TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10411 Pierria Lee-Vaughntay Henry v. The International Basketball Federation (FIBA)

ARBITRAL AWARD

rendered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms Carine Dupeyron, Attorney-at-law in Paris, France

Arbitrators: Mr José J. Pinto, Attorney-at-law in Barcelona, Spain

Dr Marco Balmelli, Attorney-at-law in Basel, Switzerland

in the arbitration between

Mr Pierria Lee-Vaughntay Henry,

Represented by Mr José Rodríguez García, R&C Abogados, Madrid, Spain

-Appellant-

and

International Basketball Federation,
Represented by Mr Antonio Rigozzi and Marie-Christin Bareuther, Lévy Kaufmann-Kohler, Geneva, Switzerland

-Respondent-

I. THE PARTIES

1. Mr Pierria Lee-Vaughntay Henry (the "Player", the "Athlete", "Mr Henry" or the "Appellant") is a Senegalese American basketball player who played for Spanish club Cazoo Baskonia Vitoria-Gasteiz ("Baskonia") during the 2022-23 season. He is also a member of the Senegalese national basketball team.

2. The International Basketball Federation (the "FIBA" or the "Respondent") is the world governing body of the sport of basketball located in Switzerland, and is an association under Swiss law.

3. The Appellant and the Respondent are referred to individually as a "Party" and collectively as the "Parties".

II. INTRODUCTION

4. This Appeal is brought by the Appellant against the Respondent with regard to the decision of the FIBA's Disciplinary Panel Anti-Doping Division (the "DPADD") dated 19 February 2024 (the "Appealed Decision") deciding that the Player committed an Anti-Doping Rule Violation ("ADRV") by using a Prohibited Method, in violation of Article 2.2 of the FIBA Anti-Doping Rules ("FIBA ADR").

5. The DPADD decided that the Player shall be suspended for a period of ineligibility of 4 years. This period theoretically commenced on the date of the Appealed Decision, i.e. 19 February 2024, but the Player received credit for the provisional suspension he has served since 13 January 2023.

III. FACTUAL BACKGROUND

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in the present factual background only to the elements it considers necessary to explain the background and key events of the case.

7. On 3-4 November 2022, the International Doping Tests & Management, acting on behalf of FIBA, collected a urine sample (the "Sample", which was later divided into a "A-Sample" and a "B-Sample") from the Player following a Euroleague game held in in Vitoria-Gasteiz, Spain, between Baskonia and Maccabi Playtika Tel-Aviv.

8. The Player was selected together with three other players to participate in the anti-doping control, which was conducted by Mr. Enrique González Martínez, the Doping Control Officer (the "DCO").

9. Analysis of the A-Sample was then carried out by the World Anti-Doping Agency's (the "WADA") accredited laboratory in Cologne (the "Laboratory").

10. On 13 December 2022, the Laboratory reported an Adverse Analytical Finding ("AAF") for a Prohibited Method, noting that the A-Sample was not consistent with human urine.

11. On 12 January 2023, FIBA notified the Player that the AAF was a potential violation of Article 2.2 (Use or Attempted Use of a Prohibited Method) and/or Article 2.5 (Tampering or Attempted Tampering with any Part of Doping Control by an Athlete or Other Person) of the FIBA ADR, which automatically imposes a provisional suspension as mandated by Article 7.4.1 of the FIBA ADR and Article 6.2.1 of the WADA International Standard for Results Management ("ISRM").

12. In the same correspondence, FIBA invited the Player to declare his intentions concerning (i) the opening and analysis of the B-Sample, and (ii) the communication of the A-Sample Laboratory Documentation Package (the "LDP"). FIBA invited the Player to submit any explanation for the AAF by 31 January 2023.

13. On 13 January 2023, the Player requested a hearing to lift the provisional suspension and asked for an expedited decision without a hearing. Additionally, he requested that the A-Sample LDP and any documentation related to the chain of custody of the Sample. Finally, the Player informed FIBA that he would provide his position on the B-Sample Analysis upon receipt of the A-Sample LDP.

14. On 16 January 2023, FIBA informed the Player that Mr. Olivier Ducrey was designated as the Single Judge at the Disciplinary Panel (the "DP") to oversee the case. FIBA also stated that the Laboratory had been instructed to provide the A-Sample LDP and estimated the preparation time for the A-Sample LDP to be around 15 days.

15. On 18 January 2023, the Player filed an unsolicited submission concerning the requirements to lift the provisional suspension.

16. On 19 January 2023, the FIBA DP issued the operative section of its decision, in which it rejected the request for the lifting of the provisional suspension (the "Provisional Suspension Decision"), and on 23 January 2023, it communicated the grounds for the Provisional Suspension Decision to the Player. This decision was not appealed.

17. On 24 January 2023, the Player requested an update on the A-Sample LDP. FIBA responded the same day, confirming that the A-Sample LDP had been sent to the Laboratory on 18 January 2023 and that the LDP was expected by 31 January 2023. FIBA also informed the

Player that he would be given a new deadline to supplement his explanation based on the LDP once it was received.

18. On 31 January 2023, the Player provided his explanations concerning the AAF and sought the questioning of the DCO and the chaperone who were present during the test of 3-4 November 2022, about how the Sample collection was conducted.

19. On 2 February 2023, FIBA confirmed they had received the Player's explanations and notified him that the individuals involved in the Sample collection would be subject to interviews as part of the investigation into his AAF. FIBA also noted that the questions raised in the request for evidence would be considered in that context.

20. In that same correspondence, FIBA sent the Player the A-Sample LDP he had requested and gave him an extension until 9 February 2023 to supplement his explanations, limited to any issues stemming from the A-Sample LDP, and to confirm his intentions concerning the analysis of the B-Sample.

21. On 6 February 2023, the Player exercised his right to have the B-Sample opened and analysed. He appointed Dr. Douwe De Boer as his representative to be physically present for the B-Sample's opening.

22. On 8 February 2023, the Player asked for the B-Sample to be opened with great urgency. On the same day, FIBA notified the Laboratory about the Player's request.

23. On 9 February 2023, the Player communicated with FIBA, pointing out that the A-Sample LDP revealed that additional analyses had been performed. He requested that the A-Sample LDP be completed with the information and documentation of all analyses performed. The Player added that he was unable to provide any further explanations until he received this additional information.

24. On the same date, FIBA requested the Player to offer more precise details and direct references to the A-Sample LDP to properly verify his latest request with the Laboratory.

25. On 10 February 2023, the Player submitted a screenshot from page 22/24 of the A-Sample LDP, asserting that there was no information in the LDP regarding the analyses referred to on that page.

26. On 13 February 2023, FIBA notified the Player that his inquiry has been submitted to the Laboratory for review. Subsequently, the Laboratory offered clarifications about the additional analyses performed on the A-Sample and specifically provided the LDP.

27. On 14 February 2023, the Player indicated that the analysis of the bovine albumin and the nitrogen and carbon isotope ratios reported in the A-Sample LDP did not fulfil what is regulated in the WADA Technical Documentation TD2022LDOC, specifically under point

3.3, i.e. additional data on the presence of bovine albumin and of abnormal nitrogen and carbon isotope ratios. The Player indicated that, without such data, "*it is not only a huge challenge to give an explanation, it is actually an impossible challenge to give a satisfactory explanation"* as he could *"only speculate with the presumed presence of bovine albumin or the calculation of abnormal nitrogen and carbon isotope ratios."*

28. On 23 February 2023, FIBA informed the Player that the A-Sample LDP contained all the data necessary under TD2022LDOC to substantiate the AAF. It also stated that the additional analyses offered further insights into the AAF but did not impact its validity. In the same correspondence, FIBA granted Mr. Henry a final deadline extension to respond, setting the new date as 28 February 2023. Finally, FIBA informed the Player that the earliest possible date proposed by the Laboratory for the opening and analysis of the B-Sample was 23 March 2023, 10:00 am and asked the Player to confirm the proposed date and time within the same deadline of 28 February 2023.

29. On the same day, the Player notified FIBA that his designated representative, Dr. Douwe De Boer, was unavailable at the proposed date and time. He requested a new date and provided payment confirmation for the B-Sample Analysis.

30. FIBA did not receive any additional submissions from the Player about the A-Sample LDP by the 28 February 2023 deadline.

31. On 9 March 2023, FIBA acknowledged the Player's request for a different date for the B-Sample Analysis and informed him that the Laboratory has suggested 19 April 2023, at 10:00 am for the procedure.

32. On 10 March 2023, the Player asked for the analysis to be performed during the month of March 2023.

33. On 15 March 2023, FIBA informed the Player that upon FIBA's request, the Laboratory was able to conduct the opening and analysis of the B-Sample on 29 March 2023. Mr. Henry confirmed his representative's availability on that date.

34. On 29 March 2023, the B-Sample's opening and analysis ("B-Sample Analysis") took place at the Laboratory. It was attended by the Player's representative, Dr. Douwe de Boer, and Laboratory representatives Dr. Hans Geyer, Dr. Gregor Fußhöller, and Mr. Raphael Hamacher.

35. On 31 March 2023, FIBA notified the Player of the B-Sample Analysis confirming the A-Sample's findings. The detection of a Prohibited Method (Chemical and Physical Manipulation) was confirmed, and the Player was invited to submit his explanation and supporting documents by 14 April 2023.

36. On 3 April 2023, the Player reached out to FIBA, after learning that on 9 March 2023, an investigator, Mr. Jose de Freitas, apparently interviewed Mr. Enrique González Martínez (the DCO), the two chaperones, and Dr. Luis González Lago (the Player's team doctor), all of whom were present during the Player's Sample collection. The Player requested a copy of Mr. de Freitas' report (the "Harod Report" or "Report") from these interviews and repeated this request on 11 April 2023.

37. On 13 April 2023, FIBA informed the Player that the investigation was ongoing, and no report had been produced yet. They also reminded him of the 14 April deadline to provide his explanations regarding the B-Sample Confirmation Procedure.

38. On 14 April 2023, the Player submitted his additional explanations following the B-Sample Analysis. He denied manipulating or substituting the urine sample and maintained his adherence to the ADR. In the same communication, he sought the B-Sample LDP and asserted his right to question Mr. Enrique González, the two chaperones, and Dr. Luis González Lago, and to present the necessary evidence in his defence once all documentation from the laboratory, the investigator, and FIBA was available.

39. On 26 April 2023, FIBA presented the Player with the B-Sample LDP and provided a deadline until 8 May 2023 for him to expand on his explanation, specifically regarding matters related to the B-Sample LDP.

40. On 8 May 2023, the Player reaffirmed his initial explanation given on 31 January 2023, with slight modifications, and requested the declarations of the DCO, Mr. Enrique González, and the two accompanying chaperones.

41. In both his statements on 31 January 2023, and 8 May 2023, the Player did not dispute the AAF underlying the alleged ADRV for Use of a Prohibited Method.

42. On 2 June 2023, FIBA formally charged the Player of an ADRV for the Use of a Prohibited Method (Chemical and Physical Manipulation), resulting in an AAF.

43. FIBA considers that the existence of the AAF is indisputable, and that the Player did not successfully discharge his burden to prove that the AAF was the result of an error in the chain of custody of the Sample. FIBA noted that when the ADRV involves a non-Specified Method, as in the case for Chemical and Physical Manipulation, the base sanction is four (4) years pursuant to Article 10.2.1 FIBA ADR. However, FIBA offered the Player an acceptance of consequences and the possibility to grant a reduction of one (1) year.

44. On 14 June 2023, the Player rejected FIBA's proposed acceptance of consequences and requested access to the Harod Report. Additionally, the Player sought a written or oral hearing with the FIBA DPADD, to be held once he receives the report.

45. On 19 June 2023, FIBA acknowledged receipt of the Player's challenge and informed him that his case would be sent to the DPADD, before which he could make all the procedural requests that he deemed necessary.

IV. PROCEEDINGS BEFORE THE DPADD

46. On 7 August 2023, FIBA filed a petition for referral of the matter to the FIBA DPADD, pursuant to Article 8.1.2 of Book 4 of the FIBA IR.

47. FIBA requested the DPADD to issue a decision: "*(i) Declaring that Mr. Pierria Vaughntay-Lee Henry has committed an Anti-Doping Rule Violation. (ii) Imposing a period of ineligibility of four (4) years on Mr. Pierria Vaughntay-Lee Henry starting on the date of the notification of the Decision of the Anti-Doping Division of the Disciplinary Panel. (iii) Holding that the period of provisional suspension served by Mr. Pierria Vaughntay-Lee Henry since 12 January 2023 shall be credited against the period of ineligibility imposed by the Disciplinary Panel. (iv) Disqualifying all the results obtained and all the prizes earned by Mr. Pierria Vaughntay-Lee Henry from the date of the collection of the Sample (i.e. on 4 November 2023)* [sic] *until the day he was provisionally suspended (i.e. 12 January 2023). (v) Ordering Mr. Pierria Vaughntay-Lee Henry to pay all the costs of the present proceedings as well a contribution towards FIBA's costs*" .

48. On 17 October 2023, the Player filed his written submission in response and requested the DPADD "*to issue a decision declaring that Pierria Vaughntay-Lee Henry has not committed any Anti-Doping Rule Violation*".

49. On 9 November 2023, FIBA filed a brief reply to the Player's written submission.

50. On 21 November 2023, a hearing was held by videoconference before the DPADD. During the hearing, the Parties had the opportunity to question the DCO, the two chaperones and the team doctor. Following the hearing, no additional procedural requests were made, and the Parties confirmed their satisfaction with the conduct of the proceedings and that their respective right to be heard had been duly respected.

51. On 19 February 2024, the FIBA DPADD rendered the Appealed Decision confirming that the Player had committed an ADRV by using a Prohibited Method, in violation of Article 2.2 of the FIBA ADR.

52. The operative part of the Appealed Decision reads as follows:

> "*a. Mr. Pierria Henry has committed an Anti-Doping Rule Violation.*
>
> *b. Mr. Henry is suspended for a Period of Ineligibility of 4 years. The Period of Ineligibility shall commence on the date of this decision, i.e. 19 February 2024.*

However, Mr. Henry shall receive credit for the Provisional Suspension he has served since 13 January 2023.

c. The results obtained by Mr. Henry from 4 November 2022 until 13 January 2023 are disqualified.

d. All other requests and prayers for relief are dismissed.

e. This decision shall be notified to: (i) Mr. Pierria Henry; (ii) FIBA; (iii) NADO Spain (CELAD); (iv) WADA".

53. On the same day, the Appealed Decision was communicated to the Appellant.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

54. On 11 March 2024, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sports (the "CAS") with respect to the Appealed Decision. In his Statement of Appeal, the Appellant requested the CAS for a Sole Arbitrator to be appointed. He also requested the production of the report of the FIBA's Integrity Officer assigned investigator, Mr Jose de Freitas (i.e. the "Harod Report"). Finally, he requested the suspension of the Appellant's deadline to file his Appeal Brief until the receipt of the requested report.

55. On 15 March 2024, the CAS Court Office initiated the arbitration procedure and invited the Respondent to respond to the requests made by the Appellant.

56. On 22 March 2024, the Respondent objected to the Appellant's request for the production of the Harod Report and the suspension of the time-limit for the filing of his Appeal Brief.

57. On 25 March 2024, the Respondent also objected to the Appellant's request for the appointment of a Sole Arbitrator and requested that the President of the CAS Appeals Arbitration Division, or her deputy, to decide on this issue in accordance with Article R50 of the Code of Sports-related Arbitration (the "CAS Code").

58. On 12 April 2024, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division (the "Deputy President") has decided to submit their dispute to a Panel composed of three (3) arbitrators and requested the Appellant to nominate an arbitrator from the list of CAS arbitrators within ten (10) days of receipt of its letter. In addition, the CAS Court Office informed the Parties that the Deputy President decided that (i) it shall be for the Panel, once constituted, to decide on the request for the Harod Report and (ii) the time-limit for the filing of the Appeal Brief shall remain suspended until further notice.

59. On 20 April 2024, the Appellant nominated Mr José Juan Pintó Sala as arbitrator.

60. On 3 May 2024, the Respondent nominated Dr Marco Balmelli as arbitrator.

61. On 14 May 2024, the CAS Court Office informed the Parties about a remark made by Dr Marco Balmelli in his Acceptance and Statement of Independence.

62. On 28 May 2024, the CAS Court Office informed the Parties that no challenge has been filed against the nomination of Dr Marco Balmelli within the deadline prescribed by Article R34 of the CAS Code.

63. On 5 June 2024, the CAS Court Office informed the Parties about the appointment of Ms Carine Dupeyron as President by the Deputy President and invited them to respond to the remarks made in her Acceptance and Statement of Independence.

64. On 17 June 2024, the CAS Court Office informed the Parties that no challenge has been filed against the appointment of Ms Carine Dupeyron within the deadline prescribed at Article R34 of the CAS Code. Therefore, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President, the CAS Court Office informed the Parties that the constitution of the Panel in this procedure is as follows:

President: Ms Carine Dupeyron, Attorney-at-law in Paris, France

Arbitrators: Mr José J. Pinto, Attorney-at-law in Barcelona, Spain

Dr Marco Balmelli, Attorney-at-law in Basel, Switzerland

65. On 9 July 2024, the CAS Court Office informed the Parties of the Panel's decision ordering the communication of the Harod Report within seven (7) days and the lifting of the suspension of the Appellant time-limit to file its Appeal Brief upon receipt of the said report.

66. On 15 July 2024, the Respondent requested a five (5) day extension to provide the Harod Report.

67. On 18 July 2024, the Respondent wrote to the CAS Court Office to inform the Panel that "*(c)ontrary to the Panel's understanding, there is no* "*report of Mr de Freitas*" and that "*FIBA is thus not in a position to produce the requested document as it does not exist*". The Respondent explained that FIBA instructed the FIBA Integrity Officer (the "FIBA IO"), Prof. Richard McLaren, to conduct an investigation to determine whether any third person might have participated in the Player's ADRV. Following this, the FIBA IO instructed Harod Associates Limited ("Harod") to conduct the investigation. As part of this investigation, Harod's Associate investigator, Mr. de Freitas interviewed the persons who might have assisted the Player in committing the ADRV. Specifically, Mr. de Freitas interviewed the following persons: Mr. Enrique González Martinez, DCO: Mr. Yeray Márquez Arrieta, Chaperone; Mr. David Gonzlez Guinea, Chaperone; Mr. Luis González Lago, Team Doctor; Mr. Arkaitz Ruiz de Arbulo Urreizti, Team Operations Technician.

Lastly, the Respondent showed its willingness to produce transcripts of these interviews if the Panel deemed it necessary pursuant to Article R44.3(2) of the CAS Code.

68. On 29 July 2024, the Appellant wrote to the Panel explaining that FIBA never denied that Mr. José de Freitas issued a report with the conclusions on his investigations

69. On 19 August 2024, the CAS Court Office informed the Parties that the Panel has decided that it "*concurs with the Appellant that the Respondent's response presents certain inconsistencies, since the preparation and existence of the Report were evoked on several occasions, such as FIBA's letter dated 3 March 2023 and its counsel's letter of 22 March 2024. The Panel understands nonetheless that a formal Report might not exist. Therefore, in accordance with the provisions of Article R44.3 of the Code (applicable by reference of Article R57), and for the same reasons referred to in its correspondence dated 9 July 2024, the Panel orders the Respondent to communicate any draft notes, notes of interviews and any internal document prepared by Harod Associates Limited (Harod) (or alternatively by any other person instructed by the FIBA Integrity Officer (IO), Prof. Richard McLaren for the same mission) regarding the Player's anti-doping rule* violation (ADRV), or any note or report prepared by the IO on or before 2 September 2024."

