

delivered by the

**ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: Patrice Brunet, Attorney-at-Law in Montreal, Canada

in the arbitration between

Badminton World Federation, Malaysia

Represented by Mr. Thomas Delaye Fortin, Head of Legal and Governance

Claimant

and

Clement Krobakpo, Nigeria

Represented by Mr. John I. Duru, Esq., Attorney-at-Law in Lagos, Nigeria

Respondent

I. PARTIES

1. The Badminton World Federation (“BWF” or “Claimant”) is the world governing body for the sport of Badminton.
2. Mr. Clement Krobakpo (the “Athlete”) is a badminton Athlete from Nigeria.
3. The Claimant and Athlete are hereinafter referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he only refers to the submissions and evidence he considers necessary to explain his reasoning.
5. On 25 August 2019, during the 2019 African Games in Rabat, Morocco (the “Event”), the Athlete provided an in-competition urine sample. The urine sample was split into an A Sample (A-4479403) and B Sample (B-4479403) (the “Samples”).
6. The Samples were analysed at the World Anti-Doping Agency’s (“WADA”) accredited laboratory in Lausanne, Switzerland (the “Laboratory”) in accordance with the procedures set out in WADA’s International Standard for Laboratories.
7. On 25 September 2019, the Laboratory provided its report on the analysis of the Athlete’s A Sample confirming as follows:
 - a. An advance analytical finding (“AAF”) for heptaminol and octodrine¹, specified substances set out in Section 6 “Specified Stimulants” of the 2019 WADA Prohibited List;
 - b. An atypical finding (“ATF”) for clenbuterol, a non-specified substance set out in Section S1.2 “Other Anabolic Agents” of the 2019 WADA Prohibited List. The Clenbuterol was determined at a concentration of 20 pg/mL.
8. The Athlete did not request the opening or analysis of his B Sample.
9. The Organizing Committee of the African Games (“COJAR”) acted as the results management authority for the Event. On 30 September 2019, the BWF requested that COJAR review the ATF for clenbuterol following WADA’s Stakeholder Notice regarding meat contamination. Having received no response, the BWF sent several follow-up reminders to COJAR.
10. On 27 July 2020, the Disciplinary Committee of COJAR decided to disqualify the Athlete’s results from the Event and subsequently referred the matter back to the BWF to take any

¹ Octodrine is the generic name for Methylpentan-2-amine (1,3-dimethylbutylamine).

appropriate decision beyond the Event. This decision was notified to the BWF on 8 August 2020.

11. On 14 August 2020, the BWF issued a Notice of Charge against the Athlete and invited him to explain the circumstances surrounding the AAF and ATF.
12. On 26 August 2020, the Athlete provided his explanations and in doing so, noted as follows:
 - a. He admitted that the Samples were collected from him on the occasion of the Event.
 - b. He did not contest that he committed an anti-doping rule violation (“ADRV”) but argued in favour of a reduction or elimination of any sanction.
 - c. He confirmed that he did not travel to China, Mexico, or Guatemala in the months preceding August 2019.
13. On 17 September 2020, the BWF (following various exchanges of correspondence with WADA regarding its Clenbuterol Guidelines) issued an updated Notice of Charge against the Athlete.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 25 September 2020, the BWF filed a Request for Arbitration with the ADD in accordance with Article A13 of the Arbitration Rules of the ADD (the “ADD Rules”). Within its Request for Arbitration, the BWF filed a Request for Provisional Measures seeking to suspend the Athlete in accordance with Article 7.9 of the BWF Anti-Doping Rules (the “BWF ADR”).
15. In its Request for Arbitration, and in accordance with Article A16 of the ADD Rules, the BWF requested that this procedure be referred to a Sole Arbitrator appointed by the President of the ADD.
16. On 7 October 2020, the Athlete filed his response to the BWF’s request for provisional measures.
17. On 8 October 2020, the CAS ADD sought clarification from the Parties as to whether the Athlete was (or had) voluntarily accepted a provisional suspension and if so, as to what date the provisional suspension should begin (and why).
18. On 13 October 2020, the ADD, on behalf of the President of the ADD, confirmed the appointment of Mr. Patrice Brunet as Sole Arbitrator in accordance with Article A16 of the ADD Rules.
19. On 16 October 2020, following review of the Parties’ positions on the BWF’s request for provisional measures, the Sole Arbitrator confirmed the provisional suspension of the Athlete as from 16 October 2020.

