Arbitration CAS 2003/A/452 International Association of Athletics Federations (IAAF) v/ Fédération Royale Marocaine d'Athlétisme (MAR) and B., award of 19 November 2003

Panel: David W. Rivkin, President (USA); Richard McLaren (Canada); Juan Vives R. De Hinojosa (Spain)

Athletics
Doping (r-EPO)
Reliability of the testing method
Accreditation of the testing laboratory

1. **The direct urine test used by the laboratory is a valid and reliable test for the detection of r-EPO in urine (the respondents have failed to cast doubt on the evidence brought forth by the IAAF that 80% is a reasonable cut-off point that largely eliminates the risk of false positives in urinary r-EPO test); this direct urine test has sufficient international acceptance for the purpose of detecting r-EPO in the urine of athletes.**

2. **The laboratory's lack of specific accreditation to conduct r-EPO testing is not fatal to the legal validity of its r-EPO tests. However, the lack of specific accreditation shifts the burden to the federation to show that the laboratory conducted its testing in accordance with the scientific community's practices and procedures, and that it satisfied itself as to the validity of the method before using it. Such a burden-shifting rule provides the necessary balance between the needs of IOC laboratories to implement new, reliable testing methods as quickly as possible, on the one hand, and the interests of athletes and the sporting community in ensuring trustworthy test results, on the other**.

In mid-August, 2002, B. was in Zurich, Switzerland, to compete in the Weltklasse meeting, an IAAF Grand Prix event. Prior to B.'s participation in the competition, he was selected by an International Doping Control Officer to provide out-of-competition blood and urine samples. Early in the morning of August 15, 2002, the doping officer contacted B. at B.'s hotel, and that morning B. provided both blood and urine samples to IAAF doping control officials. The blood sample was numbered 004116. The urine sample was divided into two parts, numbered A071981 (the "A" sample) and B071981 (the "B" sample). The test results of these samples are the primary subject of this arbitration.

Later on the same day, August 15, B.'s blood sample was screened in the mobile, on-site testing unit at the Weltklasse meeting. Three parameters were used to test the blood: hemoglobin

(g/dl), hematocrite (%), and reticulocytes (%). The IAAF has established cutoff levels of 17.5 g/dl hemoglobin, 50% hematocrite, and 2% reticulocytes. If an athlete's blood exceeds the cutoff level for one of these parameters, the IAAF considers the test suggestive of the presence of r-EPO, and the athlete's urine will be tested to confirm or deny the presence of r-EPO. B.'s blood exceeded the cutoff levels for two of the three parameters, producing results of 54% hematocrite and 18.1 g/dl hemoglobin.

On August 16, 2002, after B.'s blood test, but before the tests of urine samples "A" and "B", B. competed in the 3000 meter steeplechase at the Weltklasse meeting. He finished in a world record time of 7:53.17, which beat his own world record by just over two seconds.

Under IAAF rules, any athlete setting a new world record must submit to doping control and provide a urine sample. Therefore, after the race on August 16, 2002, B. provided a new urine sample, which was divided into two parts and numbered A186847 ("August 16 A sample") and B186847 ("August 16 B sample"). The "August 16 A sample" was not tested for r-EPO.

The August 16 urine sample is not the primary subject of this arbitration. However, the IAAF offers the results of an analysis of the "August 16 B sample" as evidence corroborating test results from the August 15 blood and urine samples.

The August 15 urine samples were sent to the Laboratoire Suisse d'Analyse du Dopage ("LAD") in Lausanne, Switzerland. LAD is accredited by the IOC. The samples arrived at the laboratory on August 19, 2002. No chain-of-custody issues have been raised in this case.

On August 27, 2002, LAD completed its analysis of sample "A". LAD found that sample "A" contained r-EPO with a percentage of 91%.

On August 28, 2002, MAR sent a fax to the IAAF stating that B. was very surprised and could not understand the test results. The fax also requested analysis of the reserve sample "B".

The IAAF contends that, on August 28, 2002, B. agreed to be voluntarily suspended by the IAAF. B. claims, on the other hand, that the IAAF unilaterally decided to suspend him on that day. Regardless, both parties agree that B.'s provisional suspension commenced August 28, 2002, and the parties furthermore agree that the effective start date of any suspension imposed as a result of this arbitration shall be August 28, 2002, so that B. would receive credit for suspension time already served.