70. On 2 September 2024, the Respondent produced various draft notes, internal documents and interview transcripts prepared by Harod.

71. On 4 September 2024, the CAS Court Office informed the Parties that the suspension of the time-limit for the filing of the Appeal Brief was lifted. It also stated, regarding the Respondent's remark in its previous letter to the Court Office on the use of the documents in the record of the case, that the Panel decided that "*as these documents have been produced upon request's for the Appellant, only those of these documents that will be submitted as exhibits to the Parties' written submissions, will be considered as being part of the CAS file, without prejudice on the relevancy of such documents to assess the merits of the case*".

72. On 13 October 2024, following an extension granted by the CAS Court Office, the Appellant filed his Appeal Brief, together with factual and legal exhibits.

73. On 28 November 2024, following two extensions granted by the CAS Court Office, the Respondent filed his Answer, together with factual and legal exhibits.

74. On 16 January 2025, the CAS Court Office confirmed the Parties' agreement: (i) that the convening of a hearing be substituted with a second round of written submissions; (ii) that such submissions shall be brief and limited to the rebuttal of the allegations contained under paragraphs 10, 89-93, 97, 101, 107-109 and 117-120 of the Answer; (iii) that the second response shall be limited to a rebuttal of the allegations contained in the Reply; and (iv) that new evidence shall be submitted only to the extent necessary: for the Appellant, to rebut Exhibit R-20; and for the Respondent, to address any new evidence submitted by the Appellant in his Reply.

75. On 3 February 2025 and within the relevant deadline, the Appellant filed his Reply.

76. On 27 February 2025 and within the relevant deadline, the Respondent filed his Rejoinder.

77. On 25 March 2025, the CAS Court Office informed the Parties that the evidentiary proceedings were now closed pursuant to Article R59 of the CAS Code and invite them to return a signed copy of the Order of Procedure, which *inter alia* confirmed that their right to be heard had been respected.

78. The Order of Procedure was signed by the Parties, on 1, respectively 8, April 2025.

VI. THE PARTIES' ARGUMENTS

79. The Panel has taken into consideration all the Parties' written submissions and has weighed the arguments made by the Parties in the light of all the evidence presented. The Panel sets out below a concise summary of the Parties' positions relevant to its decision, which does not attempt to be an exhaustive account of all the evidence and arguments put forward before it but only of the most relevant factual and legal arguments. When necessary, other factual and legal arguments will be described in the decision on the merits section of this Award.

A. Summary of the Appellant's arguments

80. In his submissions, the Appellant contends that what is being required of him, to counter the ADRV violation under Articles 2.2 and 3.1 of the FIBA ADR, is a *probatio diabolica* in having to establish the non-existence of the Sample manipulation (CAS 98/222).

81. In the Appellant's view, this constitutes an onerous burden of proof, which is impossible to discharge in practice and for which the only possible defence would be to rule out all conceivable scenarios. The Appellant contents that he produced sufficient evidence for that purpose, that he did not swap the urine samples and that he established some departures from the relevant International Standard for Laboratories (ISL) that may call into question the AAF on which the ADRV is based. The Appellant, maintain that he did not breach Article 2.2 of the FIBA ADR and therefore should not be sanctioned.

82. The Appellant's arguments, in essence, may be summarized as follows.

1. The impossible substitution or replacement of the urine during the doping control

83. To counter the Article 2.2 ADRV established by the Respondent under Article 3.1 of the FIBA ADR, the Appellant holds that, under the circumstances, any urine substitution or manipulation prior or during the sample collection process was impossible.

84. The Appellant argues that this would have required prior preparation which was not possible under the circumstances. He emphasizes that, in the hours leading up to the doping control, he was before the public during the match, and subsequently, accompanied by the chaperones or the DCO, and in the presence of other selected players and the team doctor. To rule out any possible manipulation with the Sample during the collection process, the Appellant notes that any manipulation could only occur in the following three (3) ways or methods:

- The substitution of the urine inside the Player's urinary bladder: regarding this first method, the Appellant explains how this method could be applied by producing two videos demonstrating its application. He contends that this is a complex procedure that could not have been performed without it being noticed by everyone in the control room. He recalls that "*only seven minutes elapsed from when the doping control was communicated*" to him, and that he was in the presence of the DCO during the last hour before the Sample collection ("*more or less*").

- The substitution of urine at the time of Sample provision, so that the urine that passes into the vessel is not from the Athlete: regarding this second method, the Appellant contends that "*[t]his action requires prior preparation consisting of : a) To prepare a container with 90 ml of liquid. b) Keep this container hidden during the entire sampling process. c) At the time of sample provision, the athlete must have the vessel provided by the DCO in one hand and the container with urine in the other hand. d) Once the vessel provided by the DCO has been refilled, the athlete must hide the container that contained the urine*". The Appellant argues that any hidden container would have been discovered either by the cleaning staff, the other players or "*by the very experienced DCO*". He contends that "*[i]t is not possible to carry out all these operations at "a moment of inattention*". He further argues that the chaperones confirmed that he "*did not have in his possession any object that could contain hidden liquid."*. Finally, he notes that his representatives and the DCO have signed the Doping Control Form (the "DCF") which certifies that the Sample collection was performed according to the rules, notably Annex C.4.8 of the International Standard for Testing and Investigations ("ISTI"). Moreover, the DCO had a clear and unobstructed view of the Sample provision, as the DCO confirmed when interviewed. According to Appellant, CAS case law shows that statement of facts made by a DCO are relied upon as credible and trustworthy evidence (CAS 2015/A/4163; CAS 2018/A/5990), and that very substantial counter evidence needs to be presented in order to rebut the DCO's version of the facts (CAS 2016/A/4700).

- The replacement of the urine collection vessel with another collection vessel containing "clean" liquid: regarding this third method, the Appellant outlines that it involves preparing and hiding a container with 90 ml of liquid and then executing the swap. He also outlines the lay-out of the room and the difficulty in executing this method. Furthermore, in accordance with CAS 2008/A/1718-1724, he argues that this method is only feasible if

athletes are warned in advance, which was not the case here. He relies on the DCO's statement and on the above-mentioned chaperones sworn statements to prove that he did not have any container in his possession during the Sample collection. Moreover, he contends that "*the urine could not be changed before the Player was in the presence of the DCO because he did not have the doping control vessels*".

85. Regarding all three methods, the Appellant further insists that he was constantly under the supervision of the chaperones and the DCO and that it would not have been possible to carry out these operations during *"a moment of inattention"*. Moreover, the Appellant argues that any person intending to manipulate his/her urine sample would not have replace it with urine that is not human but with his/her own clean urine; accordingly, in the present case, this replacement of the urine sample was intended to harm him.

2. The criticism of the Harod Report

86. In his submissions, the Appellant argues that the Harod Report contains obvious errors and fails to take into account relevant aspects of the sampling process, in particular:

- the Harod Report states that the chaperone, Mr. David González was followed by the players, although it was confirmed during his interview that they were instead in front of him;
- had the Appellant stored the fake urine in the locker room, he could not have possibly known in advance that the Sample would be collected using a Lockcon kit, making it impossible to plan accordingly;
- the Harod Report fails to account for the height and width of the waste bin in the locker room as compared to the Appellant's size; the Appellant argues that if any vessel or Lockon kit containing fake urine had been hidden in the bin, retrieving it would have required several noticeable movements, something the DCO would likely have noticed;
- the Harod Report states that the Sample Collection Authority is Price Waterhouse Cooper (PWC), when in fact the doping control authority was Professional Worldwide Controls.

87. Furthermore, the Appellant stresses that the Report relies unjustifiably on the mere supposition that the "*DCO and/or the chaperones performed their doping control duties poorly*". The Report implies that he had previously prepared the process to change his own urine for a fake one, which, for him, was not possible under the circumstances of the case.

88. Regarding the training of the chaperons, the Appellant argues that there is no proof that the supervision of the chaperones was ineffective due to their lack of knowledge or that the DCO's work was incorrect. The Appellant highlights that if the Respondent considers that the supervision of the chaperones was not effective and/or the DCO's work did not respect

the ADR, then FIBA should recognize that it failed to fulfil its obligations as a "*Testing Authority*" according to the ISTI rules.

89. In light of the foregoing, the Appellant argues that he presented enough evidence to prove that no manipulation occurred during the Sample collection phase.

3. Chain of custody of the Sample and deviations from ISL to rebut the Presumption under Article 3.2.2 of the FIBA ADR

90. Article 3.2.2 of the FIBA ADR provides for the rebuttable presumption that WADA-accredited and WADA-approved laboratories, as in the case here, are presumed to have conducted the sample analyses and custodial procedures in accordance with the applicable ISTI and ISL. In his submissions, the Appellant intends to show that there has been significant deviations from the ISTI and the ISL.

91. As a preliminary note, the Appellant holds that the Harod Report makes its results conditional on the respect of the chain of custody rules. Nonetheless, he contends that the Report did not correctly investigate the chain of custody of the urine sample during the transportation, storage and analysis procedures.

92. Firstly, the Appellant submits that the Report did not investigate the chain of custody of the Sample during the transportation of the samples, so there is no information on this issue. In particular, he notes that:

- Contrary to what is mandated by Section 4 (Sample Collection Personnel Transfer to Laboratory or Courier) of the WADA Chain of Custody Form instructions, the name and signature of the individual courier were not recorded on the Chain of Custody Form.

