



**Arbitration CAS 2016/A/4563 World Anti-Doping Agency (WADA) v. Egyptian Anti-Doping Organisation (EGY-NADO) & Radwa Arafa Abd Elsalam, award of 16 January 2017**

Panel: Mr Lars Halgreen (Denmark), Sole Arbitrator

*Karate*

*Doping (ractopamine)*

*Burden of proof*

*Balance of probability*

*Duty of the athlete to establish how the prohibited substance entered his/her body*

*Intentional use*

*Intentional violation*

1. It is the athlete that bears the burden of proof of establishing that the violation was unintentional and thus to establish how the relevant forbidden substance entered into his/her body.
2. The burden of proof is based on the “balance of probability” standard, which entails that the athlete has the burden of convincing that the occurrence of the circumstances on which the athlete relies is more probable than their non-occurrence.
3. To establish the origin of a prohibited substance, it is not sufficient for an athlete merely to protest his or her innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product, which the athlete was taken at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question. The mere presentation of invoices or bills as evidence for the purchase of contaminated foods cannot fulfil the athlete’s burden of proof that this food was indeed the source of the contamination. In cases of meat contamination, it must – as a minimum – be a requirement that the athlete sufficiently demonstrates where the meat originated from. For example, where did the butcher buy the meat, how was the meat imported into the country, has any of the other imports of meat been examined or tested for the presence of the prohibited substance, etc.
4. If the athlete cannot prove to the comfortable satisfaction of a panel how a prohibited substance got into his/her body, he/she cannot exclude the possibility of intentional or significantly negligent use of a forbidden substance.
5. Under Art. 10.2.1 of the Egyptian Anti-doping Organisation Rules, an athlete who did not discharge his/her burden of proof of the unintentional nature of his/her use of a prohibited product shall be deemed to have intentionally violated the relevant anti-doping regulations.

## **I. THE PARTIES**

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is the independent international anti-doping agency, constituted as a private-law foundation under Swiss law with its seat in Lausanne, Switzerland, and having its headquarter in Montreal, Canada. Its aim is to promote and coordinate the fight against doping in sport internationally.
2. The Egyptian Anti-Doping Organisation (“EGY-NADO” or the “First Respondent”) is the national organisation responsible for enforcing the applicable Egyptian anti-doping rules. The EGY-NADO is headquartered in Cairo, Egypt.
3. Ms Radwa Arafa Abd Elsalam (the “Athlete” or “Second Respondent”) is an Egyptian karateka from Cairo, Egypt. She was born on 1 July 1997.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence produced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 7 August 2015, the Athlete underwent an out-of-competition doping control in Cairo, Egypt. At the time the doping control was conducted, the Athlete had turned 18 years old approximately one month prior to the date of testing.
6. The analysis of the sample revealed the presence of Ractopamine. Ractopamine is not specifically mentioned by name in the World Anti-Doping Code (“WADC”), but is an Other Anabolic Agent prohibited under S1.2 of the 2015 Prohibited List under the WADC. At the time of testing, the Athlete waived her right to the analysis of the B sample.
7. On 3 November 2015, the Disciplinary Committee of EGY-NADO sanctioned the Athlete with a two-year ineligibility period starting on 21 September 2015, which was the date of the hearing before the Disciplinary Committee.
8. On 18 November 2015, the Athlete appealed the decision to the Appeal Panel of EGY-NADO.
9. Before the EGY-NADO Appeal Panel, the Athlete explained that she was a minor and that she had never taken any prohibited substances before, and that Ractopamine was used in many countries as a “feed additive”, which meant that she must have eaten contaminated food, and in this way the substance has unintentionally entered into her system and caused the positive testing result.