At B.'s request, the IAAF delayed the commencement date for analysis of sample "B" from September 3, 2002 to September 10, 2002, so that B., his representative, and a representative of MAR could be present for the commencement of the analysis.

On September 12, 2002, LAD completed analysis of sample "B" and found it to contain r-EPO with a percentage of 100%. LAD issued the analytical report for the "B" sample that same day and informed the IAAF of the result.

At some point in late August or early September, after the (precompetition) "A" sample tested positive for r-EPO, the IAAF decided additionally to test the (post-competition) "August 16 B sample" for corroborative purposes.

On September 11, 2002, LAD commenced analysis of the "August 16 B sample". LAD found the "August 16 B sample" to contain r-EPO with a percentage of 100%. LAD issued a report on the analytical results of the "August 16 B sample" on September 18, 2002 and reported the findings to the IAAF.

On January 30, 2003, MAR informed the IAAF that MAR's Disciplinary Commission had been unable to reach a decision regarding B. at its January 24 meeting. On February 4, 2003, IAAF responded that, pursuant to IAAF rules, MAR was required to come to a final decision as to B.'s guilt and to impose appropriate sanctions.

On February 6, 2003, the MAR Disciplinary Commission found B. not guilty of a Doping Offense. The MAR provided the following reasons for the decision to the IAAF in a fax dated February 11, 2003:

i. The athlete was not notified of his right to be accompanied by a representative when he provided a urine and blood sample on 15 August 2002 in breach of paragraph 2.9 of the IAAF's Procedural Guidelines;

ii. The "B" sample which was provided on 16 August 2002 was analyzed even though the "A" sample result had never been communicated to the athlete;

iii. The MAR representative Professor Stambouli was denied the opportunity to attend the analysis of the 15 August "B" sample (numbered B071981 in breach of IAAF Procedural Guidelines;

iv. No results had been provided concerning the athlete's blood sample;

v. The r-EPO method of testing has not been recognized scientifically or validated by the international scientific community;

vi. The Lausanne laboratory does not have specific ISO accreditation to conduct r-EPO testing; and

vii. The athlete categorically denies administering r-EPO.

The IAAF filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") on April 11, 2003. The IAAF contested every one of the seven reasons given by MAR for exonerating B. The IAAF named both B. and MAR as respondents. The IAAF asks the Panel to find that B. is guilty of a Doping Offense as defined in IAAF Rules, and to find that he should be declared ineligible to compete for two years pursuant to IAAF Rule 60.2 (a)(i), with credit received for suspension time already served.

This Panel held a hearing in Lausanne on October 2 and 3, 2003.

LAW

1. This Court has jurisdiction over the dispute between the IAAF and B. under IAAF Rule 21.3 (ii), which provides that a dispute may be submitted to CAS by way of an appeal:

> [w]here a member has held a hearing under Rule 59.3 and the IAAF believes that, in the conduct or conclusions of such hearing, the member has misdirected itself, or otherwise reached an erroneous conclusion.

A hearing under IAAF Rule 59.3, as described in IAAF Rule 59.6, involves a determination by an IAAF member organization, such as MAR, as to whether an athlete has committed a doping offense "beyond reasonable doubt." MAR conducted such a hearing on February 6, 2003, the findings of which were reflected in a fax to the IAAF on February 11, 2003. Because the IAAF is now contesting the result from MAR's Rule 59.3 hearing, this court has jurisdiction over these proceedings.

2. While MAR originally contested jurisdiction, at the hearing it withdrew that objection and stated that it submitted to CAS's jurisdiction for this dispute and would comply with its decision. *See* IAAF Rule 21.10 ("The decision of CAS shall be final and binding on all parties and on all Members of the IAAF, and no right of appeal will lie from the CAS decision").

3. In a case referred to CAS under IAAF Rule 21, "the CAS Panel shall be bound to apply IAAF Rules and Regulations." (IAAF Rule 21.8). Furthermore, "[a]ll appeals before CAS ... shall be bound by IAAF... Procedural Guidelines for Doping Control...." (IAAF Rule 21.9).

4. All appeals referred to CAS under IAAF rules "shall take the form of a re-hearing de novo of the issues raised by the case...." (IAAF Rule 21.9). This wording is consistent with Art. R57 of the Code of Sports-related Arbitration.

5. In any doping case referred to CAS under IAAF rules, "the IAAF shall have the burden of proving, beyond reasonable doubt, that a doping offense has been committed." (IAAF Rule 21.9).

