



**Arbitration CAS 2014/A/3604 Ralfs Freibergs v. International Olympic Committee (IOC), award of 17 December 2014**

Panel: The Hon. Michael Beloff Q.C. (United Kingdom), President; Mr Olli Rauste (Finland); Prof. Luigi Fumagalli (Italy)

*Ice hockey*

*Doping (dehydrochlormethyltestosterone)*

*Presumption of regularity under Article 3.2 WADC and lack of registration of a laboratory as a legal entity*

*Purpose of the laboratory documentation packages*

*Form of consent for the opening of the B-sample*

*Validity of a DC decision if it was signed only by the Chairman of the DC*

- 1. The principle “*omnia praesumuntur rite esse acta*” – the presumption of regularity is codified in Article 3.2 of the WADC. A challenge of irregularity of an anti-doping laboratory based on the contention that the latter was not registered in the country as a legal entity and such an unregistered organization is not authorized to carry out any activity is a very formalistic approach. While it might be preferable for all the formal requirements of local laws to be strictly observed, in the context of international sport, the competence of laboratories to carry out analysis of doping samples is defined in the WADC. Whatever the consequences of non-registration might be, they don't seem to matter.**
- 2. Although the classic case for explaining corrections will be where the analytical material itself is corrected (for example where the first analysis was based on an insufficient sample and had to be reviewed after analysis of a fuller sample), this is not the only incidence where explanation for corrections may be required. The very purpose of the laboratory documentation packages is to provide the accused athlete an insight into the internal procedures of the laboratory in connection with the analysis of his sample. In this sensitive area where so much is at stake, it is important that there is no doubt as to what has occurred at the relevant laboratory.**
- 3. There is no requirement in the applicable rules that an athlete's consent to the opening of the B-sample must be issued in writing or on a specific form in order to be effective. It is only essential that the athlete concerned has in fact given his consent to the opening and analysis of his B-sample. The fact that an athlete only received the approved IOC form later and therefore could not use it as the vehicle for granting his consent matters not.**
- 4. The signature of the Chairman alone of the DC decision does not invalidate the decision itself. There is no evidence of any requirement under Swiss law or any relevant regulation that the signature of all members of the DC is a pre-condition of its decision's**

**validity in law. Such a requirement, if it existed, which it does not, would represent the triumph of form over substance and is inconsistent with the practice of not only the DC but of other bodies of similar composition.**

## **I. INTRODUCTION**

1. This is a case with a single issue, namely whether the Appellant had on 19 February 2014, when he was a participant in the XXII Winter Olympic Games at Sochi, a prohibited substance in his body.
2. Mr Ralfs Freibergs (“Appellant” or the “Player”), a scholarship student at Bowling Green State University in the USA (“the University”) was a member of the Latvian Hockey Team, which took part in the Games.
3. The International Olympic Committee (“Respondent” or “IOC”) is the world governing body of Olympic Sports having its registered offices in Lausanne, Switzerland. The IOC is incorporated as an association with respect to articles 60 *et seq.* of the Swiss Civil Code (“SCC”).
4. The Appellant appeals a decision of the IOC Disciplinary Commission (“DC”) dated 23 April 2014 (“Decision”) which disqualified him from the Men’s Play-Off Quarter Finals Canada v. Latvia, removed his 8th place diploma and excluded him from further participation in the Games.

## **II. BACKGROUND FACTS**

5. On 19 February 2014, the Appellant competed with his team in the Men’s Play-offs Quarter finals Canada v. Latvia.
6. After the match, which ended up late in the evening, the Appellant was requested to provide a urine sample for a doping control. The collection occurred just after midnight, *i.e.* effectively on 20 February 2014 at 00:15. The Doping Control Form signed by his representative, the team doctor, Dr Janis Kveps, confirmed that the collection “*was in accordance with the relevant procedures*”.
7. The Appellant’s samples were put in bottles A + B bearing the number 2889489.
8. The sample # 2889489 was sent, together with further samples collected during the same collection proceedings, for analysis to the Anti-Doping Olympic Laboratory in Sochi (the “Sochi Laboratory”), the laboratory facility established in Sochi to analyse the samples collected on the occasion of the Olympic Games.

