

JUDICIAL AWARD DELIVERED BY THE FISA DOPING HEARING PANEL

sitting in the following composition

Members:
John Boulton
Tricia Smith
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**In the reopening of the case of
Gabriela Eduarda Cardozo de Almeida Salles (BRA)**

The Facts

An Anti-Doping organisation of Brazil conducted out-of- competition testing in Brazil on 7 June 2012. Two urine samples (the "Samples") were collected from athlete Gabriela Salles (the "Athlete"). The sample collection authority for this testing is entered in ADAMS as the Brazilian Rowing Confederation (BRC).

The samples taken from the Athlete were numbered 2683034 and 2683330. The WADA accredited laboratory in Montreal received the "A" samples on 15 June 2012.

The Laboratory Results in ADAMS entered by the Montreal Laboratory on 25 June 2012 indicate that the samples both showed the presence of hydrochlorothiazide and chlorothiazide which are on the 2012 Prohibited Substances/Methods List of the World Anti-Doping Code. Hydrochlorothiazide and chlorothiazide are diuretics classified in class S5, Diuretics and Masking Agents.

The Brazilian Rowing Confederation confirmed to FISA in a letter dated 1 September 2012 that the Athlete declined to have the B samples analysed. The results management process was conducted following the notification of the Adverse Analytical Finding from the A sample results.

A decision was reached by the Hearing Panel of the Brazilian Rowing Confederation on 8 July 2012. (There was no evidence presented to this Panel that the Athlete had a valid Therapeutic Use Exemption (TUE) for hydrochlorothiazide and chlorothiazide. There was no evidence presented to this Panel that there were departures from the International Standard for Testing (ISL).)

According to article 8.4.7 of the FISA Anti-Doping Bye-Laws, the FISA Doping Hearing Panel reviews national cases when they are final at National level and the FISA Panel has decided to reopen this case. The Brazilian Rowing Confederation provided the following documents to the FISA Hearing Panel: a cover letter, the decision document and the written evidence submitted by the Athlete (both Portuguese and English versions). A section of the written evidence not originally included or translated was later submitted to FISA and titled "Nutrition Report". A later document titled Final Plea was sent to FISA on 11 December 2012. In addition on this date, a

document was submitted and identified as having been written by the pharmaceutical company, the Nobre Pharma De Farmacia De Manipulação e Homeopatia LTDA. Also from the Nobre Pharma De Farmacia De Manipulação e Homeopatia LTDA were three Certificates of Analysis. The last document submitted on this date by the Athlete was submitted as written by the Government of the State of Rio de Janeiro relating to a conciliatory hearing between the Athlete and the Nobre Pharma De Farmacia De Manipulação e Homeopatia LTDA.

Hearing and Decision by the National Federation

The Hearing by the National Federation took place on 8 July 2012. This Hearing Panel was made up of the following members: Dr. Eduardo De Rose, Dra. Sandra Soldan and Dr. Pedro Paulo Soares. The Athlete's lawyer, Wagner Rebello de Oliveira was also present.

The Athlete stated in her first written submission that because the test was conducted on 7 June and that her next planned competition was on 24 June, there would have been no reason to take a masking agent as it was such a long time before the competition. To quote the Athlete "*there was no doping for the competition*".

The written submission also states that the Athlete "*never used substances other than the ones duly authorised by her physician or her nutritionist.*" and that "*...it is very likely that there has been an error of prescription or manipulation.*" The submission refers as an example the Cesar Cielo case. (see below).

The submission goes on to say that the Athlete received the letter from the national federation on 3 July 2012 with the scheduled date of the Hearing set on 8 July 2012. Therefore she had no time to have any supplements analysed to show if they were contaminated.

FISA has received a translated decision document of one page from the National Federation.

The Panel of the BRC considered that the Athlete had committed an anti-doping rule violation due to the presence of prohibited substances in her urine samples.

The Panel stated that the Athlete is a junior rower and that there is "no specific weight for her boat".

In the Decision, the Panel states that these prohibited substances could have been the result of supplement contamination. The Panel also stated that they agreed with the Athlete's arguments that as she was not competing at the time of testing, and it was not just before a planned competition then she would not have used the banned substances as masking agents. Based on these arguments, the sanction was reduced from 2 years to six months.

The decision of the Hearing Panel of the Brazilian Rowing Confederation was to declare the Athlete suspended and ineligible to compete for six months from the date of sample collection, 7 June 2012, and to annul any results achieved from that date.

FISA Hearing

Applicable law

The applicable rules

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test (7 June 2012). These rules are consistent with the World Anti-Doping Code.

