

DECISION
OF THE FIM INTERNATIONAL DISCIPLINARY COURT (CDI)

Sitting in the following composition:

President: **Mr Anand SASHIDHARAN** (CDI Single Judge)

in the following case:

Championship: 2018 FIM Supersport World Championship

Event: Round 8 at Misano, Italy on 8th July 2018

Circuit: Misano World Circuit Marco Simoncelli, Italy

Case concerns: Anti-doping rule violation based on Adverse Analytical Finding (presence of benzoylecgonine, S.6 Stimulants) notified in the Analytical Report of the sample taken from Mr. Anthony West at Misano, Italy

Present at the Hearing (Teleconference):

Mr Anthony West, Rider
Dr Martyn Green, Rider's Representative

Mr Anand Sashidharan, CDI Single Judge
Mr Jan Stovicek, FIM Board Member

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I. RECAPITULATION OF THE RELEVANT FACTS

1. Mr. Anthony West (hereinafter referred to as ‘*Mr. West*’ or ‘*Rider*’) is a Professional rider and was participating in the 2018 FIM Supersport World Championship (“hereinafter referred to as ‘the Championship’”). The Rider was also participating in the 2018 Asian Road Racing Championship.
2. On 20 May 2012, the Rider underwent an anti-doping control test carried out during Le Mans Race of the 2012 FIM Road Racing World Championship Prix, class Moto 2. The analysis of the sample showed the presence of methylhexanamine (which was a Prohibited Substance classified under S6 Stimulants (Specified Stimulants) on the WADA 2012 Prohibited List and the FIM Anti-Doping Regulation) in the Athlete’s bodily specimen. After hearing the rider, the FIM’s CDI had imposed a one-month period of ineligibility on the Rider. Aggrieved by this, WADA had filed an appeal before the Court of Arbitration for Sport at Lausanne, who passed Arbitral Award dated 22 November 2013 of the Court of Arbitration for Sport at Lausanne in *CAS 2012/A/3029 - WADA v. Anthony West and FIM* in terms of which a period of ineligibility of 18 months was imposed on the Rider.
3. Mr. West participated in the eighth round of the Championship at the Misano World Circuit Marco Simoncelli, Italy on 8th July 2018.
4. On 8th July, 2018, as a part of a routine In-Competition doping control, Mr. Anthony West’s urine sample was taken together with the Doping Control Form submitted by the Rider. The rider’s urine sample (A-Sample Code No. 4274669) was sent to Deutsche Sporthochschule Köln Institut für Biochemie, a WADA accredited Laboratory, for testing.
5. The above-mentioned WADA accredited laboratory tested the ‘A’ Sample and issued Analytical Report No.AR201804707 dated 30.07.2018, which contained an Adverse Analytical Finding as follows:

Substance:
Benzoyllecgonine
(S6. Stimulants)

Annotation
Detection of benzoyllecgonine is consistent with the administration of the prohibited substance cocaine

This is a metabolite of the prohibited substance cocaine under the head ‘S.6 Stimulants’ of the FIM Anti-Doping Code.

6. By letter of 24th August, 2018, the FIM Medical Director informed the FIM Legal Department that the WADA accredited laboratory had informed them that the result of the anti-doping control carried out on the Rider reveals the presence of a Benzoyllecgonine and that the same constitutes an anti-doping violation. It was also confirmed that no Therapeutic Use Exemption (TUE) is in place or has been requested for the use of these substances for legitimate medical reasons by the Rider.

7. The Rider was informed by the FIM by letter dated 13th September 2018 of the adverse analytical finding of the WADA-accredited Laboratory in Cologne, Germany which indicates anti-doping rule violations under Article 2 of the FIM Anti-doping Code (hereinafter referred to as '**ADC**') [i.e. Presence (Article 2.1 ADC), Use (Article 2.2 ADC) and Possession (Article 2.6 ADC) of prohibited substance]. The Rider was asked to confirm as to whether he wanted the B-Sample tested and the Rider was also informed, among other things, that:
 - a) The FIM did not receive any Therapeutic Use exemption from the Rider before the test;
 - b) The adverse analytical finding in the Rider's case concerns Benzoyllecognine, which is the main metabolite of cocaine, which is a prohibited substance. It is not a specified substance in the meaning of Article 4.2.2 ADC and 7.9.1. The FIM is therefore obliged to provisionally suspend the Rider and bar him from participating in any motorcycling competition or activity until further notice;
 - c) The Rider is provisionally suspended with effect from 14th September 2018;
 - d) The Rider was advised to refer to Article 10.7 of the 2018 ADC for the potential consequences of multiple anti-doping violations in light of the previous anti-doping violation following an adverse analytical finding of a prohibited substance in terms of which the Rider was sanctioned with a period of ineligibility of eighteen months by CAS;
 - e) If he believed he has valid reasons to do so, he could request that the provisional suspension be lifted by submitting in writing his grounds for such a request and he was informed of the grounds available under Article 7.9.3.3 and Article 7.9.3.4 of the ADC;
 - f) Under Article 7.10.1 of the ADC, at any time during the results management process, the FIM and the Rider may agree on the consequences of an anti-doping violation;
 - g) The case would otherwise be referred to the CDI to determine whether or not the Rider has committed an anti-doping violation under Article 2 of the ADC in order to impose a sanction on the Rider in accordance with Article 10 of the ADC.
8. Regarding the adverse analytical finding of the WADA-accredited Laboratory, the Rider had requested analysis of the B Sample. The Rider also made a Request for a Provisional Hearing Pursuant to Article 7.9.3 ADC before the FIM CDI seeking the lifting of the provisional suspension.
9. After considering the submissions of the Rider, the CDI passed order dated 12th October 2018 wherein the provisional suspension of Mr. West was upheld and it was ordered that the Rider shall not be entitled to participate in any sporting competitions pending the hearing by the CDI of the Anti Doping Violation.
10. In so far as the Rider's 'B' sample is concerned, the above-mentioned WADA accredited laboratory tested the and issued Analytical Report No.AR201806699

dated 24.10.2018, which contained an Adverse Analytical Finding identical to the Analytical Report No.AR201804707 dated 30.07.2018 with reference to the 'A' Sample.

11. By letter dated 7th December 2018 issued by the FIM, Mr. West was informed that the CDI Single Judge, appointed to hear his case was Mr. Anand Sashidharan from India. The Rider was offered numerous dates on which the hearing could be convened and was asked to indicate his convenient dates. The Rider was also informed that he is entitled to a physical hearing, however, if he wished, the hearing could also be held by way of teleconference. The Rider was also advised to choose a date after allowing sufficient time for his preparation.
12. The Rider had requested for convening the hearing on 15 December 2018. Accordingly, Mr. Ludovic Agassiz, FIM Legal Director, by letter dated 12th December 2018 informed Mr. West that the hearing would be on 15th December 2018 by way of telephone conference. Mr. West was also asked to answer the following questions:

1. *How did you ingest the prohibited substance?*
2. *Why did you ingest the prohibited substance?*
3. *Did you intend to enhance your sports performance in ingesting it?*
4. *If any, what precautionary steps did you take to avoid the present anti-doping rule violations (i.e. presence of benzoylecgonine in your body)?*

In order to benefit from a possible elimination or reduction of the otherwise applicable period of Ineligibility as provided for under Articles 10.4 and 10.5 ADC (No Fault or Negligence or no Significant Fault or Negligence with regard to the present anti-doping rule violations).