9. According to the analytical report issued by the laboratory on 22 February 2014, the analysis of the A-sample revealed the presence of a Prohibited Substance, *i.e.* the metabolite of an anabolic steroid “*dehydrochloromethyl-testosterone metabolite 18-nor-17b-hydroxymethyl-17a-methyl-4-chloro-5b-androst-13-en-3a-ol*”, it being on the 2014 Prohibited List of the World Antidoping Code (“WADC”), operative at the Sochi Games, as an exogenous Anabolic Androgenic Steroid “AAS”. Its trade name is “Turinabol” which for convenience the Panel will use hereafter.
10. On 23 February 2014 at 10:44 am, and in accordance with Art. 6.2.6 of the IOC Antidoping Rules applicable to the Games (“ADR”), the notification of the adverse analytical finding and of the opening of the disciplinary proceedings were accomplished by delivery of the notice to the Latvian Deputy Chef de Mission Mr Raitis Keselis.
11. At that time, the Appellant had already left the Olympic Village. However, he was reached by telephone by Mr Maris Gorbunovs, a Latvian team official (Olympic accreditation no. 2035900). The Appellant has since confirmed that in that discussion he consented to the opening of the B-sample and its analysis (letter of the Athlete’s Counsel to the IOC Disciplinary Commission dated 25 March 2014).
12. At 11.27 am on the same day, the form used to confirm the position regarding the B-sample analysis was accordingly filled in and signed by the Latvian Deputy Chef de Mission, Mr Keselis. He specified that the opening and analysis would be conducted in the presence of Mr Gorbunovs as the Appellant’s designated representative. On the same form, the Latvian Deputy Chef de Mission requested to be communicated the A and B sample laboratory documentation packages of the Appellant’s sample.
13. The B-sample opening took place as scheduled in the presence of Mr Gorbunovs, the laboratory director, the IOC representative and an independent witness Mr Thierry Boghosian, one of the WADA independent observers in Sochi. Mr Gorbunovs, the laboratory director and the IOC representative confirmed in writing on the B-sample Opening Protocol that the bottle was opened in their presence and part of the B-sample removed for analysis, and the remainder of the B-sample was resealed with number degree and security cap.
14. The B-sample analysis confirmed on its face the A-sample analysis result and the presence of the same prohibited substance.
15. The Appellant has consistently denied having used or ingested any prohibited substance and (consistently) not offered any explanation for the adverse analytical finding such as the use of contaminated substances.

### **III. PROCEEDINGS BEFORE THE IOC DISCIPLINARY COMMISSION**

16. On 10 March 2014, the Appellant was informed that he had the opportunity to attend the hearing of the DC scheduled on 4 April 2014 and/or to provide a defence in writing.

17. On 19 March 2014, the Appellant indicated that he would not attend in person but would be represented by his legal counsel.
18. On 21 March 2014, the Appellant's Counsel Mr Marcis Kruminis, attorney-at-law in Riga, Latvia, sent a first communication.
19. On 24 March 2014, the Appellant's counsel repeated the request to be provided with the documentation packages originally presented on the form used to confirm the athlete's position regarding the B-sample analysis on 23 February 2014. The documentation packages were on 25 March 2014 made available through an upload system (slingshot) and on 26 March 2014 downloaded by the Appellant's counsel.
20. On 4 April 2014, the hearing of the DC took place in Lausanne. The Appellant did not attend but was represented by his counsel.
21. On 23 April 2014, the DC issued its decision, signed by the Chairman Dennis Oswald on behalf of the Commission, dismissing all of the arguments raised by the Appellant which called into question the validity of the analytical results.