- Given that the Report does not contain the data pertinent to the transportation of the samples as required by Article 8.3.1 of the ISTI, he cannot meet his burden of proof before the Panel unless FIBA provides the relevant chain of custody documentation. According to the Appellant, the names of the people who were in contact with the samples, the places where the samples were stored, and the storage conditions are unknown.

93. Secondly, as for the storage conditions, the Appellant highlights that Articles 5.3.4.1 ISL and 9.3.2 of the ISTI provide that urine samples can degrade if not kept under proper temperature conditions. The Appellant further explains that the "*urine samples were transported without refrigeration, from 00:03 hours on 4 November to 08:54 hours on 7 November 2022. Later they were not frozen until 8 November*". Therefore, these errors in the transportation process must have caused the degradation of the Samples.

94. Additionally, the Appellant notes that according to the Chain of Custody Form, the "*urine samples were sent to the anti-doping laboratory on 4 November, 2022, at 9:57 a.m*".

However, "*in the DHL company documentation it appears that the samples were sent on 3 November 2022*". This contradiction therefore shows that the urine sample does not belong to him. Moreover, the Appellant notes that the LDP of Sample A does not accurately trace its movement, notably between 8 November and 17 November. In this regard, he notes that "*on 8 November, at 10:10 a.m., urine is deposited in Room R247. On 17 November, the urine is used and stored in Room R235, at 10:30 a.m. This document does not allow us to know if on 17 November, before using the urine, that sample was really still in room R247 where it was deposited on 8 November*".

95. Thirdly, as for the laboratory analysis, the Appellant highlights certain discrepancies in the samples LDP. He argues that if the A and B Sample belonged to the same person, then they both must be identical. However:

- Laboratory results shows that Sample A has a PH level of 8.3 and that Sample B has a PH level of 8.2.
- Laboratory found "bovine albumin" in Sample A but not in Sample B.
- Laboratory results show some discrepancies in the data obtained in the analysis of Samples A and B (retention times and steroid concentrations).

96. According to Appellant, the "*[s]trict liability regime which underpins the anti-doping system requires strict compliance with the anti-doping rules by everyone involved in the administration of the anti-doping system in order to preserve the integrity of fair and competitive sport*" (CAS 2014/A/3487). In this context: "*certain IST departures will be treated as so serious that, by their very nature, they will be considered to undermine the fairness of the testing process to such an extent that it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred*" (CAS 2009/A/1752 y 1753). For the Appellant, the same reasoning shall apply to departures from the ISL.

97. Overall, given the circumstances described above, the Appellant argues that the traceability of the Sample within the laboratory is unknown, which breaks the internal chain of custody, which makes any explanations regarding the analytical results of both samples irrelevant. Finally, the Appellant concludes that he has proved that the Sample "*could have been tampered with in the laboratory*" which constitutes a deviation from the ISL enough to rebut the presumption under Article 3.2.2 of the FIBA ADR.

98. Finally, to support his claim that he did not change or manipulate the Sample, the Appellant also produces a polygraph test. He highlights the conclusion of the person who indicates that the "*examination was evaluated by numerical scoring and grading consistent with nationally standardized procedures. This resulted in the finding of No Deception indicated*". The Appellant contends that polygraph tests analyse the effects of lying on the human body to determine with a degree of reliability whether a person has lied. In accordance with CAS

OG AD 18/003, he notes that the production of a polygraph test does not replace the need to carefully consider all other evidence. Nonetheless, the test's result lends greater weight to his declaration of innocence.

4. The Proportionality of the Sanction

99. The Appellant argues that the application of the standard period of ineligibility of four (4) years under Article 10.2.1.1 of the FIBA ADR is disproportionate. He contends that, at thirty-one (31) years old, this sanction amounts to a lifetime sanction and that he will not be able to play professional basketball again.

B. The Appellant's request for relief

100. Based on the above, in its request for relief set out in its Appeal Brief, the Appellant requests the CAS to decide the following:

"*1. The Appeal of Mr Henry is admissible.*

2. The decision issued by the FIBA Disciplinary Panel Anti-Doping Division on 19 February 2024 is set aside.

3. Mr Pierria Vaughntay-Lee Henry is not found to have committed an anti-doping rule violation.

4. The arbitration costs shall be borne by FIBA.

5. Mr Henry is granted a significant contribution to its legal and other costs".

C. Summary of the Respondent's arguments

101. The Respondent submits that there are no decisive new elements in the Appellant's appeal that could interfere with the DPADD's findings in the Appealed Decision. The Appellant committed an ADRV under article 2.2 of the FIBA ADR, as established by FIBA under Article 3.2 of the latter.

102. In essence, the Respondent's arguments may be summarized as follows:

1. FIBA has Established the Use of a Prohibited Method Case

103. The Respondent contends that it is "*undisputed that the urine sample provided by the Player during an anti-doping control contained synthetic urine, which can only be present as a result of the utilization of a prohibited method"* and therefore concludes that the Player has committed an ADRV of the Use of a Prohibited Method according to Article 2.2 of the FIBA, i.e. to the comfortable satisfaction of the Panel.

2. The failure of the Player's Impossibility Defence

104. According to the Respondent, the Appellant's "impossibility defence" fails as the three potential urine substitution methods described by the Appellant still leave room for manipulation or substitution of the sample:

- The substitution of the urine inside the Player's urinary bladder: the Respondent argues that there is no evidence that the methods presented by the Appellant are the only feasible ways to substitute the urine that is inside one's bladder. Moreover, even assuming that these were the only methods to do so, the Appellant had ample time to substitute his own urine prior to its collection since the Player had two (2) hours between the moment when he was notified about the control and when the sample was delivered. Moreover, even if the Appellant was under strict supervision, the first instance hearing has shown that such supervision might have not been effective throughout the entire time because of the presence of unqualified chaperones. In this respect, the Respondent holds that "*the only person in the doping control station who was sufficiently qualified to have noticed something suspicious from an anti-doping perspective was the DCO. On Mr. Henry's own case he was "in presence of the DCO" only in "the last hour before sample provision (more or less)". This means that there is one hour (more or less) during which Mr. Henry was accompanied only by a totally unqualified chaperone*". Therefore, substitution of the urine sample must have remained possible during the sample collection.

- The substitution of urine at the time of sample provision, so that the urine that passes into the vessel is not from the Athlete: the Respondent notes that the Appellant impossibility claim in this respect is mainly based on (i) the sworn statements of the chaperones and the team doctor and (ii) the statements of the DCO's during his examination at the first instance hearing. The Respondent contends that the Appellant cannot rely on the sworn statements of the chaperones and the team doctor to establish that he did not have any objects in his possession during the sample provision for two reasons: first, the Respondent argues that during the first instance hearing "*when questioned at the hearing, the team doctor and chaperones accepted that they did not conduct any search of the Player's belongings*", and second, it submits that the sworn statements should "*have no evidentiary value*" because the chaperones had no training, and that the team doctor testified that he was only there to accompany the players. Furthermore, the Respondent submits that the Appellant cannot rely on the DCO's statement that he "*had a clear and unobstructed view of the urine passing from the athlete's body into the vessel*" because anyone can understandably loose attention momentarily. Indeed, during the first instance hearing, the DCO said that "*everything can happen but I would say that he had nothing hidden*", which does not rule out that the Appellant might have had an object in his possession during the sample provision process. Therefore, since the only person with anti-doping training and experience did not rule out the possibility that the Appellant could have hidden something within him, this "*fundamentally undermines the Player's claim that it was impossible for him to substitute the urine during sample collection*".

- The replacement of the urine collection vessel with another collection vessel containing "clean" liquid: the Respondent submits that the replacement of the vessel after the sample provision is indeed possible, and discards the extract from the CAS award cited by the Appellant (CAS 2008/A/1718-1724) because such "*expert statement concerned unannounced out-of-competition testing, while in the present case the Player knew that he was subject to testing after the game and was indeed informed that he had been selected to provide a sample (before he went to the locker room and some two hours before he actually provided the sample)*". To the contrary, the Respondent recalls the finding of this case that a replacement "*can easily be made in a momentary lack of attention from the Doping Control Officer*". In response to the Appellant's contention that he did not have doping control vessels, the Respondent highlights that the Report states that "*more than enough of these sampling cups were available during the testing process*". The Respondent further notes that the availability of the sampling cups was "*due to an inadequate procedure these sample cups were treated as normal waste and were thus freely accessible*" which allowed them to be removed and reused.

105. On the basis of the foregoing, the Respondent submits that nothing under the circumstances allows to eliminate the possibility of substitution. The Respondent explains that the Harod Report confirmed that a *"detailed analysis and review of all of the available evidence strongly suggests, with comfortable satisfaction, that the player was able to covertly substitute the urine sample taken in the presence of and witnessed by the DCO with a pre-prepared fake sample in an identical urine sampling cup to what was being used that day by the DCO*". Nonetheless, the Respondent makes it clear that "*FIBA is not relying on this "Report" not only for the reasons set out in the document production phase but also and foremost because it is not FIBA's duty to prove that it was not impossible for the Player to substitute his urine with the synthetic urine that was then found in his sample*".

106. In view of the foregoing, the Respondent argues that urine manipulation could have been possible during the sample collection phase, and that none of evidence put forward by the Appellant counters the ADRV case it established under article 3.1 of the FIBA ADR.

3. The Player's chain of custody defence

107. Assuming that it was impossible for the Appellant to substitute the urine during the sample collection, that would mean that the urine would have been somehow swapped during the transportation or at the laboratory but the Respondent argues here that no errors occurred during the transportation of the Sample or the Laboratory chain of custody which constitutes deviations from the ISL or can rebut the presumption under article 3.2.2 of the FIBA ADR.

