



Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
FIBA Internal Regulations governing Anti-Doping
in the matter

Noe Alonzo Chávez
(born 28 December 1983)

hereafter:

(“the Player”)

(Nationality: Mexican)

Whereas, the Player underwent an in-competition doping test on 30 July 2010 in Mayagüez, Puerto Rico in the framework of the basketball tournament of the XXI Central American and Caribbean Games (“CAC Games”);

Whereas, the analysis of the Player's sample (Code no.: 2542117) was conducted at the WADA-accredited laboratory of Laval, Quebec (Canada), which informed the organiser of the CAC Games, ODECABE (Organización Deportiva Centroamericana y Caribeña) on 10 August 2010 that the analysis showed the presence of the prohibited substance methylhexaneamine in the Player's sample;

Whereas, by letter dated 25 August 2010 ODECABE informed FIBA that the Player had waived his right to have the B sample analysed;

Whereas, on 24 September 2010 the Medical Commission of ODECABE organised a hearing in San Juan, Puerto Rico, where the Player was given the opportunity to explain his position regarding the positive finding;

Whereas, ODECABE did not issue a decision following the hearing; instead, on 30 September 2010 the President of the ODECABE Medical Commission Mr. Enrique Amy wrote to FIBA that “this Commission transfer[s] all following investigations to your Federation Antidoping Panel”. In the same letter Mr. Amy simply mentioned that the case “was evaluated by our Commission” on 24 September 2010 without providing further information;

Whereas, on 1 October 2010 the President of the Mexican Basketball Federation Mr. Modesto Robledo (“Mr. Robledo”) informed FIBA that the Player was provisionally suspended already since 9 August 2010 and was still waiting for a decision in his case;

Whereas, by letter dated 12 October 2010 FIBA informed the Player that in accordance with Article 13.7 of the FIBA Internal Regulations governing Anti-Doping, the FIBA Disciplinary Panel would decide whether and to what extent a sanction should be imposed upon the Player for the purposes of FIBA competitions and that said decision should then be applied by all national member federations. In the same letter, the Player was informed about his right to be heard either by telephone conference or in person;

Whereas, on 1 November 2010 the Player was heard via telephone conference by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, member of FIBA's Legal Commission and of Dr. Heinz Günter, President of FIBA's Medical Commission. The Player was accompanied by Mr. Robledo and by the President of his club Dr. Juan Manuel Gonzalez Flores. The following persons were also in attendance: Mr. Alberto Garcia, FIBA Americas Secretary General; Mr. Nestor Rodriguez, FIBA Americas Doping Control Manager; Ms. Cendrine Guillon, FIBA Anti-Doping

Manager; Mr. Amir Ibrahim, FIBA Anti-Doping Assistant; Dr. Dirk-Reiner Martens and Mr. Andreas Zagklis, FIBA Legal Advisors;

Whereas, the Panel decided to accept on file relevant documentation forwarded by FIBA Americas, including statements to the press by Dr. Amy, a report of the ODECABE Medical Commission stating that “in Mr. Noe Alonzo’s case, the possibility of accidental use of methyl-hexanamide through a nutritional supplement was raised”, and a statement of the Player’s club Halcones UV Xalapa;

Whereas, in his written statement and at the hearing the Player:

- did not contest the result of the test;
- stated that he is a member of the Mexican national team and that he was called to participate in a tournament in the Dominican Republic from 5 to 9 July 2010 but he denied the invitation due to serious family problems;
- stated that he accepted the invitation to join the team for the CAC Games only a few days before the start of the competition and that, in compliance with the relevant rules, he went to California on 23 July 2010 and submitted himself to an out-of-competition doping control (“California test”) organised by the United States Anti-Doping Agency;
- submitted that a few days earlier he had started taking the nutritional supplement Jack-3D, which he had purchased from a well-known supplement store named “GNC”, upon advice of the salesman;
- informed the Panel that he declared said supplement in the documentation completed for the purposes of the California test and that the analysis of the sample by the WADA-accredited UCLA laboratory did not reveal the presence of any prohibited substance;
- submitted that he had no idea that a substance contained in the Jack-3D could be prohibited, especially after he successfully passed the California test; this is why he did not declare the supplement on 30 July 2010;
- stated that in Mayagüez the weather was extremely hot and he got sick upon arrival; since he felt weak, he decided to use again the Jack-3D powder in a drink he prepared just before the game of 30 July 2010;

- stated that the Mexican delegation doctor was not with the basketball team all the time and that, since the California test was negative, he did not feel he had to receive medical advice before using Jack-3D;
- argued that he did not know the substance 1,3 Dimethylamylamine, as appears on the Jack-3D bottle, was prohibited;
- argued that he had learned only after the announcement of the results that the banned substance methylhexaneamine was a result of intake of Jack-3D;
- asserted that this was his first anti-doping rule violation;

Now, therefore, the Panel takes the following:

DECISION

A period of twelve (12) months' ineligibility, i.e. from 30 July 2010 to 29 July 2011, is imposed on Mr. Noe Alonso Chávez.

Reasons:

1. According to Article 5 (entitled "Analysis of Samples") of the Doping Control Manual for the CAC Games, following an adverse analytical finding the Medical Commission of ODECABE is responsible to hear the accused athlete and send its recommendation (5.10) to the ODECABE Executive Committee which is responsible to take "the necessary measures" (5.11). The ODECABE shall then inform the athlete's delegation and the competent international federation before the decision is publicly announced.
2. The Panel notes that the above provisions are unclear and that, in any event, were not followed by ODECABE in the case of the Player. In particular, the Panel is unable to understand why ODECABE invited the Player and the Mexican delegation to a hearing in San Juan, Puerto

Rico and then failed to take any decision in this matter. Rather, ODECABE transferred the matter to FIBA without communicating any decision by its Executive Committee or a recommendation by its Medical Commission that heard the Player. In addition, contrary to the requirements of Article 14.4.1 of the FIBA ADR, the Player's name was reported in the press (e.g. in a newspaper article with the Player's picture next to the title "el descrédito") and Dr. Amy appears to have made public statements about the contents of the hearing – that could be read as favourable to the Player, however – while the proceedings were still pending.