#### **IV. PROCEEDINGS BEFORE CAS**

22. On 19 May 2014, the Appellant filed his Statement of Appeal serving as Appeal Brief in accordance with articles R47, R48 and R51 of the Code of Sport-related Arbitration ("Code").
23. On 23 May 2014, the CAS Court Office initiated an appeals arbitral procedure under the reference *CAS 2014/A/3604 Ralfs Freibergs v. International Olympic Committee*.
24. On 4 July 2014, the IOC filed its answer in accordance with article R55 para. 1 of the Code.
25. On 8 July 2014, the CAS Court Office advised the parties that the Panel appointed to decide the present matter was constituted as follows:
  - President The Hon. Michael J. Beloff QC, Barrister in London, UK
  - Arbitrators Mr Olli Rauste, Attorney-at-law in Helsinki, Finland  
Mr Luigi Fumagalli, Attorney-at-law in Milan, Italy
26. On 9 and, respectively, 10 September 2014, both parties signed and returned their order of procedure to the CAS Court Office.
27. On 12 September 2014, a hearing took place at the CAS Court Office in Lausanne, Switzerland.
28. The Appellant was represented by Mr Marcis Kruminis, attorney at law, Riga, Latvia and called up Dr Janis Kveps as witness. Both the counsel and the witness were assisted by Mr Martins Dambergs, interpreter.

29. The IOC was represented by Mr Howard Stupp, Director of IOC Legal Affairs, and Mr Christian Thill, IOC Senior Legal Counsel, and assisted by Mr Jean-Pierre Morand and Mr Yvan Henzer, Counsel. In addition, Dr Richard Budgett, IOC Medical Director, was called by the IOC to give evidence.
30. At the start of the hearing the representatives of the parties confirmed their satisfaction with the composition of the panel and at its conclusion their satisfaction that their right to present their case had been properly respected.

## **V. JURISDICTION**

31. Article 61 para. 2 of the Olympic Charter provides that “*Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-related Arbitration*”.
32. Furthermore, the jurisdiction of the CAS is not contested by the Respondent and was confirmed by the signature of the order of procedure.
33. Finally, the Statement of Appeal filed by the Appellant on 19 May 2014 and complied with the requirements of article R48 para. 1 of the Code.
34. Therefore, the CAS has jurisdiction to adjudicate the present matter.

## **VI. ADMISSIBILITY**

35. The Appellant was notified of the decision on 29 April 2014. The Appellant filed his Statement of Appeal, as noted above, on 19 May 2014. The IOC did not contest that the appeal was admissible as being filed within the time limit prescribed by article R49 of the Code.
36. In light of the above, the appeal is therefore admissible.

## **VII. LAW APPLICABLE TO THE MERITS**

37. In accordance with article R58 of the Code, 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 choice, according to the law of the country in which the association which has issued the challenged decision is domiciled, here being Switzerland.
38. In the present case, the applicable regulations are the WADC, the ADR, and the WADA International Standard for Laboratories (“ISL”). Swiss law shall apply subsidiarily.

### VIII. CONTENTIONS OF THE PARTIES

39. The Appellant's main contentions were as follows:
- i) The Sochi laboratory was not a registered legal entity under Russian law, hence was not authorized and therefore incompetent to carry out any testing, nor had the techniques used to identify Turinabol been validated.
  - ii) The documentation of the A-sample was flawed and no sufficient explanation of the flaws had been provided by the IOC, thus casting doubt on the validity of the tests.
  - iii) The Appellant's consent to the opening of the B-sample was not properly obtained and the rules on the opening of the B-sample were therefore not observed. (The Appellant abandoned an original contention that the B-sample was not opened in the presence of his representative).
  - iv) The analysis of the samples taken from the Appellant both before and after the Sochi test disclosed no presence of Turinabol which casts doubt on the validity of the Sochi test.
  - v) The decision of the DC was signed only by its chairman which casts doubt on whether it was truly a collegiate decision and it should therefore be cancelled.
40. The IOC's main contentions in connection with those five issues were as follows:
- i) The Sochi laboratory was properly credited and competent to carry out testing during the Sochi games. The technique used to identify Turinabol did not require special validation.
  - ii) The analytical material of both the A-sample and the B-sample is itself impeccable and the alleged flaws in the documentation relating to the A-sample were immaterial to the conclusion to be drawn from that material. Notably no challenge at all had been made to the B-sample.
  - iii) The Appellant had effectively consented to the opening of the B-sample in the presence of his representative and there was no evidence at all to contradict that representative's written confirmation of what properly took place at that opening.
  - iv) The analysis of the Appellant's other samples both before and after the sample at Sochi was collected were ineffective to challenge the results of the Sochi tests.
  - v) The decision was clearly, as the Chairman's signature confirmed, a decision of the IOC Disciplinary Commission and not of him alone.