10. The EGY-NADO Appeal Panel found, based on the evidence and witness statements, that the Athlete was young and had no significant fault or negligence in this matter, and that she had taken the substance unintentionally with contaminated food according to Article 10.5.1.2 of the Egyptian Anti-Doping Rules. Consequently, the Appeal Panel reduced the sanction of the Athlete to six months starting on 21 September 2015 (date of hearing in the first instance) and ending on 20 March 2016.
11. On 30 March 2016, WADA was notified and provided with a copy of the case file concerning the Appealed Decision.

### III. PROCEEDINGS BEFORE THE CAS

12. On 20 April 2016, WADA filed its Statement of Appeal at the CAS in accordance with Article R47 *et seq.* of the Code of Sports-Related Arbitration (the “Code”) against the EGY-NADO and the Athlete with respect to the Appealed Decision. WADA requested that the procedure be conducted in English and that the case be submitted to a Sole Arbitrator pursuant to Article R50 of the Code.
13. On 25 April 2016, the CAS Court Office acknowledged receipt of WADA’s Statement of Appeal and *inter alia* invited the Respondent to inform the CAS Court Office, whether they agreed to the appointment of a Sole Arbitrator and to object to conducting the procedure in English, failing which all submissions must be filed in English in accordance with Article R29 of the Code.
14. On 3 May 2016, the CAS Court Office granted the Appellant a five-day extension of the time limit to file its Appeal Brief in accordance with Article R32 of the Code. At the same time, the CAS Court Office noted that the Respondents had not provided the CAS Court Office with their position on the Appellant’s request to submit the present case to a Sole Arbitrator. Therefore, it would be for the President of the Appeals of the Arbitration Division to decide the issue in accordance with Article R50 of the Code.
15. On 9 May 2016, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division decided to submit the present case to the Sole Arbitrator pursuant to Article R50 of the Code.
16. On that same day - 9 May 2016 - the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
17. On 10 May 2016, the CAS Court Office acknowledged receipt of the Appellant’s Appeal Brief and invited the Respondents to submit to the CAS an Answer within 20 days upon receipt of this letter by courier pursuant to Article R55 of the Code.
18. On 23 May 2016, the CAS Court Office informed the Parties that Mr Lars Halgreen, attorney-at-law in Copenhagen, Denmark, had been appointed the Sole Arbitrator.

19. On 6 June 2016, the CAS Court Office acknowledged receipt of the Second Respondent's answer. At the same time the CAS Court Office noted that the twenty-day deadline for the First Respondent to file its answer had expired and that no such submission was filed on its behalf.
20. On 4, 7, and 9 September 2016, the First Respondent, the Appellant and the Second Respondent respectively signed and returned the Order of Procedure to the CAS Court Office.
21. On 21 September 2016, a hearing was held at the CAS headquarters in Lausanne, Switzerland. The Panel was assisted by Mr Brent J. Nowicki, counsel to the CAS, and joined by the following:
  - For the Appellant: Mr Ross Wenzel (counsel), Mr Nicolas Zbinden (counsel);
  - For the First Respondent: Dr. Osama Ghoniem (CEO), and Dr. Hanen Amir (doping control manager);
  - The Second Respondent was not represented in Lausanne, but she appeared at the hearing via Skype.
22. At the beginning of the hearing, no party objected to the appointment of the Sole Arbitrator, but the First Respondent wished to present a number of documents to be submitted into the file. These documents included among other things scientific articles regarding the use of the feed additive Ractopamine in beef and pork in a number of countries including Mexico, Brazil, China and the United States. These documents had not been provided to the other parties or Sole Arbitrator prior to the hearing. The Appellant objected to the submission of this evidence at this stage of the proceedings.
23. After having examined the documents, the Sole Arbitrator ruled that no exceptional circumstances pursuant to Article R56 of the Code were present to allow the First Respondent to supplement or amend its request or its argument or produce new exhibits or to specify further evidence, on which it intended to rely after the submission of the Appeal Brief and of the Answer. Thus, the request to submit new evidence was rejected.
24. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be equally treated during these proceedings had been fully respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. The position of the Appellant**