20. On 27 November 2020, following an agreed-upon extension of time, the Athlete filed his Answer and Expert Report of Prof. Suleiman Folorunsho Ambali.
21. On 10 December 2020, the CAS ADD, on behalf of the Sole Arbitrator, invited the BWF to comment (if necessary) on the Expert Report filed by the Athlete. Additionally, the CAS ADD invited the Parties to consider whether a hearing was needed in this procedure.
22. On 11 and 13 December 2020, the Athlete and BWF, respectively, confirmed that no hearing was needed in this procedure.
23. On 23 December 2020, the BWF filed its observations on the Expert Report filed by the Athlete.
24. On 28 December 2020, the CAS ADD confirmed that the Sole Arbitrator considered himself sufficiently well informed to render a decision in this procedure based on the Parties' written submissions, without a hearing.
25. On 4 January 2021, the Parties signed and returned the order of procedure.

IV. SUBMISSIONS OF THE PARTIES

A. The BWF

26. In its request for arbitration, the BWF requested the following relief:
 - a. *The BWF's Request for Arbitration is admissible.*
 - b. *Mr Krobakpo is sanctioned with a period of ineligibility of four years. Any period of ineligibility effectively served (whether imposed on, or voluntarily accepted by, Mr Krobakpo) before the entry into force of the CAS award, shall be credited against the total period of ineligibility.*
 - c. *The period of ineligibility commences on 25 November 2019.*
 - d. *All competitive results obtained by Mr Krobakpo from and including 25 August 2019 are disqualified, with all resulting consequences (including forfeiture of any medals, points and prizes).*
27. The BWF's submissions, in essence, may be summarised as follows:
28. According to BWF-ADR 7.9, a provisional suspension is mandatory in the case of non-specified substances, such as clenbuterol.
29. Pursuant to BWF-ADR Art. 2.2.1, it is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body.
30. Further to the Athlete's In-Competition doping control on 25 August 2019, the analysis of the A sample revealed the presence of:
 - a. heptaminol,
 - b. octodrine and

c. clenbuterol.

31. Heptaminol and octodrine are both specified substances mentioned in section S6b “Specified Stimulants” of the WADA 2019 Prohibited List. Clenbuterol is a non-specified substance mentioned in section S1.2 “Other Anabolic Agents” of the WADA Prohibited List.
32. Heptaminol and octodrine are specified substances, and clenbuterol is a non-specified substance. The BWF submitted its position regarding each substance classification, in conformity with each associated set of sanctions.
33. For the presence of Clenbuterol, the period of ineligibility shall be four years, unless the Athlete can establish that the ADRV was not intentional.
34. According to BWF-ADR Art. 3.1, the applicable standard of proof for the Athlete to establish that the ADRV was not intentional is the “balance of probabilities”.
35. While the Athlete explained that he probably ingested contaminated meat, the BWF was not satisfied with the explanations provided by the Athlete to explain the origin of the substance, and the probable source of contamination of the meat.
36. Therefore, the BWF maintains that the base sanction for the ADRV for Presence of clenbuterol should be four year.
37. For the presence of heptaminol and octodrine, the period of ineligibility shall be two years according to BWF-ADR Art. 10.2.1 and Art. 10.2.2, unless the BWF can establish that the ADRV was intentional in which case the period of ineligibility is four years.
38. Given the candid explanations provided by the Athlete, the BWF declared having no reason to believe that the ADRV was intentional, and therefore did not seek to increase the sanction of two years.
39. Moving on then to the analysis of the appropriate sanction for the ADRV of clenbuterol, the BWF explained that it did not have the burden to “hypothesise, still less prove” an alternative source. This burden rests solely on the shoulders of the Athlete. Citing CAS 2014/A/3820 WADA v. Damar Robinson & JADCO, the BWF expected the Athlete to provide actual evidence as opposed to mere speculation.
40. Having failed to provide a reasonable explanation regarding the origin of the clenbuterol, the BWF concluded that he had not met his burden under the rules.
41. Therefore, the applicable sanction should be four years.
42. The BWF’s analysis of the appropriate sanction regarding the ADRV for octodrine and heptaminol is different. They recognize that, since the Athlete established their origin by consuming “Freedom Juice”, an energy drink, it is then possible to consider a potential sanction reduction or elimination under BWF-ADR articles 10.4 and 10.5.
43. In its analysis, the Sole Arbitrator should consider the Athlete’s behaviour. Because the Athlete is of relatively high level in his discipline (ranked #150 in the world), that he failed to consult a doctor or sports doctor before taking “Freedom Juice”, and that the product

mentions “2-aminoisoeptane”, which is an alternative name for octodrine on its label, he should be faulted for his negligence. Therefore, the elimination of a sanction should not be considered.

44. On the other hand, the BWF recognizes that the Athlete was forthcoming in declaring “Freedom Juice” on his doping control form. The Sole Arbitrator should consider this as an act of good faith, and of the characterization of an Athlete who is honest.
45. For all these reasons, the BWF considers that the appropriate range of sanction should be between 8 to 16 months, leaning towards 12 months.
46. Finally, since the Athlete committed multiple ADRVs, the most severe sanction should apply: this would then be for the presence of Clenbuterol, and the period of ineligibility is suggested at four years.
47. Regarding the commencement of the period of ineligibility, BWF-ADR Art. 10.11 states that the period of ineligibility should start on the date of the hearing, or if there is no hearing, on the date the ineligibility is accepted or otherwise imposed.
48. Also, a credit on the period of ineligibility can be obtained if the Athlete has respected his provisional suspension. In this case, no provisional suspension was imposed on the Athlete, and therefore he cannot benefit from this provision.
49. Considering that the COJAR took 11 months from the AAF to render a decision, with the fact that the Athlete was not responsive to the process, the BWF suggests that the commencement of any period of ineligibility begin on 25 November 2019 (3 months after the sample collection), corresponding to the date a hearing could have reasonably taken place for this type of procedure.

B. The Athlete

50. In his answer, the Athlete requested the following relief:

A finding from CAS of a no fault or negligence on the part of the Respondent pursuant to Article 10.4 or 10.5 of BWF-ADR.

51. The Athlete’s submissions, in essence, may be summarised as follows:
52. The position of the Athlete regarding the analysis of his intention for the purpose of determining the sanction is divided between the two classes of Prohibited Substances: heptaminol/octodrine (specified), and clenbuterol (non-specified).
53. Regarding the specified substance, the Athlete explains that he took all care within his personal competence in ensuring that he did not ingest any banned substance.
54. He attracts the Sole Arbitrator’s attention to his level of education, exposure and the facilities available to him in Nigeria. He is a self-trained badminton player and he does not benefit from an entourage of sports professionals who could have guided him through better supplementation advice. He checked the label to ensure the product did not contain banned substances and was comforted with the product statement that it complied with strict American Manufacturing practices.