108. First, regarding the sample transportation, the Respondent asserts that the Appellant cannot argue that there is an issue with the DHL documentation because this issue has been settled and acknowledged by Appellant's counsel during the first instance hearing. The

documentation was prepared on 3 November 2023 and the shipment was sent after midnight of that same day, namely on 4 November 2023.

109. Second, regarding the Laboratory chain of custody, the Respondent submits "the Laboratory confirmed FIBA's understanding that there is nothing wrong in the chain of custody and that the "*movement of the samples is fully traceable*". The claim that it is "*unknown which person collected the urine sample from Room R247*" is incorrect as the LDP includes a column titled "Personnel" which indicates exactly who handled the sample at each stage. Moreover, it holds that, even if, for the sake of argument, there were minor gaps in the documentation, the Appellant's vague statement that the samples "*could have been manipulated*" is speculative and should not be treated as evidence.

110. According to the Respondent, the Appellant failed to prove any departures from the ISL. It further notes that "[b]*eing incapable of identifying how an alleged departure could have caused the AAF the Player desperately claims that this is a situation comparable to the ones where CAS held that some serious departures from the IST can directly impact the fairness of testing. Even assuming that the same is true with respect to departures from the ISL, a proposition for which the Player offers no authority in support, the reality is that there is no such fundamental departure.* […] *Be that as it may, the burden is on the Player to prove that a chain of custody deviation was so serious that it could have reasonably caused the AAF. He has not done so. His entire argument is based on hypothetical scenarios and unsupported assumptions*". On these grounds, the Respondent concludes that the Appellant's chain of custody defence should fail.

4. The Player's Technical Defence

111. The Respondent disagrees with the Appellant that the results of the analysis of the samples are to be questioned on the ground that the samples were not refrigerated during transportation and that the results of the A and B-Samples are allegedly different.

112. First, regarding the refrigeration of the samples during transportation, the Respondent submits that there is no departures from Article 9.3.2 of the ISTI which requires transposition "*in a manner which minimizes the potential for Sample degradation due to factors such as time delays and extreme temperature variations*". Under the circumstances, the Appellant's arguments do not discharge his burden "*to establish that the transportation of the sample without refrigeration could reasonably have caused the AAF*". The Respondent further notes that "*even if that was the case, FIBA would still be able to establish, as provided by Article 3.2.3 of the FIBA ADR, that such alleged "departure did not cause the Adverse Analytical Finding*" as the laboratory did not indicate any sign of degradation upon arrival of the sample.

113. Likewise, the Respondent maintains that there were no violations of Article 5.3.4.1 of the ISL which requires that the A-Samples to be frozen by the laboratory after Aliquots are

taken for the Initial Testing Procedures. This is because "*the ISL only applies from the moment in which the sample arrives to the Laboratory and does thus not constitute a proper basis to challenge the transportation of the sample to the laboratory*".

114. Second, regarding the alleged discrepancies between the results of the A-and B-Sample Analysis, the Respondent denies all issues raised by the Appellant.

- Regarding the difference PH levels between samples A and B, the Respondent contends that "*as confirmed by the Laboratory, a difference between pH values of 8.3 and 8.2 is negligible as a "normal analytical variation of the applied method"*".

- Regarding the discrepancies in the data results of both samples (retention times and steroid concentrations), the Respondent contends that the Laboratory confirmed that such discrepancies should not cast any doubts on the reliability of the AAF.

- Regarding the existence of bovine albumin in Sample A but not Sample B, the Respondent explains that bovine albumin was only tested in Sample A "as part of additional analysis conducted to confirm the highly unusual steroid profile inconsistent *with human urine*" which was not tested for in Sample B.

115. Finally, regarding the reliability of the polygraph test presented by the Appellant, the Respondent contends that the assertion by the examiner that the test was conducted in consistency with "nationally standardized procedures" cannot be accepted as reliable evidence on its own without any supporting documentation. Furthermore, in accordance with CAS caselaw, the Respondent highlights that "*[e]ven when properly conducted and documented, polygraph tests are considered by CAS as mere parties' evidence with no particular evidentiary value*" (CAS 2021 A/7768, paras. 196-199; CAS 2023/A/9551, para. 116). Moreover, it notes that the test "*appears on its face to be a one-question examination, which is widely recognized as scientifically unsound*" (CAS 2023/A/9551). Finally, it explains that "*even in cases where the reliability of the polygraph evidence is accepted, like in the CAS OG AD 18/003 case relied upon by the Player, all what the polygraph test could do is to "add some force" to an athlete's statement but would not replace the need for other evidence*".

5. The Appellant's ADRV requires the imposition of a four-year period of ineligibility, which is not a disproportionate sanction

116. Based on the foregoing, the Respondent concludes that it has discharged its burden to establish the manipulation of the Sample at the hearing body comfortable satisfaction. It submits that the Appellant does not contest that the applicable period of ineligibility is four (4) years under Article 10.2.1.1 of the FIBA ADR. It notes that the Appellant does not claim that the violation is ought to be considered unintentional but simply argues that it is disproportionate as it amounts to a lifetime sanction if imposed on a player at 31 years old.

Nonetheless, the Respondent argues that there "*are plenty of CAS awards that have convincingly rejected this kind of considerations*" (CAS 2023/A/9550-9586-9607).

117. Therefore, the Respondent concludes that the sanction is appropriate and justified under the ADR and CAS caselaw.

D. The Respondent's request for relief

118. In view of the foregoing, in its request for relief set out in its Answer Brief, Respondent requests the CAS to decide the following:

"*(i) Mr. Pierra Lee-Vaughntay Henry's Appeal is dismissed.*

(ii) The Decision of the FIBA Disciplinary Panel Anti-Doping Division of 19 February 2024 is upheld.

(iii) Mr. Pierra Lee-Vaughntay Henry shall bear all arbitration costs, if any, and pay a significant contribution towards the legal costs incurred by FIBA in connection with these proceedings.

FIBA reserves the right to amend and/or expand upon the above prayers for relief in ensuing submissions and/or at the hearing".

VII. JURISDICTION AND SCOPE OF REVIEW

119. Article R47 of the CAS Code states that:

"*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*".

120. Turning to the relevant sports body in the present circumstances, Articles 13.2.2 and 13.2.3 FIBA ADR provides that:

"*13.2.2 Appeals against decisions of the Anti-Doping Division of the FIBA Disciplinary Panel*

Appeals against decisions of the Anti-Doping Division of the FIBA Disciplinary Panel may be lodged exclusively with CAS in accordance with the provisions applicable for such proceeding. Recourse to a state court is not permitted. An appeal to the FIBA Appeals' Panel is excluded.

13.2.3 Persons Entitled to Appeal

The following parties shall have the right to appeal a decision as set forth in this Article 13.2:

a. the Athlete or other Person who is the subject of the decision being appealed […]".

121. The Appellant's right to appeal stems from Article 13.2.3 (a) of the FIBA ADR, since the Player is an Athlete.

122. In light of the above, the Panel notes that the Appealed Decision was rendered by FIBA DPADD in application of the FIBA ADR. The Panel further notes that the jurisdiction of the CAS has not been challenged by the Parties and was further expressly confirmed by the signature of the Order of Procedure by both Parties. Therefore, the Panel is satisfied that the jurisdiction of the CAS is established.

123. Regarding the scope of review, the Appellant submits that the Panel has the full power to review the facts and the law. The Respondent agrees with the Appellant and further argues that all while this is a de novo hearing, some level of deference should be given to a well-reasoned first instance decision (See, CAS 2017/A/5299; CAS 2019/A/6665; CAS 2018/A/5800).

124. Article R57 of the CAS Code expressly provides that: "*the Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous* instance".

125. In light of the above, the Panel confirms, which has not been challenged by the Parties, that it will rule *de novo*, examining all the facts and legal arguments presented before it.

VIII. ADMISSIBILITY

126. 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 21 days from the receipt of the disputed decision appealed against […]".*

127. Article 13.2.3 FIBA ADR provides that:

"*[t]he following parties have the right to appeal as set forth in this Article 13.2: a) the Athlete or other Persona who is subject of the decision being appealed*".

128. Moreover, Article 13.6.1 FIBA ADR provides that:

[t]he time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party".

129. In light of the above, the Panel notes that the Appellant has the right to appeal in accordance with 13.2.3 FIBA ADR.

130. The Panel further notes that the appeal against the Appealed decision, which was issued and notified on 19 February 2024, was filed on 11 March 2024 and in compliance with the formal requirement of the CAS Code. The Respondent did further not challenge the admissibility of any claims.

131. In light of the above, the Panel is satisfied that this Appeal was timely filed within the time-limits specified in the FIBA ADR and the proceedings are therefore admissible.

IX. APPLICABLE LAW

A. Applicable law and regulations

132. 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*".

133. The Appellant submits that the present dispute shall be decided according to the FIBA ADR associated regulations including World Anti-Doping Code ("WADC"). The Respondent agrees with the Appellant, underlines that WADA International Standards are also relevant, and adds that, subsidiarily, Swiss law should be applicable in accordance with article R58 of the CAS Code.

134. In light of the above, the Panel concludes that the applicable regulations are those of the FIBA ADR and its associated regulations (including WADC and WADA International Standards). Moreover, since FIBA has its seat in Switzerland, the Panel holds that Swiss law shall apply on a subsidiary basis.

B. Relevant provisions

135. In light of the Parties' submissions, the Panel highlights that the following provisions of the FIBA ADR, ISTI and ISL are material to the current proceedings:

1. The applicable FIBA Anti-Doping Rules and the WADA Prohibited List

136. Article 2.2 of the FIBA ADR:

"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.

2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, 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.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed".

137. Appendix 1 of the FIBA ADR (Definitions):

"Use: The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method".