### IX. ANALYSIS

41. The Panel will address the issues in the same sequence as did the parties. However, before doing so the Panel reminds itself of the principle "*omnia praesumuntur rite esse acta*" – the presumption of regularity. In the context of the sensitive area of drug testing in sport, the presumption is codified in Article 3.2 of the WADC which provides:

*"3.2.1 WADA accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The athlete or other person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding."*

*If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the Anti-Doping Organisation shall have the burden to establish that such departure did not cause the Adverse Analytical Finding”.*

**i) Authority and competence of the Sochi Laboratory**

42. The Appellant’s challenge to the competence of the Sochi Laboratory, if well made out, would put in doubt not only the Appellant’s own test results but that of all such results obtained during the Sochi Games. If the premise of laboratory incompetence was sound, the Panel would not shrink from so stating, however serious the consequences may be. But the Panel is unpersuaded by the Appellant’s challenge.
43. The Appellant’s challenge is based on the contention that the Sochi Laboratory was not registered in Russia as a legal entity, and according to the Appellant, such an unregistered organization is not authorized to carry out any activity in Russia, indeed did not even exist in a point of law. According to the Appellant, even branches of legal entities must be registered in the enterprise registry of the Russian Federation in order to be authorised to perform any activities in Russia. The Sochi Laboratory lacked such registration as a satellite laboratory of the WADA accredited Laboratory in Moscow and thus the capacity to perform any testing at the Sochi Olympic Games.
44. The Panel notes that the Appellant’s approach to this issue is a very formalistic one. While it might have been preferable for all the formal requirements of local laws to be strictly observed, the Panel emphasizes that, in the context of international sport, the competence of laboratories to carry out analysis of doping samples is defined in the WADC. The Panel had no expert evidence from either side as to the consequences of non-registration in Russian law but, in its view whatever those consequences might be matters not.
45. The Sochi Laboratory was a satellite facility of the WADA accredited laboratory in Moscow. Before the Sochi Games, the World Anti-Doping Agency (“WADA”) had evaluated the capability of the Sochi Laboratory in due course and issued its official accreditation for the Sochi Laboratory for the time period running from 27 January 2014 to 15 April 2014. The accreditation certificate confirms that the Sochi Laboratory was properly recognised as such by the President of the WADA.
46. The ability to use a satellite laboratory facility of a WADA accredited laboratory to carry out analysis of samples collected at major events is expressly provided for in the ISL (Article 4.5). The Sochi Laboratory was a physical location in which the already accredited Moscow Laboratory temporarily extended its operation (ISL 4.5 para. 5). The facility itself and the organisational operation were subject to an assessment (ISL Article 4.5.2) which resulted in the issuing of a temporary and limited accreditation certificate (ISL Article 4.5.2.4).
47. The use of a satellite facility is a familiar feature of Olympic Games which take place in a location where there is no permanent accredited laboratory (see for example Torino 2006, the

satellite facility of the WADA accredited Laboratory of Rome in Orbassano, and Vancouver 2010, the satellite facility of the WADA accredited Laboratory of Montreal in Vancouver).

48. The Appellant further alleges that the techniques used to identify Turinabol in the Sochi Laboratory had not been validated.
49. As far as this allegation is concerned, the Panel adopts the IOC's analysis presented during the hearing. The technique used to detect this particular metabolite of Turinabol is not a completely new method, but only an extension of the well-established method of mass spectrometry which has been in general use for the detection of anabolic steroids for decades. The feasibility of identifying this particular metabolite in the detection of Turinabol has become known only recently and is based on a study published in 2012<sup>1</sup>. The identification of this metabolite in mass spectrometry was previously impossible because of the lack of reference samples which have now become commercially available.
50. The Panel therefore concludes that there was no need separately to validate the technique used for the Appellant's sample since it was a mere development of the long time ago validated mass spectrometry method and not something completely different.