3. Furthermore, Article 13.7 of the FIBA Internal Regulations governing Anti-Doping (the "FIBA ADR") reads as follows:

"13.7.3 The Disciplinary Panel may decide whether and to what extent a sanction shall be imposed for the purposes of FIBA Competitions on a Person sanctioned or provisionally suspended by a national member federation. In taking this decision, the Disciplinary Panel shall take into account, where applicable, the reliability of the doping test and of the analysis of the sample and the substance detected shall be taken into account. The implicated Person has the right to be heard. He may be suspended provisionally before the hearing.

[...]

13.7.5 In the event of an anti-doping rule violation within the country of a national member federation, the Disciplinary Panel is authorised to impose a provisional suspension and/or a sanction according to these Regulations if the national member federation fails to do so. The implicated Person has the right to be heard. He may be suspended provisionally before the hearing."

4. The Panel notes that this is a case of international nature, since the Player, who is a Mexican national, was tested positive in an international event: the CAC Games held in Puerto Rico in July 2010. Further, the Player has been provisionally suspended by his national federation and the organiser of the CAC Games, ODECABE, has failed to take a decision within a reasonable time-frame and has simply transferred the file to FIBA.

5. Therefore, the FIBA Disciplinary Panel has jurisdiction to decide this case in accordance with Article 8 of the FIBA ADR.

6. Article 2.1 of the FIBA ADR reads as follows:

“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample.

2.1.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player’s part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]”

7. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA FIBA ADR since methylhexaneamine, a prohibited substance listed in WADA's 2010 Prohibited List (the “2010 Prohibited List”) under letter S.6.1 (Non-Specified Stimulants) was found in his urine sample. This fact remained uncontested.

8. According to Article 10.2 of the FIBA ADR

“The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), [...] shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility.”

9. Furthermore, Article 10.5 of the FIBA ADR provides that if a Player establishes that he bears no fault or negligence (10.5.1) or no significant fault or negligence (10.5.2) the otherwise

applicable period of ineligibility shall be eliminated or, as the case may be, reduced. In the event that the Player has violated Article 2.1 of the FIBA ADR, like in the present case, he must also establish how the Prohibited Substance entered his system. The Panel feels satisfied, also in view of the written statements by the Player's club and the confirmation by Mr. Robledo during the hearing, that the presence of methylhexaneamine in the Player's sample is consistent with the use shortly before the game of the supplement Jack-3D, which contains 1,3 Dimethylamylamine, also known as Geranamine or Methylhexaneamine.

10. In this respect, the Panel is mindful of the principles laid down in Article 2.1.1 of the FIBA ADR and the relevant CAS jurisprudence and underlines that "It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body."
11. In the present case, the Player is a 27-year old professional player who is a member of the Mexican men's national team and is playing professional basketball in a top-club of his country. Given his – admitted – experience as a top-level athlete, the use of a supplement provided to him upon advice of a salesman in the GNC supplement store represents per se a negligent behaviour on his part. The fact that the California test was negative explains his decision to continue the use and not declare it during the doping control of 30 July 2010. However, the Panel underlines that the Player should not have used this supplement in the first place.
12. In evaluating the Player's arguments, the Panel considers that the lack of continuous medical and dietary support for players in a national team is unacceptable: the Player found himself in a situation where he was sick and suffering from the extremely hot weather in Mayagüez but still had to purchase, prepare and consume his supplements on his own during those days. Although this is not a mitigating factor, it proved to be important in this case where the prohibited substance was added on the WADA Prohibited List for the first time on 1 January 2010 and is mentioned on the list with a name (methylhexaneamine) different than both the one commercially used (geranamine) and than the one appearing on the supplement's label (1,3 Dimethylamylamine). Thus, even comparing the WADA 2010 Prohibited List with the

ingredients of Jack-3D would not have served the Player at all. On the other hand, the Panel considers that a simple internet research would have revealed immediately the connection between 1,3 Dimethylamylamine and methylhexaneamine – since the above-mentioned supplement even has its own website – and would have made the Player avoid the use of Jack-3D.

13. Lastly, and without taking a position about the inclusion of methylexaneamine on the WADA 2010 Prohibited List and especially on the list of non-specified substances, the Panel underlines that it would probably have reached a different conclusion in case of an anabolic steroid, i.e. of a prohibited substance with unquestionable performance enhancing and health endangering effects which is consistently dealt with by the anti-doping authorities. The Panel regrets to be left with very limited discretion by the applicable WADA and FIBA rules, despite the fact that in the recent case CAS 2009/A/1918 the CAS Panel, applying rules under which geranamine/methylexaneamine was – then – still a specified substance, considered a sanction of three months' eligibility to be proportionate for a football player.
14. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction of twelve (12) months.
15. The Panel emphasizes that it reached the above conclusions on the basis of very particular circumstances as evidenced, and without therefore intending to give any direction whatsoever for future cases.
16. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on the date of the player's last game, i.e. on 30 July 2010, given that he has not participated in any official basketball competitions since that date.
17. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Fédération Internationale
de Basketball



FIBA

We Are Basketball

International Basketball
Federation

Geneva, 11 November 2010

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel