



**Tribunal Arbitral du Sport
Court of Arbitration for Sport**

Le Secrétaire général

Per fax

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Lausanne, 27 June 2002/MR/ln

RE : TAS 2002/A/363 Pastorello c/USADA

Dear Sirs,

You will find attached the award rendered in the above mentioned arbitration procedure.
The original will follow in a few days.

Yours sincerely,


Matthieu REEB

Encl. Ment.



Tribunal Arbitral du Sport
Court of Arbitration for Sport

TAS 2002/A/363 Pastorello v/USADA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Peter Leaver QC, Barrister-at-Law, London, England

Arbitrators: Professor Richard H. McLaren, London, Ontario, Canada
Hon. Robert J. Ellicott QC, Barrister-at-Law, Sydney, Australia.

in the arbitration between

JOSEPH PASTORELLO, represented by Mr. James T Gray, Attorney-at-Law, Milwaukee,
Wisconsin, USA

Appellant

v/

UNITED STATES ANTI-DOPING AGENCY, represented by Mr. William Bock III,
Attorney-at-Law, Indianapolis, Indiana, USA

Respondent

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1. The Parties

- 1.1. The Appellant, Joseph Pastorello, is a serving officer in the United States Air Force. He is a boxer, who has represented the United States in the Olympic Games.
- 1.2. The Respondent, the United States Anti-Doping Agency ("USADA"), has, since the 1st October 2001, had the authority for the testing, education, research and adjudication for United States Olympic, Pan Am Games and Paralympic athletes, and the corresponding responsibilities to test and educate athletes, to conduct research and to make adjudications. For the purpose of this arbitration, USADA acts in the interest of USA Boxing, which is the national governing body with responsibility for upholding the Anti-Doping Rules of the Association Internationale De Boxe Amateur ("AIBA").

2. The Relevant Chronology

- 2.1. The Appellant reached the semi-finals at the United States Men's National Boxing Championship, which was held at Colorado Springs on the 16th March 2001. He qualified for the final, and subsequently won the silver medal.
- 2.2. After the semi-final, the Appellant was required to submit to a drug test pursuant to USADA's Regulations. He provided a urine sample, and completed the appropriate USADA Doping Control Official Record. He declared on that form that, during the previous 3 days, he had taken multivitamins, chelated minerals (sic), "alphalpha" (sic), creatine, essential fatty acids and a green tea pill.
- 2.3. The sample was divided, as usual into "A" and "B" samples. Both samples were transported to the UCLA Olympic Analytical Laboratory in Los Angeles, California. They were received by the Laboratory on the 18 March 2001, and were there properly stored and labelled. The Appellant accepts that both the collection of the sample and the chain of custody were properly completed.
- 2.4. The "A" sample was batch-screened, and it was determined that there was a possibility that it contained nandrolone metabolites. Accordingly, confirmation procedures were undertaken. These were completed on the 29th March 2001, when it was determined

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that the "A" sample contained a concentration of 19-norandrosterone greater than 2 ng/ml and 19-noretiocholanolone, both of which are nandrolone metabolites.

- 2.5. USADA was notified of the result of the test of the "A" sample, and duly passed on that notification to the Appellant, who was given the option to have the "B" sample tested at the same laboratory. The Appellant elected to have that test carried out.
- 2.6. On the 1st May 2001 the UCLA Laboratory issued its report on the "B" sample. It concluded that the "B" sample contained 19-norandrosterone at a concentration greater than 2 ng/ml and 19-noretiocholanolone. On about the 4th May 2001, the Appellant was notified of the positive result of the "B" sample. He was also notified that USADA was referring the matter to its Anti-Doping Review Board.
- 2.7. The Anti-Doping Review Board recommended that the Appellant should be suspended from boxing for up to two years, and that his results in the National Boxing Championship should be declared invalid. The Appellant was informed of the recommendation, and elected, as was his right, to contest it. Pursuant to Section 9.b.ii of the USADA Protocol for Olympic Movement Testing, the Appellant chose to have a hearing before American Arbitration Association Panel arbitrators, who were selected from a pool of the North American Court of Arbitration for Sport arbitrators.
- 2.8. The hearing before the American Arbitration Association Panel ("the AAA Panel") took place on the 21st December 2001. The decision was published on the 18th January 2002. The AAA Panel found that the Appellant had committed a doping offence in breach of the AIBA Doping Regulations and of the Olympic Movement Anti-Doping Code ("OMAC"), and imposed an 18 month suspension from any competition.
- 2.9. By letter dated 7th February 2002 the Appellant served a Statement of Appeal from the decision of the AAA Panel. That appeal is to CAS, pursuant to Section 9.b.iii and Rule R-49 of Annex D of the USADA Protocol. In Paragraph 3 of the Statement of Appeal it is stated that the sole issue on the appeal relates to the "application of the proper legal standard and interpretation of the AIBA doping rules". The Panel will refer to this issue as the "Construction Issue". As will be seen under the heading "The Procedure" below, a further issue arises, namely, whether, if proof of intent is necessary under the AIBA Doping Regulations, the necessary intent has been proved.