138. Article M2.1 of the WADA Prohibited List (section M dedicated to Prohibited Methods)

"Tampering, or Attempting to Tamper, to alter the integrity and validity of Samples collected during Doping Control. Including, but not limited to: Sample substitution and/or adulteration, e.g. addition of proteases to Sample".

2. The applicable evidentiary rules in the FIBA ADR

139. Article 3.1 of the FIBA ADR:

"3.1 Burdens and Standards of Proof

FIBA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIBA 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability".

140. Article 3.2 of the FIBA ADR:

"Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases: […]

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then FIBA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding".

3. The applicable sanctions

141. Article 10.2 of the FIBA ADR

"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

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

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and FIBA can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years".

4. The applicable International Standards for Laboratory (ISL) and for Testing and Investigations (ISTI)

142. Article 3 of the ISL (Definitions and Interpretations)

"*Laboratory Internal Chain of Custody: Documentation maintained within the Laboratory to record the chronological traceability of custody (by Person(s) or upon storage) and actions performed on the Sample and any Aliquot of the Sample taken for Analytical Testing*".¨

143. Article 3 of the ISTI (Definitions)

"*Testing Authority: The Anti-Doping Organization that authorizes Testing on Athletes it has authority over. It may authorize a Delegated Third Party to conduct Testing pursuant to the authority of and in accordance with the rules of the Anti-Doping Organization. Such authorization shall be documented. The Anti-Doping Organization authorizing Testing remains the Testing Authority and ultimately responsible under the Code to ensure the Delegated Third Party conducting the Testing does so in compliance with the requirements of the International Standard for Testing and Investigations*".

"*Sample Collection Authority: The organization that is responsible for the collection of Samples in compliance with the requirements of the International Standard for Testing and Investigations, whether (1) the Testing Authority itself; or (2) a Delegated Third Party to whom the authority to conduct Testing has been granted or sub-contracted. The Testing Authority always remains ultimately responsible under the Code for compliance with the requirements of the International Standard for Testing and Investigations relating to collection of Samples*".

144. Article 5.2 of the ISTI

"*Notification of Athletes starts when the Sample Collection Authority initiates the notification of the selected Athlete and ends when the Athlete arrives at the Doping Control Station or when the Athlete's possible Failure to Comply occurs. The main activities are: a) Appointment of DCOs, Chaperones and other Sample Collection Personnel sufficient to ensure No Advance Notice Testing and continuous observation of Athletes notified of their selection to provide a Sample*".

145. Article 5.3.2 of the ISTI

"*To conduct or assist with the Sample Collection Sessions, the Sample Collection Authority shall appoint and authorize Sample Collection Personnel who have been trained for their assigned responsibilities, who do not have a conflict of interest in the outcome of the Sample collection, and who are not Minors*".

146. Article 5.3.4.1 of the ISL

"In order to maintain the stability and integrity of the urine Samples, the Laboratory shall implement Sample storage procedures that minimize storage time at room and refrigerated temperatures as well as Sample freeze/thaw cycles.

For urine Samples, the Laboratory shall obtain, following proper homogenization of the Sample, an initial Aliquot containing enough Sample volume for all analytical procedures (all Initial Testing Procedures or all intended Confirmation Procedures, as applicable), by decanting the Aliquot from the urine Sample container into a secondary container (e.g. a Falcon tube). Procedure-specific Aliquot(s) shall then be taken from the secondary container.

The Laboratory shall measure the pH and SG of urine Samples once, using one Aliquot, during the Initial Testing Procedure and the Confirmation Procedure(s) ("A" and "B"

Samples). Other tests that may assist in the evaluation of adulteration or manipulation may be performed if deemed necessary by the Laboratory (refer to the Technical Document on measuring and reporting the steroid profile, TD EAAS).

Urine "A" Samples should be frozen after Aliquots are taken for the Initial Testing Procedure(s) to minimize risks of Sample microbial degradation. Urine "B" Samples shall be stored frozen after reception until analysis, if applicable".

147. Article 5.4.2 of the ISTI

"*When contact is made, the DCO/Chaperone shall:*

a) From the time of such contact until the Athlete leaves the Doping Control Station at the end of their Sample Collection Session, keep the Athlete under observation at all times".

148. Article 5.4.8 of the ISTI

"*If Sample Collection Personnel observe any other matter with potential to compromise the collection of the Sample, the circumstances shall be reported to and documented by the DCO. If deemed appropriate by the DCO, the DCO shall consider if it is appropriate to collect an additional Sample from the Athlete. The Testing Authority shall investigate a possible Failure to Comply in accordance with Annex A - Review of a Possible Failure to Comply in the International Standard for Results Management."*

149. Article 8.3.1 of the ISTI

"The Sample Collection Authority shall define criteria ensuring that each Sample collected is stored in a manner that protects its integrity, identity and security prior to transport from the Doping Control Station. At a minimum, these criteria should include detailing and documenting the location where Samples are stored and who has custody of the Samples and/or is permitted access to the Samples. The DCO shall ensure that any Sample is stored in accordance with these criteria".

150. Article 9.3.2 of the ISTI

"Samples shall always be transported to the Laboratory that will be analyzing the Samples using the Sample Collection Authority's authorized transport method, as soon as possible after the completion of the Sample Collection Session. Samples shall be transported in a manner which minimizes the potential for Sample degradation due to factors such as time delays and extreme temperature variations".

X. DECISION ON THE MERITS

151. Taking into account the Parties' submissions, the Panel considers that, in this Appeal, it must address the following successive questions:

A. Did the Respondent establish to the comfortable satisfaction of the Panel that the Appellant committed an ADRV under Article 2.2 of the FIBA ADR?

B. If the Panel finds that the Appellant has committed an ADRV, is the four (4) year ineligibility sanction imposed under Article 10.2.1.1 of the FIBA ADR proportionate?

152. As a preliminary remark, the Panel highlights that the Appealed Decision found that the Appellant had committed an ADRV under Article 2.2 of the FIBA ADR. The DPADD clarified that if the elements of Use of a Prohibited Method are fulfilled, recourse to Article 2.5 FIBA ADR is excluded. This exclusion has not been challenged by the Appellant, and accordingly, in the present appeal, the Panel only considered whether an ADRV was committed or not under Article 2.2 of the FIBA ADR.

A. Did the Respondent establish to the comfortable satisfaction of the Panel that the Appellant committed an ADRV?

153. The Panel notes, from the outset, that this question is two-fold:

- Did the Respondent establish the existence of an AAF?

- Is the Panel comfortably satisfied that an ADRV has occurred?

154. After recalling the applicable standards and rules (1), the Panel will turn to the above two questions (2 and 3).

1. Article 2.2 of the FIBA ADR, standard and methods of proof

155. The purpose of Article 2 of the FIBA ADR is to specify the circumstances and conduct that constitute ADRVs. Specifically, Article 2.2 of the FIBA ADR provides that the use of a Prohibited Method by an Athlete constitutes an ADRV. Such a Prohibited Method is defined in section M2 of the 2020 Prohibited List as "*Tampering, or Attempting to Tamper, to alter the integrity and validity of the Samples collected during the Doping Control… including, but not limited to: Sample substitution and/or adulteration, e.g. addition of proteases to Sample*".

156. According to Article 3.1 of the FIBA ADR, a violation of Article 2.2 of the FIBA ADR must be established by FIBA to the "*comfortable satisfaction*" of the Panel, bearing in mind the seriousness of the allegations. The comfortable satisfaction of the Panel has been defined as being greater than a mere balance of probability but less than proof beyond reasonable doubt (see, CAS 2021/A/7840; CAS 2017/A/5422; CAS 2014/A/3630). The Athlete might rebut the ADRV by establishing specified facts or circumstances, in which case the standard of proof shall be by a balance of probability.

157. According to Article 3.2 of the FIBA ADR, an ADRV can be proven by any reliable means. In this respect, comment 19 of the WADC indicates that "*any reliable means*" can include reliable documentary evidence and reliable analytical data from either an A or B Sample.

2. Did the Respondent establish the existence of an AAF?

158. In the present case, the Panel recalls that the Parties did not challenge the AAF, which is based on the undisputed fact that both the A-Sample and the B-Sample were found to be inconsistent with human urine. According to the Respondent, the presence of synthetic urine in the Appellant's sample is "*per se reliable evidence*" that establishes an AAF.

159. The Panel agrees with this conclusion.

3. Is the Panel comfortably satisfied that an ADRV has occurred?

160. The requirement of a proof "*to the comfortable satisfaction*" of the Panel, as applied in doping case, invites the latter to consider the circumstances of the case and the allegations made therein to determine whether this threshold for the proof of the ADRV has been attained. In other words, the Panel will examine whether the Appellant, to avoid that an ADRV be confirmed, has provided convincing evidence to rebut the case presented by the Respondent, such that the Panel cannot be comfortably satisfied that an ADRV has occurred.

161. In that respect, the Panel refers to the cases such as CAS 2018/A/5990, whereby it was noted that: "*certain international testing standards and anti-doping rules are considered so fundamental and central in ensuring integrity in the administration of sample collection that certain departures therefrom could result in the automatic invalidation of the test results*." Subsequently; "*the other benchmark question is whether a breach or breaches, together or alone, reach "a level which may call into question the entire doping control process" (see CAS 2001/A/337 para. 68), after which "it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred" (see CAS 2014/A/3487 para. 152 and CAS 2016/A/4707 para. 85).*"

a) General analysis by the Panel of the evidence presented

162. The respective positions of the Parties have been summarized above (see, section VI) and reveal that the key disagreement between the Appellant and the Respondent is that:

- the former contends that (i) it was not possible for him to have substituted the urine during the Sample collection process, and accordingly, (ii) there must have been a manipulation of the Sample during transportation or later on at the Laboratory, which is confirmed by deviations from the applicable ISL and ISTI; whereas

- the latter argues that the Appellant's arguments pertaining to the procedural integrity of the doping control are unconvincing, and adds that, even under the circumstances, none of these elements would be sufficient to rebut the presumption of an ADRV and/or to establish that the deviations and difficulties encountered during any phase of the anti-doping process have caused the AAF.