55. On the applicable sanction for the ADRV purporting to the specified substances, the Athlete's position is that he bears no significant fault since:
- a. He was forthcoming in declaring the "Freedom Juice" on his doping control form.
 - b. He could not have known that "Freedom Juice" may contain a prohibited substance, since he had taken a similar nutritional supplement known as "Animal Fury Preworkout Power supplement", manufactured in the USA, in 2018, and had tested negative after a competition.
 - c. Sports doctors are rare in Nigeria, and it would be impracticable to expect the Athlete to receive proper nutritional advice in this country.
 - d. The Athlete cannot be expected to have the scientific knowledge to understand that 2-Aminoisoheptane is linked to octodrine, and therefore is a Prohibited Substance.
56. Regarding the presence of the non-specified substance, the Athlete ignores how the substance entered his body, and proposes a hypothesis of contaminated meat ingestion, supported by the witness expert testimony of Prof. Suleiman Folorunsho Ambali, Professor of Pharmacology and Toxicology, Dept of Veterinary Pharmacology and Toxicology at the University of Ilorin, Nigeria.
57. The BWF declined to cross-examine the expert witness and/or to submit its own expert witness report.
58. In essence, the Athlete's position is anchored in Prof. Folorunsho Ambali's opinion that it is difficult to certify that meat products in Nigeria are free from banned drugs, including clenbuterol. He explains that Nigeria is notorious for its contraband economy, which extends to imported meat and poultry products. Therefore, even though Nigeria is not on the list of countries identified by WADA for possible clenbuterol meat contamination, such as China, Mexico and Guatemala, it is not unlikely that meat from those countries may have found their way into the Nigerian food chain.
59. Prof. Folorunsho Ambali states his opinion regarding the level of Clenbuterol found in the Athlete's sample: 20 pg/ml, which is equivalent to 0.02 ng/ml, 25 times lower than the maximum limit of 5 ng/ml prescribed by WADA. In his opinion, "this certainly shows that the athlete may not have deliberately consumed the drug but the lower level must have likely come from contamination such as meat."
60. On the applicable sanction, the Athlete's position is that, since the quantity of clenbuterol was minuscule, the source should be attributed to meat contamination. Because there was no deliberate consumption, a finding of "No Significant Fault" or "No Fault" is suggested.

V. JURISDICTION

61. Article A2 of the ADD Rules provides as follows:

"CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has

jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a sports entity, by contract or by specific agreement.

These Rules apply only to the resolution by first instance arbitration of alleged anti-doping rule violations filed with CAS ADD. They neither apply with respect to appeals against any other decision rendered by an entity referred to in this Article nor against any decision rendered by CAS ADD.

Decisions rendered by CAS ADD shall be applied and recognized in accordance with the WADC.

CAS ADD shall also have jurisdiction in case of alleged doping violations linked with any re-analysis of samples.”

62. The BWF’s jurisdiction derives from Article 7.1.1 of the WADC whereby the relevant international federation is competent in relation to the consequences of any ADRV beyond the Event.
63. Under Article 8.1 of the BWF ADR, the BWF ADR has delegated its adjudication responsibilities to the ADD to hear and decide any potential anti-doping rule violations in accordance with the BWF ADR and the ADD Rules.
64. The Parties further confirmed that the ADD has jurisdiction over the present matter by signing the Order of Procedure.
65. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide this matter.

VI. APPLICABLE LAW

66. Article A20 of the ADD Rules provides as follows:

“The Panel shall decide the dispute in accordance with the WADC and with the applicable ADR or with the laws of a particular jurisdiction chosen by agreement of the Parties or, in the absence of such a choice, according to Swiss law.”

67. Both parties rely on and expressly refer to the provisions of the BWF ADR and WADC in their written submissions. Indeed, neither of the Parties objected to the application of the BWF ADR or the WADC and indeed, the Parties agreed to the application of the WADC by signing the Order of Procedure.
68. The Sole Arbitrator, therefore, confirms that the BWF ADR, in conjunction with the WADC, applies to this procedure.