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- 2.10. USADA has also identified an issue on which it requests CAS to rule, namely, whether the AIBA Doping Regulations entitled the AAA Panel to reduce the Appellant's suspension from 2 years to 18 months. The Panel will refer to this issue as the "Sanction Issue". Although USADA does not specifically identify any provision which entitles it to appeal, the Panel notes that Section 9.b.iii of the Protocol provides for an appeal by either "the athlete or the IF".

3. **The relevant rules**

- 3.1. The USADA Protocol provides in Section 9.b.v. as follows:

"In all hearings conducted pursuant to this procedure the applicable IF's categories of prohibited substances, definition of doping and sanctions shall be applied. In the event an IF's rules are silent on an issue, the rules set forth in the Olympic Movement Anti-Doping Code shall apply."

- 3.2. The AIBA Rules provide, inter alia, as follows:

"Rule XXII: Administration of drugs, etc.

- A. Doping. The administration (sic) of or use by a competing boxer of any substance foreign to his/her body or of any physiological substance taken in abnormal quantity or taken by an abnormal route of entry into the body with the sole intention of increasing in an artificial and unfair manner his/her performance /i.e. "doping"/ is prohibited. The AIBA doping regulations are in conformity with those of the IOC and do not differ in any respect. These regulations are a bye-law to this Rule.

.....

D. Prohibited Drugs. The IOC list of banned substances shall constitute AIBA's list of banned substances. Any boxer taking such substances or any official administering such substances shall be subject to the penalties. AIBA may ban additional substances upon the recommendation of the AIBA Medical Commission."

- 3.3. The Doping Regulations of the AIBA are to be found in the AIBA Medical Handbook. In Appendix I the following is to be found:

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“Article XXVIII/C. Doping

....

2. A boxer who has been found guilty of doping may be punished by suspension from any competition for a period of up to two years and, in case of recurrence, disqualification for lifetime.

....

4. In case of doping being proved, the result of the competition shall be declared invalid”

- 3.4. As has been seen, the Doping Regulations provide that they are “in conformity with those of the IOC and do not differ in any respect”. Section C of the Doping Regulations specifically prohibits anabolic agents. The examples of prohibited substances include anabolic androgenic steroids such as 19-norandrostenediol, 19-norandrostenedione and related substances. There is a specific caution appended to the list of examples of prohibited substances, which is in the following terms:

“CAUTION: This is not an exhaustive list of prohibited substances. Many substances that do not appear on his (sic) list are considered prohibited under the term “and related substances”. Athletes must ensure that any medicine, supplement, over-the-counter preparation or any other substance they use does not contain any Prohibited Substance.”

- 3.5. The relevant provisions of OMAC are as follows:

Chapter I, Article 1

“RELATED SUBSTANCE means any substance having pharmacological action and/or chemical structure similar to a Prohibited Substance or any other substance referred to in this Code.”

Chapter II, Article 2

“Doping is:

1. the use of an expedient (substance or method) which is potentially harmful to athletes' health and/or capable of enhancing their performance, or

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2. the presence in the athlete's body of a Prohibited Substance or evidence of the use thereof or evidence of the use of a Prohibited Method."

Chapter II, Article 3

"1. In a case of doping, the penalties for a first offence are as follows:

.....

b) if a Prohibited Substance used is one other than those referred to in paragraph a) above:

- I) a ban on participation in one or several sports competitions in any capacity whatsoever,
- II) a fine of up to the US\$100,000;
- III) suspension from any competition for a minimum period of two years. However, based on specific, exceptional circumstances to be evaluated in the first instance by the competent IF bodies, there may be a provision for a possible modification of the two-year sanction.

.....

3. Any case of doping during a competition automatically leads to invalidation of the result obtained (with all its consequences, including forfeit of any medals and prizes), irrespective of any other sanction that may be applied, subject to the provisions of point 4 of this article.