25. In its request for relief, the Appellant provides as follows:

1. *The appeal of WADA is admissible.*
  2. *The undated decision rendered by the Appeal Panel of the Egyptian Anti-Doping Organisation in the matter of Radwa Arafa Abd Elsalam is set aside.*
  3. *Radwa Arafa Abd Elsalam is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility that is effectively served, whether imposed on or voluntarily accepted, by Radwa Arafa Abd Elsalam before the entry into force of the CAS award shall be credited against a total period of ineligibility to be served.*
  4. *All competitive results obtained by Radwa Arafa Abd Elsalam from and including 7 August 2015 are disqualified with all resulting consequences (including forfeiture of medals, points and prizes).*
  5. *WADA is granted an award for costs.*
26. WADA's submissions, in essence, may be summarised as follows:
- The Appealed Decision was rendered by the Appel Panel of EGY-NADO, and the Appealed Decision was rendered on the basis of the EGY-NADO Rules, which are therefore applicable in this case. On the basis of Art. 13.2.2 of the EGY-NADO Rules, WADA is entitled to appeal a decision in cases not involving an international level athlete.
  - According to Art. 13.7.1 of the EGY-NADO Rules, the filing deadline of an appeal filed by CAS shall be the later of: a) Twenty-one days after the last day on which any other party in the case could have appealed or b) twenty-one days after WADA's receipt of the complete file relating to the decision. As WADA received the case file relating to the Appealed Decision on 30 March 2016, the deadline to appeal thus expired on 20 April 2016. Since the appeal was filed on that day – 20 April 2016 – the Appeal Brief was therefore filed in a timely fashion.
  - Although the Ractopamine is not specifically listed on the 2015 Prohibited List as an Other Anabolic Agent categorised under S1.2, it is undisputed that Ractopamine nevertheless is a non-specified substance falling under the category as an Other Anabolic Agent. As Ractopamine was found in the Athlete's A sample and she waived the analysis of the B sample, there is a clear violation of Art. 2.1 of the EGY-NADO Rules.
  - In accordance with Art. 10.2.1.1 in the EGY-NADO Rules, the period of ineligibility shall be four years, where the prohibited substance does not involve a specified substance and the Athlete cannot show that the anti-doping rule violation was not intentional. The Athlete is required to prove her "non-intent" on a balance of probability test, and the circumstance under which she relied upon must be more probable than their non-occurrence.
  - The Athlete cannot protest her innocence and suggest that the prohibited substance must have entered her body through a contaminated food product. Instead, she must produce

specific evidence that she ingested a food product which contained the substance in question. It is not sufficient for an athlete merely to make protestations of innocence and suggest that the prohibited substance must have entered her body in inadvertently from some supplement, medicine or other product, which she may have taken or eaten at the relevant time.

- This burden of proof on the Athlete in food contamination cases has been established in a number of CAS cases, to which WADA has referred. In all of these cases, CAS panels have applied the requirement for the Athlete to establish origin of the prohibited substance strictly.
- In the present case, the Athlete has simply alleged that the Ractopamine finding may have come from meat that she ate. The Athlete has, to the effect, only produced “*research for using Ractopamine as feed additive in many countries*”. However, she has not provided any evidence whatsoever that she actually ate meat that was contaminated with Ractopamine at the relevant time. Thus, her explanations are nothing more than mere speculation.
- WADA is not aware of any other cases in Egypt where athletes have been eating meat which was contaminated with Ractopamine. The mere speculation of a possible food contamination to establish the origin of the prohibited substance would clearly contradict the objectives of the WADC and cannot therefore be permitted.
- Finally, the Athlete was not a minor when she was tested out of competition, as she was in fact 18 years, 1 month and 7 days old. There is nothing to suggest or indicate that the prohibited substance should have entered her system, before she turned 18.