13. In consideration of Article 8.1.1 ADC and Article 3.3.2 of the FIM Disciplinary and Arbitration Code, Mr. West, was heard by the CDI during two telephone conference hearings on 15 December 2018 and 22nd December 2018 ("the CDI Hearings").
14. The CDI Hearings were attended by Mr. Anthony West, Dr. Martyn Green (22nd December 2018 hearing only) and Mr. Jan Stovicek on behalf of FIM.

II. ASSESSMENT IN LAW AND IN FACT BY THE CDI

PROCEDURAL ISSUES

A. CDI Jurisdiction

15. The CDI has jurisdiction to handle this case and decide on its merits in accordance with Article 8.1.1 ADC and Article 3.3.2 of the FIM Disciplinary and Arbitration Code.

16. In addition, the CDI notes that the Mr. West has never called into question or challenged the competency of the CDI in the proceedings.
17. The Director of the International Commission of Judges (CJI) has appointed Mr. Anand Sashidharan as the single CDI Judge for this particular case.
18. The CDI finds hereby that Mr. West had by his email dated 12th December enquired as to why the same Judge that had decided his earlier case was appointed and enquired as to whether he could have another Judge to decide his case. During the CDI Hearing on 15th December 2018, as a preliminary issue. The Rider was informed that such objection would have to be dealt with by the Director of the International Judicial Commission (CJI) of the FIM and that the case would have to be adjourned so that the Director could make a decision regarding this objection. At this juncture, the Rider stated that he was not keen on pursuing with the objection and that he would like to proceed with the hearing. Since the objection had been waived, the CDI proceeded with the hearing.
19. During the CDI Hearings on 15th December 2018 and 22nd December 2018 in accordance with Article 8 ADC, Mr. West was given the opportunity to exercise in full his right to be heard (present his version of the facts, arguments and submit relevant evidence in particular).

MERITS (Procedure before the CDI)

B. Scope of review of the CDI

20. When adjudicating in first instance (FIM Disciplinary and Arbitration Code, Article 3.3.2), the CDI enjoys, as usual, full powers to establish the relevant facts and applies the law applicable to the case.
21. While the CDI has considered all the facts, allegations, legal arguments and evidence submitted by Mr. West and his representative Dr. Martyn Green in the present proceedings, it refers in its Decision only to the submissions and evidence it considers necessary to explain its reasoning.

C. Applicable law

22. The 2018 FIM Anti-Doping Code, the FIM Disciplinary and Arbitration Code, and as usual and complementarily Swiss law, if necessary, as the FIM has its seat in Switzerland [cf. Arbitration CAS 2003/A/461 & 471 & 473 WCM-GP Limited v/ Fédération Internationale de Motocyclisme (FIM), Award of 19 August 2003] apply to this case. The CDI shall also consider the relevant case law of the Court of Arbitration for Sport (“CAS”).

D. The CDI Hearing

23. The following documents were furnished to the CDI:

1. Notification of AAF from FIM to Mr. West, 13 September 2018
 2. Appendices to Notification of AAF (Analytical Report, AAF)
 3. CMI Bureau Report of AAF, absence of TUE, 24 August 2018
 4. Request for lifting provisional suspension filed on behalf of the Rider together with attachments, 28 September 2018
 5. FIM CDI decision on request for lifting provisional suspension, 12 October 2018
 6. Letter from FIM to Mr. West, 7 December 2018
 7. Analytical Report No.AR201806699 dated 24.010.2018 received from the WADA Accredited Laboratory with reference to the 'B' Sample.
 8. Email dated 10 December 2018 from Mr. West to FIM requesting the hearing on 15.12.2018
 9. Letter from FIM to the Rider convening the hearing, 12 December 2018
 10. Email dated 12 December 2018 from Mr. West to FIM containing his written submissions on facts and arguments including photographs attached
 11. Email from Mr. West dated 13 December 2018 asking whether he can have another Judge
 12. Email dated 14 December 2018 from FIM to Mr. West regarding teleconference dial-in details for hearing on 15 December 2018
 13. Statutory Declaration of Mr. Jacobo Caldeiro Suarez, 12 December 2018
 14. Emails dated 16 December 2018 from Dr. Green to the CDI
 15. Email dated 17 December 2018 from Mr. West to FIM requesting that Dr. Green be permitted to help represent him.
 16. Email dated 17 December 2018 issued by the CDI requesting the Rider and Dr.Green for dates that would suit them for the next hearing
 17. Email dated 19 December 2018 convening the hearing on 22.12.2018
 18. Email dated 19 December 2018 sent by FIM regarding teleconference dial-in details for hearing on 22 December 2018
 19. Executed Affidavit of Mr. Michael Murphy, 20 December 2018
 20. Email dated 22 December 2018 from Dr. Green to the CDI during the course of the hearing
 21. Email dated 14 January 2019 sent by Dr. Green to the CDI
 22. Other email communications in connection with fixing of hearings and the intimation of the final order.
24. Mr. West's evidence sent to the CDI was reviewed and discussed in detail at the CDI Hearing. At the hearing, the oral evidence of Mr. West and Mr. Jacobo Suarez was heard and the documents in support of his case were also taken on record. The following were the relevant submissions of Mr. West:

The Rider, by email dated 12th December 2018, contended as follows:

Breaches pertaining to the taking of sample and notification

- a) On July 8, 2018, he was randomly selected to produce a Urinary Drugs Screen (UDS) sample following the WSS race in Misano, Italy. He was accompanied to the

stadium medical centre by his mechanic and friend, Michael Murphy. The test was administered by Mr. Andrea Mariola at 13:03 hrs and labelled M-803994224. At the time, he was provided with a pathology urine specimen jar. Mr. Mariola followed him into the corridor, where Mr. Mariola remained. The Rider proceeded around the corner into the lavatory, where he produced the specimen. As he passed the specimen, he could hear Mr. Mariola talking in the corridor. Mr. Mariola did not watch him during the sample collection. This concerned the Rider because he knew that level 1 supervision was required to satisfy WADA standards to produce a valid and reliable test. Level 1 supervision requires the test administrator to observe the urine specimen delivery, from my urethral meatus into the sample pot. In Australia, this level of supervision is referred to as level 1. Mr Mariola provided level 4 supervision, at best.

- b) Chain of Custody. Following the test, he discussed this irregularity with Michael Murphy, who also recognised its impropriety. Approximately 30 minutes after they left the medical centre, Michael returned to the centre to visit the toilet. As he passed the office, he noted that the Rider's specimen remained, unsupervised, on Mr. Mariola's desk. This was a contravention of the Chain of Custody requirements.
- c) The notes on the Chain of Custody form, completed by the Institute of Biochemistry, Germany, state: BAG, CAR, HOME as Mr. Mariola's management of the specimen. Apparently, the sample was kept in the DCO's bag, then his car and then at his home. During this period the sample was never secure. Further, it was collected by DHL at 16:00 hrs on Monday, more than 24 hours after the sample was collected. These also constitute inappropriate management of and security for the specimen and they are further contraventions of the WADA Chain of Custody rules.
- d) While the sample was taken on 8th July, FIM medical was notified of an adverse analytical finding on 30th July 2018 and FIM Medical notified the Director of the FIM Legal Department, of the adverse analytical finding on 24th August 2018, the rider was notified only on 13th September 2018. On 14th September 2018, the Rider was informed of the provisional suspension. The aforementioned timeline of notifications breaches the WADA regulations, which determine that he is to be notified of an abnormal analytical finding within two weeks of that finding.
- e) Considering the breach of standards of the UDS, the Chain of Custody contraventions and finally the delay in notification, the Rider was concerned that certain individuals within the FIM executive, with whom he had previously experienced significant difficulties, were attempting to destroy his reputation and racing career. He believed that his "paranoia" was real and justified. He protested his innocence.