The relevant rules

The relevant rules in this case are the FISA Anti-Doping Bye Laws including but not limited to:

- Article 2.1.1 which states it is each Rower's personal duty to ensure no Prohibited Substance enters his or her body;
- Article 10.2 which sets a period of two years' ineligibility for a first violation for the substance here concerned, and which provides that the athlete shall have the opportunity to establish the basis for eliminating or reducing this sanction as provided in Article 10.5;

Article 10.5 which provides for elimination or reduction of the period of ineligibility based on exceptional circumstances: (10.5.1) elimination in the case of "no fault or negligence" and establishing how the prohibited substance entered his or her system; (10.5.2) reduction to no less than one half of the minimum period of ineligibility in the case of "no significant fault or negligence";

Merits

According to FISA Rules and the World Anti-Doping Code, the burden of proof is on the athlete to rebut the presumption of guilt established by the presence of a prohibited substance in her body or fluid.

The Panel of the Brazilian Rowing Confederation was satisfied that a positive test was established by the evidence of the laboratory analysis. In fact the Athlete did not dispute the findings of the test. The sanction for an anti-doping rule violation in this case is a two year period of ineligibility.

The FISA Panel must then decide if the Athlete provided sufficient evidence of exceptional circumstances and no fault or negligence (Article 10.5) or no significant fault or negligence (10.5.2) to reduce the period of ineligibility. Under the Article the Athlete must also explain and give evidence as to how the Prohibited Substance entered her body.

The FISA Doping Hearing Panel was not persuaded by the arguments presented by the Athlete and referred to in the Decision document of the Brazilian Rowing Confederation to reduce the sanction and has decided to reopen the case in accordance with article 8.4.7:

8.4.7 The FISA Doping Hearing Panel, appointed in accordance with paragraph 8.3.2, shall review all National cases when they are final at National level (having exhausted all possible appeals) and will decide within 60 days of receipt of all relevant documents for each case whether to re-open the case or

not. If it decides not to reopen the case, the sanction already imposed at national level is automatically applied at an international level. If the FISA Doping Hearing Panel decides to reopen the case, it will follow the same procedure defined from paragraph 8.3.1 to 8.3.3. (which means seeking the imposition of less or more severe sanctions, the imposition of sanctions where no sanctions have been imposed or seeking removal of sanctions where sanctions have been imposed) in order to ensure that an adequate sanction has been given and that all Rowers in the world are treated consistently and in an equal manner. The FISA Doping Hearing Panel may also intervene in cases involving rowing Rowers that other authorities or organisations were supposed to handle, but did not. If the FISA Doping Hearing Panel decides not to re-open the decision taken at National level, WADA may appeal the National decision to the Court of Arbitration for Sport.

A document entitled "Nutrition Report" was submitted as part of the translation of the Athlete's written submission. This document is an evaluation report by the athlete's nutritionist for the second quarter of 2012. Prescribed supplements are listed as well as ways to improve eating habits. Reported problems to address were listed as *"difficulty to reduce weight, intestinal constipation, water retention and weak and fragile nails"*

The last paragraph of the report states that *"between January and March 2012, despite keeping the weight and the elevated percent of fat, the athlete presented reduction of 1.5kg of fat and an increase of 1.7kg of free fat mass. A new evaluation of body composition will be done in the next trimester..."*

Although the Hearing Panel of the Brazilian Rowing Confederation noted in their decision that the athlete is a junior athlete and that there *"is no specific weight for her boat"* and *"...there was no necessity for body weight control for her sport once she is a Junior..."* the nutrition report suggests that the athlete was given a goal of losing some weight. It is not known if the Athlete was under pressure to lose weight, but her weight was at least being monitored with the aim of weight reduction.

The following statement is taken from the decision document of the Hearing Panel of the BRC: *"The Panel considered appropriate the reduction of the ineligibility period for specific substance in accordance with the Article 10.4 of the same Rules, understanding that the product ingestion may be a result of a supplement contamination prepared in a manipulation pharmacy"*.

With regards to the Athlete's explanation relating to no fault or negligence, or no significant fault or negligence, the Panel finds that the Athlete only speculates on a way that the substance could have entered her body. No evidence was presented which established how the substance hydrochlorothiazide or chlorothiazide came to be in her body. She does not provide in her first written submission or in the Final Plea the name of the supplement which could be at fault and has not shown through analysis that any of the supplements she did take were contaminated or how any particular supplement could have been contaminated at the place of manufacture. The Athlete claimed in her first submission that she did not have time to have any of the supplements analysed because the Hearing of the BRC was set for only five days after the notification of the positive test. The Athlete claimed that she took only supplements *"authorised by her physician or her nutritionist"*.

In the Final Plea submitted on the 11 December 2012, the Athlete claims the manufacturer of the unnamed supplement is responsible for the contamination which would have occurred during the manufacturing process or have been introduced from raw materials. It is claimed by

the Athlete that she requested the manufacturer to investigate through analysis of their product to determine if there was evidence showing that contamination occurred in this way. However the manufacturer after providing three negative certificates of Analysis decided not to proceed any further. The letter submitted by the Athlete from the manufacturer, the Nobre Pharma De Farmacia De Manipulação e Homeopatia LTDA states the following:

“The Appellant at any time flee from the matter (sic), however, there is no possibility of appearance of the substance HYDROCHLOROTHIAZIDE at levels capable of show in doping tests.... The primary route of elimination is renal, being excreted unchanged in the urine, however, in case of cross-contamination, these levels would be minimum and inviolable for the World Anti-Doping Code.”

The Athlete claims that the manufacturer did not want to produce self- incriminating evidence in order to avoid a damages claim according to the law in Brazil. Therefore no evidence was produced by the Athlete to show that the supplement taken was contaminated before ingestion. The response by the Athlete in the Final Plea is the following:

“In this sense, we may reach two conclusions: the first is that, effectively, the substances came from abroad already contaminated, at the moment of fractioning and, in the minimum portion in which the analysis was conducted there was no diuretic, or that someone put the substance in the athlete’s drink and she was a victim of sabotage!”

No independent analysis of the actual tablets or capsules which the Athlete claims to be contaminated was presented by the Athlete in her written submissions. The name of the supplement in question has never been specified nor was there any information about any remaining capsules or tablets remaining in a container which could have been analysed independently.

The case of the swimmer, Cesar Cielo was cited in the written submission to demonstrate contamination of supplements can occur. In the Cielo case, the prohibited substance found was furosemide. However in the Cielo case, the Athlete had the particular supplement he was taking, caffeine capsules, independently analysed which showed that they contained the prohibited substance. He provided evidence from the manufacturer to show that a heart disease medication containing furosemide had been made using the same equipment on the same day.

Athletes are responsible for the medications and substances they take into their bodies. It is not a sufficient explanation to state that it is a probability that she ingested a prohibited substance through a product taken such as a supplement. It is the responsibility of the Athlete to make every effort to ensure that she was not taking a prohibited substance.

In fact, sufficient evidence has not been presented in this regard to support a finding which would allow a reduction in the sanction.

In the written submission of the Athlete, a second argument is raised that because the samples were collected out of competition then there would be no reason to take the prohibited substances as masking agents. The argument raised in the written submission of the Athlete is the following: *“The sample of the athlete was taken on 06/07 and the competition took place on 06/24. Thus it is obvious that there was no doping for the competition and, even if the athlete was using a forbidden substance, she would have stopped its use in view of the fear that it*

would have appear in the competition....Therefore, we wonder: if the athlete was not in competition, why would she ingest a diuretic substance if she did not need to conceal any forbidden drug that stimulates the performance improvement?"

The Hearing Panel of the BRC responds in their decision: "...the Panel understands that there was no intention to improve sports performance, since she was not competing on the test date or close to it, besides, being young athlete not conditioned to a specific weight. The Panel also understands that the athlete was during a training period with no immediate competition scheduled, which prevents the possibility of using the product as a masking agent."

The FISA Panel finds the argument of the Athlete and the finding of the BRC as inherently flawed. It is generally well understood from materials available to the public from WADA and all anti-doping organisations that out of competition testing is just as important if not more than in competition testing. The performance enhancing effects could still be significant for the upcoming competition while the window of detection would have passed by the time of the competition. Therefore it is irrelevant if a prohibited substance including one that could be a masking agent is found in a sample collected out of competition or in competition.

It is important that a national federation provides comprehensive anti-doping education to ensure that athletes know their responsibilities and rights in all circumstances. The athletes must be aware that it is their responsibility to check any substance given to them and be able to make an informed decision about taking a substance or not even if the substance is prescribed by a doctor or other professional.

The FISA Panel finds that the Athlete's explanations relating to no fault or negligence are not sufficient and that the Athlete did not establish the basis for reducing the sanction from two years.

FOR THESE REASONS

The FISA Doping Hearing Panel finds:

1. Gabriela Eduarda Cardozo de Almeida Salles has committed an Anti-Doping Rule Violation under the Anti-Doping By-Laws.
2. Gabriela Eduarda Cardozo de Almeida Salles is suspended and ineligible for two years from national and international competition.
3. The period of ineligibility commences from the date of the original suspension, 7 June 2012.
4. This award is rendered without costs.

Lausanne, February 2013

For the FISA Doping Hearing Panel:

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