6. IAAF Rule 60.1 (i) establishes a strict liability standard for doping by stating that "the presence in an athlete's body tissues or fluids of a prohibited substance" constitutes a doping offense (a "Doping Offense").

7. Therefore, to establish B.'s liability for doping under IAAF Rules, the IAAF must prove beyond reasonable doubt that a prohibited substance was present in his body tissues or fluids. This Panel is required to examine anew the issues raised by the case and to issue an award consistent with IAAF Rules and Regulations and IAAF Procedural Guidelines for Doping Control.

8. IAAF contends that B.'s urine contained the banned substance recombinant erythropoietin (r-EPO). In support of this contention, the IAAF offers the results of the blood and urine tests conducted by LAD on the samples taken at the Weltklasse meeting.

9. MAR initially proffered to the IAAF seven different reasons to justify B.'s exoneration, including various procedural issues, challenges to the testing methods and laboratory, and the athlete's outright denial that he engaged in blood doping. In its Statement of Appeal, the IAAF offered evidence to defeat each of the procedural claims, and this evidence stands uncontroverted by the Answer. Because Respondents have abandoned these procedural claims, and because B.'s personal denial has little probative value in a strict liability case such as this one, the only issues remaining to be addressed are B.'s challenges to the testing methods and testing laboratory, respectively.

10. Respondents contend that the evidence depended upon by the IAAF to establish the presence of r-EPO is unreliable for two reasons: First, B. argues that the methods used by LAD to detect r-EPO have certain weaknesses and are not internationally recognized or sufficiently validated according to European Standard EN ISO/IEC 17025, "General Requirements for the Competence of Testing and Calibration Laboratories" (hereinafter "ISO Standard 17025") and the "Harmonization of Methods and Measurements in the Fight Against Doping" (HARDOP) project final report. Second, Respondents argue that the test results lacked reliability because LAD lacks a specific ISO accreditation to conduct r-EPO testing. In addition, at the hearing MAR urged that the violation of its right to have an expert observe the sample testing should eliminate or reduce any liability for B. After providing some background information on EPO and the testing methods used, the Panel addresses each of these contentions in turn.

11. EPO is a hormone naturally produced by the human body, primarily by the kidney. Aurelie Gaudard et al., *Erythropoietins and Doping: Uses, New Perspectives and Detection Methods. A Review,* Annales de Toxicologie Analytique, vol. XV no. 1, 2003, at 1 (English translation) (hereinafter Gaudard et al.). The naturally produced version of this hormone is sometimes referred to as endogenous EPO or urinary erythropoietin (u-EPO).

12. In both its synthetic and natural forms, EPO stimulates the production of red blood corpuscles, thereby increasing oxygen transport and aerobic power. Francoise Lasne, et al., *Detection of Isoelectric Profiles of Erythropoietin in Urine: Differentiation of Natural and Administered Recombinant Hormones*, Analytical Biochemistry 311, 2002, at 119; Gaudard et al., at 3; Berglund B. Ekblom, *Effect of Erythropoietin Administration on Maximal Aerobic Power*, Scand.

J. Med. Sci. Sports, 1991, at 88. Increased aerobic power leads to greater performance for endurance athletes.

13. r-EPO is a synthetic version of the erythropoietin hormone. There are actually several different recombinant forms of EPO, including, in the terms used by Gaudard et al., "alpha rHuEpo," "beta rHuEpo," and "omega rHuEpo." Gaudard et al. 2-3. For ease of reference, we refer to all such recombinant forms as "r-EPO."All synthetic forms of EPO are substances prohibited by both the IAAF and the International Olympic Committee. IAAF Procedural Guidelines for Doping Control, Schedule I, Part I (d) (2002 edition); Olympic Movement Anti-Doping Code, Appendix A, Section I (E)(6) (2002 edition).

14. Therefore, the confirmed presence of r-EPO in the urine of an athlete constitutes a Doping Offense under the IAAF Rules. *See* IAAF Rule 55.2(i) ("[The offense of doping takes place when] a prohibited substance is present within an athlete's body tissues or fluids").

15. It should be noted that r-EPO is not normally produced by the human body, and its presence in the body of an athlete is therefore indicative of the intentional administration of an external substance. *See* Francoise Lasne et al., *Detection of Isoelectric Profiles of Erythropoietin in Urine: Differentiation of Natural and Administered Recombinant Hormones*, Analytical Biochemistry 311, 2002, at 120 (stating that endogenous EPO is synthesized in the human kidney, whereas recombinant EPO is synthesized in Chinese hamster ovary cells).

16. The blood test used to screen B. on August 15, 2002, is often referred to as an "indirect blood test," because the results are not believed by the scientific community to prove directly the presence or absence of r-EPO. *See* Kare I. Birkeland et al., *Effect of rhEPO Administration on Serum Levels of sTfR And Cycling Performance,* Medicine & Science in Sports & Exercise, 2000, at 1238 (calling proof of r-EPO through blood parameters "indirect"). Dr. Hemmersbach (in his testimony) and Dr. Stambouli (in his report) agreed that they would not base a judgment solely on the blood test.

17. The blood test is merely a screen to send the urine sample to the lab for a specific r-EPO test, which is expensive and only done when it is possible that there might be cause to check further. Because the IAAF does not rely heavily on the results of the blood test to meet its burden of proof in this case, we do not discuss the indirect blood test in depth. We do, however, note in passing that the same type of indirect blood test successfully flagged athletes whose urine tests later confirmed the presence of synthetic EPO at the 2002 Olympic Winter Games. *See*, for example, *L. v. IOC,* CAS 2002/A/370; *D. v. IOC,* CAS 2002/A/371; *M. v. IOC*, CAS 2002/A/374.

18. B.'s blood results of 54% hematocrite and 18.1 g/dl hemoglobin are, in any event, consistent with blood parameters observed in subjects who have been administered with r-EPO, and inconsistent with blood parameters of subjects who have not been administered

with r-EPO. *See* Kare I. Birkeland et al., *Effect of rhEPO Administration on Serum Levels of sTfR And Cycling Performance,* Medicine & Science in Sports & Exercise, 2000, at 1238.

19. The urine test for r-EPO used in this case relies upon the fact that endogenous EPO is glycosylated, meaning that, at the molecular level, it contains a certain kind of terminal sugar molecule. Francoise Lasne et al., *Detection of Isoelectric Profiles of Erythropoietin in Urine: Differentiation of Natural and Administered Recombinant Hormones*, Analytical Biochemistry 311, 2002, at 119. r-EPO, on the other hand, contains different carbohydrate molecules than endogenous EPO.

20. As a result, and as experts put forward by both parties acknowledge, EPO and r-EPO have different electrical charges. This means that, when properly preserved and separated out from urine, EPO and r-EPO will respond differently when placed in an electrical field.

21. Because r-EPO has predominantly positive charges, it will move to the more basic area of a pH field, while endogenous EPO, having a majority of negative charges, will move predominantly, but not exclusively, to the acidic area of the pH field.

22. To test a urine sample for r-EPO, a multi-stage laboratory process is conducted in which the EPO hormones from the sample are preserved, concentrated, and applied to a gel. The gel operates as an electric field once cathodes are attached. Control samples of urine known to contain 100% r-EPO and 0% r-EPO are applied at the same time to the same gel, but on different vertical tracks between the two cathodes.

23. Through a sequence of procedures, the resulting distribution of the EPO hormones throughout the electric field for each individual sample applied to the gel is specially photographed and developed as a computer image. The distribution is then measured scientifically. The end result looks something like a series of parallel ladders, or parallel stacks of innertubes. The intricacies of this laboratory process have also been described by panels from this court in *L. v. IOC,* CAS 2002/A/370 at pp. 17-19, and *D. v. IOC,* CAS 2002/A/371 at pp. 17-19.

24. The final "percentage r-EPO" arrived upon at the end of the direct urine test is determined as follows: one of the 100% r-EPO control samples is used to establish a horizontal dividing line across the gel. This line is drawn at the bottom of the most acidic rung of the 100% r-EPO sample, so that all the rungs of the 100% r-EPO control sample are above the horizontal line, in the basic area of the gel. This line is then extended across the entire gel so that it runs perpendicular across the EPO ladder of every other sample applied to the gel.

25. The EPO ladder of the athlete urine sample in question is then examined relative to the horizontal baseline. A machine is used to assess the total surface area of the EPO rungs appearing on the athlete's sample. The machine then measures what percentage of the surface area of these rungs appears above the horizontal baseline in the basic area of the

gel. This percentage of EPO-hormone-rung surface area appearing above the horizontal baseline is the "percentage r-EPO" number that will ultimately be reported by a laboratory to the IAAF or IOC. Dr. Saugy acknowledges that there can be a "slight overlap" between endogenous EPO and r-EPO.

