CAS 2022/A/8809 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA) & Alexey Slepov

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr. Heiner Kahlert, Attorney-at-Law, Munich, Germany

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Messrs. Nicolas Zbinden and Anton Sotir, Attorneys-at-Law, Kellerhals Carrard, Lausanne, Switzerland

Appellant

and

Russian Anti-Doping Agency (RUSADA), Moscow, Russia

Represented by Mr. Graham Arthur, Attorney-at-Law, Liverpool, United Kingdom

First Respondent

Mr. Alexey Slepov, Vladimir, Russia

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency ("**WADA**" or the "**Appellant**") is the international Anti-Doping Organisation.[1] It has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.

2. The Russian Anti-Doping Agency ("**RUSADA**" or the "**First Respondent**") is the National Anti-Doping Organisation in Russia.

3. Mr. Alexey Slepov (the "**Athlete**" or the "**Second Respondent**"), born on 19 December 1986, is a Russian biathlete.

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

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' submissions (including the evidence adduced). Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions he considers necessary to explain its reasoning.

A. Inclusion in IBU's registered testing pool

6. On 5 December 2018, the International Testing Agency (the "**ITA**") notified the Athlete, on behalf of the International Biathlon Union (the "**IBU**"), of his inclusion in the Registered Testing Pool (the "**RTP**") of IBU, and asked him to return a signed form acknowledging receipt and having understood the implication of the inclusion. The Athlete did not return the said form.

7. On 15 April 2019, the ITA sent an email to the Athlete referring to its letter of 5 December 2018 and reminding the Athlete that he would remain in the IBU's RTP until he is informed that he is excluded from it or he retires from competition.

B. Potential first missed test

8. On 26 October 2019 at 21:00, a doping control officer ("**DCO**") arrived at the Athlete's home address in the city of Vladimir, Russia, which the Athlete had indicated in the Anti-Doping Administration & Management System ("**ADAMS**") as the location where he would be available for testing that day between 21:00 and 22:00. At 21:00, the DCO tried to access the building and called the intercom several times but received no answer.

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the 2021 RUSADA ADR, as per the English translation submitted by WADA.

Then the DCO called the telephone number specified in the Athlete's ADAMS account on multiple occasions but the calls remained unanswered. After the DCO eventually gained access to the building, he rang the doorbell of the Athlete's apartment door several times. At 22:00, the DCO made one last attempt to ring the doorbell and call the Athlete's phone and since there was no answer, the DCO departed after the 60-minute timeslot had expired.

9. By letter of 5 November 2019, the ITA notified the Athlete of an apparent missed test in accordance with Article 5.6 of the IBU Anti-Doping Regulations (the "**IBU ADR**") in their 2019 edition (the "**2019 IBU ADR**") and Article I.3[2] of the WADA International Standard for Testing and Investigations the (the "**ISTI**") in its 2019 edition (the "**2019 ISTI**"). The letter provided further information and invited the Athlete to comment on the apparent missed test by 19 November 2019.

10. On 18 November 2019, the Athlete provided a submission to the ITA stating that "on November 26, from 18-23 hours, I was on the anniversary of a friend. I admit my guilt, in the future I undertake to accurately indicate my location". The Athlete did not provide any explanation for having failed to answer the phone when the DCO called him.

11. By letter of 27 November 2019, the ITA informed the Athlete that having evaluated his explanation, the ITA had decided to record a missed test against him in accordance with Article I.4.3 of the 2019 ISTI. Among other things, the ITA informed the Athlete of his right to request an administrative review of the ITA's decision within seven days, and that a combination of three whereabouts failures (missed tests and/or filing failures) committed within a 12-month period would constitute an anti-doping rule violation ("**ADRV**"). The Athlete did not request an administrative review.

C. Potential second missed test

12. On 10 March 2020 at 06:50, a DCO and a blood collection assistant arrived at the Hotel Olimp in Tyumen, Russia, which the Athlete had indicated in ADAMS as the location where he would be available for testing that day between 07:00 and 08:00. When they arrived at the Hotel Olimp, the hotel administrator told them that the Athlete was not staying at the hotel. The DCO spoke to the administrator of the "*Zhemchuzhina Sibiri*" biathlon centre, who told him that the Athlete was not staying there either. At 8:00, the DCO called the telephone number specified in the Athlete's ADAMS account. The answering machine stated that *"This type of communication is not available to the subscriber"* (as per the English translation provided by WADA). Eventually, the DCO departed at 08:10.

13. By letter of 12 March 2020, the ITA notified the Athlete of an apparent second missed test in accordance with Article 5.6 of the 2019 IBU ADR and Article I.4.3 of the 2020 edition of the ISTI (the "**2020 ISTI**"). The letter provided further information and invited the Athlete to comment in writing on the apparent missed test by 26 March 2020.

[2] This reference presumably was a clerical mistake as the correct reference seems to have been Article I.4.3, as per the ITA's subsequent letter of 27 November 2019.

The ITA further clarified that *"if recorded, this will constitute your **Second** Whereabouts Failure in the last 12-months"* (emphasis as in the original).

14. On 19 April 2020, the Athlete explained that prior to the apparent missed test, he had been travelling from Novosibirsk to Tyumen and arrived at Tyumen at 8:34. However, he had failed to take into account the time difference between the two cities and therefore had not changed the 60-minute timeslot. He provided the relevant train ticket and further explained that, when "*chaperons*" had come to the hotel, they had called him by telephone and had told him that they had been waiting for him but he could not reach the location within the timeslot.[3]

15. By letter of 8 May 2020, the ITA informed the Athlete that having evaluated his explanation, the ITA had decided to record a missed test against him in accordance with Article I.4.3 of the 2020 ISTI. Among other things, the ITA mentioned that the Athlete had bought his ticket on 26 February 2020 and the missed test only occurred on 10 March 2020 and, consequently, he had had enough time to amend his whereabouts filings. Accordingly, the ITA found that the Athlete had been unable to establish that no negligent behaviour on his part had caused or contributed to his failure to be available and accessible for testing. Consequently, the ITA recorded a second missed test within 12 months. Among other things, the ITA reminded the Athlete that three whereabouts failures within 12 months would constitute an anti-doping rule violation ("**ADRV**") and informed him of his right to request an administrative review in respect of the recording of a second missed test. The Athlete did not file such request.

D. Removal from the IBU's RTP and inclusion in RUSADA's RTP

16. On 29 April 2020, the ITA notified the Athlete, on behalf of the IBU, that he had been removed from the IBU's RTP. The ITA further stated that the Athlete was released from his obligations to submit whereabouts information to the IBU starting from 1 May 2020. The ITA also mentioned that the Athlete's National Anti-Doping Organization may still require him to file his whereabouts information with them.

17. By letter of 8 June 2020, RUSADA notified the Athlete that he had been included in the RTP of RUSADA.

18. On 26 June 2020, the Athlete returned a signed form, acknowledging that he had received the aforementioned notification letter, that he was familiar with the whereabouts requirements and that he understood that "*the responsibility for the timeliness and accuracy of the information provided, as well as for violation of the rules of availability lies with the athlete*".

E. Potential third whereabouts failure

19. On 30 September 2020, a DCO arrived at 21:20 at the Athlete's home address in the city of Vladimir, Russia, which the Athlete had indicated in ADAMS as the location

[3] The Athlete's explanations of 19 April 2020 were not submitted into the record of this arbitration. However, based on the contents of the ITA's letter of 8 May 2020, and subsequent submissions by the Athlete, the Sole Arbitrator accepts WADA's submission that the explanations of 19 April 2020 were as set out herein.

where he would be available for testing that day between 21:00 and 22:00. When the DCO rang the doorbell of the apartment, the Athlete's father opened the door and said that the Athlete was not at home and that he was in St. Petersburg. The DCO asked the Athlete's father to confirm the Athlete's absence in writing and he did so. During the conversation, the Athlete's father phoned the Athlete and handed over the phone to the DCO. The Athlete told the DCO over the phone that he was in St. Petersburg and that he forgot to update his whereabouts information. The DCO left the location at 22:20.

20. By letter of 2 October 2020, RUSADA notified the Athlete of an apparent missed test in accordance with Article 1.4.1 of the 2020 ISTI. The letter also stated that any combination of three such violations within a twelve-month period entails a period of ineligibility of two years and that this case could be considered as the Athlete's third missed test. The Athlete was invited to comment in writing on the apparent missed test by 16 October 2020.

21. On 8 October 2020, the Athlete provided his explanations to RUSADA stating that on 30 September 2020, he had to return his weapons to the armoury in St. Petersburg, after which he headed to Vladimir by the express train "Sapsan". He expected to be at his home by 21:00 but in St. Petersburg he felt nauseous and had a stomachache, which deteriorated. He then went to a medical centre for examination and care where he stayed under the supervision of a "*therapist*" because of which he could not update his whereabouts information. After his health improved, he updated his whereabouts information. The Athlete also provided a certificate from the medical centre as evidence.

22. On 12 October 2020, RUSADA sent a letter to the hospital mentioned by the Athlete in his explanation and asked them to confirm whether the Athlete sought medical care there on 30 September 2020. On 16 October 2020, the hospital responded to WADA confirming that the Athlete had sought medical care with them on 30 September 2020. On 5 November 2020, RUSADA sent another letter to the hospital asking them to provide additional data on the Athlete's visit, specifically the time when his treatment began and ended at the hospital. The hospital responded to RUSADA stating that as per the relevant applicable laws, the concerned data regarding the Athlete was confidential and that, therefore, the hospital refused to provide the details requested.

23. By letter of 19 October 2020, RUSADA informed the Athlete that it had completed its review of the potential missed test and decided not to assert a missed test. RUSADA further reminded the Athlete of his whereabouts obligations in accordance with Article I.3.5 of the 2020 ISTI.