Mental Health

- f) The three years preceding this test, 2015-2018, had been difficult for him;
 - He had separated from his de facto, after 6 years.
 - He had lost his rider position with Qatar.
 - He was losing control of his team.
 - His Mechanic, Michael Murphy, was being replaced.
 - He was stretched financially.
 - He had been away from Australia for a long period.

-He had entered into a new relationship with a Spanish girl, Ms. Rouse Silva, which became toxic.

- g) He contended that while these factors were all stressors for him, in particular, the toxic relationship with Rouse proved extremely stressful. Over time, their relationship deteriorated and she became emotionally and physically abusive. The physical assaults resulted in bruising, scratches to his body and facial lacerations. The mental torment was particularly personal. She also damaged his property, for example she key-scratched the rear of his car and smashed its indicator arm. He produced various photographs to show damage to his car and body. He stated that his mood had deteriorated and he had become sad and agitated and he could not sleep. He was drinking excessive amounts of alcohol.
- h) On Wednesday 4th July, 2018, he was drinking with his good friend, and confidant, Jacobo Suarez, who recognised the instability of the Rider's mental health and his excessive alcohol use and abuse. Mr.Suarez decided to help the Rider's agitation, anxiety and insomnia by adding cocaine to his drink. This was done without the Rider's consent or knowledge. Mr.Suarez only informed the Rider of his actions after the FIM press release on November 2, 2018. The Rider was troubled when he told him that this was not the first time that he had laced his drink.
- i) Since the report of the adverse analytical finding, he has repeatedly denied that he has used cocaine. He has always protested his innocence. At that time, he steadfastly believed that the three aforementioned breaches of WADA protocols were part of an FIM conspiracy to prematurely end his racing career. He tried to defend himself by attempting to prove tampering of his specimen. ***He now realises that the positive result was correct.*** He apologised for the inappropriate pressure that he placed on the FIM department.

Regarding Cocaine

- j) He stated that he does not use this drug recreationally. He is not addicted to any illicit drugs, nor is he addicted to alcohol. His excessive use and abuse of alcohol was self-medication. He is not an alcoholic and he does not need to drink alcohol. According to medical assessment, he does not have an "addictive personality disorder" that would put him at risk of alcohol and/or drug addiction.
- k) It is his understanding that cocaine is not a performance enhancing drug, quite the contrary, Cocaine is considered by WADA to be a recreational drug, and its use is not banned, only prohibited. His understanding is that; according to WADA, riders with a UDS cocaine level of equal to or less than 50 ng/ml are deemed to not to have an adverse analytical finding. Yet it appears that he is to be banned from riding for the next two years because he had a finding marginally above this level.

With regard to the adverse analytic finding:

- l) If he had knowingly used cocaine, he had the opportunity to tamper with the UDS sample both during the passing of the specimen, under level 4 supervision, and afterwards, when it was left unattended on the office desk. Yet he did not.

- m) The WADA UDS system is a bipartisan system designed to protect the competitors against unfair advantage for those athletes using performance enhancing drugs. This is an extremely complex field and WADA is responsible for protecting the innocent, drug free, competitors. Over the years, WADA has failed in its duty of care to protect us, by serially failing to identify enhanced athletes, for example Lance Armstrong and Bradley Wiggins.
- n) WADA's role in adjudicating on recreational/prohibited drugs is, he believes, only to protect the other athletes against accident due to impairment, not to ensure that the race was fair.
- o) In conclusion he contended that the following are the decisions that the CDI could come to:
- **Failure of UDS:** That Mr. Mariola failed to satisfy the standards required by WADA. Thus, the test result should be set aside, without penalty or record.
 - **Failure of Chain of Custody:** That Mr. Mariola failed to follow the standards required by WADA. Thus, the test results should be set aside, without penalty or record.
 - **Failure of adequate notification:** That FIM failed in its duty of to notify him within 2 weeks of the adverse finding, as required by WADA. Thus, the test results should be set aside, without penalty or record.
 - **Evidence:** That the test was positive due to circumstances beyond his control. In the interests of natural justice, the result should be recorded and noted, but his suspension pragmatically terminated. He is not a cocaine addict and he does not use cocaine for recreational gain. He is more than willing to undertake random UDS at a much higher frequency than required by WADA, for the next two years.
 - **Punitive:** His suspension continues throughout 2019 and 2020, which will end his career.
- p) He further stated that medical opinion is that he has a major depressive illness.

25. While the written submissions made by the Rider in his email dated 12th December 2018 had referred to a statutory declaration by Mr. Jacobo Suarez, the statutory declaration was not attached to the email. When the CDI Hearing on 15 December 2018 commenced, the Rider informed the CDI that he was still awaiting the declaration of Mr. Jacobo Suarez. At this point the Rider was reminded that it would be critical for him to avail the opportunity of producing any evidence in support of his case and since his case was that the adverse analytical finding was on account of Mr. Suarez spiking his drink with cocaine, this evidence may be crucial to his case. During the hearing, the Rider sent an email dated 15 December 2018 attaching the statutory declaration issued by Mr. Suarez, which the Rider received during the hearing.

26. Even though the Rider was advised that he had to file his written submissions and evidence by 13 December 2018, in order to ensure that the Rider was not denied a fair opportunity to present his case, the statutory declaration of Mr. Suarez presented by the Rider during the hearing on 15 December 2018 was taken on record.

27. During the CDI hearing on 15 December 2018, the Rider had repeated the contentions made in his email dated 12 December 2018 with respect to his contention that he does not take drugs, the alleged breaches of procedure in taking, storing and transporting his sample and the mental stress that he was under due to his relationship. He further stated that:
- a) In 2012, when his first anti-doping violation occurred, he admitted the same immediately and accepted the penalty.
 - b) He did not produce his Rider passport at the time of giving his sample.
 - c) He had differences with his team and was considering not racing at Misano.
 - d) He suffered more stress than other riders as he had to temporarily reside in Europe and could not live in his home country unlike other riders. He stayed in Madrid between race weekends.
 - e) Mr. Suarez is a person that he knows for about three years as he also used to race bikes.
 - f) He had gone out with Mr. Suarez to a bar called Bahiana Bar, where his drink was spiked with cocaine. **This was a categoric admission that the Rider had consumed cocaine as a result of the spiking of his drink.**
 - g) He travelled to Italy on 4 July 2018. He was sober during the race weekend.
 - h) He said that upon learning of the press release regarding the provisional suspension of the Rider not having been lifted, Mr. Suarez contacted Mr. West through Instagram and email and informed him that he had put cocaine in his drink. The rider stated that he had an argument with Mr. Suarez pursuant to this communication.
28. On behalf of the FIM, it was argued that the Rider's contention of breach of procedure in taking, storing and transporting the sample on one hand and the contention that Mr. Suarez had spiked the Rider's drink with cocaine were mutually inconsistent. The Rider was also asked if he believed that the alleged breach of procedure had any impact or influence on the sample to which the Rider replied no. The Rider admitted to the use of cocaine on account of the spiking of his drink by Mr. Suarez.
29. It was noticed that the statutory declaration said to have been executed by Mr. Suarez was not signed in the appropriate place and that the same was not attested. The Rider was further informed that if he wished to rely on the evidence of Mr. Suarez, Mr. Suarez would have to be examined as a witness and subjected to cross examination. Also, considering the fact that the said declaration was filed only during the hearing, the FIM, would require further time. Mr. West attempted to contact Mr. Suarez during the hearing, however Mr. Suarez could not be reached and therefore it was agreed that the case would be adjourned.