163. Specifically, the Panel notes that:

- the Appellant has divided up the Sample collection process into two different phases, namely: a first stage prior to and during the Sample collection, and a second stage following the collection, i.e., starting from the transfer of the Sample to the Laboratory for testing and during the storage of the Sample. For the Appellant, in the first stage, no manipulation could have taken place during the Sample collection (the so-called "impossibility argument") while, during the second stage of the anti-doping control, the Appellant highlights various issues with the chain of custody of the Sample which, in his view, amounted to deviations from the ISTI and/or the ISL which could have reasonably caused the AAF; in his view, this scenario suffices, on a balance of probability, to rebut the finding of an ADRV.

- the Respondent highlights that there have been numerous opportunities for the Appellant to interfere with the Sample collection process during the first stage of the anti-doping process whereas, at odds with the Appellant's allegations, there is no evidence that the transportation or the chain of custody presented deficiencies that could have potentially caused the AAF.

164. In that respect, the Panel highlights that the evidence presented by the Appellant occasionally overlaps. Accordingly, the Panel notes that the general arguments and evidence advanced by the Appellant are addressed immediately below, while a more detailed discussion follows on the arguments that have been raised.

- <u>The credibility of the DCO' statements:</u>

165. The Panel recalls that the Appellant holds, on multiple occasions in support of his defense, that the DCO's statement confirmed that the latter had a "*clear and unobstructed view of the urine passing from the athlete's body into the vessel*" as required by Annex C.4.8 of the ISTI. The Panel agrees with the Parties that DCO's statements are to be relied upon as credible and trustworthy evidence. The Panel also holds that, in line with the case CAS 2016/A/4700, "*substantial counter-evidence must be presented to rebut the doping control officer's version of the facts*".

166. In this respect, many factors do not provide a clear and consistent account of the events. Here, the Panel recalls that, when questioned whether the Appellant might have had in his possession objects containing liquids, the DCO during the hearing before the DPADD,

confirmed that the Appellant had a good attitude and that he could see his body from his chest to his feet completely naked, and while noting that "*everything can happen*", the DCO confirmed that he had nothing hidden from him. The Panel thus holds that it shall, under the balance of probability test, investigate further the circumstances of the case and the allegations made therein. Another element is that the formulation of "clear and unobstructed view" is a wording in a form, as opposed to an expression by the DCO himself.

167. Under the circumstances, this is not the only issue that questions the integrity of the Sample collection process. In his submissions, the Appellant holds that the sworn statements of the chaperones and the team doctor confirm that he did not have in his possession any object where he could have hidden any cups or vessels with any liquid. Nevertheless, during the hearing before the DPADD, it was made clear that no search was conducted on the Appellant during the doping control.

168. Moreover, the lack of training and the absence of proper instructions given to them by the DCO, potentially leading to inadequate supervision performed by the chaperones, is apparent from their interviews.

- <u>The credibility of the Harod report:</u>

169. Having that in mind, the Panel now turns to the findings of the Harold Report—specifically requested by the Appellant during the document production phase of this arbitration and produced by him as an exhibit to his appeal brief. As a reminder, the Report highlights that a "*detailed analysis and review of all of the available evidence strongly suggests, with comfortable satisfaction, that the player was able to covertly substitute the urine sample taken in the presence of and witnessed by the DCO with a pre-prepared fake sample in an identical urine sampling cup to what was being used that day by the DCO. To do this he must have had available access to a urine sampling cup of the same make (Lockcon) and model utilized by the DCO. The investigation showed that more than enough of these sampling cups were available during the testing process*".

170. The Panel notes the Appellant's view, as summarized above (See, Section VI.A), regarding the errors in the Report. The Panel also takes note of the typographical error concerning the doping control authority referred to by the acronym PWC. However, the Panel does not find any clear and convincing rationale in the issues raised by the Appellant regarding the Harod Report that would undermine its findings. Overall, the Panel views the Harod Report, which is based on investigations onsite and interview, as relevant evidence to be confronted with the other elements of the file, while not being bound by its findings.

- <u>The evidentiary value of the polygraph test:</u>

171. Finally, regarding the polygraph test produced by the Appellant, the Panel generally agrees with CAS case law (see, CAS OG AD 18/003), which confirms that the production of such

a test does not supplant the need to carefully assess all other evidence. The Panel retains additionally that polygraph tests may have limited probative value in very specific instances, in particular when supported by other strong evidence (see, CAS 2011/A/2384 & 2386; CAS 2019/A/6313). Overall, the Panel agrees with the Respondent that, in accordance with case CAS OG AD 18/003 supported by the Appellant, at most, the test may "*add some force*" to the Appellant's statement but would not replace the need for other evidence.

172. On the evidentiary value of the test, while the Appellant explains that the test was conducted with the "*national standardized procedures*" and therefore argues that its result lends greater weight to its declaration of innocence, he does not further develop this point or present any supporting documentation. Moreover, the Panel noted that the test consisted in only three very short questions, while a significantly more detailed questioning could have been relevant. On that basis, the Panel concludes that the polygraph test does not assist in the resolution of the issues in the case.

b) Detailed analysis

- <u>The Sample collection phase and the alleged impossibility of substitution by the Appellant</u>

173. In this section, the Panel focuses on the evidence produced by the Appellant pertinent to the Sample collection stage to counter the doping case established by the Respondent under Articles 2.2 and 3.1 of the FIBA ADR. These elements were presented by the Appellant in support of his argument that any alleged manipulation of the Sample could only have been possible through the three (3) methods he presented, which he claims not to have used. It is remined here that these methods are: (i) the substitution of the urine that was inside his bladder; (ii) the substitution of urine at the time of sample provision, so that the urine that passes into the vessel is not from the athlete; and finally (iii) the replacement of the urine collection vessel with another collection vessel containing "clean" liquid.

174. The Panel starts its analysis by addressing the first method, i.e. (i) the substitution of the urine that was inside of the Appellant's bladder.

175. As a preliminary note, the Panel highlights that, as noted by FIBA, it is not certain that the implementation of this method is only plausible through the two techniques demonstrated by the videos that the Appellant produced in its exhibits.

176. Nevertheless, even assuming the Panel were to accept the Appellant's contention, and the complexity of applying this method, the Panel is of the view that the Appellant, under the circumstances and notwithstanding the method's alleged complexity, could still have had a reasonable opportunity to implement it. This could indeed have been possible from the time he was notified until he had delivered the sample. This doubt comes from the lack of anti-doping training of the chaperons chosen to overlook the process and therefore the

effectiveness of the supervision until the Appellant reached the doping control room and came under the supervision of the DCO. Therefore, given these circumstances, the majority of the Panel is of the opinion that the Appellant's impossibility claim regarding this method shall fail.

177. The Panel now proceeds to the joint examination of methods two and three, i.e. (ii) the substitution of urine at the time of the Sample provision, so that the urine that passes into the vessel is not from the Athlete; and (iii) the replacement of the urine collection vessel with another collection vessel containing the non-human urine. The Panel is of the view that these two methods, as the Appellant confirms, share a key point which is that they both require the preparation of a container of liquid and that the Appellant to keep it hidden "*during the entire sampling process*" while substituting the urine.

178. Regarding these two methods, the majority of the Panel is of the view that the Appellant's argumentation shall also fail for the following reasons. As previously noted, the Panel has doubt about the effectiveness of the supervision of the Appellant during the doping control process, particularly due to the lack of anti-doping training of the chaperones chosen to overlook the process and the significant time that elapsed between the Athlete having the notification of the anti-doping test and the moment the Sample was collected, together with the number of attempts from the Athlete to provide his sample (five or six). Another element supporting the existence of opportunities to tamper or manipulate is that, despite the sworn statements of the chaperones and the team doctor that he did not have in his possession any object where he could have hidden any cups or vessels with any liquid, it was made clear during the hearing before the DPADD that no thorough search was conducted on him during the doping control.

179. Moreover, the Panel recalls the DCO's statement confirming that he had a "*clear and unobstructed view of the urine passing from the athlete's body into the vessel*" as required by Annex C.4.8 of the ISTI and as indicated in the DCF. While the Panel agrees that the DCO's statements are to be relied upon as credible and trustworthy evidence, and that "*substantial counter-evidence must be presented to rebut the doping control officer's version of the facts*" (See, CAS 2016/A/4700), the majority of the Panel finds it difficult to conclude that the DCO's position, expressed in a pre-filled form, is incontestable and, while, before the DPADD he confirmed that he had the feeling that the Appellant had nothing hidden from him, he also recognized that "*everything can happen*". Moreover, during the Harod investigation, the DCO certified that he had briefed the three chaperones, while, when interviewed, all three denied having had any proper briefing at all. Finally, the doping control process of the Appellant lasted over two hours, and hence, maintains a degree of uncertainty about the effectiveness of the supervision all along.

180. Another argument raised by the Appellant is that he could not have substituted the urine in the presence of the DCO because he did not have any doping control vessels. However, the Harold Report indicated that "*more than enough of these sampling cups were available*

during the testing process" which the Appellant could have used. The record also shows that the Appellant used several of the control vessels in prior attempts to provide his Sample. It therefore cannot be excluded that he kept one and poured the substitute urine in it prior to handing it over to the DCO.

181. The Appellant also highlighted that, had he intended to cheat, he would not have used fake urine but his own clean urine. The Panel is not convinced by this argument, because as actually shown by an article entitled "*Can synthetic urine replace authentic urine to "beat" drug place drug testing?*," numerous fake urines trump testing and the Appellant could have thought that this would be the case.