24. On 6 November 2020, RUSADA informed the Athlete that he had provided incorrect information about his whereabouts on 29 September 2020. RUSADA stated that during the results management of the possible missed test on 30 September 2020, the Athlete had submitted an air ticket, according to which he arrived in St. Petersburg from Tyumen on 30 September 2020, while in ADAMS he had indicated the city of Vladimir as his location for 29 September 2020. RUSADA stated that it considered this as a possible whereabouts failure (filing failure) in accordance with Article I.4.1 of the 2020 ISTI. It was further stated that this case would be the Athlete's third whereabouts failure within 12 months. The Athlete was invited to comment in writing on the apparent

whereabouts failure by 17 November 2020. RUSADA further informed the Athlete that *"Three failures of the kind within 12 months may lead to ineligibility period for up to 2 years"* (according to the English translation submitted by WADA).

25. On 11 November 2020, the Athlete confirmed (according to the English translation provided by WADA) that he:

> *"*[…] *was not in Vladimir according to the ADAMS program. In early September, I went to the Seminsky Pass (Altai) for training camp at my own expense. On the final days of the camp I indicated in the ADAMS program my further stay in Tyumen for two days. Two days would have been enough for me to indicate my further stay in Tyumen. But as a result of a poor performance at the Russian Summer Championship that was shown on TV, and a further stay in Tyumen with the Russian national biathlon team and a poor performance in test trainings that were showed in the news and social networks, I did not change location until September 30. On September 30, chaperons came to me and I was not there. I indicated the circumstances of my absence in the explanatory note that I sent earlier.* […]".

26. On 16 November 2020, RUSADA informed the Athlete that having evaluated his explanation, RUSADA had decided to record a filing failure against him in accordance with Article I.3.5 of the 2020 ISTI. RUSADA stated that the Athlete's explanations did not relieve him of his liability as per Article I.3.5 of the 2020 and that this was his third whereabouts failure within 12 months. RUSADA also informed him of his right to request an administrative review by 27 November 2020 and that his case will be reviewed by another member of RUSADA who was not involved in the previous consideration of the filing failure, in accordance with Article I.5.2.e)ii. of the 2020 ISTI.

27. On 22 November 2020, the Athlete requested an administrative review stating (as per the English translation submitted by WADA) that:

> *"I ask the decision to be reviewed by another employee taking into account the following:*
> - *I have been filing the ADAMS system for more than 10 years*
> - *clean test results throughout all doping-controls*
> - *I have always been for the promotion of clean sports (I constantly participate in events that tell about sports, a healthy lifestyle in educational schools, universities, military organizations, at mass summer rallies)*
> - *the age of almost 34 years, which is considered the oldest for the Russian team*
> - *for several years I have not been a member of the centralized staff and have been training at my own expense, at the expense of the region*
> - *I am not chasing the Olympic Games, World Championships, I am trying to fulfill my contract, which ends in December 2021.*
> - *Sport is my hobby at the moment, not my job (a scholarship of 15,000 rubles+a salary of 3,000 rubles)."*

28. On 18 December 2020, RUSADA informed the Athlete that a staff member not involved previously in the consideration of this case had reviewed the Athlete's explanations but had concluded that there were no grounds for exemption from liability. RUSADA

mentioned that the Athlete had provided incorrect whereabouts information and that the Athlete did not submit any information about serious reasons that led to the filing failure and confirmed that the decision of 16 November 2020 to register a filing failure was valid. RUSADA confirmed that this was the Athlete's third whereabouts failure and that *"three failures of the kind (missed test or filing failure) within 12 months will lead to ineligibility period of up to 2 years"* (according to the English translation submitted by WADA).

F. Results management proceedings before RUSADA in respect of a potential ADRV

29. By letter of 18 January 2021, RUSADA notified the Athlete of a potential ADRV in connection with three whereabouts failures within a 12-month period pursuant to Article 2.4 of the Russian Anti-Doping Rules ("**RUSADA ADR**") in their 2015 edition ("**2015 RUSADA ADR"**), citing the missed tests of 26 October 2019 and 10 March 2020 and the filing failure with respect to his whereabouts of 29 September 2020. Among other things, RUSADA invited the Athlete to provide written explanations within seven days and informed him that he could voluntarily accept a provisional suspension by signing the relevant form provided by RUSADA. The Athlete did not react to that letter.

30. On 14 May 2021, RUSADA charged the Athlete with an ADRV pursuant to Article 2.4 of the 2015 RUSADA ADR. The letter invited the Athlete to contest the ADRV in writing and/or file a request for a hearing with the Disciplinary Anti-Doping Committee of RUSADA (the "**RUSADA DADC**") within 20 days. RUSADA further provided detailed explanations as regards the Athlete's options, including the right to provide substantial assistance, admit the ADRV and enter into a case resolution agreement.

31. On 2 June 2021, the Athlete objected to the charge and requested a hearing. The Athlete, on an unspecified date, also submitted his explanations for the three alleged whereabouts failures stating, in its relevant part, as follows (as per the English translation provided by WADA):

> *"*[…] *The first whereabouts failure occurred on 26 October 2019. Almost 18 months ago. I remember – I returned from the training camp at home at 6 pm and, as it turned out, my cousin's wife had a birthday party at 7 pm. We went with the whole family to a café within 500 meters from home (Café Krasnoselskoe behind the Krasnoselskaya Sauna). I did not change my whereabouts and at 9-10 pm chaperons came to my house and did not find anyone. They were from WADA, if I am not wrong. In a while I was informed the chaperons came to me, received the notification letter. I have attached the photo from the birthday party.*
>
> *The next whereabouts failure occurred in March 2020. I was going by train from the Russian Cup (in Novosibirsk) to Tyumen. I did not take into account the time difference of 2 hours. Chaperons (from WADA) came to the hotel, but I did not come yet. They called me and told they were waiting for me, but unfortunately I could not come to the stadium Zhemchuzhina of Siberia within 1-hour slot stipulated in the system. At the end of March I received the notification that ITA terminated work with me. I filled a new form of RUSADA on 26 June 2020. This is the ticket from Novosibirsk to Tyumen on the photo.*

I have already submitted the explanation concerning the third whereabouts failure. On 31 of September, when the chaperons came, my father opened the door, I was absent. I submitted the explanatory note with all the medical documents and tickets, and the charge was eliminated, which was translated in Mass Media. But in a week I received a letter from RUSADA stating I need to send my explanations about 30 of September. For the day when nobody came to me. I explained where I was on 30 of September. And I have been waiting for the decision since the beginning of November."

32. On 30 September 2021, a hearing was held before the RUSADA DADC. On 11 February 2022[4], the RUSADA DADC took a decision, with reference number 38/2022 (the "**Appealed Decision**"), that forms the subject matter of the present appeal. It reads, in relevant part, as follows (according to the English translation provided by WADA):

"[…] *The Committee found that the Athlete, while in the registered testing pool, from October 26, 2019 to September 29, 2020, violated the rules of accessibility for testing at least 3 times, thereby committing a violation of cl. 2.4 of the Rules "Whereabouts failures", that is, any a combination of three Missed Tests and/or Filing failures, as defined in the International Standard for Testing and Investigations, committed within a twelve-month period by an Athlete in a Registered Testing Pool.*

In accordance with cl. 10.3.2 of the Rules, for violation of cl. 2.4, the period of ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete's degree of fault. The flexibility between two (2) years and one (1) year of ineligibility in this clause is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the athlete was trying to avoid being available for testing.

During the hearings, the Committee found that there was no evidence of the existence of serious suspicions that the Athlete's behavior was caused by an attempt to avoid testing, in addition, RAA RUSADA did not declare such evidence.

Thus, the Committee considers it possible to reduce the sanction due to the fact that the Athlete did not avoid testing, but did not take his responsibility to fill in the ADAMS system responsibly, which he explained by participation in the Russian Biathlon Championship and accumulated fatigue.

The Athlete's explanation by itself cannot be grounds of a reduction of the sanction under cl.10.3.2 of the Rules, however, the Committee notes that during the hearing it was found that the Athlete had no previous record of anti-doping rule violations, had been subject to more than 60 doping-control testing during his career,

[4] While the first page of the decision bears a date of 30 September 2021, the last sentence of the decision is "*The decision was made on February 11, 2022*". Hence, it seems the former date was merely a reference to the date of the hearing; while the RUSADA DADC may well have taken the decision on the same date, the written decision with reasons seems to have been completed only on 11 February 2022.

including during the period whereabouts failures, namely December 26, 2019, February 23, 2020 and August 10, 2020.

As established by the World Anti-Doping Code ("the Code"), the purpose of the Code and the World Anti-Doping Program is, among other things, is Rule of law - to ensure that all relevant stakeholders have agreed to submit to the Code and the International Standards, and that all measures taken in application of their anti-doping programs respect the Code, the International Standards, and the principles of proportionality and human rights.

The Committee considers the Athlete to have violated the Rules, but given that the Athlete has been passing testing procedures between whereabouts failures, the disqualifications of the Athlete's results would violate the principle of proportionality established by the Code.

Based on the foregoing, the Committee decided that Athlete Alexey Slepov has committed an ADRV and to impose a sanction of one year ineligibility, starting from September 30, 2021, without disqualification of the results achieved by the Athlete from the date of the ADRV. […]*"*

33. On 18 March 2022, WADA requested the case file in respect of the Appealed Decision. On 23 March 2022, WADA received elements of the case file.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 12 April 2022, the Appellant filed its Statement of Appeal within the meaning of Article R48 of the Code of Sports-related Arbitration (2021 edition) (the "**CAS Code**") before the Court of Arbitration for Sport ("**CAS**"). In its Statement of Appeal, the Appellant requested that the dispute be decided by a sole arbitrator.