30. It is pertinent to state that during the hearing on 15 December 2018, Mr. West was disrespectful and often used abusive language. Dr. Green informed the CDI that Mr. West had asked him to apologise on Mr. West's behalf for his behavior during the last hearing.
31. While the case was adjourned, the CDI received a request from the rider seeking permission to be represented by Dr. Martyn Green. The CDI also received an email from Dr. Martyn Green requesting for leave to represent the Rider and make submissions on his behalf due to the major depressive illness suffered by the Rider due to which his cognitive abilities are compromised.
32. During the hearing on 22.12.2018, Dr. Green had indicated that he wished to highlight the breaches in procedure by asking Mr. West questions regarding these breaches. The CDI had enquired as to whether the Rider was questioning the presence and use of the prohibited substance or whether it was the Rider's case that the use of the prohibited substance was due to the spiking of the Rider's drink by Mr. Suarez as claimed by the Rider. Since the use of the prohibited substance was admitted by the Rider (although due to spiking of his drink) it was agreed that the hearing could be proceeded with by allowing Mr. Suarez to join the telephone conference for his examination / cross examination. Dr. Green sent an email with the questions that he had prepared to ask Mr. West regarding the alleged breaches of procedure in taking, storing and transporting the sample.
33. Mr. Suarez was examined as a witness and cross examined by the FIM. Questions were also put to Mr. Suarez by the CDI.
34. In his statutory declaration, Mr. Suarez had, among other things, stated as follows:

“Anthony visited me in early July this year. He was in a bad way. He was tired and exhausted.

We went for a drink and food at Bahiana Club, Calle del Conde. He got drunk and did not eat. He talked about his relationship with Rouse. She called him a useless man and a failure. He talked about trouble with his team. He was swearing. I heard most of it before but this time he was really angry. He was sad. I had seen him before like this but not this bad.

He was racing that weekend at Misano. He was flying to Italy that day.

To help him I put some cocaine in his drink to get him through the flight and help him feel better. I did not tell him because I knew he would not accept the offer.”

35. During the examination of Mr. Suarez by Dr. Green at the CDI Hearing on 22.12.2018, Mr. Suarez deposed as follows:

Q: Did you witness Mr. West's drink being spiked?

A: I did. I admit to doing it.

Q. Was Mr. West aware of his drink being spiked?

A: No. With my group of friends we do it. He was in a really bad situation.

Q: Was Mr. West very drunk?

A: No. Not very drunk. When I saw him, I saw he was down and he told me his problems.

36. During cross examination by Mr. Jan Stovicek, Mr. Suarez deposed, among other things, as follows:

Q: Do you realize it is a criminal offence to put cocaine in another person's drink?

A: Yes, I Know. But I also know he was down.

Q: Was there someone else at the bar?

A: Not with me. But many other people that I know were at the bar.

Q: Did you sit at the bar or at the table?

A: We were there at both. We spent hours but I don't remember details.

Q: Do you remember what he was drinking?

A: No. I don't remember.

Q: Was Mr. West at the table when you spiked the drink?

A: He was in the toilet I wanted to help him as he was down. I did not know he was going to race.

Q: Why did you not offer him voluntarily?

A: Because I knew he would not accept.

Q: Do you accept that you did it 3 times?

A: Yes.

Q: Can you tell me the quantity?

A: Maybe a gram between us.

Q: When you were doing cocaine, did Mr. West know?

A: No. I went to the toilet.

Q: Isn't it very unusual to put cocaine in a drink?

A: No. with my friends we do it.

37. The CDI also put questions to Mr. Suarez, who deposed as follows:

Q: What were the three occasions when you spiked Mr. West's drink?

A: In the same night

Q: Each of these times was it half a gram?

A: I don't count what I do.

Q: Who were the other friends that were there when you spiked the drink?

A: Nobody else saw it. I don't know if anybody else saw it. It is impossible for me to remember whether I spiked the drink at the bar or at the table. I don't remember all details.

Q: When did you tell him that you spiked his drink?

A: Four weeks ago.

Q: When did you find out about the violation

A: a couple of months ago. I thought for a few weeks and then thought that it is my responsibility.

Q: Where was Mr. West when you put cocaine in his drink?

A: First time, toilet. The other two times we were just drinking. He was in the group with people.

38. During the CDI hearing and in the email sent by Dr. Green to the CDI on 23 December 2018, the following submissions on behalf of Mr. West were made:

There is compelling evidence before this court that Mr West did not consent to, nor did he have knowledge of, the cocaine found to be in his body. This conclusion may be drawn from the following evidence:

1. Mr Suarez's testimony.
2. That Mr West has always vehemently protested his innocence.
3. That Mr West produced a sample in good faith. If he had been aware of the potential for a positive result he could have tampered with the specimen or he could have asked Mr Murphy to take his place. Both of these options were available to Mr West because of Mr Mariola's 10, beyond a reasonable doubt, breaches of protocol, previously accepted by the court. Yet Mr West took no such advantage.
4. There is no evidence before the court that Mr West has, or has ever had, a recreational cocaine habit. Medical assessment indicates that Mr West does not have an addictive personality and therefore he does not have an increased risk of drug and alcohol abuse and addiction.
5. He is not a serial anti-doping offender. He accepted the CDI decision regarding his transient suspension in 2012 on legal advice, not because he was culpable.
6. He now has a major depressive illness with suicidal intent.

39. Thereafter, in an email dated Dr. Green 14th January 2019, it was further submitted as follows:

I am writing to you on behalf of Mr West. As you are aware Mr West has recently been subjected to further profound stressors. His mental state remains fragile. I have been supporting him to the best of my ability, but he remains vulnerable.

It is imperative that Mr West knows the outcome of his hearing before you as soon as possible. He needs to know that decision so that he can move forward with his life:

If you set his suspension aside then he can arrange to race this year, in an attempt to maintain Mr Vincent Lee's legacy.

If you decide that his riding suspension should continue then Mr West will have no option but to change the statement he made, under duress, before you. He will state that, beyond a reasonable doubt, he can not confirm that the UDS tested in Germany was in fact his urine sample. He will seek a review of his case before CAS. This judicial system will be obliged to review all the evidence. The 10 breaches of protocol made by FIM,s DCO, Mr Mariola will be reviewed and the presiding judge(s) should find that Mr West has no case to answer.