182. Regarding the Harold Report, the Panel notes that the Appellant chose to challenge the Report. Overall however, in the Panel's view, the Harod's report, while being severe against FIBA and the organization of the doping control, shows that a thorough investigation was conducted and the majority of the Panel holds that the Appellant has not presented any evidence capable of rebutting the Report's factual findings.

183. Finally, the Panel also highlights that the Appellant was at "his" stadium, in his locker room, surrounded by members of his team, and the chaperones were selected from the people working at the team's buvette. This naturally lends greater weight to the possibility of opportunities to substitute samples, and to the ineffectiveness of the supervision.

184. The question of the failures in the doping control process has eventually been used as a final alternative argument by the Appellant, who contends that under Articles 5.2, 5.3.2, 5.4.2, 5.4.8 of the ISTI, the Respondent, as the Testing Authority and the Sample Collection Authority, should recognize its responsibility for the lack of training of the chaperones and the conduct of the DCO and on that basis, that would prevent a finding of an ADRV to the comfortable satisfaction of the Panel.

185. The Panel takes this argument seriously and has reviewed the criteria applied in similar cases by other CAS Panels, to which it concurs, i.e. that if there are deviations in the doping control process, these deviations shall either explain the AAF, or be so significant that the entire doping control process has been affected and must be ignored. In the present circumstances, while the Panel could agree that the Respondent has probably been negligent in the organization of the doping collection process and that it could have possibly failed, fully or partially, its obligations as a Testing Authority – whether it being for the choice of the chaperones and/or for the DCO supervision -, the majority of the Panel notes however that the Appellant does not criticize these alleged failures during the sample collection process; quite to the contrary, his position is that the process was fully compliant and did not allow any opportunity to manipulate or substitute (the "impossibility argument"). In fact, the Appellant only presented the Panel with evidence confirming the procedural integrity of the sample collection process. Regarding the degree of seriousness of these failures, the majority of the Panel is not convinced that it was so serious that it has

jeopardized the entire doping control. Turning to the chain of custody for which the Appellant states that there has been departure from the applicable ISL and ISTI, the Panel is of the view that he however does not demonstrate how these alleged failures explain the AAF.

186. Therefore, the majority of the Panel comes to the conclusion that, in light of the circumstances and allegations made, it is not convinced that no manipulation could have occurred by the Appellant during the Sample collection process. The majority of the Panel concurs with the DPADD that it is not persuaded that the demonstration that all three sample substitution methods were impossible to carry out by the Appellant.

- The Sample transportation and analysis and the alleged departures from the International Standard for Laboratories or for Testing and Investigation which could reasonably have caused the AAF

187. The Panel recalls that Article 3.2.2 of the FIBA ADR provides for the rebuttable presumption that the analyses conducted by WADA-accredited and WADA-approved laboratories, like it is the case here by the Laboratory, are presumed to have been conducted in accordance with the applicable ISTI and ISL. If an athlete intends to challenge this presumption, he/she must demonstrate, on a balance of probability, the exact provisions of the ISTI/ISL that have been allegedly violated or departed from. It is only if the athlete can successfully demonstrate this that the burden of proof then shifts to FIBA to establish, to the comfortable satisfaction of the relevant Panel, that the departure did not cause the AAF.

188. Therefore, it is incumbent upon the Appellant to demonstrate a departure from the ISTI/ISL that "could reasonably" have caused the AAF by a balance of probability.

189. It is reminded here that the Appellant's main argument is that the urine sample must have been manipulated when it was outside of his custody, i.e. when it was sent to the Laboratory or thereafter. The Respondent contends that the Appellant's arguments on the chain of custody and laboratory analysis are based on misrepresentations.

190. In this respect, as detailed above (see, section VI.A), the Appellant specifically cites Articles 8.3.1 and 9.3.2 of the ISTI and Article 5.3.4.1 of the ISL to argue that:

- first, the courier documentation is incomplete;

- second, the samples were transported without refrigeration, between 4 November (midnight after the match) and 7 November, which must have the caused degradation of the Sample;

- third, the traceability and internal chain of custody of the A-Sample within the Laboratory is incomplete;

- fourth, there are differences in the results between the A- and B-Samples, notably that the former contains bovine albumin while the latter does not and the PH levels are different between the A and B-Samples.

191. On the first point, the Panel highlights its full agreement with the DPADD that the "*absence of complete courier documentation introduces a measure of uncertainty, but given the generally high standards maintained by courier services such as the one used here, […] it is improbable that manipulation occurred at that particular juncture*".

192. Turning more specifically to the transportation and alleged violation of 9.3.2 of ISTI, the Panel recalls that the latter dictates that samples "*shall be transported in a manner which minimizes the potential for Sample degradation due to factors such as time delays and extreme temperature variations*". While the Panel can be inclined to agree with the Appellant that transportation without refrigeration may lead to potential degradation of a urine sample, here, the Sample was transported from Spain to Germany in the month of November, and therefore extreme variations in temperature might not be evident. Moreover, the Appellant does not establish how the degradation of human urine would have led to the finding of a synthetic urine if not kept under proper temperature conditions. On this issue, the Panel holds that the Appellant does not show how this "could reasonably" explain the presence of bovine albumin in the Sample and therefore the AAF.

193. As for after the Sample has reached the Laboratory, the Panel recalls that, in his submissions, the Appellant cites cases CAS 2014/A/3487, CAS 2009/A/1752 and CAS 2009/A/1753 to argue that "*the traceability of the samples within the laboratory is unknown*" and therefore the internal chain of custody has been broken. To supplement his contention, the Appellant highlights that, for instance, the LDP of the A-sample do not show who collected the sample from room R247 on 8 November till it entered room R235 on 17 November.

194. Nevertheless, under the circumstances in the present case, the Appellant's arguments do not withstand scrutiny. Contrary to what the Appellant supports, the Laboratory has confirmed that the Internal Chain of Custody of the Sample is fully traceable. In fact, the LDP includes a column titled "Personnel" which indicates who handled the sample at each stage of the analysis. Therefore, according to the Panel, this shows the Appellant's contention regarding the sample's traceability is not accepted.

195. The Panel now turns to the alleged departures from article 7.8.3.1 of the ISO 170256, which the Appellant highlights briefly in its submission. In this respect, the Panel adds that the Laboratory explained that the differences in PH levels between both samples is a normal analytical variation. Furthermore, the Laboratory explained that bovine albumin was only tested for in the A-Sample and that both samples are not consistent with human urine. Moreover, the Laboratory confirmed that any discrepancies regarding any steroidal concentration and retention times should not cast any doubts on the analytical results of the

Sample. Hence, nothing in the present case, casts doubt as to the integrity of the Sample analysis and custodial procedures.

196. In conclusion, and in light of the above, the Panel holds that the Appellant did not establish, on the balance of probabilities, that any departure from the ISTI and ISL that could reasonably have caused the AAF, have occurred in the present case. The Appellant thus does not rebut the presumption under Article 3.2.2 of the FIBA ADR.

197. After a thorough examination of the facts and the evidence submitted by the Parties, the Panel highlights that the Appellant did not establish that it would have been impossible for him to swap his Sample during the sample collection phase and did not bring a single convincing element in favour of any other explanations. In light of the above, the majority of the Panel is comfortably satisfied that an ADRV has occurred during the sample collection process, thus constituting a breach of Article 2.2 ADRV.

B. If the Panel finds that the Appellant has committed an ADRV, is the four (4) year ineligibility sanction imposed under Article 10.2.1.1 of the FIBA ADR disproportionate?

198. The Panel recalls that under Article 10.2.1.1 of the FIBA ADR, the period of ineligibility shall be four (4) years unless the Appellant or other Person "*can establish that the anti-doping rule violation was not intentional*".

199. In his submissions, the Appellant contends that the four (4) year sanction is disproportionate as he is currently thirty-one (31) years old. This constitutes a lifetime sanction as he will not be able to play professional basketball again. Furthermore, the Appellant reiterates his argument that there is no reasonable explanation as to how the urine substitution has occurred and therefore, he requests the Panel to lift the sanction.

200. The Respondent, in turn, requests the Panel to uphold the sanction. It explains that the Appellant does not argue that the violation ought to be considered as unintentional or that he would be entitled to any reduction of the period of ineligibility under the FIBA ADR. For the Respondent, the disproportionality of the sanction with regards to the Appellant's age is irrelevant since, in accordance with CAS caselaw, this consideration must be rejected (See, CAS 2023/A/9550; CAS 2023/A/9586; CAS 2023/A/9607).

201. Consequently, and in line with the CAS case law, the Panel finds that the principle of proportionality is already built into the system of imposing sanctions under the FIBA ADR. There is no scope for the application of a general principle of proportionality outside of the applicable sanctioning regime in the matter at hand.

202. Therefore, the majority of the Panel finds that the four (4) year sanction under Article 10.2.1.1 of the FIBA ADR should be maintained.

203. For the sake of completeness, the Panel notes that, as mentioned in the Appealed Decision, "*Mr. Henry shall receive credit for the Provisional Suspension he has served since 13 January 2023*" and the Appealed Decision is hereby entirely upheld.

XI. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Pierria Lee-Vaughntay Henry against the decision issued on 19 February 2024 by FIBA DPADD is admissible.

2. The appeal filed by Pierria Lee-Vaughntay Henry against the decision issued on 19 February 2024 by FIBA DPADD is dismissed.

3. The decision issued on 19 February 2024 by FIBA DPADD is upheld.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.

Seat of Arbitration: Lausanne, Switzerland.
Date: 14 August 2025

THE COURT OF ARBITRATION FOR SPORT

Ms Carine Dupeyron
President of the Panel

Mr José J. Pinto
Arbitrator

Dr Marco Balmelli
Arbitrator