35. On 14 April 2022, the Appellant requested an extension until 16 May 2022 to file its Appeal Brief.

36. On 21 April 2022, the CAS Court Office notified the Statement of Appeal to the Respondents and invited them to comment, within five days, on the Appellant's request that a sole arbitrator be appointed. The Respondents were further invited to comment, by 26 April 2022, whether they consented to the Appellant's request for an extension of its time-limit to file its Appeal Brief, and were informed that their silence would be deemed acceptance of such request. The Respondents were furthermore informed that absent any objection within three days, the language of the arbitration would be English.

37. On 22 April 2022, the First Respondent declared that it had no objection to the request for extension to file the Appeal Brief, nor to the request for a sole arbitrator to be appointed nor for the proceedings to be conducted in English.

38. On 29 April 2022, the CAS Court Office notified the Parties of the First Respondent's communication and further informed the Parties that the Second Respondent had not taken any position. The CAS Court Office further confirmed the requested extension of

the time-limit to file the Appeal Brief, that a sole arbitrator would be appointed and that the proceedings would be conducted in English.

39. On 16 May 2022, the Appellant filed its Appeal Brief within the meaning of Article R54 of the CAS Code.

40. On 17 May 2022, the CAS Court Office notified the Appeal Brief to the Respondents, invited them to file their Answers within 20 days and informed them that if (one of) the Respondents failed to submit their Answers, the sole arbitrator might nevertheless proceed with the arbitration and deliver an award.

41. By letter of 31 May 2022, the First Respondent requested an extension of the deadline for filing its Answer until 17 June 2022 due to the unusually high workload of the First Respondent.

42. By letter of 1 June 2022, the CAS Court Office invited the other Parties to comment on the First Respondent's request by 7 June 2022. By email of 7 June 2022, WADA stated that it had no objection to the First Respondent's request.

43. By letter of 8 June 2022, the CAS Court Office noted that the Second Respondent did not state his position on the First Respondent's request and confirmed that the First Respondent's request for extension was granted until 17 June 2022.

44. On 17 June 2022, the First Respondent filed its Answer within the meaning of Article R55 of the CAS Code.

45. On 21 June 2022, the CAS Court Office notified the First Respondent's Answer to the Appellant and the Second Respondent, informed the Parties that the Second Respondent had failed to file an Answer and invited the Parties to indicate by 28 June 2022 whether they preferred for a hearing to be held or for an award to be issued based solely on the Parties' written submissions.

46. On 23 June 2022, the CAS Court Office informed the Second Respondent that the Appellant had filed another appeal against RUSADA and another Russian athlete, with the case number CAS 2022/A/8895, and that the Appellant had requested that that case be submitted to the same sole arbitrator who will be appointed in the present case. The CAS Court Office further stated that the First Respondent had agreed to the said request of the Appellant and invited the Second Respondent to confirm whether he agrees to the Appellant's request by 30 June 2022.

47. Also on 23 June 2022, the Appellant stated that it does not deem a hearing necessary in the present case.

48. On 4 July 2022, the CAS Court Office informed the Parties that the Second Respondent did not respond to its letter of 23 June 2022 and that, hence, in accordance with Article R50 of the CAS Code, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the issue of appointing the same sole arbitrator in CAS 2022/A/8895 and the present case. It was further stated that since only the

Appellant indicated its preference regarding the question of a hearing, it would be for the sole arbitrator, once appointed, to decide whether to convene a hearing.

49. On 8 July 2022, the First Respondent stated that if the Sole Arbitrator considered that he was sufficiently informed as to the issues, then it did not consider a hearing to be necessary in the present case.

50. By letter of 31 August 2022, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that pursuant to Article R54 of the CAS Code, the Panel had been constituted as follows:

Sole Arbitrator: Dr. Heiner Kahlert, Attorney-at-Law in Munich, Germany.

51. On 21 September 2022, the CAS Court Office, on behalf of the Sole Arbitrator, provided a Procedural Order (the "**Procedural Order**") to the Parties by which the Appellant was invited to make submissions on certain specific points arising from the Parties' written submissions.

52. On 14 October 2022, within the deadline as previously extended by the Sole Arbitrator, WADA provided its submission in response to the Procedural Order.

53. By letter of 17 October 2022, on behalf of the Sole Arbitrator, the CAS Court Office invited the Respondents to comment, by 1 November 2022, on WADA's submission in response to the Procedural Order.

54. On 1 November 2022, the First Respondent submitted its comments.

55. On 16 November 2022, the CAS Court Office notified the First Respondent's comments to the Parties and further informed the Parties that the Second Respondent had not submitted any comments on the Appellant's submission of 14 October 2022.

56. On 6 December 2022, the CAS Court Office, on behalf of the Sole Arbitrator and in view of the Procedural Order and the written submissions made in response to it, again invited the Parties to confirm, by 21 December 2022, whether they preferred for a hearing to be held or for an award being issued based solely on the Parties' written submission. In addition, the Parties were invited to comment, within the same deadline, on the applicability of the principle (as held in CAS 2017/A/5369 para. 121, CAS 2017/A/5260 para. 123, CAS 2018/A/5990 para. 209 and CAS 2019/A/6157 para. 82) that a National Anti-Doping Organisation with results management responsibility has to bear the costs in case a first-instance decision rendered by the judicial bodies of such National Anti-Doping Organisation is lifted.

57. By emails of 20 and 21 December 2022, respectively, the First Respondent and the Appellant reiterated their previous positions in respect of the necessity of a hearing. While the Appellant further commented on the question related to the cost issue addressed in the 6 December 2022 CAS Court Office letter, the First Respondent requested an extension until 6 January 2023 to comment on such question related to costs.

58. By letter of 21 December 2022, the CAS Court Office *inter alia* informed the Parties that its letter of 6 December 2022 had been successfully delivered to the Second Respondent by courier on 14 December 2022 together with a hard copy of the full case file (excluding the exhibits to the Parties' submissions), and that the Second Respondent had not responded to that letter. The CAS Court Office, on behalf of the Sole Arbitrator, further granted the First Respondent's request for an extension of its deadline to comment on costs.

59. On 11 January 2023, within the deadline as previously extended and thereupon re-instated by the Sole Arbitrator after consultation of the other Parties, the First Respondent filed its comments on the Appellant's remarks related to costs. The CAS Court Office, on behalf of the Sole Arbitrator and following a respective request by the Appellant of the same day, granted the Appellant the opportunity to file final observations on costs by 17 January 2023.

60. On 13 January 2023, the CAS Court Office clarified that the Second Respondent had not made any comments or submissions on costs.

61. On 20 January 2023, within the deadline as previously extended by the Sole Arbitrator, the Appellant filed its final observations on the cost issue.

62. By letter of 24 February 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to issue his award based solely on the Parties' written submissions. Furthermore, the Parties were requested to return a signed copy of the Order of Procedure by 3 March 2023.

63. On 27 February and 1 March 2023, respectively, the Appellant and the First Respondent returned signed copies of the Order of Procedure. The Second Respondent failed to do so, despite a reminder sent by the CAS Court Office on 6 March 2023.

IV. SUBMISSIONS OF THE PARTIES

64. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that he has carefully considered all the submissions made by the Parties, regardless of whether there is any specific reference to them in the following summary.

A. WADA's submissions and requests for relief

65. WADA's submissions, in essence, may be summarized as follows:

- Given that the first and second whereabouts failures were under the Results Management Authority of the ITA, acting on behalf of the IBU, the 2019 IBU ADR and the ISTI are applicable to the first two whereabouts failures. Based on Article 20.4.2 of the 2021 edition of the RUSADA ADR (the "**2021 RUSADA ADR**"), the third whereabouts failure and the ADRV are governed by the 2015 RUSADA ADR, which were in force at the time of the third whereabouts failure,

whereas procedural matters are governed by the 2021 RUSADA ADR, as supplemented by the WADA International Standard on Results Management (the "**ISRM**").

- The Athlete's liability is unchallenged as he accepted having committed an ADRV pursuant to Article 2.4 of the 2015 RUSADA ADR and did not appeal against the Appealed Decision. The "*only question is therefore the sanction to be imposed on the Athlete*".

- Article 10.3.2 of the 2015 RUSADA ADR provides that in case of three whereabouts failures within 12 months, the standard applicable sanction is a two-year period of ineligibility, subject to a possible reduction based on the Athlete's degree of fault.

- WADA understands that no written explanations were provided by the Athlete within the proceedings before the RUSADA DADC and that he has never sought any mitigation of the applicable consequences. Instead, it was at the sole initiative of the RUSADA DADC to reduce the standard sanction. However, the reasons provided by the RUSADA DADC do not justify any reduction. In particular, as follows from Article 10.3.2 of the 2015 RUSADA ADR and the definition of "*Fault*", lack of intent to avoid testing is a necessary precondition for reducing the sanction, but it is not relevant when assessing the athlete's degree of fault. Instead, it is the degree of care exercised by the athlete with respect to his whereabouts duties that is relevant at this stage. The RUSADA DADC even acknowledged that the "*Athlete's explanation by itself cannot be grounds for a reduction of the sanction*" per Article 10.3.2.

- The Athlete's fault must be assessed in relation to all three whereabouts failures, as confirmed by a number of CAS awards such as CAS 2020/A/7526 & 7559, para. 206 and CAS 2020/A/7528, para. 168(c).

- None of the explanations provided by the Athlete show a lack of fault. Instead, the Athlete's fault is significant taking into account the following circumstances:

  - Regarding the first missed test, the Athlete failed to explain why he did not answer his phone when the DCO called him.

  - With respect to the Athlete's explanation regarding the second missed test, WADA notes that the train ticket was bought on 26 February 2020, i.e. more than two weeks before the date of the unsuccessful attempt. Furthermore, according to the ticket, the Athlete was supposed to arrive in Tyumen at 08:34 local time (which was 10:34 in Novosibirsk, where he supposedly entered information into ADAMS). He then should have travelled another 40km to arrive at the hotel / biathlon centre, whereas the 60-minutes slot specified by the Athlete was between 07:00 and 08:00. Therefore, because of the train arrival time, the Athlete could not have been in the hotel / biathlon centre between 07:00 and 08:00, be it the local (Tyumen) time or Novosibirsk time.