VII. MERITS

A. The Anti-Doping Rule Violation

69. Under Article 3.1 of the BWF ADR, the BWF has the burden of establishing “*to the comfortable satisfaction of the*” Sole Arbitrator that an ADRV has occurred. This “*standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt*”.
70. Under Article 3.2.2 of the BWF ADR “*WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories*”. The burden shifts to the Athlete to rebut this presumption “*by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*”
71. From the Athlete’s A sample, the analysis returned an ATF and an AAF for Prohibited Substances as listed in the WADA 2019 Prohibited List:
 - a. Clenbuterol, belonging to Class S1.2 (Other Anabolic Agents),
 - b. Heptaminol, a Specified Stimulant belonging to Class S6b. of the WADA 2019 Prohibited List. Heptaminol is also a metabolite of Octodrine.
 - c. Octodrine², a Specified Stimulant belonging to Class S6b. of the WADA 2019 Prohibited List.
72. The Prohibited Substances were detected by the Lausanne Laboratory, which is a WADA-accredited laboratory and the Athlete did not argue, let alone establish, a departure of the Lausanne Laboratory from the International Standard for Laboratories.
73. According to Article 2.1.1 of the BWF ADR, “[i]t is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Player’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1”.
74. Pursuant to Article 2.1.2 of BWF ADR, “[s]ufficient proof of an anti-doping rule violation under Article 2.1 is established....where the Player waives analysis of the B Sample and the B Sample is not analyzed.”
75. The Prohibited Substances were unequivocally found in the Athlete’s A-Sample.
76. The Athlete did not contest the positive finding. In his Answer the Athlete expressly stated that “*The Respondent concedes the points raised by the Claimant in its submissions [...] more particularly contained in paragraphs 37-43 on page 7 of its submissions*”.
77. For the sake of brevity, paragraphs 37-43 of the Claimants’ submissions are the charging paragraphs related to the ADRVs. Therefore, the Athlete admits to the ADRVs for clenbuterol, octodrine and heptaminol. Under BWF-ADR Art. 10.7.4.1, all ADRVs should

² Methylpentan-2-amine (1,3-dimethylbutylamine)

be considered as one, with consequences based on the ADRV that carries the most severe sanction.

78. Consequently, an ADRV under Article 2.1.1 of WADC is established.
79. The Athlete claims to be self-trained, without access to qualified sporting staff who could have advised him regarding the supplements he was taking.
80. Furthermore, the Athlete explains that the quantity of clenbuterol found in his Sample supports the explanation of contaminated meat.
81. Since the Prohibited Substances were detected in the Athlete's Sample and, save for a hypothesis, no explanation for the presence of clenbuterol was demonstrated nor evidenced by the Athlete, and an admission was recorded for heptaminol and octodrine, the commission of an ADRV is consequently also established based on Article 2.2.1 of WADC.
82. Consequently, the Sole Arbitrator finds that the Athlete committed an ADRV under WADC Articles 2.1.1 and 2.2.1.
83. While the Athlete's Answer appears to be candid, the Sole Arbitrator notes that any mitigating circumstances invoked by the Athlete in defense of his ADRV, such as lack of intent, lack of knowledge, consumption of supplements containing two of the Prohibited Substances and the small quantity of Clenbuterol detected, are not relevant to establish whether an ADRV was committed. Indeed, according to the WADC, an athlete's fault or negligence are elements taken into consideration in determining the consequences of an ADRV, not the commitment of the violation itself. The consequences of his violation as discussed below.

B. The Applicable Sanction

84. Article 10.7.4.1 of the BWF-ADR applies in connection to this violation, since all three ADRVs were committed at once. They should be considered as one, with consequences based on the ADRV that carries the most severe sanction.
85. For this reason, the Sole Arbitrator has concentrated his analysis on the ADRV concerning clenbuterol.
86. It is admitted by all Parties that clenbuterol was found in the Athlete's Sample.
87. Because of the potential for food contamination in certain countries (China, Mexico and Guatemala) where Clenbuterol has been found in their food chain, and to avoid punishing athletes who may unknowingly ingest contaminated meat, WADA has published a *Stakeholder Notice regarding meat contamination* (the "Notice") on 30 May 2019.
88. Relying on his expert testimony, the Athlete explains that an exceedingly small amount of clenbuterol supports the hypothesis of meat contamination. Further, the expert witness explains the amount of Clenbuterol in the sample was "25 times lower than the maximum limit of 5 ng/ml prescribed by WADA".
89. First, clenbuterol is not a threshold substance. Any trace amount can lead to an ADRV, and there is no credible body of sport jurisprudence to support the Athlete's position. There

are many hypothetical reasons why a very low level of a Prohibited Substance would be found in an athlete's body, among which one can find microdosing and end-of-cycle residue in the body. Varying excretion and metabolic rates can also explain low concentrations of Prohibited Substances in samples. Since clenbuterol is not an endogenous substance, any amount of the substance in a Sample must originate from an outside source, which is the responsibility of the Athlete.