## **B. The position of the EGY-NADO**

27. EGY-NADO was granted a deadline of twenty days from receipt of the Appeal Brief to file its Answer. However, no answer was filed at the expiry of the deadline.
28. At the hearing, the representatives of EGY-NADO stated that the Appealed Decision should be upheld and that WADA’s appeal should be dismissed.

## **C. The Position of the Athlete**

29. In her request for relief, the Athlete provides as follows:
  1. *The Appeal of WADA is refused.*
  2. *The decision rendered by the Appeal Panel of the Egyptian Anti-Doping Organisation in matter Radwa Arafa Abd Elsalam is applied.*
30. The Athlete’s submission, in essence, may be summarised as follows:

- The substance, Ractopamine, is not as such clearly listed as an Other Anabolic Agent in the Prohibited List. The Athlete does not have the type of knowledge of analogous or resembling substances, so it must be up to WADA to stipulate clearly all prohibited substances in the Prohibited List.
- Ractopamine is used in many countries as a feed adjective to increase the weight of cattle to gain higher economic yield. That occurs in imported meat from many countries such as Brazil, the United States, and Japan. Egypt is one of the largest importing countries of meat from the United States and Brazil, because it is a developing country with a high population.
- The Athlete is a normal Arabic girl living at home with her parents until her marriage, and her parents are responsible for providing her with her meals. In her home, large amounts of meat are bought to suffice the need of the home, because the Athlete has four sisters beside her mother and father. In the period from 17 June – 30 July 2015 it was the fasting month of Ramadan, and after the fasting the family eats many types of food. Her father has a bill showing the purchase of a large amount of meat to be consumed during the month of Ramadan.
- No warning from WADA has been given to Athletes indicating which types of meat may contain prohibited substances. Thus, she could not know that there may be a risk involved in eating certain meat products. This shows that there is no negligence on the part of her.
- The Athlete's sport, karate, has no need of using this substance as there is no requirement for high power or high muscle mass, but instead swiftness, speed and muscle control.
- The Athlete waived her right to the analysis of the B sample, because it would cost a lot of money, and there is no high-income gain from sports in developing countries like Egypt.
- After the Athlete's case has been decided in Egypt, EGY-NADO notified and warned federations and clubs about the existence of the prohibited substance in imported meats. This shows that the Athlete could not have known about the dangers of eating imported meats before this warning was issued.
- It is unfair that the Athlete is barred from competing in her sport after the expiry of the period of ineligibility of six months, while the appeal and demand for a period of ineligibility of four years will affect her whole life causing her depression.
- Finally, the Athlete admits that in cases of contaminated products, the period of ineligibility may be reduced, when there is no negligence on the Athlete and the period may be reduced to four months.
- The Athlete does not have the financial means to hire a lawyer in her defence, nor does

she have the possibility to travel to the hearing in Lausanne.

## V. JURISDICTION

31. Article R47 of the Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be files with CAS against an award rendered by CAS acting as a first-instance tribunal, if such appeal has been expressly provided by the rules of the federations or sports-body concerned”.*

32. It is undisputed that the Athlete is not an international-level athlete, and the rules on appeal to the CAS in EGY-NADO are therefore set out in Art. 13.2.2 concerning appeals involving other athletes or other persons. In this case, the final decision at the national Egyptian level has been made by EGY-NADO Appeal Panel, and according to Art. 13.2.3 of EGY-NADO Rules, WADA has the right to appeal to CAS with respect to the decision of the national-level appeal body.

33. Thus, CAS has jurisdiction to rule in this matter. Jurisdiction has also been confirmed by all parties without objections by the signing of Order of Procedure.

## VI. ADMISSIBILITY

34. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

35. It is undisputed that on 30 March 2016 WADA was notified and provided with a copy of the case file regarding the Appealed Decision. WADA filed its Statement of Appeal on 20 April 2016 and thus within the twenty-one-day time limit in the Code and Art. 13.7.1 of the EGY-NADO Rules. There were no objections as to the admissibility of the case by any of the Respondents.