26. Using this technique, LAD found that B.'s sample "A" contained r-EPO with a percentage of 91%, and that the "B" sample contained 100% r-EPO, as did the "August 16 B" sample.

27. The IAAF has established a reading of 80% as the cut off for positive r-EPO tests. A study conducted by the Paris Laboratoire National de Depistage du Dopage ("LNDD"), concluded that the risk of falsely identifying a sample as containing r-EPO when it returns a reading of 80% is 1 in 3161, or .00032%. The same study concluded that the risk of false positives for readings of 90% or higher, as we have in this case, is 1 in 278,898, or .0000036%.

28. B., through Professor Stambouli, has attempted to cast doubt on the positive results of his test by arguing that the percentage of basic isoforms in endogenously occurring EPO may be much higher than previously determined. He also argues that the 9% difference between his "A" and "B" samples indicates methodological weakness in the test. Finally, B. argues that the r-EPO test has not been internationally accepted or validated by the scientific community, and that it does not fulfill the requirements of ISO Standard 17025. We reject each of these contentions and find the test to be reliable and internationally accepted for the purpose it serves in this case.

29. To mount the first challenge, that endogenous EPO in the general population has far more basic isoforms than accounted for in the 80% baseline established by the IAAF, Professor Stambouli has apparently misused statistics produced by an inter-laboratory study attached to his statement.

30. Respondents suggest that the inter-laboratory study reflects a finding that the average percentage of basic isoforms in endogenous EPO in the general population is approximately 73.4%. Professor Stambouli uses this number to call into question a finding by the Paris laboratory, in a separate study involving 264 subjects, that the average percentage of basic EPO isoforms in the general population is 27.34%. The stark difference, Professor Stambouli argues, suggests a much higher risk of false positives in the EPO test than originally thought.

31. However, the inter-laboratory study cited to by Professor Stambouli clearly states that the "blank urine" used in that study *was all from a single urine pool, and did not in any way represent an average survey of the general population.* All of the blank urine in the inter-laboratory study had to be the same, or else the inter-laboratory comparison of results would have been useless.

32. Furthermore, the inter-laboratory study also clearly states that the blank urine used was intentionally chosen *because it contained an abnormally high percentage of basic isoforms in the first place,* thus allowing the laboratories to test their methodology under the most difficult conditions.

33. In light of this, Respondents and Professor Stambouli have failed to cast doubt on the evidence brought forth by the IAAF that 80% is a reasonable cut-off point that largely eliminates the risk of false positives in urinary r-EPO tests.

34. B. also argues that the 9% difference between his two August 15 samples demonstrates the unreliability of the direct urine test. In light of the foregoing discussion, this fact carries little evidentiary weight. Even a 9% departure downward from the lower of B.'s two readings (91%) would still place him within the punishable range under IAAF guidelines (82%).

35. Nevertheless, Respondents argue that the application of a greater amount of urine retentate to the gel would have led to the visualization of a greater number of acidic bands and thus would have lowered r-EPO percentage reported from his urine. Respondents suggest that B.'s samples had concentration levels below recommended standards. This argument is also without merit. As the above description of the r-EPO test indicates, and as the witness statement of B.'s own expert implicitly acknowledges, the r-EPO test is emphatically not a quantitative test dependent upon the volume of urine retentate applied to a gel, but rather a qualitative test in which the relative number of acidic and basic EPO bands from a sample are compared.

36. Furthermore, the earlier discussion of the r-EPO testing method may easily explain the discrepancy between the two samples. Because the two samples were tested on different gels at different times, different 100% r-EPO control samples were used to establish the horizontal baseline against which B.'s EPO ladder was compared. A slight difference in the establishment of the horizontal baseline may have led to the discrepancy. So too may have the relatively faded appearance of B.'s EPO ladder, caused by the diluted nature of B.'s urine, have caused the difference; the IAAF plausibly argues that the variation between the "A" and "B" is due to a slight difference in the discernible shape of the most acidic band on the respective samples.

37. The Panel holds that the discrepancy between the two samples is irrelevant in this case, because the r-EPO percentages for both of B.'s August 15 samples fell far within the forbidden range. B. again has failed to cast doubt on the evidence brought forth by IAAF indicating his guilt.

38. B. also argues that the r-EPO test has not been internationally accepted or validated by the scientific community. This argument has been rejected by five different panels of CAS: *M. v. IOC,* CAS 2002/A/374; *D. v. IOC,* CAS 2002/A/371; *L. v. IOC,* CAS 2002/A/370; *M.*

v. Swiss Cycling, CAS 2001/A/345; and *UCI v. H.,* CAS 2001/A/343. Two years ago in 2001, in *M. v. Swiss Cycling*, the CAS Panel held that:

> ... it cannot be said that this method is still at a trial stage. There is already an extensive laboratory guide in place which fully lists the steps to be performed. Moreover, according to the testimony of the witnesses, validation studies have taken place for proving the presence of r-EPO, the results of which are to be considered a success.
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> CAS 2001/A/345 at p. 17.

39. It should also be noted that B.'s argument that the testing method lacks validation is thoroughly intertwined with his already-rejected argument: that further testing is needed to establish a more reliable cut-off level so as to eliminate false positive tests. B.'s own expert acknowledges the conceptual scientific basis for the r-EPO test and challenges only the "interpretation" of the results.

40. However, the 2001 inter-laboratory study between IOC accredited laboratories in Paris, Barcelona, Sydney, Oslo, and Lausanne, provides considerable support for LAD's interpretation of the test results from B.'s urine. In the study, each laboratory determined that the risk of false positives would be virtually nonexistent at a cut off somewhere in the area of 85%**.**

41. This Panel takes notice that the notes from the EPO Detection Meeting in Lausanne, Switzerland on November 7, 2001 do reflect concerns by some doctors that courts and lawyers would not find the r-EPO tests legally defensible.

42. However, these concerns must be read in the context of the ultimate decision by the group of doctors at that meeting to use the blood and urine tests discussed to test for r-EPO at the Olympic Winter Games in Salt Lake City. Subsequent explanation by doctors to arbitration panels such as this one have proven sufficient to establish the reliability and validity of the direct urine test for r-EPO, and B. has pointed us to no studies, experiments, or publications that seriously call into question the validity of the testing method used in this case. The Panel therefore finds no reason to doubt that the r-EPO test used to test B.'s urine has gained sufficient international acceptance for the purpose of detecting r-EPO in athletes' urine.

43. Finally, Respondents argue that the r-EPO testing method used to analyze his urine has not been validated according to ISO Standard 17025 and does not conform to the requirements of the "Harmonization of Methods and Measurements in the Fight against doping" (HARDOP) project final report.

44. The IAAF counters that ISO Standard 17025 addresses itself to the accreditation of laboratories, and not of testing methods themselves, so that the r-EPO test itself can never be "validated" under the Standard. With respect to the HARDOP project, the IAAF argues that the project report is a future-oriented, aspirational document having no legal or

regulatory status, and that the report is instead intended to suggest the direction that future legal and regulatory doping regimes might take.

45. ISO Standard 17025 is relevant to this case because IAAF Procedural Guidelines for Doping Control allow only laboratories accredited by the IOC and approved by the IAAF to test samples (IAAF Procedural Guidelines for Doping Control 2.41, 2002 Edition). The IOC in turn strongly encourages laboratories "to maintain ISO Guide 17025 accreditation," and includes such ISO accreditation as one of the factors taken into consideration when laboratories are considered for IOC accreditation (Olympic Movement Anti-Doping Code, Appendix B at 6.6, 6.8, 2002 Edition).

46. The HARDOP project report, on the other hand, has clearly not been drafted as a set of rules and laws, but rather as a set of suggestions for future actions. For example, the report recommends that doping test results be obtained by means of a "validated method," and that the standard used to determine such validation should be "made available to the judicial agents" who will ultimately pass upon the validity of the method (Harmonization of Methods in Measurements in the Fight against Doping, Project Final Report at 17, 1999). The same section furthermore suggests that "minimum analytical performance criteria [for testing methods] *should be* established" [*Id.* (emphasis added)]. These passages clearly indicate the absence of fixed and specific analytical performance criteria for testing methods, and acknowledge that no such criteria have been "made available" to judicial agents through such legal and regulatory documents as the Olympic Movement Anti-Doping Code. It would be to turn logic on its head to suggest that these passages somehow create the very analytical performance criteria that they are instead suggesting be created.

47. The Panel thus finds that only ISO Standard 17025, and not the HARDOP project report, is applicable in this case.

48. The IAAF correctly argues that ISO Standard 17025 is "concerned with the competence of laboratories in conducting particular methods, rather than with validation of the methods themselves." The Standard offers no set of rules or conditions under which a testing method can be formally validated, instead providing for the possibility that laboratories will use both standard methods and non-standard methods, which include laboratory-developed methods and "methods adopted by the laboratory" if "appropriate for the intended use" (ISO Standard 17025, 5.4.2 - 5.4.4).