**ii) Alleged flaws in the documentation of the A-sample**

51. The Appellant refers to several handwritten corrections in his A-Sample Documentation Package and on that basis claims that his test results have been falsified. The Appellant has focused in particular on those corrections for which the time and author cannot be identified.
52. In the Panel's view, the key evidence is the analytical material in relation to both A and B samples of the Appellant. Although it was contended on behalf of the Appellant that the test results were inaccurate or (even for which the Panel states unequivocally that there was not a scintilla of evidence) were deliberately falsified, no direct attack was made on the conclusions to be drawn from the material, namely that they disclosed the presence of Turinabol in the Appellant's urine.
53. In particular, no submission was made that the analytical material had been misinterpreted or that the samples to which the material related were not those of the Appellant or that those samples had been in some way contaminated between the time of their collection and the time of their analysis or that the equipment used for the process of analysis both chromatography and mass spectrometry were in some way defective.
54. The Appellant for his part gave evidence neither before the DC nor before the Panel, even by telephone or by videoconference (or skype) which he might have asked for in lieu of a physical appearance which, the Panel accepts would have been costly for a student. He did provide a written statement dated 9 June 2014 which the Panel has taken into account but on analysis it

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<sup>1</sup> SOBOLEVSKY/RODCHENKOV, *Detection and mass spectrometric characterization of novel long-term dehydrochloromethyltestosterone metabolites in human urine*. J Steroid Mol Biol. 2012 Feb; 128(3-5):121-127.

says no more than that he had no need to take a prohibited substance as his place on the Latvian ice hockey team was guaranteed and did not in fact do so. The other points made in that letter did not add to those made by his lawyers on his behalf, which the Panel deals with elsewhere in this award, and add nothing to the evidence itself.

55. The sheet anchor of the Appellant's case as it developed was the fact that in the internal laboratory documentation leading to the chain that covered the data evaluation against the A-sample there were originally two ticks indicating a negative finding from two members of the laboratory staff. In the hearing the Respondent identified these two staff members having been Mr Grigory Dudko ("GD") on page 25 of the report and Ms Natalia Bochkareva ("NB") on page 26 of the report.
56. The "negative" tick on page 25 has subsequently been replaced with a text "Oral – TN3 low". Nor the time at which or the person by whom this correction was made is recorded in the report.
57. The "negative" tick on page 26 has subsequently been replaced with a text "TS: DHCMT M3 > 2253: non-negative". This correction has been initialized and dated by Mr Tim Sobolevsky ("TS"), who was himself the expert in the technique which enabled the low level of Turinabol to be detected at Sochi.
58. The Panel did not have the advantage of hearing any of the trio, but the choice was between a recording error, a premature negative clearance given to all samples tested in the same batch by Mr Grigory Dudko and Ms Natalia Bochkareva (which was at least consistent with one interpretation of the timings on the file suggesting that clearances were given at 9.50 and 10.45 whereas the analysis was not completed until 12.06), and a difference of opinion between Mr Grigory Dudko and Ms Natalia Bochkareva on one hand and Mr Tim Sobolevsky on the other as to whether the analysis of the Appellant's A-sample did disclose a prohibited substance. Such difference of opinion, if it ever existed, between Mr Dudko and Mr Sobolevsky must have been temporary only since both Mr Dudko and Mr Sobolevsky signed at the conclusion of the analysis the analytical results of both the A-sample (and indeed the B-sample) on the Analytical Finding Review Form which vouched for the presence of Turinabol.
59. The Panel must nonetheless consider the point given that Section 5.4.4.1.5 of the ISL provides as follows: *"All data entry, recording of reporting processes and all changes to reported data shall be recorded with an audit trail. This shall include the date and time, retention of original data, reason for change to original data and the individual performing the task"*.
60. The ISL requires that such corrections be appropriately documented and reasoned. Indeed common sense dictates that if a "negative" marking on the report is afterwards reversed to a "positive", such amendment must be appropriately documented. In the Appellant's documentation package for his A-sample such documented and reasoned corrections are absent.