- As to the Athlete's explanation regarding the third whereabouts failure, WADA notes that the plane ticket provided by the Athlete was for a round trip: the outbound flight was from St. Petersburg to Tyumen on 16/17 September 2020, and the return flight was from Tyumen to St. Petersburg on 30 September 2020. The Athlete was therefore aware as early as on 16 September 2020, i.e. almost two weeks in advance, that he would not be in Vladimir on 29 September 2020 (nor throughout the period from 19-30 September 2020); however, he still failed to update his whereabouts for the period.

- With respect to the Athlete's explanation regarding the missed test on 30 September 2020, WADA notes that during the unsuccessful attempt on that day, neither the Athlete nor the Athlete's father told the DCO that the Athlete was supposed to come home that day, or that the Athlete had to stay in St. Petersburg due to his illness and had missed the train to Vladimir. Furthermore, no train ticket was provided by the Athlete (unlike with respect to the second missed test). Finally, it appears that the high-speed train "Sapsan" departed from St. Petersburg at 17:00 on 30 September 2020 and arrived in Vladimir at 23:08; the Athlete's 60-minutes slot was between 21:00 and 22:00, i.e. it ended before he would have even arrived in Vladimir.

- The Athlete is a high-profile and experienced international-level Athlete. He has provided whereabouts information for the purpose of out-of-competition testing for many years and has been subject to doping control since 2012.

- With respect to all three whereabouts failures, the Athlete admitted that he was in entirely different locations and failed to update the information in ADAMS. Moreover, with respect to the second and the third whereabouts failures, the Athlete was aware a few weeks in advance that he would be in a different location than the one indicated in ADAMS, and still did not update his whereabouts. This shows the Athlete's total carelessness with respect to his whereabouts obligations.

- With respect to the missed tests (i.e., the first two whereabouts failures), the Athlete was not only away from the place indicated for the 60-minute timeslot, but he also ignored the phone calls made by the DCO.

- With two 'strikes' against him, the Athlete should have been on "*red alert*". As the Panel in CAS 2020/A/7528 (para. 184) stated, the Athlete should therefore "*have taken every step within his control to ensure that a third Whereabouts Failure did not happen*". Still, the Athlete disregarded his whereabouts obligations and entered wrong information into ADAMS for 29 September 2020, being aware as early as on 16 September 2020, i.e., almost two weeks in advance, that he would not be in Vladimir but in Tyumen, 2000km away. It is difficult to conceive of more negligent behaviour bearing in mind the degree of risk that should have been perceived by the Athlete.

- In CAS 2015/A/4210, the standard sanction of 2 years' ineligibility was imposed even though the filing failure was due to the athlete being in another city as a result

of his wife's hospitalization and although he had specifically notified a third party in charge of his whereabouts filings that he had changed location. The Athlete bears a higher degree of fault than the athlete in that case.

- In summary, the period of ineligibility shall be two years commencing on the date of the decision, with credit for the period of ineligibility effectively served by the Athlete.

- It appears that it was solely the initiative of the RUSADA DADC that the Athlete's competitive results were maintained. Pursuant to Article 10.8 of the 2015 RUSADA ADR, any competitive results obtained by the Athlete from 1 July 2020 (i.e. the date that the ADRV occurred) through to the commencement of the ineligibility period should be disqualified, with all associated consequences. It should be recalled that disqualification of results is the principle; it is therefore the Athlete's burden to demonstrate that fairness requires that results be maintained. The Athlete did not even claim that the fairness exception should apply as he has made no arguments and adduced no evidence in this respect. The fact that the Athlete tested negative following the ADRV is irrelevant, as negative tests are not evidence that an athlete is not doping and it is well-known that certain prohibited substances can have long-term effects.

- RUSADA shall be primarily liable for the costs of the arbitration as well as the legal and other costs to be awarded to WADA. As per consistent CAS case law, even in circumstances where the appeal is against a decision from an independent tribunal or any other body, the decision is attributed to the Anti-Doping Organisation with Results Management responsibility, which bears full responsibility for the decision (CAS 2017/A/5260, para. 123; CAS 2017/A/5369, para. 121; CAS 2018/A/5990, para. 209; CAS 2019/A/6157, para. 82). This Anti-Doping Organisation is the right respondent on appeal and must bear full responsibility for the Appealed Decision, irrespective of their position at first instance. Contrary to RUSADA's argument, those CAS decisions also emphasized that the Anti-Doping Organisation with Results Management responsibility had to suffer arbitration costs. It is irrelevant that those awards were rendered under the 2015 edition of the World Anti-Doping Code (the "**WADC**" and, in its 2015 edition, the "**2015 WADC**") because the national tribunals at issue in those cases were as independent as now required by the 2021 edition of the WADC (the "**2021 WADC**"). It is equally irrelevant that RUSADA shared WADA's position in the present appeal; as a Respondent in this CAS proceeding, RUSADA necessarily 'loses' if the appeal is upheld. It would be unfair to put the cost on the Athlete, who did not render the decision that WADA was forced to appeal, and who cannot be blamed for having benefited from a lenient decision.

66. WADA made the following requests for relief:

"1. The appeal of WADA is admissible.

2. The decision dated 30 September 2021 rendered by the Disciplinary Anti-Doping Committee of RUSADA in the matter of Alexey Slepov is set aside.

3. Alexey Slepov is found to have committed an anti-doping rule violation pursuant to Article 2.4 of the RUSADA ADR.

4. Alexey Slepov is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility effectively served by Alexey Slepov before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

5. All competitive results obtained by Alexey Slepov from and including 1 July 2020 (i.e. the date of the anti-doping rule violation) are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

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

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

B. RUSADA's submissions and requests for relief

67. RUSADA's submissions, in essence, may be summarized as follows:

- RUSADA does not dispute WADA's right to appeal, the timeliness of the appeal, or the jurisdiction of CAS to decide upon the appeal.

- RUSADA is the Results Management authority under the 2015 RUSADA ADR and has standing to assert the relevant ADRV against the Athlete.

- The Athlete was at all material times subject to the 2015 RUSADA ADR and the individual provisions thereof.

- As the Athlete has not disputed that he is guilty of three whereabouts failures within 12 months, he has committed an ADRV. The issues raised by this appeal are therefore confined to the sanction that should be imposed on the Athlete.

- The WADC has been written based on a stakeholder consensus that a 1-2 year sanction is a proportionate measure to underwrite the effectiveness of the whereabouts system. It is the Athlete's burden to show that the level of fault is such that the otherwise "*standard*" sanction of two years' ineligibility should be reduced.

- With respect to the first missed test, the Athlete went out for an evening and was absent when the DCO arrived to test him. It is quite clear from his evidence that he had plenty of time to update his whereabouts, left no information that would have allowed him to have been located, and was not reachable by telephone.

- In relation to the second missed test, the Athlete has provided no evidence that explains or excuses his failure to be located within his one-hour slot. He travelled

at a time that made it impossible for him to be where he said he would be the following day. He had sufficient time and opportunity to update his whereabouts. The train ticket suggests that he would have been on the train for several hours within which he could have made an attempt to update his whereabouts.

- In relation to the third whereabouts failure, it is clear that the Athlete committed a filing failure. If RUSADA had tried to test the Athlete on 29 September 2020 using his whereabouts information, the attempt would have been unsuccessful. The Athlete had an obligation to provide accurate whereabouts information and failed to do so.

- The first two whereabouts failures were not "*innocent*" or "*understandable*" mistakes and do not reflect the sort of "*hard luck stories*" that sometimes arise in relation to whereabouts violations. They were attributable solely to the Athlete's lack of care and attention to his whereabouts responsibilities. He received clear and unambiguous guidance after each of the first two whereabouts violation and still showed a similar lack of care and attention when it came to his third whereabouts violation.

- No mitigating factors have been put forward by the Athlete. He was an experienced athlete who was familiar with the whereabouts system, knew his responsibilities and had been reminded/warned in relation to those responsibilities on two separate occasions. He did not show anything close to the required level of care and attention.

- Therefore, a period of ineligibility of two years should be imposed. Contrary to the Appealed Decision, the fact that the Athlete did not attempt to avoid testing is not a 'plus' that can be applied when assessing his fault. Equally contrary to the Appealed Decision, the fact that the Athlete had no previous record of any ADRV has no bearing either on the Athlete's fault as it relates to his whereabouts failures.

- RUSADA disagrees with the RUSADA DADC's reasoning that disqualification of the Athlete's results would violate the principle of proportionality. RUSADA adopts the position stated in CAS 2018/A/5546 in this regard. It is not open to disciplinary bodies to apply the rules as they would like to apply them and they must apply the rules that have been agreed and implemented as the result of a consensus.

- If the appeal is successful, RUSADA should not be required to bear any arbitration costs or to contribute towards WADA's legal fees. Three of the CAS awards invoked by WADA (CAS 2017/A/5369, CAS 2017/A/5260 and CAS 2018/A/5990) do not establish any basis for the proposition that a National Anti-Doping Organization ("**NADO**") should be by default responsible for the costs of an appeal brought against a decision made by a national-level body that is constituted according to the relevant ADR; instead, those decisions merely provide a basis for including a NADO as a respondent. The award in CAS 2019/A/6157, in turn, can be distinguished on the facts because in that case, the NADO defended its decision before CAS and was therefore a clear 'loser', whereas RUSADA

agrees with WADA that the Appealed Decision is erroneous, and merely refrained for budgetary reasons from appealing itself; therefore, as between WADA and RUSADA, there is no "*prevailing party*" within the meaning of Article R64.5 of the CAS Code. In addition, all four CAS awards referred to by WADA were issued under the 2015 WADC. Under the 2021 WADC, ADRV disputes are resolved by operationally independent hearing panels, such as the RUSADA DADC. The position taken by RUSADA before the RUSADA DADC was the same position as the position taken by WADA – and RUSADA – in this arbitration. The Appealed Decision took a different position, but was made by the operationally independent RUSADA DADC, over which RUSADA (quite properly) has no influence. There is nothing inherent in the system devised by the 2021 WADC that makes a NADO financially accountable for mistaken decisions of an operationally independent hearing panel.