49. Respondent's challenge under ISO Standard 17025 can therefore only be properly considered as a challenge to LAD's lack of specific accreditation to conduct the r-EPO test, rather than a challenge to the test in and of itself.

50. Respondents challenge the evidence presented by the IAAF on the basis that, at the time it performed the test, LAD was not specifically accredited by ISO to test for r-EPO.

51. The IAAF contends that IOC-accredited laboratories, by virtue of their accreditation, are accredited to test urine samples for all substances prohibited under the IOC list. The IAAF further contends that the accreditation process lacks the degree of formality invested in it by B. and MAR, and that IOC laboratories may commence using techniques without ISO accreditation, waiting until the next accreditation period to apply for specific accreditation.

52. IAAF Procedural Guidelines for Doping Control allow only laboratories accredited by the IOC and approved by the IAAF to test samples (IAAF Procedural Guidelines for Doping Control 2.41, 2002 Edition).

53. The IOC accreditation of laboratories is governed by the Olympic Movement Anti-Doping Code, Chapter V and Appendix B (2002 edition). Although both sections address accreditation of laboratories, neither contains language requiring laboratories to acquire specific accreditation for a given method before using it. Thus, the IAAF requirement that a laboratory be IOC-accredited does not, in turn, create a requirement that a laboratory, to perform testing for the IAAF, be specifically ISO-accredited for the testing method employed.

54. IAAF Procedural Guidelines for Doping Control, Section 2.47, furthermore states:

> In analyzing samples to determine whether or not a prohibited substance is present ... the laboratory involved may use any method or protocol which it believes to be appropriate and reliable.

55. Dr. Saugy's testimony reflects how the sections of the Olympic Movement Anti-Doping Code on laboratory accreditation have been interpreted and implemented in practice: laboratories satisfy themselves as to the validity of a method, and then commence using it; thereafter, they demonstrate their proficiency to accrediting bodies such as the ISO to obtain an official, specific accreditation. The Panel sees no reason, based in the language of the Olympic Movement Anti-Doping Code, the IAAF Procedural Guidelines for Doping Control, or the IAAF Rules, to curtail the customary practice as illegal, or to find that results produced by laboratories in the interim before specific accreditation are automatically invalid.

56. Thus, LAD's lack of specific accreditation to conduct r-EPO testing is not fatal to the legal validity of its r-EPO tests. However, the lack of specific accreditation shifts the burden to the IAAF to show that LAD conducted its testing in accordance with the scientific community's practices and procedures, and that it satisfied itself as to the validity of the method before using it. See *M. v. IOC,* CAS 2002/A/374, at § 7.1.8. The Panel believes such a burden-shifting rule provides the necessary balance between the needs of IOC laboratories to implement new, reliable testing methods as quickly as possible, on the one hand, and the interests of athletes and the sporting community in ensuring trustworthy test results, on the other.

57. Dr. Martial Saugy's testimony regarding the procedure followed for r-EPO tests at LAD demonstrates that procedure to be consistent with the general laboratory procedures used and found to be valid in five different CAS arbitrations (see § 38 above). The procedure described by Dr. Saugy is also generally consistent with the procedure as it was first presented by Francoise Lasne et al., in *Detection of Isoelectric Profiles of Erythropoietin in Urine: Differentiation of Natural and Administered Recombinant Hormones*, Analytical Biochemistry 311, 2002, at 119. It is also noteworthy that LAD was among the participating laboratories in the "Project for Inter-Laboratory Comparison of the Method for the Detection of rhEPO In Human Urine.…," which helped to develop the current protocol for r-EPO testing. The fact that different laboratories use slightly different criteria, and could even hypothetically obtain different results in similar circumstances, does not undermine their essential agreement on the validity of the testing. The minimum percentage used by laboratories to find an r-EPO violation ranges from 80% to 86%, all well below even the lower of B.'s samples.

58. Based upon the specific testimony of Dr. Saugy and Dr. Hemmersbach, and the status of LAD as one of the pioneering laboratories in the development of standardized testing for r-EPO in urine, the Panel finds that LAD conducted its testing in accordance with the scientific community's practices and procedures. The Panel also finds that LAD took sufficient steps to satisfy itself as to the validity of the r-EPO test under ISO Standard 17025. The results of LAD's tests are therefore accorded credibility as reliable evidence in this case.