The focus of this case will then shift from Mr West's alleged indiscretion to FIM's incompetence.

E. Findings of the CDI

40. In the opinion of the CDI, the following are the issues to be decided by the CDI:

I. Whether the Anti-Doping Rule Violation has been established?

II. What is the period of ineligibility in terms of Article 10.2 of the ADC?

III. Has the rider established how the Prohibited Substance entered his system?

IV. Fault or Negligence of the rider (Article 10.4 ADC)

V. Significant Fault or negligence of the rider (Article 10.5.2 ADC)

VI. Effect of Multiple Doping Violations (Article 10.7)

VII. What is the appropriate sanction for Mr. West?

VIII. When does the period of ineligibility commence?

IX. Whether the Rider is entitled to any credit in terms of Article 10.11 of the ADC

X. Whether Mr. West should be disqualified from Round 8 of the Championship at Misano World Circuit Marco Simoncelli, Italy and Round 4 of the Asia Road Racing Championship held at the Madras Motor Race Track on August 3-5, 2018 in terms of Article 9 and Article 10.8 of the ADC respectively?

XI. Other contentions raised by the Rider

I. Whether the Anti-Doping Rule Violation has been established?

41. At the outset, the first question to be answered by the CDI is whether there was an Anti-Doping Violation, i.e. presence of a Prohibited Substance or its metabolite, namely Benzoyllecgonine (S6. Stimulants), a metabolite of the prohibited substance cocaine in the Rider's sample.
42. With regard to the burden and standard of proof applicable to the FIM in order to establish an anti-doping rule violation, in terms of Article 3.1 of ADC, the FIM has the burden of establishing that an anti-doping rule violation has occurred and the standard of proof shall be 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.
43. In the present case, the evidence in support of the use of the prohibited substance or its metabolites are as follows:
- a) The Adverse Analytical Report No.AR201804707 dated 30.07.2018 of the Deutsche Sporthochschule Köln Institut für Biochimie, a WADA accredited Laboratory, which tested Mr. West's 'A' sample has confirmed that 'Benzoyllecgonine', a metabolite of the prohibited substance cocaine, was present.
 - b) The Adverse Analytical Report No.AR201806699 dated 24.10.2018 of the Deutsche Sporthochschule Köln Institut für Biochimie, a WADA accredited Laboratory, which tested Mr. West's 'B' sample has also confirmed that 'Benzoyllecgonine', a metabolite of the prohibited substance cocaine, was present.
 - c) In the Rider's submissions dated 12 December 2018, the Rider has stated as follows:

*On Wednesday 4th July, 2018, I was drinking with my good friend, and confidant, Jacobo Suarez. He recognised the instability of my mental health and my excessive alcohol use and abuse. I was in denial. **He decided to help my agitation, anxiety and insomnia by adding cocaine to my drink.** This was done without my consent or knowledge. He only informed me of his actions after the FIM press release on November 2, 2018. I was troubled when he told me that this was not the first time that he had laced my drink. I rely on the Statutory Declaration attached hereto, see Item 2.*
 - d) Thereafter, the Rider has filed a statutory declaration executed by Mr. Jacobo Suarez, wherein Mr. Suarez stated as follows:

"To help him I put some cocaine in his drink to get him through the flight and help him feel better"
 - e) Further, during the CDI Hearings, the Rider has deposed that his drink was spiked with cocaine and during his examination of Mr. Suarez as a witness, Mr. Suarez deposed as follows:

Q: Did you witness Mr. West's drink being spiked?

A: I did. I admit to doing it.

f) During cross examination of Mr. Suarez, Mr. Suarez has deposed as follows:

Q: Was Mr. West at the table when you spiked the drink?

A: He was in the toilet I wanted to help him as he was down. I did not know he was going to race.

Q: Why did you not offer him voluntarily?

A: Because I knew he would not accept.

Q: Do you accept that you did it 3 times?

A: Yes.

Q: Can you tell me the quantity?

A: Maybe a gram between us.

g) Mr. Suarez has responded to the questions put by the CDI as follows:

Q: What were the three occasions when you spiked Mr. West's drink?

A: In the same night

Q: Each of these times was it half a gram?

A: I don't count what I do.

Q: Who were the other friends that were there when you spiked the drink?

A: Nobody else saw it. I don't know if anybody else saw it. It is impossible for me to remember whether I spiked the drink at the bar or at the table. I don't remember all details.

Q: Where was Mr. West when you put cocaine in his drink?

A: First time, toilet. The other two times we were just drinking. He was in the group with people.

44. 'Benzoylecgonine', a metabolite of cocaine, which is a non-specified Stimulant in Class S6.A of the 2018 Prohibited List of the ADC and accordingly in terms of Article 4.2.2 of the ADC, the presence of Benzoylecgonine which indicates use of cocaine, amounts to an anti-doping violation under Article 2.1 of the ADC.
45. In terms of Article 2.2 of the ADC, the use of a prohibited substance can be established by any reliable means including analytical reports, admissions by the rider, witness statements etc.
46. In the present case, the CDI finds that the use of the prohibited substance (cocaine) by the Rider has been clearly established in light of the Adverse Analytical Reports of the Rider's 'A' Sample and 'B' Sample from the WADA accredited laboratory, the written submissions of the Rider dated 12th December 2018, wherein the use of cocaine has been admitted (albeit through the spiking of his drink), the statutory

declaration of Mr. Jacobo Suarez, the deposition of Mr. Suarez in response to the questions put to him by Dr. Green, the deposition of Mr. Suarez during cross examination by Mr. Stovicek and the deposition of Mr. Suarez in response to the questions put to him by the CDI.

47. While the Rider has consistently contended that Mr. Suarez had spiked his drink with cocaine in order to explain the presence of a prohibited substance or its metabolites in his sample, he has also sought to question the taking of his sample, storing of his sample and transportation of his sample. In the opinion of the CDI, once the use of the prohibited substance has been admitted and established by credible evidence including the rider's admission and the evidence of a witness produced by the Rider himself, the issue as to whether there was any breach in taking the sample, storing the sample, transporting the sample etc. is anyhow aADCemic.

48. Further Article 5.9.8 of the ADC states as follows:

The Rider shall certify, by signing the Doping Control Form (see Art. 5.10.2), that the entire process has been performed in compliance with the procedures outlined above. The Rider shall also record any irregularities or procedural deviations he/she identifies. Any irregularities or procedural deviations identified by the Rider's accredited representative (if present), the DCO, or station staff shall be recorded on the form. The form will also be signed by the Rider's accredited representative (if present).

49. Neither the Rider nor the Rider's representative, Mr. Michael Murphy, both of whom had signed the doping control form have raised any irregularities or procedural deviations and by signing the form, these persons have confirmed that the procedure for urine testing is in compliance with the procedures outlined in the ADC. Also, even after the taking of the sample, no other objection or procedural irregularity has been raised by the Rider or the rider's representative until the request for lifting the provisional suspension was filed on behalf of the Rider. The belated allegations of procedural irregularity in taking and storing the sample are untenable. Also, during the CDI Hearing on 15th December 2018, the Rider has also admitted that it is not his case that the sample tested by the WADA Accredited laboratory was not his sample. Therefore, the allegations of procedural irregularity will not affect the finding that the anti-doping rule violation has been committed by the Rider.

50. It is also pertinent to state that the Rider has attempted to approbate and reprobate. The Rider cannot contest the anti-doping violation, i.e. the use of a prohibited substance and explain the presence of the prohibited substance at the same time as these are mutually inconsistent stands. It is also extremely unfortunate that Dr. Green has in his email dated 14th January 2019 stated as follows:

If you decide that his riding suspension should continue then Mr West will have no option but to change the statement he made, under duress, before you. He will state that, beyond a reasonable doubt, he cannot confirm that the UDS tested in Germany was in fact his urine sample.

51. The contention that the explanation of the presence of the prohibited substance in the Rider is only if the suspension is going to be lifted and **that it will be argued that**

these statements were made under duress exhibit dishonesty, unfairness and lack of credibility. It cannot be said that the rider was under duress to make these statements. Further, third parties such as Dr. Green and Mr. Suarez, have also repeated the consistent stand that the Rider had consumed cocaine (albeit due to spiking of his drink).

52. At the cost of repetition, it is clear from the written submissions dated 12th December 2018 filed by the Rider, the statutory declaration, the submissions of the Rider on 15th December 2018 during the CDI Hearing, the deposition of Mr. Suarez (who was called as a witness of Mr. West) during examination and cross examination, the arguments of Dr. Green at the CDI Hearing, the email dated 23rd December 2018 that, over a period of time, a consistent stand has been taken that cocaine was consumed (although due to spiking of his drink).
53. It is also pertinent to state that in terms of Article 2.12.1 of the ADC, it is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and accordingly, it is not necessary that intent, fault, negligence or knowing use on the Rider's part be demonstrated in order to establish an anti-doping rule violation for use of a Prohibited Substance.
54. The CDI therefore finds that it is undisputable that Mr. West committed an anti-doping rule violation under Article 2.1 ADC, namely the presence of a prohibited substance or its metabolite in the Rider's sample. It is also undisputable that it is the second anti-doping rule violation recognised against Mr. West. The First Anti-Doping violation was for the presence of methylhexanamine in the rider's sample during a doping control test on 20 May 2012, which case stood finally decided by Arbitral Award dated 22 November 2013 of the Court of Arbitration for Sport at Lausanne in *CAS 2012/A/3029 - WADA v. Anthony West and FIM* in terms of which a 18 Month period of ineligibility was imposed on the Rider.

II. What is the period of ineligibility in terms of Article 10.2 of the ADC?

55. In terms of Article 10.2, in so far as an anti-doping rule violation involving a prohibited substance which is not a specified substance is concerned, the period of ineligibility will be four years if the violation was intentional and 2 years if the violation was not intentional. This is of course subject to potential reduction under Articles 10.4, 10.5 or 10.6 and the impact of Article 10.7 pertaining to multiple doping violations.
56. Therefore, the first issue to be addressed is the whether the anti-doping rule violation was intentional in order to determine the period of ineligibility in terms of Article 10.2.
57. Article 10.2.3 provides that for the purpose of Articles 10.2 and 10.3 the term "intentional" is meant to identify those Riders who cheat and the term requires that the Rider engaged in conduct which he knew constituted an anti-doping rule violation.

58. In the present case, the following facts are relevant:

- a) In his statutory declaration dated 12 December 2018, Mr. Suarez has stated as follows:

To help him I put some cocaine in his drink to get him through the flight and help him feel better. I did not tell him because I knew he would not accept the offer.”

- b) During the examination of Mr. Suarez by Dr. Green at the CDI Hearing on 22.12.2018, Mr. Suarez deposed as follows:

Q: Did you witness Mr. West’s drink being spiked?

A: I did. I admit to doing it.

- c) During cross examination by Mr. Jan Stovicek, Mr. Suarez deposed, among other things, as follows:

Q: Do you realize it is a criminal offence to put cocaine in another person’s drink?

A: Yes, I Know. But I also know he was down.

Q: Was Mr. West at the table when you spiked the drink?

A: He was in the toilet I wanted to help him as he was down. I did not know he was going to race.

Q: Why did you not offer him voluntarily?

A: Because I knew he would not accept.

59. From this evidence, in the opinion of the CDI, it has been established well beyond the balance of probability that the Rider’s drink had been spiked by Mr. Suarez and that the Rider had not intentionally used the prohibited substance.

60. Accordingly, in terms of Article 10.2.2, the period of ineligibility to be imposed on the Rider is 2 years, subject to the application of Articles 10.4, 10.5, 10.6 and 10.7.

III. Has the rider established how the Prohibited Substance entered his system?

61. In order to determine as to whether the Rider is eligible for the elimination or the reduction of the ineligible period in terms of Article 10.4 (No Fault or Negligence) or Article 10.5.2 (No Significant Fault or Negligence) the Rider has to establish on a balance of probability (as required under Article 3 of the ADC) as to how the Prohibited Substance entered his system.

62. Mr. West has tendered evidence, through his own testimony as well as through the evidence of Mr. Jacobo Suarez that the use of the prohibited substance cocaine was due to the spiking of his drink by Mr. Suarez at the Bahiana Club, which was without the knowledge of the Rider.

63. The CDI Judge notes the following case law *“In case the Panel is offered several alternative explanations for the ingestion of the prohibited substance but it is satisfied that one of them is more likely than not to have occurred, the Athlete is deemed to have met the required standard of proof regarding the means of ingestion of the prohibited substance. It remains irrelevant that there may also be other possibilities of ingestion, as long as they are considered by the Panel to be less likely to have occurred. In other words, for the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred.”* See point 32 of CAS 2009/A/1926 & 1930 - ITF v. Richard Gasquet & WADA v. ITF & Richard Gasquet and *“For the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The athlete thus needs to show that one specific way of ingestion is marginally more likely than not to have occurred”* (See para. 113 of Contador’s case, CAS 2011/A/2384).
64. Based on the evidence tendered, it has been established that the Rider was going through a difficult time with his girlfriend, which was established through photographs. While the CDI is unable to understand as to how Mr. Suarez could believe that spiking his drink while knowing fully well that the Rider would not accept his offer of consuming cocaine, the story seems believable especially in the absence of any other version.
65. Therefore, taking into consideration the evidence tendered, especially that of Mr. Suarez, who was willing to make an inculpatory statement admitting to spiking of the Rider’s drink despite known that it is a criminal offence, the CDI is of the opinion that it can be said beyond reasonable doubt (even though the test is only balance of probabilities, which is a far lower test) that the Rider had consumed cocaine due to the spiking of his drink by Mr. Suarez, and the CDI is satisfied that the Rider has established as to how the Prohibited Substance entered his body.

IV. Fault or Negligence of the rider (Article 10.4 ADC)

66. As Mr. West’s explanation as to how the prohibited substance entered his body has been accepted, the CDI must then examine the question of Fault or Negligence. According to the ADC, “No Fault or Negligence” means *“the rider establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of the utmost caution, that he or she had used or been administered the Prohibited Substance or Prohibited method”*.
67. The CDI must consider whether Mr. West knew or suspected or could reasonably have known or suspected “even with the exercise of the utmost caution” that he had used or been administered cocaine (See definition of No Fault or Negligence in the ADC).

68. Article 2.1 states that *“It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Rider’s part be demonstrated in order to establish an anti-doping violation under Article 2.1”*. This places a high responsibility on the Rider to ensure that no Prohibited Substance enters his body. The Rider/ athlete's fault is measured against the fundamental duty that he or she owes under the ADC to do everything in his or her power to avoid ingesting any Prohibited Substance. In CAS 2003/A/484 Vencill v. USADA, at para. 57, the CAS panel stated: *“The essential question is whether the athlete has lived up to this duty...”*
69. The provisions of Article 10.4 apply only to exceptional circumstances and despite all due care, he or she was sabotaged by a competitor. In the present case, there is no evidence of sabotage. On the other hand, it appears that Mr. Suarez has deliberately spiked his drink in his belief that it will help the Rider. As stated above, the duty of care required by a Rider is extremely high and riders are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink.
70. In the present case, the Rider is an experienced athlete having participated at the highest levels for many years. The Rider is responsible for what he ingests and accordingly the Rider is expected to exercise due care to ensure that he does not ingest a prohibited substance. The evidence tendered in the present case is that the Rider’s drink has been spiked three times in the same night. While the evidence tendered has established that the Rider was not present on the first occasion when his drink was spiked, there is no evidence regarding the spiking of the Rider’s drink on the two subsequent occasions such as the presence of the Rider, other persons etc. It is obvious that Mr. Suarez was a friend of the Rider and was allowed access to the Rider’s drink. Further, especially in public places, riders are required to exercise a greater degree of caution in order to ensure that prohibited substances are not used by the rider, especially due to spiking.
71. Therefore, in the opinion of the CDI, the Rider did not exercise the duty and care that he was obliged to in order to ensure that no prohibited substance entered his body and consequently, it cannot be said that there was no fault on the part of the Rider and accordingly the Rider is not entitled to the benefit of Article 10.4.

V. Significant Fault or negligence of the rider (Article 10.5.2 ADC)

72. If a finding of No Fault or Negligence” is not made, the CDI must proceed to examine the question of the degree of Fault or Negligence in the present case. According to the ADC, “No Significant Fault of Negligence” means *“[t]he rider establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence (vide supra), was not significant in relationship to the anti-doping violation”*. See definition of No Significant Fault or Negligence in the ADC).

73. The decision of the CAS in the case of CAS 2005/A/951 Canas v/ATP (para 9.1) is relevant for the purpose of determining the manner in which significant fault/negligence is to be determined. In this case, the CAS has held as follows:

*“9.1 Based on the provisions of ATP Rules M.5.b., the Panel must determine the actual period of ineligibility to be imposed on Appellant. As stated in H. Knauss v/FIS (CAS 2005/A/847), “In the Panel's opinion the requirements to be met by the qualifying element “no significant fault or negligence” must not be set excessively high [See also CAS 2004/A/624 IAAF v/ ÖLV & Lichtenegger [7.7.2004] marg. no. 81 et seq.; by contrast much stricter CAS 2003/A/484 Vencill v/ USADA [18.11.2003] marg. no. 61 et seq). This follows from the language of the provision, the systematics of the rule and the doctrine of proportionality (see also CAS 2004/A/624 IAAF v/ ÖLV & Lichtenegger [7.7.2004] marg. no. 82 seq.). Once the scope of application of Art. 10.5.2 FIS-Rules [the same provision as ATP Rules M.5.b.] has been opened, the period of ineligibility can range between one and two years. **In deciding how this wide range is to be applied in a particular case, one must closely examine and evaluate the athlete’s level of fault or negligence.** The element of fault or negligence is therefore ultimately ‘doubly relevant’. Firstly, it is relevant in deciding whether Article 10.5.2 FIS-Rules [the same provision as ATP Rules M.5.b.] applies at all and, secondly, whether, in the specific case, the term of the appropriate sanction should be set somewhere between one and two years. However, the higher the threshold is set for applying the rule, the less opportunity remains for differentiating meaningfully and fairly within the (rather wide) range of the sanction. But the low end of the threshold for the element “no significant fault” must also not be set too low; for otherwise the period of ineligibility of two years laid down in Article 10.2 FIS-Rules would form the exception rather than the general rule (see also CAS 2003/A/484 Vencill v/USADA [18.11.2003] mar. no. 47). It is this tension between the two limits which is precisely what the WADC wishes to reduce. In this regard the (official) comments on the WADC expressly read as follows: ‘Article 10.5 is meant to have an impact only, in cases where the circumstances are truly exceptional and not in the vast majority of cases.’”*

74. In the present case, the question is what is the extent of fault or negligence on the part of Mr. West in committing the Anti-doping Rule Violation. As held by the CAS in the case of Dimitar Kutrovsky Vs. ITF, CAS 2012/A/2804, the fault is “*measured against the fundamental duty that he or she owes under the programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substances*”. In the CDI Sole Judge’s opinion, the extent of fault / or negligence has to be seen in the background of the following factors:

- a) the duty of care of Rider to act with utmost caution
- b) that the Rider allowed Mr. Suarez access to his drink, which allowed Mr. Suarez to spike his drink
- c) that the drink was spiked by Mr. Suarez without the knowledge of the Rider.
- d) The violation was not used to enhance performance

75. In the present case, while it is the duty of the rider to ensure that he takes the necessary care to avoid ingesting a prohibited substance, the Rider has established upon balance of probability that the consumption of the prohibited substance was on account of his drink having been spiked by his friend. The mitigating factors are

those stated in (c) and (d) of para 74 above. Therefore, while there was fault/negligence on the part of the Rider in ensuring that he does not ingest a prohibited substance, it cannot be said that such fault/negligence is significant in cases where the rider's drink is spiked, considering that spiking is without the rider's knowledge.

76. In the present case, in the CDI's Single Judge's opinion it cannot be said that the Anti-doping violation is due to the significant fault or negligence of the Rider in light of the circumstances mentioned above. Accordingly, the Rider is entitled to a reduction in the period of ineligibility under Article 10.5.2.
77. If the fault or negligence is to be considered as less serious (i.e. lower degree of fault or negligence), the possible range of sanctions to be considered by the CDI shall range from twelve months (lower end of the range) to twenty-four months (upper end of the range).
78. While determining the quantum of sanction to be imposed, the principle of proportionality (which has been recognised by the CAS in numerous decisions including the cases of *CAS/2006/A/1025 Puerta v/ITF* and *CAS 2005/A/830 Squizzato.v.FINA*) should be applied. In other words, the sanction should be in fair and just proportion to the measure of the negligence/ fault. In the present case, the negligence and fault of the Rider was that he did not exercise the required care and diligence to ensure that he does not ingest a prohibited substance and thereby committed an anti-doping Rule Violation. This in the opinion of the CDI Single Judge would amount to a light degree of fault/ negligence as opposed to a normal degree of fault or negligence or a 'significant degree of fault or negligence' and the Rider ought to be granted a reduction of one half of the period of ineligibility in terms of Article 10.5.2.