Chapter II, Article 4

"2. Evidence obtained from metabolic profiles and/or isotopic ratio measurements may be used to draw definitive conclusions regarding the use of anabolic androgenic steroids.

.....

4. The success or failure of the use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited (sic) Method was used or attempted for the offence of doping to be considered as consummated."

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3.6. Anabolic androgenic steroids are "Prohibited Substances". The examples of such steroids set out in Appendix A of OMAC include 19-norandrostenediol, 19-norandrostenedione and related substances.

4. **The procedure**

- 4.1. After the Order of Procedure had been made, and the date for the hearing had been fixed, the Panel was informed that the parties wished the appeal to be decided on the basis of the written submissions and of a proposed Joint Stipulation.
- 4.2. The Panel was concerned to ensure that, in the event that there was no hearing and the appeal was decided on the basis of the written submissions and any Joint Stipulation, there should be no misunderstanding as to the status of the findings of the American Arbitration Association Panel. Accordingly, by letter dated the 23rd April 2002, the Panel asked for clarification on two matters: first, the status of the last paragraph on page 9 of the American Arbitration Association Panel's decision, and, secondly, the appropriate penalty in the light of the decision in the Jovanovic case.
- 4.3. The Appellant's legal adviser responded to the request for clarification by letter dated the 30th April 2002. In the light of that response, the Panel informed the parties that, if there was no hearing, it would determine intent (if intent were a necessary ingredient of a breach of the AIBA Doping Regulations) on the basis of the findings of fact by the AAA Panel, which had been accepted by the Appellant's legal adviser in his letter as "a true statement of Captain Pastorello's testimony".
- 4.4. By letter dated the 3rd May 2002 the Respondent's legal adviser replied to the Panel's letter dated the 23rd April 2002, and enclosed a Joint Stipulation signed by the legal representatives of both parties.
- 4.5. In the light of that Joint Stipulation, the Panel agreed, pursuant to art. R57 of the Code of Sports-related Arbitration, to dispense with an oral hearing. Accordingly, the Panel will decide this appeal on the basis of the decision of the American Arbitration Association Panel and the written submissions of the parties, including the submissions contained respectively in the letters dated the 30th April 2002 and the 3rd May 2002 to which reference has been made above.

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5. The Construction Issue

- 5.1. The relevant provisions of the AIBA Doping Regulations have been set out above. In summary, the Appellant's case is that CAS jurisprudence requires that strict liability doping rules have to be clearly drafted, and that the AIBA Doping Regulations are not drafted so as to impose strict liability.
- 5.2. The AAA Panel held that "... the AIBA rules certainly fall "short of the clarity and certainty desirable in an area as sensitive as doping...". The Panel respectfully agrees with that finding: there can be no doubt that the drafting of the AIBA Doping Regulations leaves much to be desired. However, that is not, and cannot be, the end of the matter. The Panel must apply itself to the issue of construction notwithstanding the infelicitous drafting.
- 5.3. Construction is always very much a matter of impression. Rule XXIX of the AIBA Doping Regulations contains four paragraphs, of which the first and the last (respectively "A" and "D") are relevant on the Construction Issue. Paragraph A is entitled "Doping", and Paragraph D is entitled "Prohibited Drugs". In the Panel's opinion each of those Paragraphs independently defines an activity which is a breach of the AIBA Rules. Paragraph A defines doping, but says nothing about penalty, for which it is necessary to look to the AIBA Doping Regulations. Paragraph D defines "Prohibited Drugs", but it specifically provides that any boxer taking "banned substances" shall be "subject to the penalties".
- 5.4. There are two limbs of Paragraph A. The first limb is concerned with the administration of or use by a competing boxer of any substance foreign to his/her body. The second limb is concerned with the taking in abnormal quantity or by any abnormal route of entry into the body of any physiological substance. One immediate issue of construction in regard to Paragraph A is whether the words "with the sole intention of increasing in an artificial and unfair manner his/her performance" apply to both limbs, or just to the second limb.
- 5.5. It could be argued, with some force, that those words fit more happily and easily with the second limb. Thus, there would be two types of doping under the AIBA Doping Regulations: the first type of doping would be the simple administration or use of a

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substance foreign to the body (which Paragraph D refers to as a "banned substance"), whereas the second type of doping would be the administration or use of a physiological substance (not necessarily a prohibited substance) in abnormal quantity or by an abnormal route of entry into the body. In the second type of doping it would be necessary to prove the intention to enhance (to paraphrase the Rule) performance.