68. RUSADA requests the Sole Arbitrator to rule as follows:

> *"81.1. Mr Slepov has committed an anti-doping rule violation arising from the commission of three whereabouts violations between October 2019 and September 2020.*
>
> *81.2. Mr Slepov has provided no evidence that would justify the reduction of the standard sanction of a two year period of Ineligibility.*
>
> *81.3. The consequences to be imposed upon Mr Slepov should be those as provided for in ADR Article 10.2.3 and Article 10.8.*
>
> *82. RUSADA respectfully requests that the costs incurred by RUSADA in relation to this appeal be paid by Mr Slepov in their entirety in accordance with Rule 64.4 and Rule 64.5 of the Code of Sports-related Arbitration."*

C. The Athlete

69. The Athlete did not make any submissions in this arbitration.

V. JURISDICTION

70. The Sole Arbitrator observes that while RUSADA has expressly accepted CAS jurisdiction, the Athlete has not participated in the arbitration. Therefore, the Sole Arbitrator must examine jurisdiction *ex officio* (see, *ex multis*, Swiss Federal Tribunal, ATF 120 II 155 (162); CAS 2012/A/2877, para. 36; CAS 2008/A/1699, para. 15).

71. Pursuant to Article R47 of the CAS Code:

> *"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. […]*"* (emphasis added)

72. As the Appealed Decision was taken by the RUSADA DADC, the relevant regulations within the meaning of Article R47 of the CAS Code are the RUSADA ADR. Regarding the applicable edition of the RUSADA ADR in respect of jurisdiction, the Sole Arbitrator relies on the well-established principle of *tempus regit actum*, according to which substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs (see, *ex multis*, CAS 2018/A/5628, para. 70 with further references). Questions of jurisdiction are procedural matters (see *ibid.*). Therefore, the 2021 RUSADA ADR are applicable because they were in force during the entire proceeding before the RUSADA DADC and at the time when WADA filed its appeal to CAS.

73. The 2021 RUSADA ADR provide as follows, in relevant parts:

"15.1.2. […] *Where WADA has the right to appeal under Chapter XV of the Rules and no other party has appealed a final decision pursuant to these Rules, WADA may appeal such decision directly to CAS without having to exhaust internal remedies specified by the Rules.*
15.2 […] *The decisions specified below may be appealed exclusively pursuant to the procedure stipulated by Clause 15.2 hereof:*
• *A decision that the Rules' violation was committed*
• *A decision to impose or not to impose Consequences for the Rules violation*
[…]
15.2.1. […] *If a violation occurred during an International Event or International-Level Athletes are involved, the decision made may be appealed exclusively to CAS.*

15.2.2. […] *Where Clause 15.2.1 hereof does not apply, the decision may be appealed to the National Appeal Body.*
[…]
15.2.3.1. In cases stipulated by Clauses 15.2.1 and 15.2.2 hereof, the following parties shall have the right to appeal:
[…]
f) WADA." (emphasis added)

74. Accordingly, pursuant to Articles 15.1.2, 15.2 and 15.2.3.1 of the 2021 RUSADA ADR, CAS has jurisdiction over an appeal by WADA against a decision imposing (or not imposing) Consequences for a violation of the "*Rules*", the latter being a defined term denoting the 2021 RUSADA ADR (but the Sole Arbitrator considers that this implicitly encompasses also the previous editions of the RUSADA ADR). The present appeal was filed by WADA against a decision by the RUSADA DADC imposing certain Consequences for a violation of Article 2.4 of the 2015 RUSADA ADR (see para. 88 below on the applicable edition of the RUSADA ADR). As no other party has appealed, it may be left open whether the dispute falls under Article 15.2.1 or 15.2.2, in particular, whether the Second Respondent is an International-Level Athlete. This is because, in either case, Article 15.1.2 provides that if no other party has appealed a final decision

pursuant to these Rules, WADA may appeal directly to CAS, i.e., without having to exhaust internal remedies.

75. Therefore, the Sole Arbitrator has jurisdiction to adjudicate the present matter.

VI. ADMISSIBILITY

76. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.* […]*"*

77. Accordingly, Article R49 of the CAS Code accords priority to any time limit for appeal that is provided for in the regulations governing the body that issued the decision appealed against. Pursuant to Article 15.2.3.4 of the 2021 RUSADA ADR:

> *"The time to file an appeal by WADA shall be the later of:*
> *a) Twenty-one (21) days from the expiry of the time for filing an appeal by other parties*
> *b) Twenty-one (21) days after WADA's receipt of a complete file relating to the decision."* (emphasis added)

78. WADA received elements of the case file on 23 March 2022. The Sole Arbitrator does not need to decide whether the documents received constituted the "*complete file*" within the meaning of Article 15.2.3.4 of the 2021 RUSADA ADR. In any case, the Statement of Appeal was filed on 12 April 2022 and, therefore, within 21 days of receipt of those documents by WADA.

79. Moreover, the Athlete's failure to submit his Answer, to provide a signed copy of the Order of Procedure, or to participate in any other manner in this proceeding, did not prevent the Sole Arbitrator from proceeding with the arbitration and delivering this Award (see Article R55(2) of the CAS Code; CAS 2018/A/5945, para. 39). The Sole Arbitrator is satisfied that the Athlete was duly notified of the arbitration but chose not to participate in it. Every communication was sent to the Athlete by email to the address that he had indicated in his ADAMS profile and that he had used in his communications with the ITA. In addition, out of an abundance of caution, and without prejudice to the efficacy of the prior communications by the CAS Court Office, the entire case file (except for exhibits to the Parties' submissions) was again delivered to the Athlete by courier.

80. As no Party raised any objections as to the admissibility of the appeal and as there are no indications in the file that the appeal could be inadmissible for any other reasons, the Sole Arbitrator determines that the appeal is admissible.

VII. APPLICABLE LAW

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

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

82. In the present case, it is necessary to distinguish between each of the alleged whereabouts failures and the potential resulting ADRV. This is because the anti-doping regulations to be applied are, at least in principle, those of the Anti-Doping Organization that has Results Management authority. While the first two alleged missed tests and the related Results Management were conducted by the ITA on behalf of IBU, the Results Management in relation to the third alleged whereabouts failure and the potential ADRV resulting from it, was conducted by RUSADA. To the extent that the involvement of those different Anti-Doping Organizations derived from or resulted in a shift in Results Management authority, this could entail the applicability of different anti-doping regulations. Therefore, it is necessary to ascertain the applicable regulations separately for each alleged whereabouts failure and the ADRV (see sections A. to D. below). Subsidiarily to the applicable regulations, Russian law shall apply, being the law of the country in which the RUSADA DADC is domiciled; however, the Sole Arbitrator notes that neither Party made any submissions on Russian law.

A. Potential first and second missed tests

83. Both Article 7.1 of the 2019 IBU ADR and Article 7.1.1 of the 2015 RUSADA ADR, which were in force when the first and the second alleged missed tests occurred and when the relevant Results Management procedures were initiated, refer to the WADC for the allocation of Results Management authority. Pursuant to Article 7.1.2 of the then applicable 2015 WADC and Article I.5.1 of the relevant version of the ISTI (the 2019 ISTI for the first alleged missed test and the 2020 ISTI for the second alleged missed test), the Results Management authority in relation to a potential whereabouts failure (filing failure or missed test) lies with the Anti-Doping Organization with whom the athlete in question files whereabouts information. It transpires from Article I.2.2 and the comment to Article I.5.1 of the 2020 ISTI that an athlete files whereabouts information with the Anti-Doping Organization in whose RTP that athlete is included. As the Athlete was included in the IBU's RTP when the alleged missed tests occurred and when the Results Management in relation to them was conducted, it follows that he filed his whereabouts information with the IBU and that the IBU therefore had Results Management authority in relation to any missed tests at the time. This is not changed by the fact that the ITA managed the IBU's RTP and any whereabouts failures on behalf of the IBU.

84. Therefore, the Sole Arbitrator finds that the IBU ADR are applicable to the two alleged missed tests and the related Results Management procedures. In accordance with the

principle of *tempus regit actum* (see para. 72 *supra*), it is the 2019 IBU ADR that apply, together with the relevant version of the ISTI (the 2019 ISTI for the first alleged missed test and the 2020 ISTI for the second alleged missed test), as those were the regulations in force when the alleged missed tests occurred and when the relevant Results Management procedure was initiated.

B. Potential filing failure

85. In relation to the third alleged whereabouts failure (filing failure), the Sole Arbitrator notes that at the time of the said failure, the Athlete had been removed from the IBU's RTP and included in RUSADA's RTP. The comment to Article I.5.1 of the 2020 ISTI states that

> *"If an Anti-Doping Organization that receives an Athlete's Whereabouts Filings (and so is his/her Results Management Authority for whereabouts purposes) removes the Athlete from its Registered Testing Pool after recording one or two Whereabouts Failures against him/her, then if the Athlete remains in (or is put in) another Anti-Doping Organization's Registered Testing Pool, and that other Anti-Doping Organization starts receiving his/her Whereabouts Filings, then that other Anti-Doping Organization becomes the Results Management Authority in respect of all Whereabouts Failures by that Athlete, including those recorded by the first Anti-Doping Organization* […]*"*

86. Consequently, the Sole Arbitrator finds that RUSADA had the Results Management authority for the third whereabouts failure. Accordingly, the said whereabouts failure of the Athlete is governed by the 2015 RUSADA ADR, together with the 2020 ISTI, which were in force when the alleged filing failure occurred, and when the related Results Management procedure was initiated.

C. Potential ADRV

87. As mentioned above, the Sole Arbitrator considers it evident from the comment to Article I.5.1 of the 2020 ISTI that the Results Management authority over the Athlete's potential whereabouts failures shifted from the IBU to RUSADA at the point in time that the Athlete was removed from the IBU's RTP and included in RUSADA's RTP. Further, the said comment goes on to state that

> *"*[…] *In that case, the first Anti-Doping Organization shall provide the second Anti-Doping Organization with full information about the Whereabouts Failure(s) recorded by the first Anti-Doping Organization in the relevant period, so that if the second Anti-Doping Organization records any further Whereabouts Failure(s) against that Athlete, it has all the information it needs to bring proceedings against him/her, in accordance with Article I.5.4, for violation of Code Article 2.4.*"

88. The Sole Arbitrator considers that the above part of the comment clearly envisages the second Anti-Doping Organization i.e., RUSADA in the present case, having the Results Management authority with respect to initiating proceedings regarding any potential ADRV resulting from whereabouts failures. In accordance with the principle of *tempus*

regit actum (see para. 72 *supra*), the Sole Arbitrator finds that the substantive issues with respect to the alleged ADRV and the relevant Results Management are governed by the relevant rules applicable at the time of the commission of the alleged ADRV i.e., the 2015 RUSADA ADR, along with the 2020 ISTI. Following the same principle, the procedural elements of the alleged ADRV are governed by the relevant rules applicable at the time when the Results Management process commenced i.e., the 2021 RUSADA ADR, the ISRM in its January 2021 edition (the "**2021 ISRM**") and the ISTI in its 2021 edition (the "**2021 ISTI**").

D. Summary

89. In summary, the applicable regulations in relation to substantive issues are as follows:

- Potential first missed test: 2019 IBU ADR and 2019 ISTI
- Potential second missed test: 2019 IBU ADR and 2020 ISTI
- Potential filing failure: 2015 RUSADA ADR and 2020 ISTI
- Potential ADRV: 2015 RUSADA ADR and 2020 ISTI.

90. The Sole Arbitrator notes for completeness that the provisions that are decisive for the outcome of this case are materially the same between all of the above-mentioned regulations. In particular, even if one applied the 2015 RUSADA ADR instead of the 2019 IBU ADR, or the 2021 RUSADA ADR instead of the 2015 RUSADA ADR, the result would remain the same.

91. In addition, the Sole Arbitrator wishes to emphasize that whenever applying a provision that is no longer in force at the time this award is rendered, he has considered whether the successor provision(s) would be more favourable to the Athlete and should therefore be applied instead, in accordance with the principle of *lex mitior*, as recognized by well-established CAS jurisprudence (see, *ex multis*, CAS 2019/A/6669, para. 123).

VIII. MERITS

92. WADA argues, supported by RUSADA, that the Athlete's "liability is unchallenged as he accepted having committed an ADRV and did not appeal against the Appealed Decision" and that, therefore, "the only question is the sanction to be imposed". The Sole Arbitrator does not agree, as already indicated in the Procedural Order.

93. In particular, the Sole Arbitrator has not been referred to any document that would amount to an acknowledgement by the Athlete of having committed an ADRV. In particular, the Sole Arbitrator considers that the fact that the Athlete has submitted a request for an administrative review of the third whereabouts failure seems to suggest that the Athlete considers that he did not commit an ADRV.

94. Moreover, while the Athlete has not participated in this arbitration, this does not amount to an acknowledgement of the facts as presented by WADA, and even less of WADA's

legal conclusion that an ADRV was committed. Rather, it is for the Sole Arbitrator to satisfy himself that the appeal is well-founded (see KAUFMANN-KOHLER/RIGOZZI, International Arbitration – Law and Practice in Switzerland, 2015, para. 6.20; see also CAS 2018/A/5945, para. 40). As WADA requests that a longer period of ineligibility compared to the Appealed Decision be imposed on the Athlete, the appeal is well-founded only if the Sole Arbitrator is satisfied that the Athlete committed an ADRV (see section A. *infra*) and that the appropriate sanction is the one sought by WADA (see section B. *infra*).

A. Commission of an anti-doping rule violation

95. Article 3.1 of the 2015 RUSADA ADR provides as follows (and Article 5.1 of the 2021 RUSADA ADR is identical in substance[5]):

> *"The RUSADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the RUSADA 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.* […]*"* (emphasis added)

96. As WADA is appealing the RUSADA DADC's decision to seek a higher sanction to be imposed on the Athlete, in this arbitration the burden and standard of proof as set out in Article 3.1 of the 2015 RUSADA ADR and Article 5.1 of the 2021 RUSADA ADR apply to WADA (cf. CAS 2021/A/7840, para. 90). Accordingly, it is for WADA to prove, to the comfortable satisfaction of the Sole Arbitrator, that the Athlete committed an ADRV.

97. WADA asserts that the Athlete violated Article 2.4 of the 2015 RUSADA ADR, which provides as follows:

> *"2.4 Whereabouts Failures*
> *Any combination of three missed tests and (or) filing failures, as defined in the International Standard for Testing and Investigations, within a twelve-month period by an Athlete in a Registered Testing Pool (hereinafter – Pool)"* (emphasis added)

98. Accordingly, the alleged ADRV presupposes inclusion of the Athlete in an RTP (see section 1. *infra*) and three whereabouts failures within 12 months (see section 2. *infra*).

[5] The Sole Arbitrator notes that while there appears to be some consensus in CAS jurisprudence that the burden of proof is a substantive issue (with the consequence in the present case that it is regulated by Article 3.1 of the 2015 RUSADA ADR, rather than Article 5.1 of the 2021 RUSADA ADR), there is some controversy whether the same holds true for the standard of proof (see e.g., CAS 2018/0/5666, para 84; CAS 2017/A/5045, para 83; CAS 2016/A/4501, para 117; CAS 2013/A/3256, para. 274). However, the Sole Arbitrator does not consider it necessary to examine this further as the two provisions (Article 3.1 of the 2015 RUSADA ADR and Article 5.1 of the 2021 RUSADA ADR) are the same in content.

1. Inclusion of the Athlete in an RTP

99. The Sole Arbitrator is comfortably satisfied that the Athlete was in the IBU's RTP at the time of the two potential missed tests and in RUSADA's RTP when the potential filing failure occurred.

100. The Athlete was notified of his inclusion in the IBU's RTP by the letter from the ITA dated 5 December 2018. While WADA has acknowledged that the ITA never received a signed copy of the acknowledgement form from the Athlete, there is no requirement for the same in the ISTI. Likewise, there is no reason to doubt that the Athlete received the said letter from the ITA. In particular, the Athlete clearly considered himself included in the RTP, as he entered whereabouts information after the ITA's letter of 5 December 2018 (e.g., on 13 December 2018, the Athlete entered his whereabouts information for 13 to 17 December 2018, as is clear from the Athlete's whereabouts filings submitted by WADA). In addition, had the Athlete not been duly notified of his inclusion in the RTP and his resulting whereabouts obligations, one would have expected him to raise this in his explanations provided in response to the notification of the apparent missed tests.

101. The Sole Arbitrator notes that contrary to Article I.2.1(a) of the 2019 ISTI, the ITA's letter of 5 December 2018 did not indicate a "*specified date in the future*" as of which the Athlete would be included in the RTP. However, there is no indication that the Athlete ever objected to the lack of a specified date, or that he suffered any prejudice. To the contrary, as mentioned above, the Athlete clearly considered himself included in the RTP after receipt of the ITA's 5 December 2018 letter. Therefore, pursuant to Article 3.2.5 of the 2019 IBU ADR, any missed test or ADRV that the Athlete may have committed cannot be invalidated on this basis.

102. On 29 April 2020, the ITA informed the Athlete of his removal from the IBU's RTP and on 8 June 2020, RUSADA communicated his inclusion in RUSADA's RTP. Subsequently, the Athlete clearly considered himself included in RUSADA's RTP, at the very latest as of 26 June 2020 when he signed a form acknowledging *inter alia* that he understood the obligations he was subject to as an RTP member.

103. Therefore, the Athlete was, at all material times, in either the RTP of the IBU or that of RUSADA and, hence, subject to the applicable whereabouts requirements (see initially Article 5.6.5 of the 2019 IBU ADR and Article I.2.4 of the 2019 ISTI, and subsequently, Article 5.6.4 of the 2015 RUSADA ADR and Article I.2.4 of the 2020 ISTI).

2. Three whereabouts failures within 12 months

i. Missed Tests

104. As follows from Article 2.4 of the 2019 IBU ADR, the requirements for declaring a missed test are as set forth in the applicable ISTI, i.e. in the present case Article I.4.3 of the 2019 ISTI (for the first alleged missed test) and the 2020 ISTI (for the second alleged missed test). In summary, the Athlete can only be considered as having committed any missed test if the following requirements are met:

(i) When notified of his inclusion in the RTP, the Athlete was advised that he would be liable for a missed test if he failed to be available for testing during the 60-minute slots and at the location(s) specified in his whereabouts filings.

(ii) During one of those 60-minute time slots, the Athlete was unavailable for testing even though the DCO did what was reasonable in the circumstances to try and locate the Athlete at the location specified in the whereabouts filing.

(iii) In case of a second (or further) missed test: Any previous potential missed test had already been notified to the Athlete before the relevant test attempt.

(iv) The Athlete's unavailability for testing was at least negligent, which is rebuttably presumed if the previous three requirements are met.