90. Second, the Sole Arbitrator cannot agree with the interpretation of the Athlete and his expert witness with regards to WADA setting a *maximum limit of 5 ng/ml* for Clenbuterol. There is no such maximum limit contained in the List of Prohibited Substances 2019, nor in the Notice.
91. Interpreting the Notice closely, and in the context of possible cases of meat contamination in certain countries, WADA has established a reporting and analysis protocol specifically for clenbuterol.
92. The Notice provides instructions to WADA-accredited laboratories to report concentrations of Clenbuterol below 5ng/ml as Atypical Findings (ATFs), in order to investigate whether the athlete may have consumed meat from China, Mexico or Guatemala. If the Anti-Doping Organization (ADO) is satisfied that meat contamination is a credible justification, then it shall not assert an ADRV.
93. However, if the ADO is not satisfied with the athlete's explanations that meat contamination is responsible for the finding of clenbuterol in the sample, then an ADRV is to be asserted.
94. While the Athlete attempts to add a threshold criterion to the Sole Arbitrator's analysis, this is not an option that is envisioned in the Notice nor in the BWF-ADR. The "threshold" to which the Athlete's expert witness is referring is simply an initial screen test to confirm whether an ADRV should proceed forward and to exclude clear cases of meat contamination.
95. The opportunity to explain the source of the contamination has been provided to the Athlete, and since the BWF was not satisfied with his explanations, this case proceeded forward as an ADRV.
96. Notwithstanding the BWF's determination to move forward, and based on the Athlete's explanations, the Sole Arbitrator has the authority to determine whether the Athlete may still have been a victim of meat contamination.
97. As explained previously, no Prohibited Substance *threshold* can be considered in such analysis, as this is not provided in the WADC 2015, the Notice nor in the BWF-ADR. In other words, the Sole Arbitrator cannot be swayed one way or the other neither by a high nor a low concentration of the Prohibited Substance. *Any* trace in the Sample is considered equally as a presence of the substance, period.
98. With this in mind, the Sole Arbitrator turns his attention to the explanation of the Athlete regarding possible meat contamination.
99. The details that have been provided regarding meat contamination are too broad and general for the Sole Arbitrator to consider them.

100. The Athlete's witness is an expert in veterinary pharmacology and toxicology. He confirmed that there *"have not been any known study to ascertain the level of clenbuterol in the imported poultry and beef products"*.
101. The Sole Arbitrator noted his opinion on the *"dumping of contrabands in the country..."* and his recognition that *"...we have not had any documented report of deliberate usage of clenbuterol by livestock farmers in Nigeria..."*.
102. The Sole Arbitrator has also noted the expert witness' statement to the effect that *"...most of the meat consumed in the country are imported, many of them illegally through our various porous land and sea borders is a pointer to the danger of consuming contaminated meat"*.
103. However, the witness is not an expert in international commerce. While his comment is appreciated, the Sole Arbitrator cannot give any weight to it. It can only be categorized as anecdotal without additional supporting evidence nor expertise.
104. In fact, the Athlete's entire defence about the ADRV for Clenbuterol rests on:
 - a. The minuscule amounts of the substance found in his sample, and
 - b. The hypothesis, presented as factual, that Nigerian borders are porous, and that the meat he ingested probably originated illegally from another country.
105. The burden of proof rests with the Athlete, to show that he was the victim of contaminated meat. While the recent jurisprudence (see CAS 2017/A/5112 Arsan Arashov v. ITF) can flexibly accept, depending on the circumstances, that the Athlete may not be under an obligation to explain exactly how the substance entered his body, it remains his burden of proof to show, against a balance of probabilities, that he was the victim of meat contamination.
106. Unfortunately, the explanations that have been provided to explain the meat contamination are too general and significantly short of the Sole Arbitrator's expectations to provide a credible explanation regarding its source. "In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation" (see CAS 2014/A/3820 WADA v. Damar Robinson & JADCO).
107. Only speculation has been offered to explain the meat contamination, and therefore, the Athlete's defence must be rejected.
108. Therefore, the Sole Arbitrator finds no reason to vary the sanction period in the BWF-ADR, and it is set at four years for the ADRV of clenbuterol.
109. Regarding the presence of heptaminol and octodrine, it is admitted by all Parties that the source of contamination was the Athlete's consumption of "Freedom Juice". The label clearly states "2-Aminoisoheptane" as one of its ingredients, which is another name for octodrine.
110. Both heptaminol and octodrine are Specified Substances, and the maximum suspension period is two years. In application with Article 10.7.4.1 of the BWF-ADR and since all three