- 5.6. The Appellant has drawn our attention to two passages from the Opinion of the CAS Panel in USA Shooting & Q v. International Shooting Union (UIT) CAS 94/129. The first passage is from Paragraph 23, where the Panel said:

"The fact that article 1 of the UIT Anti-Doping Regulations recites that they are "based on" the IOC Rules cannot mean that any provisions in any IOC rules which contradict the UIT Regulations will take precedence. The statement in article 1 may very well be of assistance if there is an issue of interpreting the Regulations. But it is for the UIT, if it so wishes, to ensure that its Regulations do indeed incorporate relevant IOC texts. Persons subjected to the UIT Regulations can only read what is said. They cannot be asked to consider that any or all of the UIT Regulations might in fact be invalid due to the existence or emergence of unspecified IOC rules."

- 5.7. The second passage is from Paragraph 34, where the Panel says:

"The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the *de facto* practice over the course of many years of small group of insiders."

- 5.8. These passages are clearly of considerable relevance in considering the meaning and construction of Paragraph A of Rule XXIX. Although the view that we have expressed in Paragraphs 5.5 above has much to commend it, we are not convinced that it is necessarily the correct interpretation of Paragraph A. The drafting of that Paragraph is obscure, and the alternative interpretation, in accordance with which the phrase "with the sole intention of increasing in an artificial and unfair manner" would

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qualify both limbs, is not grammatically impossible, and is clearly a possible construction.

- 5.9. This Panel agrees with the observations of the CAS Panel in the Shooting Union case. Accordingly, this Panel concludes that the proper construction of Paragraph A is that which favors the athlete, and that proof of intent is necessary under both limbs of that Paragraph. However, as has been made clear above, the Panel does not regard Paragraph A as being the only relevant provision in respect of which there can be a breach of the AIBA Doping Regulations, and, in particular, of Rule XXIX. In the Panel's view, Paragraph D also defines conduct which, if committed by the boxer, amounts to a breach of Rule XXIX, and which attracts the penalties provided for under Article XXVIII/C in the AIBA Medical Handbook.
- 5.10. The argument for treating Paragraph D as providing a separate and independent breach is not only the clarity of the language in that Paragraph, but also the use of the phrase "banned substances" in contradistinction to the phrase "substance foreign to his/her body" in Paragraph A. The language used in the two Paragraphs supports the view that they were intended to provide for two separate and independent breaches: one which was wider as to substances, but which required proof of intent, and the other which was a narrower but stricter provision, in respect of which intent is irrelevant. A further reason for preferring this construction of Paragraphs A and D is that if intent related only to the second limb of Paragraph A, it could be said that Paragraph D was otiose. Normal canons of construction would lean against such a finding.
- 5.11. This view of Paragraph D is not only consistent with the IOC Regulations, but also with the fact that it, in contrast with Paragraph A makes no mention of intent. It is, what is often called, a strict liability provision.
- 5.12. No issue has been raised in relation to the chain of custody of the test sample or the accuracy of the laboratory test results. Thus, there is no dispute that both the A and B samples contained concentrations of 19-norandrosterone greater than 2 ng/ml and 19-noretiocholanolone. There can be no doubt, in the Panel's view, that on the evidence set out in the AAA Panel's decision, the Appellant took a banned substance and was therefore in breach of Paragraph D and liable to the penalties to which we have referred. As the Panel has held, in relation to this breach intent is irrelevant.

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- 5.13. Even if the Panel's view that Paragraph D provides for a separate breach were wrong, the Panel would nevertheless be of the view that the intent required for a breach of Paragraph A had, on the evidence set out in the AAA Panel's decision, been established.
- 5.14. It is to be noted that the Appellant is recorded by the AAA Panel as having testified "that he used the various nutritional supplements to improve his recovery after training. He also indicated that he took these supplements to increase his energy, his strength, and his endurance". As has been stated above, that record is accepted to be a true statement of the Appellant's testimony.
- 5.15. It is also to be noted that the Appellant's legal adviser also made the following statement in his letter dated the 30th April 2002:

"He took nutritional supplements as part of his overall boxing training regimen. The nutritional supplements were utilized and included by Captain Pastorello in his training, just the same as other training techniques such as: obtaining proper sleep, engaging in rigorous exercise, using water, resting between workouts, use of proper nutrition and diet, along with abstaining from using tobacco and alcohol products during his boxing training periods. *All of Captain Pastorello's efforts during his boxing training regimen at the time of his USADA drug test was directed to increase his energy, strength and endurance in order for him to achieve optimally as a boxer.* Most importantly, however, at all times, as will be demonstrated under our discussion under Issue III, Captain Pastorello did not intentionally take any supplements in violation of the AIBA doping rules."(emphasis added).