36. Thus, the Sole Arbitrator holds that the appeal is admissible.

## VII. APPLICABLE LAW

37. Article R58 of the Code provides as follows:



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

38. Pursuant to Article R58 of the Code, the Sole Arbitrator concludes that the present appeal by WADA shall be decided on the basis of the EGY-NADO Rules in conjunction with the 2015 WADC so as to harmonise anti-doping policy rules and regulations within all sports in Egypt as well as all sports around the world. In this respect, the Sole Arbitrator notes that no party has asserted that any other set of laws or procedures should apply alternatively.

### VIII. MERITS

39. The following issues shall be determined by the Sole Arbitrator in these appeal proceedings:

**Question 1:**

Did the Athlete commit a violation of Art. 2.1 of EGY-NADO Rules, as the substance Ractopamine was found in the Athlete’s A sample from the out-of-competition testing conducted on 7 August 2015?

**Question 2:**

If so, which period of ineligibility and other sanctions in accordance with the EGY-NADO Rules should the Athlete be sanctioned with?

#### Analysing Question 1

40. The analysis of the Athlete’s A sample revealed the presence of Ractopamine pursuant to the analytical report dated 8 September 2015.
41. In the Appealed Decision, it is recognised by the EGY-NADO Appeal Panel that Ractopamine is a banned substance categorised in the 2015 Prohibited List (S1.) as an Other Anabolic Agent. However, in the Athlete’s submission before CAS, it is stated that Ractopamine is not specifically listed as an Other Anabolic Agent under the category S1.2. on the Prohibited List. The same arguments were presented by the representatives of EGY-NADO at the Hearing.
42. Given the fact that the Prohibited List is not to be regarded as an exhaustive listing of all anabolic agents and other prohibited substances under the S1.2. category, the Sole Arbitrator finds from the evidence that there can be no doubt that Ractopamine is indeed a non-specified substance falling under the category of Other Anabolic Agents. The Prohibited List specifically states: *“Including, but not limited to: Clenbuterol, selective androgene receptor modulators (SARMs, e.g. andarine and ostarine) tibolone, seramol, and zilpaterol”.*
43. The Appealed Decision itself specifically refers to Ractopamine as a banned substance

categorised in the 2015 Prohibited List (S1.2.) as other anabolic agents and neither the First or the Second Respondent have submitted any evidence to suggest that the substance Ractopamine found in the athlete's specimen should not be a non-specified substance banned in the 2015 Prohibited List as another anabolic agent.

44. Pursuant to Art. 2.1 of EGY-NADO Rules, the presence of a Prohibited Substance in an athlete's sample constitutes an anti-doping rule violation. Sufficient proof of an anti-doping rule violation under Art. 2.1 is established by the presence of a Prohibited Substance in the Athlete's A sample, where the Athlete waived an analysis of the B sample, or the B sample is not analysed (cf. Art. 2.1.2 of EGY-NADO Rules).
45. As Ractopamine was found in the Athlete's A sample according to the uncontested lab report, and the Athlete waived analysis of the B sample, the Sole Arbitrator must conclude that the Athlete committed an anti-doping rule violation pursuant to Art. 2.1 of EGY-NADO Rules.

## Analysing question 2

46. Having established that the Athlete has committed an anti-doping rule violation pursuant to Art 2.1 in EGY-NADO Rules, the Sole Arbitrator will now focus on the issue of the sanction for such a violation.
47. Art. 10.2.1 in the EGY-NADO Rules provides as follows:

*"The period of ineligibility shall be four years where":*

*10.2.1 "The anti-doping rule violation does not involve a specified substance, unless the Athlete or other person can establish that the anti-doping rule violation was not intentional".*

*10.2.1.2 "The anti-doping rule violation involves a specified substance and EGY-NADO can establish that the anti-doping rule violation was intentional".*

*10.2.2 "If Art. 10.1. does not apply, the period ineligibility shall be two years".*