61. The IOC suggested that the relevant pages related to internal procedures of the laboratory only and did not constitute the relevant part of the documentation package. Although the Panel accepts that the classic case for explaining corrections will be where the analytical material itself is corrected (for example where the first analysis was based on an insufficient sample and had to be reviewed after analysis of a fuller sample) it is not persuaded that this is the only incidence where explanation for corrections may be required. The very purpose of the laboratory documentation packages is to provide the accused athlete an insight into the internal procedures of the laboratory in connection with the analysis of his sample. In this sensitive area where so much is at stake, it is important that there is no doubt as to what has occurred at the relevant laboratory.
62. In this case, however, insofar as the burden of proof shifts pursuant to article 3.2.1 of the WADC to the IOC to prove that such departures from the ISL were not material, the Panel is persuaded that such burden is discharged for four main reasons. First, the charts in the two documentation packages clearly demonstrate the presence of a prohibited substance. Second, the fact that the same analyst (Mr Grigory Dudko) who first concluded the sample was negative has signed the final conclusion that the sample was positive. Third, the absence of any challenge of equivalent kind to the B sample documentation. Fourth, the Appellant has not provided any expert evidence to challenge the analytical findings.
63. For the same reason, the meticulous comparison made by the Appellant represented between the document package of another athlete and the document package of the Appellant himself serves no purpose. The issue before the Panel is what was indicated by the Appellant's own documentation package in respect of which the Panel has already articulated its firm conclusion.

**iii) Opening of the B-sample**

64. The Appellant claims that he did not give his consent to the opening of his B-sample on the form specially designed for this purpose, and for this reason the B-sample has not been opened in accordance with the rules.
65. The Panel rejects the criticism made in relation to the circumstances of analysis of the B sample for the following reasons:
  - (i) The notification of the A-sample result to the Deputy Chief of Mission represented a valid notice to the Appellant pursuant to Article 6.3.3 ADR which stipulates as follows:

*“6.3.3 Deemed notification  
Notice to an Athlete or other person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or Secretary General of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC”.*

- (ii) Without prejudice to point (i), the Appellant himself was actually informed by phone that an adverse analytical finding had been established against him, and asked about the conduct of the B-sample opening and analysis.
- (iii) The Appellant himself has confirmed that he “consented” to the opening and analysis of his B-sample in the presence of his personal representative albeit in his own absence. Based on the Appellant’s oral authorization, Mr Maris Gorbunovs has signed the B-Sample Opening Protocol as “Athlete’s representative”.
- (iv) There is no requirement in the applicable rules that an athlete’s consent must be issued in writing or on a specific form in order to be effective. It is only essential that the athlete concerned has in fact given his consent to the opening and analysis of his B-sample. There is no dispute that this requirement has been observed in this case. The fact that he only received the approved IOC form on 6th March 2014 and therefore did not - indeed could not - use it as the vehicle for granting his consent matters not.

**iv) Relevance of the negative test results before and after the Sochi games**

- 66. The Appellant claims that the analysis of the samples taken from him both before and after the Sochi test disclosed no presence of Turinabol which casts doubt on the validity of the Sochi test.
- 67. It was common ground that on 3 February 2014 another urine sample of the Appellant had been analysed together with samples of all members of the Latvian Olympic team by the WADA accredited laboratory in Helsinki. The result of the Appellant’s sample analysed in Helsinki did not reveal the presence of a prohibited substance.
- 68. The Appellant’s submission has to repose on the premise that the Sochi positive could not co-exist with the Helsinki negative, *i.e.* that anyone who tested positive for Turinabol in Sochi should also have tested positive for Turinabol in Helsinki and, in consequence, the fact that the Appellant did not test positive in Helsinki casts doubt on the reliability of the Sochi positive.
- 69. The Panel notes that there was no scientific evidence addressed to support this seemingly surprising submission. Moreover, the Appellant’s sample analysed in Helsinki was collected on 3 February 2014, *i.e.* more than 16 days prior to collection of his sample in Sochi. There is no evidence that the Sochi positive test could not have been the result of ingestion of Turinabol on any date between the two samples.
- 70. There was a further obstacle in the Appellant’s argumentation. At the time the Helsinki Laboratory conducted the analysis it was not able to analyse the specific substance metabolite which was therefore not the subject of screening in the Helsinki Laboratory, whereas 16 days later in Sochi it was.