VI. Effect of Multiple Doping Violations (Article 10.7)

79. It is an admitted fact that this is the Rider's second anti-doping violation, the first having arisen out of the sample given by the Rider on 20 May 2012 at Le Mans while competing in the FIM World Championship Moto 2. The FIM had given notice of the same and the CDI had awarded a one month period of ineligibility. WADA had filed approached the Court of Arbitration for Sport at Lausanne and the Court of Arbitration for Sport, Lausanne had awarded the Rider an 18-month period of ineligibility in those proceedings. In the Rider's first anti-doping rule violation, the Rider had not established no fault or negligence and the first anti-doping rule violation has occurred with ten years of the present violation. Therefore, the period of ineligibility to be awarded in the present case will be governed by Article 10.7.1
80. Article 10.7.1 of the ADC states as follows:

For a Rider or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

- a) *six months;*

b) one-half of the period of Ineligibility imposed for the first anti- doping rule violation without taking into account any reduction under Article 10.6; or

c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.

81. In other words, the period of ineligibility shall be the greater of six months in terms of (a), 9 months in terms of (b) (as the Rider was awarded a period of ineligibility of 18 months for the first anti-doping rule violation) or twice the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation without taking into account any reduction under Article 10.6.
82. While Article 10.7.1 (c) of the ADC states that the period of ineligibility is twice the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation without taking into account any reduction under Article 10.6, the Article is silent about whether the eliminations and reductions under Article 10.4 and 10.5.2 are to be taken into consideration. In the opinion of the CDI, the reduction under 10.5.2 has to be taken into consideration and therefore the correct approach would be to determine the period of ineligibility for the second anti-doping rule violation (without any reduction under Article 10.6) treating it as a first time violation and double the same. If such period of ineligibility exceeds (a) six months and (b) one half of the period of ineligibility awarded for the first anti-doping rule violation, such period of ineligibility has to be awarded.
83. Accordingly, it is decided that twice the period of ineligibility determined as though this anti-doping rule violation is the first violation has to be awarded.

VII. What is the appropriate sanction for Mr. West?

84. As stated above, in the present case, the period of ineligibility shall be two years, subject to the reduction under Article 10.5.2 and 10.7.
85. As stated above, the period of ineligibility in terms of Article 10.5.2 is reduced to one year and such period of ineligibility of one year is required to be increased to 2 years in terms of Article 10.7.1 of the ADC.
86. The Rider is also not entitled to any of elimination, reduction or suspension of period of ineligibility under Article 10.6 of the ADC.

VIII. When does the period of ineligibility commence?

87. Article 10.11 provides that except as provided in Article 10.11, the period of ineligibility shall start on the date of the final hearing decision providing for ineligibility.
88. In the present case, neither the provisions of Articles 10.11.1 nor the provisions of Article 10.11.2 are attracted and accordingly the period of ineligibility commences from 17th January 2019, i.e. the date of pronouncement of the operative portion of the decision.

IX. Whether the Rider is entitled to any credit in terms of Article 10.11 of the ADC

89. Article 10.11.3 provides that if a provisional suspension is imposed and respected by a Rider from competing, the Rider shall receive a credit for such voluntary Provisional Suspension against any period of ineligibility, which may be ultimately imposed.
90. In the present case, no violation of the provisional suspension has been brought to the notice of the CDI. Since the Rider has respected the provisional suspension imposed, the Rider is eligible for credit from 14th September 2018 to 17th January 2019.

X. Whether Mr. West should be disqualified from Round 8 of the Championship at Misano World Circuit Marco Simoncelli, Italy and Round 4 of the Asia Road Racing Championship held at the Madras Motor Race Track on August 3-5, 2018 in terms of Article 9 and Article 10.8 of the ADC respectively?

91. In terms of Article 9, an anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.
92. Therefore, the Rider is automatically disqualified from the results obtained in Round 8 of the Championship at Misano World Circuit Marco Simoncelli, Italy.
93. Article 10.8 of the ADC states that *“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (...) or any other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified, with all of the resulting consequences including forfeiture of any medals, points and prizes.”*
94. Further, the Rider is disqualified from Round 4 of the Asia Road Racing Championship held at the Madras Motor Race Track on August 3-5, 2018, which was after the date of sample collection.

95. Accordingly, Mr. West is Disqualified from the following competitions:
- a) Round 8 of the 2018 World Supersport championship at Misano World Circuit Marco Simoncelli, Italy; and
 - b) Round 4 of the Asia Road Racing Championship held at the Madras Motor race Track on August 3-5, 2018

with all of the resulting consequences including forfeiture of any medals, points and prizes.

XI. Other contentions raised by the Rider

96. The Rider has raised various other contentions, which are dealt with below.
- a) The Rider had contended that *“Cocaine is considered by WADA to be a recreational drug, and its use is not banned, only prohibited”*. Cocaine is a prohibited substance under the ADC.
 - b) *If he had knowingly used cocaine, he had the opportunity to tamper with the UDS sample both during the passing of the specimen, under level 4 supervision, and afterwards, when it was left unattended on the office desk. Yet he did not. As stated above, the CDI has held that the Rider’s drink was spiked and that knowledge of use is not relevant for determining an Anti-doping rule violation. Further, the argument that he could have otherwise tampered with the sample will not put him in a better position. Admittedly, the sample provided was that of the Rider.*
 - c) *That FIM failed in its duty of to notify him within 2 weeks of the adverse finding, as required by WADA. Thus, the test results should be set aside, without penalty or record. There is no requirement to notify the Rider within 2 weeks failing which it can be said that the anti-doping rule violation has occurred.*
 - d) While the Rider has made substantial submissions regarding the fact that according to medical opinion, he is suffering from major depressive illness, the same is not a mitigating factor and has no relevance to the issues at hand, except to possibly justify Mr. Suarez’s explanation as to why he spiked the Rider’s drink.

F. Costs of Procedure

97. As regards the costs of the CDI proceedings, Article 6 of the 2018 Disciplinary and Arbitration Code provides that: *“The costs of a disciplinary or arbitration decision will be assessed by the FIM Executive Secretariat and will be awarded against the losing party, unless the Court decides otherwise.”*
98. Given the outcome of this case, the CDI considers that Mr. Anthony West, as the penalised party, will bear the said costs as assessed by the FIM Administration.

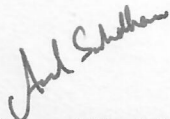
**On these grounds,
The International Disciplinary Court rules that:**

- I. Mr. Anthony West is sanctioned with a period of ineligibility of 2 years commencing on 17th January 2019 and credit for the period from 14th September 2018 (i.e. the date of provisional suspension) till 17th January 2019 is granted. Accordingly, the period of ineligibility shall end on 14th September 2020.
- II. Mr. Anthony West is disqualified from
 - a) Round 8 of the 2018 World Supersport championship at Misano World Circuit Marco Simoncelli, Italy;
 - b) Round 4 of the Asia Road Racing Championship held at the Madras Motor Race Track on August 3-5, 2018
- III. The costs of the case shall be borne by Mr. Anthony West

Operative Portion pronounced on 17th January 2019
Reasoned Decision rendered on 28th January 2019

Dated at Chennai, India on 28th January 2019

INTERNATIONAL DISCIPLINARY COURT


Mr Anand Sashidharan

Single Judge of the International Disciplinary Court

An Appeal against this decision may be lodged before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland within 21 days from the date of receipt of the CDI decision pursuant to Article 13.7 of the 2018 FIM Anti-doping Code FIM. Moreover, Articles R47 ff. of the Code of Sports-related Arbitration shall apply.

The full address and contact numbers of the CAS are the following:

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