ADRVs were committed at once, they should be considered as one, with consequences based on the ADRV that carries the most severe sanction.

111. Therefore, the analysis for a possible reduction of the suspension period for the two Specified Substances is moot.

C. The Start Date

112. On 16 October 2020, the Sole Arbitrator issued an Order on Application for Provisional Suspension, confirming that the Athlete was provisionally suspended during the present proceedings.

113. To properly analyse the start date of the period of ineligibility, it is important to recap the relevant chronology:

- a. 25 August 2019: Sample collection, during the African Games in Rabat (Morocco).
- b. 25 September 2019: Laboratory report returning an AAF for heptaminol and octodrine, and an ATF for clenbuterol.
- c. 17 November 2019: The result management authority (COJAR) confirms with the Athlete that he did not express the desire to have the B Sample analyzed.
- d. 18 July 2020: for the first time, the Athlete responds to the COJAR's Disciplinary committee.
- e. 27 July 2020: COJAR's Disciplinary Committee issued its decision to disqualify the Athlete's results.
- f. 14 August 2020: the BWF issues a Notice of Charge and asks for explanations in relation to both AAFs and the ATF.

114. It is unfortunate that the underlying results management process (concerning the results of the Event) took nearly a year to conclude. The Sole Arbitrator finds that such delay is unacceptable. But this said, it is highly surprising that, for the 11 months that COJAR was responsible for the result management of the case, the Athlete failed to communicate in a process that had the potential to terminate his sporting career. So while he may have otherwise been prejudiced by such delay, it is considered that no prejudice was suffered as the Athlete, on the evidence presented, simply did not engage in his defense during this period.

115. Even though the Athlete had elected to "suspend himself" as of 25 September 2019, this does not qualify as a Provisional Suspension under the BWF-ADR Art. 10.11.3.3.

116. Consequently, and as decided earlier, the Athlete's Provisional Suspension shall start as of 16 October 2020, and his 4-year period of ineligibility shall run from this date.

VIII. COSTS

(...).

IX. APPEAL

121. Pursuant to Article A21 of the ADD Rules, this Award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final Award with reasons. Such appeal is to be filed in accordance with Articles R47 *et seq.* of the Code of Sports-Related Arbitration, applicable to appeals procedures.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the Badminton World Federation on 25 September 2020 against Mr. Clement Krobakpo is upheld.
2. Mr. Clement Krobakpo committed an anti-doping rule violation in accordance with the Badminton World Federation's Anti-Doping Rules applicable to the 2019 African Games in Rabat, Morocco.
3. Mr. Clement Krobakpo is sanctioned with a 4-year period of ineligibility starting from 16 October 2020.
4. All competitive results obtained by Mr. Clement Krobakpo from 25 August 2019 through the date of his provisional suspension are disqualified, with all resulting consequences, including forfeiture of medals, points and prizes.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 22 January 2021

THE ANTI-DOPING DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Patrice Brunet
Sole Arbitrator