71. In an effort to eliminate that obstacle, the Appellant sought to introduce evidence from the WADA accredited Laboratory in Lausanne to the effect that the Helsinki sample had subsequently been re-analysed by the Lausanne Laboratory with the benefit of a method which tested for the relevant metabolite and produced a negative result on 16 April 2014.
72. Regrettably, although the Appellant's representative received this information on 19 August 2014, he omitted to share it with the IOC and the Panel and only disclosed such information during the hearing of 12 September 2014 (emphasis added by the Panel). Whether or not otherwise "exceptional circumstances" under article R56 of the Code could be shown, it was clearly unfair to admit such evidence at this late stage.
73. The Panel therefore considered it "*de bene esse*". On that basis it was able to reject it as irrelevant because the fundamental premise that a negative test on 3 February 2014 invalidated a positive test on 20 February 2014 is, for reasons already set out, "*non sequitur*".
74. The Appellant also relied on the result of a further analysis conducted on his return from Sochi by the private laboratory operated by Aegis Science Corporation ("AEGIS").
75. According to a statement dated 3 March 2014 and a laboratory report attached to the Latvian Federation statement issued in the name of the Appellant's University by an Assistant Director for Sport Medicine, the Appellant himself informed the University that he had tested positive for "Turinabol" (the circumstances in which the Appellant, according to this evidence, acquired knowledge of the substance for which he had tested positive in Sochi self-excited questions which could not be answered). The statement indicates it was considered to be "*In our [the university's] best interests to also screen the athlete*".
76. The analysis conducted by the AEGIS Laboratory consisted in the screening of a list of anabolic steroids including Turinabol.
77. According to the laboratory report the collection of the analysed sample occurred "2/24/2014 00:00" and analysis took place accordingly thereafter, that is to say around four days after the collection of the sample at issue in this appeal. The test result of that sample was negative.
78. The Panel does not find that this evidence assists the Appellant for the following reasons:
  - (i) AEGIS is not a WADA accredited laboratory.
  - (ii) The AEGIS analysis was conducted without application of the WADA international standards. Indeed, the University's statement mentions only that the sample was anonymous and identified through the Appellant's student identification number which corresponded to the number set forth under the "Identity of Donor" in the Aegis laboratory report so said to provide perfect proof of the chain of custody.
  - (iii) There is no indication that the AEGIS laboratory targeted the specific metabolite identified in Sochi or indeed at that time it had the technique or equipment to do so.

(iv) According to Dr Budgett's testimony, checked with the IOC's own expert in drug testing, the half life of Turinabol was such that, given the low amount of Turinabol detected in Sochi, the amount if any still extant at the time of the test conducted by AEGIS would have been infinitesimal and undetectable in the latter analysis.

79. For the reasons stated above, the Panel rejects the Appellant's argument that the negative analysis results from the two samples taken from the Appellant both before and after the Sochi test cast any doubt on the validity of the Sochi test. On the contrary the Panel considers the positive finding from the Sochi test to be correct, irrespective of those other results.

**v) The signing of the DC decision only by the Chairman of the DC**

80. The Panel declines to accept the Appellant's claim that the signature of the Chairman alone of the DC decision invalidates the decision itself for the following reasons:

(i) The decision on its face was that of the whole Commission.

(ii) The Chairman signed the decision on behalf of the Commission.

(iii) There is no evidence that the Chairman, a distinguished lawyer and member of the IOC, would have claimed to have signed on behalf of the Commission if that was not the true position and it is, in the Panel's view all but unthinkable that he would have done.

(iv) Critically, there is no evidence of any requirement under Swiss law or indeed of any relevant regulation that the signature of all members of the DC is a pre-condition of its decision's validity in law. Such a requirement, if it existed, which it does not, would represent the triumph of form over substance and is inconsistent with the practice of not only the DC but of other bodies of similar composition.

81. The Panel concludes that the sanctions imposed by the IOC Disciplinary Commission upon the Appellant were the inevitable consequence of the possible finding and there is no scope for mitigation (or indeed aggravation).

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr Ralfs Freibergs on 19 May 2014 against the decision issued by the IOC Disciplinary Commission on 23 April 2014 is dismissed.
  2. The decision issued by the IOC Disciplinary Commission on 23 April 2014 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.