105. The Sole Arbitrator is comfortably satisfied that requirement (i) is met. The letter of 5 December 2018, sent to the Athlete by the ITA on behalf of the IBU, stated "[…] *If inaccurate or incomplete whereabouts information in ADAMS results in an unsuccessful attempt to test you out-of-competition during your 1-hour testing slot, you will be liable for a MISSED TEST and will receive an official letter from the IBU/ITA notifying you of this* […]". While a missed test may also be committed in case of accurate and complete whereabouts information (e.g., if the athlete is at the location specified in his whereabouts filings but does not hear the knock on the door or does not respond to the DCO for other reasons), the Sole Arbitrator finds that the above advice was nonetheless sufficient for the case at hand. This is because both the potential missed tests do concern allegedly inaccurate whereabouts information. In other words, there is no indication that the advice provided by the ITA could have caused the alleged missed tests – as would be required, pursuant Article 3.2.5 of the 2019 IBU ADR, for potentially invalidating a missed test.

106. With respect to the other requirements (ii) – (iv) *supra*, the Sole Arbitrator will now analyse in turn below the two missed tests alleged by WADA.

(a) First alleged missed test

107. Based on the documentation provided by WADA, in particular the "*Unsuccessful Attempt Report*" completed by the DCO, the Sole Arbitrator has no reason to doubt that the Athlete was unavailable for testing on 26 October 2019 during the 60-minute time slot and at the location he had specified in his whereabouts filings. In particular, the DCO certainly did (at least) what was reasonable in the circumstances to try and locate the Athlete. In addition to calling the intercom several times, the DCO also called the Athlete's telephone number on multiple occasions, but the Athlete never answered his calls. The DCO also eventually gained access to the building and rang the doorbell of the Athlete's apartment several times before departing.

108. The Sole Arbitrator notes that there was one previous unsuccessful attempt of testing the Athlete (on 27 May 2018), which was duly notified to the Athlete by the IBU on 4 June 2018 (and confirmed on 20 July 2018). However, as per Article I.1.3 of the 2019 ISTI, the 12-month period that began from the date of commission of the said prior

potential missed test had expired before the alleged missed test on 26 October 2019; therefore, quite properly, WADA did not rely on this previous unsuccessful testing attempt in this arbitration.

109. The Sole Arbitrator observes that the Athlete provided two explanations with respect to this missed test, one on 18 November 2019 and another as part of his submission before the RUSADA DADC. In the submission of 18 November 2019, the Athlete stated that "*I, Slepov Alexey, admit that on November 26, from 18-23 hours, I was on the anniversary of a friend. I admit my guilt, in the future I undertake to accurately indicate my location.*" In his submission before the RUSADA DADC, the Athlete stated that "[…] *I returned from the training camp at home at 6 pm and, as it turned out, my cousin's wife had a birthday party at 7 pm. We went with the whole family to a café within 500 meters from home (Café Krasnoselskoe behind the Krasnoselskaya Sauna)*[…]". He further admitted that he did not change his whereabouts information and that when the "*chaperons*" came to his house, he was not present there.

110. The Sole Arbitrator notes minor discrepancies between the two explanations provided by the Athlete. However, nothing turns on this because, on the basis of either explanation, the Sole Arbitrator finds that the Athlete had sufficient time and possibility to update his whereabouts information prior to attending the party or to be present at his home during the time slot specified by him. The Athlete also did not explain why he did not answer the various telephone calls made by the DCO on that day. Therefore, the Athlete failed to rebut the presumption of negligence.

111. Consequently, the Sole Arbitrator finds that the Athlete committed a first missed test on 26 October 2019 (the "**First Missed Test**").

(b) Second alleged missed test

112. The Sole Arbitrator is comfortably satisfied that the Athlete was unavailable for testing on 10 March 2020 during the 60-minute time slot indicated by the Athlete in his whereabouts filings, despite sufficient efforts from the DCO to locate the Athlete at the address provided by him in ADAMS. As evidenced by the "*Unsuccessful Attempt Report*" completed by the DCO, the DCO went to two separate locations specified by the Athlete in his whereabouts information (Hotel Olimp and Zhemchuzhina Sibri biathlon centre) and the Athlete was not present at either during the specified timeslot. The DCO also tried to contact the Athlete by telephone but he received the auto-reply "*This type of communication is not available to the subscriber*".

113. The Athlete explained that prior to the apparent missed test, he had been travelling between two cities and failed to consider the time difference between the two cities and therefore had not changed the 60-minute timeslot. He provided the relevant train ticket and further explained that, when "*chaperons*" had come to the hotel, they had called him by telephone and had told him that they had been waiting for him but he could not reach the location within the timeslot. The Sole Arbitrator also notes that the Athlete sent an email to the ITA on 9 May 2020, wherein he stated "*I understand that sometimes I forget to change the location. Therefore, this is my fault, and I admit it*".

114. The Sole Arbitrator finds that the Athlete did not rebut the presumption of negligence with respect to this missed test. The Athlete's explanation does not provide sufficient justification for not changing his whereabouts information, especially considering that the train ticket was bought on 26 February 2020, well before the date of the second missed test. In addition, even if one considered the time difference to be a valid excuse, the Sole Arbitrator agrees with WADA's submission that regardless of which city's time the Athlete considered, he could not have made it in time to the location specified in his whereabouts filings.

115. Moreover, the Sole Arbitrator finds it established that the Athlete had been notified of the First Missed Test before the unsuccessful attempt to test him on 10 March 2020. The respective notification letter from the ITA is dated 5 November 2019. The Athlete received that letter prior to 10 March 2020, as evidenced by his response thereto of 18 November 2019.

116. Therefore, the Sole Arbitrator finds that the Athlete committed a second missed test on 10 March 2020 (the "**Second Missed Test**").

117. The Sole Arbitrator notes that although there was an alleged third missed test investigated by RUSADA, after review of the Athlete's explanations and other evidence, RUSADA decided not to proceed with a whereabouts failure with regard to this incident (as communicated to the Athlete by letter of 19 October 2020 by RUSADA). This decision of RUSADA has not been challenged by WADA and, hence, it is not necessary for the Sole Arbitrator to consider the same.

ii. Filing failure

118. As follows from Article 2.4 of the 2015 RUSADA ADR, the requirements for declaring a filing failure are as set forth in the applicable ISTI, i.e. in the present case Article I.3.6 of the 2020 ISTI. In summary, the Athlete only committed a filing failure if the following requirements are met:

(i) The Athlete was duly notified:

a. that he had been designated for inclusion in an RTP;

b. of the consequent requirement to make whereabouts filings; and

c. of the consequences of any failure to comply with that requirement.

(ii) The Athlete failed to comply with that requirement by the applicable deadline. As per the comment to Article I.3.6 (b) of the 2020 ISTI, this includes situations where the Athlete does not make any such filing, or where the Athlete fails to update the filing as required by Article I.3.5.

(iii) The Athlete's failure to comply was at least negligent, which is rebuttably presumed if the previous two requirements are met.

119. The Sole Arbitrator is comfortably satisfied that requirement (i) is met. RUSADA's letter to the Athlete of 8 June 2020 informed him of his inclusion in RUSADA's RTP, explained in detail the whereabouts requirements and warned the Athlete of the consequences of any failure to comply with the said requirements.

120. Likewise, the Sole Arbitrator is comfortably satisfied that requirement (ii) is met. According to Article I.3.4 of the 2020 ISTI, the Athlete has the responsibility to provide accurate information in his whereabouts filings. Further, Article I.3.5 provides that in the event of a change in circumstances that means that the information in a whereabouts filing is no longer accurate, the Athlete must update the same as soon as possible after such change in circumstances or, at the latest, prior to the relevant timeslot.

121. As per his whereabouts information in ADAMS, the Athlete was supposed to be in Vladimir on 29 September 2020. In reality, however, the Athlete was in Tyumen that day, which is around 2,000 kilometres from Vladimir. This is evidenced by the flight ticket provided by the Athlete to RUSADA in the framework of the investigation of a potential missed test on 30 September 2020, which proves that he travelled from Tyumen to St. Petersburg in the early morning of 30 September 2020. In addition, upon being notified of the said potential filing failure, the Athlete admitted that he was indeed not in Vladimir on 29 September 2020. Hence, the whereabouts information provided by the Athlete in ADAMS was inaccurate.

122. Further, the Sole Arbitrator notes that the Athlete's explanation provided to RUSADA does not constitute a sufficient basis to rebut the presumption of negligence. The Athlete stated that in early September, he was at the Seminsky Pass for a training camp and that in the final days of the camp, he indicated his further stay in Tyumen in ADAMS for two days; however, due to his poor performance at the Russian Summer Championship and a further stay in Tyumen with the Russian national biathlon team and a poor performance in test trainings, he did not change location until 30 September 2020. All this, however, does not show any lack of negligence on the Athlete's part. As rightly noted by WADA, the flight tickets were clearly booked as a round trip, meaning that the Athlete was aware, at least as early as 16 September 2020, that he would not be present in Vladimir on 29 September 2020. Hence, the Athlete had sufficient time to update his whereabouts filing. There is no evidence on record that the Athlete even attempted to update his whereabouts filing.

123. Therefore, the Sole Arbitrator finds that the Athlete committed a filing failure with respect to his whereabouts filing for 29 September 2020 (the "**Filing Failure**"). The Sole Arbitrator notes that as per the comment to Article I.1.3 of the 2020 ISTI, filing failures will be deemed to have occurred on the first day of the quarter for which the Athlete failed to make (or update) the filing. Consequently, the Filing Failure shall be deemed to have occurred on 1 July 2020.

3. Conclusion

124. It follows from the above that WADA has established that the Athlete committed a combination of two missed tests and one filing failure within twelve months and, therefore, an ADRV within the meaning of Article 2.4 of the 2015 RUSADA ADR. For

completeness, the Sole Arbitrator notes that the same would be true if the Filing Failure were not deemed to have occurred on 1 July 2020, but rather on 29 September 2020.