- 5.16. In the Panel's view, the finding of the AAA Panel, which has been set out in Paragraph 5.15 above, would have been sufficient to establish the intent required under Paragraph A. If, in the light of that finding, there had been any residual doubt as to whether Captain Pastorello took the supplements with the intention to enhance his performance, any doubt about the sufficiency of that finding would have been resolved by the statement in the letter dated the 30th April 2002, which is also quoted above.

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- 5.17. In these circumstances, therefore, if it had been necessary for USADA to prove that Captain Pastorello took the supplements with the intention to enhance his performance, the Panel would find that the Appellant did use a substance foreign to his body (as required by Paragraph A), and that in doing so he had "the sole intention of increasing in an artificial and unfair matter his performance" in breach of the AIBA Doping Regulations.
- 5.18. It is submitted on the Appellant's behalf that he could only be in breach of the AIBA Doping Regulations if he had "acted intentionally to violate the rules, as compared to acting negligently", and that as the AAA Panel gave him "the benefit of the doubt" and found that "he did not intentionally commit the offence of doping", the case against him must fail. In this context it is to be noted that the AAA Panel stated that the Appellant "advance[d] no theories which bear on the question or whether he intentionally or negligently committed the offence of doping". Notwithstanding that fact, the AAA Panel stated that "taking into consideration the recent history of the many nandrolone doping cases, the [Appellant's] esteemed character, and relying upon the [Appellant's] own expert witness who testified that the test results were most likely due from contaminated nutritional supplements, the Arbitrators give the [Appellant] the benefit of the doubt and find that he did not intentionally committed the offence of doping".
- 5.19. The Panel rejects the Appellant's submission. The intention proscribed by the AIBA Doping Regulations is to enhance performance, not an intention to breach the AIBA Doping Regulations. If a substance foreign to the body is used with the intention of enhancing performance it does not matter whether that substance is taken intentionally or negligently. In fact, the substance "foreign to his body" which the Appellant took in this case contained a prohibited banned substance. In other words, on the assumption that intention is a necessary ingredient of the breach, that intention is referable to the enhancement of performance rather than to a breach of the AIBA Doping Regulations. The breach is a consequence of the taking of the substance with the intention to enhance performance. It would be a cheat's charter if it were open to an athlete to contend that although a substance had been taken to enhance performance there had been no intention to breach the rules. Further, the Appellant intended to take the supplements for that purpose: that intent included all of the elements of the

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supplement, including the banned substance, irrespective of whether he knew whether or not it contained a banned substance.

- 5.20. The Appellant's submission is one that is commonly made. It is usually accompanied, as it was in the present case, by a protestation of ignorance of, or lack of familiarity with, the many warnings that have been given over the years about the risks involved in taking supplements to increase strength and performance. The AAA Panel recorded, between pages 8 and 10 of its Opinion, that the Appellant's evidence was to that effect. The Panel does not consider it necessary to set out that evidence in this Award.
- 5.21. However, the Panel does think that it is necessary to repeat once more the observations of the Panel in *Aanes v. FILA*[CAS 2001/A/317] at pages 22-23:

"As a general remark, the Panel observes that the sporting world has, for quite some time even before the 2000 Sydney Games, been well aware of the risks in connection with using so-called nutritional supplements, i.e. the risk that they may be contaminated, or, in fact, "spiked" with anabolic steroids without this being declared on the labels of the containers. There have been several cases of positive tests for nandrolone which have been attributed to nutritional supplements and which have been widely publicized in the sports press. This fact was the likely motive for the IOC press releases in October 1999 and February 2000 (II.2.2 above) which give an unequivocal warning about the use of imported and unlicensed nutritional supplements and their possible mislabelling.

Under these circumstances it is certainly not a valid excuse for an athlete to contend that he/she – personally – was not aware of these warnings. In fact, athletes are presumed to have knowledge of information which is in the public domain. In this context, the Panel notes that there is CAS case law to the effect that athletes are themselves solely (sic) responsible for, *inter alia*, the medication they take and that even a medical prescription from a doctor is no excuse for the athlete (CAS 92, 73, N v/ FEI, CAS Digest, p. 153,158). Furthermore, an athlete cannot exculpate himself/herself by simply stating that the container of the particular product taken by him/her did not specify that it contained a prohibited substance. It is obvious that the sale of nutritional supplements, many of which are available over the internet and thus sold without an effective governmental control, would go down dramatically if they properly declared that they contain (or could contain) substances prohibited under the rules governing certain sports.