48. Art. 10.2.4 of the EGY-NADO Rules provide in pertinent parts that:

*"As used in Art. 10.2 and 10.3 the term "intentional" is meant to identify those athletes who cheat. The term, therefore, requires that the athlete or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly regarded that risk".*

49. By assessing the question of "intentional use", Art. 10.2.3 must be read in conjunction with Art. 2.1.1 of EGY-NADO Rules, which in the first two sentences state the following: *"It is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substances or any metabolites or markers found to be present in their samples".*

50. Based on constant CAS jurisprudence, it is the Athlete that bears the burden of establishing that the violation was not “intentional” within the above meaning, and the Sole Arbitrator agrees that it therefore naturally follows that the Athlete must also establish how the substance entered into her body (CAS 2016/A/4377, para 51).
51. The burden of proof that the Athlete is required to prove her allegations, is based on the “balance of probability” test. The “balance of probability” standard entails that the Athlete has the burden of convincing a panel or a sole arbitrator that the occurrence of the circumstances, on which the Athlete relies, is more probably than their non-occurrence (CAS 2008/A/1515, para. 116).
52. To establish the origin of a prohibited substance, CAS panels have made it clear that it is not sufficient for an athlete merely to protest his or her innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product, which the Athlete was taken at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question (CAS 2016/A/4377, para. 52).
53. For example, as noted in CAS 2010/A/2230:
- “To permit an athlete to establish how a substance came to be present in his body by little more a denial that he took it, would undermine the objectives of the Code and Rules. Spiking and contamination – two prevailing explanations volunteered by athletes for such presence – due and can occur; but it is too easy to assert either. More must sensibly be required by way of proof given the nature of athlete’s basic personal duty to ensure that no prohibited substance entered his body”.*
54. In the final decision of the IBF Doping Hearing Panel in the case IBAF 09-003, the Panel stated the similar view:
- “In this case, the athlete’s suggestion that one or more of the medications or supplements that he took must have contaminated with Boldenone, is nothing more than speculation, unsupported by any evidence of any kind. He has not shown that Boldenone was an ingredient of any those substances, nor has he provided any evidence, for example, that the supplements that he took were contaminated with Boldenone. Such bare speculation is not nearly sufficient for the athlete’s burden under Art. 10.5 of establishing how the prohibited substance got into his system”.*
55. Moreover, in CAS 2006/A/1066, the Panel held the following:
- “The respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred. Unfortunately, apart from his own words, the respondent did not supply any actual evidence of this specific circumstances, in which the unintentional ingestion of cocaine occurred”.*
56. Thus, the necessity of proving “how the substance got there” as a precondition to qualify for any reduction in sanction flows naturally from the principle of the Athlete’s responsibility for what goes into her body. If an athlete cannot prove to the comfortable satisfaction of the

tribunal how a prohibited substance got into his/her body, she cannot exclude the possibility of intentional or significantly negligent use. A mere hypothesis is not sufficient in this regard. The WADC is quite clear that an athlete must completely exclude these possibilities in order to be entitled to a reduction in sanction.

57. Against this background, the Sole Arbitrator will evaluate what has actually been presented as evidence by the Respondents to establish the source or origin of the prohibited substance in the Athlete's system:

- In very general terms, both the First and Second Respondent presented the hypothesis that the presence of Ractopamine in the Athlete's sample must have come from some form of contaminated food that she has eaten in the relevant period.
- Both Respondents have made the argument that Ractopamine allegedly is used in many countries as a feed additive to increase the weight of cattle and that this contamination occurs in cases of imported meat from many countries such as Brazil, the United States, Japan and Mexico.
- To establish the causal link between the alleged contaminated foods from various countries and the specific food contamination with the substance Ractopamine found in the Athlete's body on 7 August 2015, the Athlete has produced two translated receipts dated 20 June 2015 and 10 July 2015 for the purchase of 20 kilos of Brazilian meat, hot dog and green sausage. The receipts are made out in the name of "Arafa Abd Elsalam" and it is submitted that it is the father of the Athlete that has purchased the meat to be consumed during the month of Ramadan.
- Apart from these materials presented as evidence during these proceedings, the Respondents have not produced any other evidence, which could substantiate or document the hypothesis presented to establish the source or origin of the prohibited substance.
- In this context, it is noteworthy that none of the Respondents produced a single piece of evidence demonstrating or even substantiating that other consumers (including athletes) having purchased and eating meat in Egypt within the relevant time have been subjected to food contamination with the prohibited substance Ractopamine.
- The presentation of the hypothesis that the prohibited substance originated from imported contaminated meat from various countries appears therefore to be mere speculation, which is not based on evidence. Had the problem of food contamination with the prohibited substance of Ractopamine been a widespread problem, as claimed by Respondents, why has not one single other case of food contamination with this particular substance been reported to the relevant Egyptian authorities? According to the information of WADA, no other Egyptian athletes have tested positive for Ractopamine, which also suggests that the hypothesis of the Respondents of wide spread contamination of imported meats is not supported by other cases of doping violations in Egypt.

- With respect to the presented invoices or bills as evidence for the purchase of contaminated foods, it is obvious that the mere presentation of such exhibits for the purchase of meat cannot fulfil the Athlete's burden of proof that this meat was indeed the source of the contamination. The bills or invoices mentioned "*Brazilian meat, hotdogs and green sausages*", but there is no further specification to rely on. In cases of meat contamination, it must – as a minimum – be a requirement that the Athlete sufficiently demonstrates where the meat originated from. For example, where did the butcher buy the Brazilian meat, how was the Brazilian meat imported into Egypt, has any of the other imports of meat been examined or tested for the presence of Ractopamine, etc.? This evidence is not provided in this case.
  - Therefore, the presentation of the two invoices or bills for the purchase of meat, which the Athlete's father allegedly made before the month of Ramadan, cannot be accepted as sufficient proof that this meat was the source of the contamination causing the presence of Ractopamine in the Athlete's specimen of 7 August 2015.
58. Based on the above considerations regarding the evidence presented by the Respondent in this matter, the Sole Arbitrator must conclude that the Athlete, based on a balance of probability standard, has not fulfilled her burden of proof to establish the origin of the prohibited substance Ractopamine in her system. Accordingly, the Sole Arbitrator finds that the Athlete has not met her burden of proof and that the anti-doping violation under Art. 10.2.1 of the EGY-NADO Rules therefore must be deemed to have been intentional. By reaching this conclusion, the Sole Arbitrator has not pronounced the Athlete as a "cheater", but the inability for her, on the balance of probability to establish the origin of the prohibited substance, automatically leads to the conclusion that she is guilty of an anti-doping rule violation pursuant to Art. 10.5.1 of the EGY-NADO Rules.
59. The Sole Arbitrator will now turn to the question whether the sanction period of four years of ineligibility under Art. 10.5.1 of the EGY-NADO Rules may be reduced, based on the presence of no significant fault or negligence by the Athlete.
60. Under Art. 10.5.2 of the EGY-NADO Rules, which covers "*the application of no significant fault or negligence beyond the application of Art. 10.5.1*" the following applies:
- "If an Athlete or other Person establishes in an individual case, where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, subject to further reduction or elimination as provided in Art. 10.6., the otherwise applicable period of ineligibility may be reduced based on the Athlete's or the Other Person's degree of Fault, but the reduced period of ineligibility may not be less than one half of the period of Ineligibility otherwise applicable".*
61. In the comment to Art. 10.5.2, the following is stipulated:
- "Art. 10.5.2 may be applied to any anti-doping violation except those articles, where intent is an element of the anti-doping rule violation (e.g. Art. 2.5, 2.6, 2.8 or 2.9), or an element of a particular sanction (e.g. Art. 10.2.1) or a range of ineligibility is already provided in an Article based on the Athlete's or Other Person's*