B. Sanction to be imposed

125. As an initial matter, the Sole Arbitrator notes that in accordance with Article 15.1.1 of the 2021 RUSADA ADR[6]:

> *"In making its decision, CAS shall not give deference to the discretion exercised by the body whose decision is being appealed."*

126. Accordingly, the Sole Arbitrator is not confined to assessing whether the sanction imposed by the Appealed Decision is "*evidently and grossly disproportionate to the offence*", as may otherwise have been the case based on well-established CAS jurisprudence (see, *ex multis*, CAS 2012/A/2756, para. 8.31 with further references). Instead, where the applicable regulations leave discretion as to the gravity of the sanction, it is for the Sole Arbitrator to determine the sanction that he deems to be the appropriate one.

127. In respect of the period of ineligibility to be imposed on the Athlete, Article 10.3.2 of the 2015 RUSADA ADR provides as follows:

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

128. None of the Parties has suggested, and neither does the Sole Arbitrator find any indication in the file, that there is a pattern of the Athlete changing his whereabouts filings last-minute, or any other conduct raising a serious suspicion that he was trying to avoid being tested. Therefore, Article 10.3.2 of the 2015 RUSADA ADR provides "*flexibility between two years and one year of Ineligibility*". While the Sole Arbitrator agrees with WADA's submission that the standard period of ineligibility is two years, this does not change the fact that this period can be reduced "*depending on the Athlete's degree of Fault*".

129. In this regard, it is important to note that contrary to Article 10.5 of the 2015 RUSADA ADR, Article 10.3.2 does not require "*No Significant Fault or Negligence*". It follows, as a matter of systematic interpretation, that a reduction under Article 10.3.2 of the 2015 RUSADA ADR remains possible even if the Athlete's Fault was significant. In addition, the Sole Arbitrator agrees with the finding of the panel in CAS 2020/A/7528, para. 187, that the categorization of degrees of Fault established in the *Cilic* case (CAS 2013/A/3327 and CAS 2013/A/3335, paras. 69 et seq.)

[6] The Sole Arbitrator notes that a similar provision can be found in Article 13.1.2 of the 2015 RUSADA ADR.

> *"*[…] *is a helpful guide, though the calibration would necessarily be different here in light of the different possible period of ineligibility of 12-24 months; thus (albeit using slightly different labels) the following levels of fault would correspond to whereabouts cases: 'high' (20-24 months, with a midpoint of 22 months), 'medium' (16-20 months, with a midpoint of 18 months), and 'low'* [(]*12-16 months, with a midpoint of 14 months).*"

130. It is thus for the Sole Arbitrator to determine whether the Athlete's level of Fault is high, medium or low, and to assess the appropriate sanction within the applicable category. In doing so, the Sole Arbitrator finds it useful to take guidance from the following findings in the *Cilic* case (CAS 2013/A/3327):

> *"71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.*
>
> *72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.*
>
> *73. The subjective element can then be used to move a particular athlete up or down within that category.*
>
> *74. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however."*

131. In terms of the factors to be considered when determining the Athlete's degree of Fault, the Sole Arbitrator relies on the definition of "*Fault*" in the Annex to the 2015 RUSADA ADR, which provides as follows:

> *"Any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior.* […]*"* (emphasis added)

132. Finally, in line with CAS jurisprudence, the Sole Arbitrator finds that when determining the Athlete's degree of Fault, he must take account of the circumstances surrounding all

three whereabouts failures (CAS 2020/A/7528, para. 168(c); CAS 2020/A/7526 & 7559, para. 206).

133. With the above in mind, the Sole Arbitrator considers that the Athlete's objective level of Fault is high.

134. In the case of the First Missed Test, no justification is discernible from the file as to why the Athlete kept his whereabouts filings as to the 60-minute time slot unchanged despite the fact that he chose to attend a birthday at that very same time. While it appears from the Athlete's explanations submitted in the previous instance that he learnt about the birthday party only shortly after he arrived home at 18:00 that day, he still had plenty of time before the start of the 60-minute time slot (at 21:00) to update his whereabouts filing. In addition, as the Athlete was apparently not far from the location specified in his whereabouts filings, at the very least one could have expected him to be available by phone so that he could be tested on short notice if called; however, without any apparent reason, the Athlete did not respond to the phone calls made by the DCO. Therefore, the rationale followed by the panel in CAS 2020/A/7528, with regard to the athlete being able to present himself upon being called by the DCO, is not applicable here.

135. In the case of the Second Missed Test, the Athlete was not even in the same city as indicated in his whereabouts filings for the respective 60-minute time slot. His reference to a confusion caused by different time zones is not helping the Athlete because, as explained above, he would not have been able to reach the testing location in time in any case, i.e. regardless of which time zone one took into account. Also, there is no indication that the Athlete's absence was due to any unexpected occurrences or any last-minute changes to his plans (cf. also CAS 2011/A/2671, para. 78; CAS 2020/A/7528, para. 188(a)). To the contrary, the Athlete bought the train ticket on 26 February 2020, well before the date of the Second Missed Test, and hence had sufficient time to update his whereabouts filing.

136. Finally, with regard to the Filing Failure, it is established that the Athlete was aware, at least as early as 16 September 2020, i.e. almost two weeks prior to the date of the incorrect whereabouts filing, that his whereabouts filings needed to be updated. That he still failed to do so was particularly careless in view of the fact that he had already accumulated two missed tests in the previous eleven months and should therefore have been on "*high-alert*" (CAS 2020/A/7528, para. 188(b), SR/092/2020 and SR/Adhocsport/272/2019). In other words, in the case of the Filing Failure, the level of care exercised by the Athlete was particularly poor in relation to what should have been the perceived level of risk.

137. In respect of the Athlete's subjective level of Fault, the Sole Arbitrator notes that the Athlete is highly experienced, has competed at the international level and provided whereabouts information for many years and has been subject to doping control since 2012, as evidenced by the Athlete's testing history submitted by WADA. Hence, the Athlete cannot claim any benefit on account of a lack of experience. Further, although the Athlete has mentioned certain poor performances affecting his plans during the time of the Filing Failure, the Sole Arbitrator notes that there is no suggestion that this could

have caused any exceptional degree of stress (as was the case in CAS 2013/A/3327, para. 76(d)(iii); CAS 2012/A/2756, para. .45 *et seq.*). In addition, given his experience, the Athlete can certainly be considered to have been used to dealing with any stress stemming from disappointing performances. As such, and in the absence of any other indication in the record that a lower degree of subjective Fault could apply, the Sole Arbitrator considers that the subjective level of Fault of the Athlete is also high in this case. Therefore, the Athlete cannot benefit from any reduction of the sanction on the basis of his degree of Fault.

138. Nothing else follows from the circumstances invoked by the Athlete in his request for an administrative review of the Filing Failure, i.e. that all his doping tests have been negative, that he has always been promoting clean sports, that he has been training at his own expense and that sports is merely his "*hobby*". Based on the definition of Fault, all of this has no bearing on the degree of Fault that the Athlete bears in relation to his three whereabouts failures.

139. In view of the above, the Sole Arbitrator finds that a period of ineligibility of 24 months, i.e., the standard sanction, is appropriate. The Sole Arbitrator finds that this is also consistent with the jurisprudence referred to by WADA (including CAS 2015/A/4210 and CAS 2020/A/7058).

140. That said, in accordance with Article 10.10.3.1 of the 2015 RUSADA ADR,

> *"If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such a period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal."*

141. The Appealed Decision imposed a period of ineligibility of one year on the Athlete, starting from 30 September 2021. There is no suggestion by any of the Parties that the Athlete failed to serve that period of ineligibility. Therefore, the Athlete shall receive credit for one year of ineligibility already served from 30 September 2021 until and including 29 September 2022.

142. In accordance with Article 10.10 of the 2015 RUSADA ADR, the period of ineligibility shall commence on the date of the final hearing decision providing for ineligibility, i.e., the date of this Award.

143. As per Article 10.8 of the 2015 RUSADA ADR, all competitive results achieved by the Athlete from 1 July 2020 (the date on which the ADRV was committed based on the deemed date of the Filing Failure) through 30 September 2021 (the date on which the period of ineligibility imposed by the RUSADA DADC began) shall be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes.

144. While Article 10.8 of the 2015 RUSADA ADR allows not to disqualify results if "*fairness requires otherwise*", none of the Parties to this arbitration has argued, and there is no indication in the file, that this exception applies here. In particular, contrary to the RUSADA DADC's view, it is not sufficient, in and of itself, that the Athlete tested

negative between the three whereabouts failures. First, as rightly noted by WADA, negative tests do not necessarily mean that the relevant athlete was not doping. Secondly, if one exempted from the consequences of Article 10.8 of the 2015 RUSADA ADR all athletes that tested negative between the three whereabouts failures, this would risk rendering that particular sanction the exception rather than the rule in cases where the ADRV is based on whereabouts failures. There is no indication in the RUSADA ADR that this is what the rule-makers intended. Hence, while a negative test may be relevant to whether disqualification of all results would be unfair, the Sole Arbitrator finds that in the circumstances of the present case, fairness does not require departing from the default sanction as provided for in Article 10.8 of the 2015 RUSADA ADR.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency (WADA) on 12 April 2022 against the decision rendered by the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency (RUSADA) on 30 September 2021 in the matter concerning Alexey Slepov is upheld.

2. The decision rendered by the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency (RUSADA) on 30 September 2021 in the matter concerning Alexey Slepov is amended as follows:

   (i) Alexey Slepov shall serve a period of ineligibility of twenty-four (24) months as from the date of this award, with credit given for the period of ineligibility already served from 30 September 2021 until and including 29 September 2022.

   (ii) All competitive results achieved by Alexey Slepov from 1 July 2020 through 30 September 2021 shall be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 5 September 2023

THE COURT OF ARBITRATION FOR SPORT

Heiner Kahlert
Sole Arbitrator