59. The Panel therefore concludes, on the basis of the test results from the August 15 "A" and "B" samples, that the IAAF has shown beyond reasonable doubt that r-EPO was present in B.'s urine on August 15, 2002.

60. As for the reduction in suspension time requested by B., IAAF Rule 60.2 (a)(i) is unambiguous and direct on this point; it requires a minimum of two years suspension for any athlete committing a Doping Offense. B. has not presented any mitigating factors that would incline the Panel to support a reduction in suspension time in this case.

61. The fact that MAR did not conduct its disciplinary hearing for many months, in violation of IAAF Rules, cannot be a basis for reducing suspension time. To do so would only encourage national federations, who have an interest in the ability of their athletes to complete, to prolong their procedures in order to gain some advantage.

62. The exclusion of MAR's representative from the testing conducted by the LAD was, in the view of the Panel, a violation of the IAAF's Procedural Guidelines for Doping Control, which states at § 2.56 that: "Should he so wish, the athlete and/or his representative may be present at the analysis. A representative of the athlete's national federation may also be present …". However, the proper forum for dealing with this violation is within the IAAF's own procedures. IAAF Rule 55.11 provides explicitly,

"Departures from the procedures set out in the Procedural Guidelines for Doping Control shall not invalidate the finding that a prohibited substance was present in the sample or that a prohibited technique has been used, unless this departure was such as to cast real doubt on the reliability of such a find." Respondents have presented no evidence to question the reliability of LAD's finding. Indeed, the testing was observed by B.'s own representative, who in testimony before this Panel failed to state that the testing was improper in any way. Therefore, the exclusion of MAR's representative is not a ground either for rejecting the finding of the Doping Offense or for reducing the suspension mandated by the IAAF Rules.

63. Similarly, Respondents argue that the questions about the testing procedures used by LAD, which have been discussed above, should result in a reduction of the suspension if they do not eliminate entirely the finding of the Doping Offense. However, for the reasons set forth above, the Panel finds that there were no improprieties in the testing procedures and that the test results provide conclusive evidence of the Doping Offense.

64. As CAS has ruled in several other cases, the two-year suspension is mandatory for any athlete committing a Doping Offense under the IAAF Rules. See *IAAF v/ Czech Athletic Federation & Z.,* CAS 2002/A/362*,* and *IAAF v/ Confederaçao Brasileira de Atletismo & D.,* CAS 2002/A/383. In the present case, it is not for the Panel to determine whether there are mitigating circumstances that should lead to a reduction of the suspension. Rather, IAAF Rule 60.9 provides a specific procedure for early reinstatement on the basis of exceptional circumstances; according to this rule, a request for early reinstatement may be addressed to the IAAF's Council, which has the jurisdiction to rule on the application, see *L. v/ IAAF*, CAS 2002/A/409. In this case, B. urges that, because of the timing of the beginning of his suspension, the two years will expire the end of the 2004 Olympics. However, that is a consideration, if at all, for the Council rather than this Panel. Moreover, we note that r-EPO is not a substance that can be accidentally introduced into an athlete's body.

65. In summary, the Panel is of the opinion that (i) on August 15, 2002, the prohibited substance r-EPO was present in B.'s urine, (ii) the direct urine test used by LAD in this case, described both above and elsewhere, is a valid and reliable test for the detection of r-EPO in urine, (iii) this direct urine test has sufficient international acceptance for the purpose of detecting r-EPO in the urine of athletes, and (iv) LAD conducted its testing in accordance with the scientific community's practice and procedures for r-EPO testing, and adequately satisfied itself as to the test's validity prior to use.

66. For all these reasons, the Panel finds B. guilty of a Doping Offense under the IAAF Rules. Accordingly, the Panel finds that B. should be declared ineligible for two years, pursuant to IAAF Rule 60.2 (a)(i), with credit for suspension time already served from August 28, 2002, until the date of this Award. B. should therefore be eligible for competition on August 28, 2004.

The Court of Arbitration for Sport:

1. Grants the appeal filed by the IAAF asking the Court to find B. guilty of a Doping Offense under IAAF Rules, and asking the Court to find that B. should be declared ineligible for two years, less the period of suspension served by the athlete.

2. Declares that B. shall be declared ineligible for two years from August 28, 2002.

3. (...).