*degree of fault. The actual wording of Art. 10.5.2 actually precludes the application of this possible basis of reduction in the sanction of the Athlete, since "intent" is already considered as an element of the sanction under Art. 10.2.1 of the EGY-NADO Rules".*

62. As set forth above, considering that the Athlete did not fulfil her burden of proof to establish the origin of the prohibited substance, she has committed an anti-doping rule violation pursuant to Art. 10.5.1 and therefore, the Sole Arbitrator cannot consider the application of this provision to reduce her sanction. This interpretation of the interrelationship between Art. 10.5.1 and Art. 10.5.2 is also confirmed in CAS 2160/A/4377, para 63.
63. Regardless of the conclusion as for the possible application of Art. 10.5.2 of the EGY-NADO Rules once anti-doping rule violation pursuant to Art. 10.5.1 of the EGY-NADO Rules has been established, the Sole Arbitrator stresses that any determination of the possible "*No Significant Fault or Negligence*" on the part of the Athlete must be based on the logical assumption that it may be able to trace how the banned substance got into the Athlete's body using the balance of probability standard. If it cannot be established how the prohibited substance entered the body of the Athlete, it is meaningless to discuss the degree of fault or negligence that the Athlete may have been responsible for. It is simply unfeasible to discuss a reduction based on the Athlete's "*No Significant Fault or Negligence*" if it is uncertain or unsubstantiated what actually caused the presence of the prohibited substance. For that reason, the Sole Arbitrator also finds that entering into a discussion of possible reasons for reduction of the sanction cannot be done on any logical or factual basis in this matter.
64. Thus, the Sole Arbitrator must sanction the Athlete with a four-year period of ineligibility pursuant to Art. 10.5.1 of the EGY-NADO Rules with the credit of any period of provisional suspension or ineligibility that she has already effected served.
65. The Sole Arbitrator notes that, had the EGY-NADO applied its regulations properly, the period of ineligibility of the Athlete would have started to run as from 21 September 2015, without any interruption. Pursuant to Art. 10.11.1 of the EGY-NADO Rules:  
  
*"Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility shall be disqualified".*
66. Although the Athlete has been found guilty of an anti-doping rule violation, without any mitigating circumstances, she should not be further penalized by a late start of her suspension, as a result of the present arbitration procedure initiated by WADA in order to correct the decision issued by EGY-NADO. In other words, considering that the present procedure cannot be directly attributable to the Athlete and given the fact that her results achieved after the date of the sample collection will be disqualified anyway, the Sole Arbitrator considers it fair and reasonable to determine that the period of ineligibility of the Athlete shall start on 21 September 2015, with retroactive effect, i.e. on the day when her initial suspension started to

run.

67. As a consequence of the anti-doping rule violation pursuant to Art. 10.5.1 of the EGY-NADO Rules, all competitive results of the Athlete obtained from 7 August 2015 shall be disqualified with all the resulting consequences including forfeiture of any medals, point and prize. During these proceedings at CAS, neither Respondent presented any submissions with respect to the application of Article 10.8 of the EGY-NADO Rules concerning disqualification of resulting competitions subsequent to sample collection or commission of an anti-doping rule violation. Thus, the Sole Arbitrator finds that the request for relief of WADA may be granted as the conditions in Art. 10.8 of the EGY-NADO Rules are met.

## ON THESE GROUNDS

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

1. The appeal filed by the World Anti-Doping Agency on 20 April 2016 is upheld.
2. The undated decision rendered by the Appeal Panel of the Egyptian Anti-Doping Organisation in the matter of Radwa Arafa Abd Elsalam is set aside.
3. Radwa Arafa Abd Elsalam is sanctioned with a four-year period of ineligibility starting from 21 September 2015.
4. All competitive results obtained by Radwa Arafa Abd Elsalam from and including 7 August 2015 are disqualified with all resulting consequences (including forfeiture of medals, points and prizes).
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.