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Therefore, to allow athletes the excuse that a nutritional supplement was mislabelled would provide an additional incentive for the producers to continue that practice. In summary, therefore, it is no excuse for an athlete found with a prohibited substance in his/her body that he/she checked the label on the product he took and that the label did not specify that the product contained a prohibited substance.”

5.22. For the reasons set out above the Panel finds that the Appellant was in breach of the AIBA Doping Regulations, and the Appellant’s appeal will, therefore, be dismissed.

6. The Sanction Issue

- 6.1. As has been stated in Paragraph 2.10 above, USADA seeks to cross-appeal from the sanction imposed by the American Arbitration Association Panel. There are three issues which must be considered: first, whether it is necessary for USADA to appeal in order for the Panel to consider the issue of sanction; secondly, if it is necessary for USADA to appeal, whether there can be such an appeal; and, thirdly, whether the Panel will interfere with the sanction imposed by the American Arbitration Association Panel.
- 6.2. The appeal is a hearing de novo under art. R57 of the Code of Sports-related Arbitration. As was stated in Jovanovic in relation to that article, a Panel has power to vary a sentence in either direction. Accordingly, it is the Panel’s view that it is not necessary for USADA to appeal in order for the Panel to consider the issue of sanction, and that on an appeal it is open to the Panel to consider sanction as well as liability. The live issue, therefore, is whether, on the facts of the present case, the Panel will or should interfere with the sanction imposed by the AAA Panel.
- 6.3. Article XXVIII C 2 of the AIBA Articles of Association and Rules for International Competitions and Tournaments provides that a boxer who has been found guilty of doping “may be punished by suspension from any competition for a period up to two years....”. It is submitted on behalf of the Appellant that that Article gave the AAA Panel a discretion on sanction. However, it is to be noted that the AIBA Doping Regulations state that they are “in conformity with those of the IOC and do not differ in any respect.”

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- 6.4. The relevant provisions of OMAC are set out in Paragraph 3.6 above. They provide for a mandatory minimum 2 year suspension from competition for a first breach of OMAC. Thus, the real issue for the Panel to decide is whether "may" in the AIBA Doping Regulations is to be construed as giving a discretion to the person imposing the sanction, or whether the mandatory minimum suspension must be imposed.
- 6.5. In the Panel's view, the AIBA Doping Regulations do give a discretion to the person imposing the sanction. They provide for "suspension from any competition *for a period of up to two years*" (emphasis added). However, the provisions of OMAC give no discretion on sanction save in "specific, exceptional circumstances". How is this inconsistency to be resolved? The Panel has no doubt that it can only be resolved in the present case in favour of the Appellant. For the future the AIBA may wish to remove the inconsistency by re-drafting the relevant rule so as to ensure consistency with OMAC.
- 6.6. However, as the hearing by the Panel is de novo, the Panel must consider what is the appropriate suspension on the facts of the present case.
- 6.7. The Panel has considered this issue very carefully. On the facts of this case, although the Panel has considerable misgivings about the AAA's reduction of the sanction below the mandatory minimum, as well as about the condition imposed as a purported justification for that reduction and the jurisdiction to impose such a condition, it has concluded, with considerable reluctance, that, on this occasion, it should not interfere with the AAA's decision.
- 6.8. The Panel would suggest that the time has come in the campaign against doping for USADA, the IFs and the IOC to make it clear to athletes, if it has not been clear since Jovanovic, that on appeal there is the possibility that a sentence will be increased. Whether it is necessary for IFs to have a specific rule to that effect, as does the UCI, or whether USADA and the IOC need to change, respectively their Protocol or the Olympic Charter, is a matter for those bodies.

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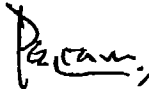
DECISION

The Court of Arbitration for Sport rules:

1. The appeal filed by Joseph Pastorello on the 7th February 2002 is dismissed.
2. The decision of the AAA Panel dated the 18th January 2002 is affirmed.
3. The award is pronounced without costs, except for the court office fee of CHF 500.--
(five hundred Swiss Francs) paid by the Appellant, which is retained by the CAS.
4. Each party shall bear its own costs.

Lausanne, 27 June 2002

THE COURT OF ARBITRATION FOR SPORT



Peter Leaver QC

President of the Panel