

Decision

by

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

Rosangela Lopes
(born 14 March 1979)

hereafter:
(“the Player”)

(Nationality: Cape Verde)

Whereas, the Player underwent an in-competition doping test on 18 July 2009 in Lisbon (Portugal) on the occasion of the 2nd Lusophony Games (“2^{os} Jogos da Lusofonia – Lisboa, 11-19 July 2009” hereinafter the “Games”);

Whereas, the analysis of the Player's sample (Code **396828**) was conducted at the Laboratory of Lisbon (Portugal), which is a WADA-accredited laboratory. On 28 July 2009 the Laboratory informed FIBA that the sample showed the presence of fenproporex and amphetamines;

Whereas, on 11 August 2009 the Lisbon Laboratory informed FIBA that the analysis of the B sample confirmed the above positive findings;

Whereas, on 27 August 2009, 6 November 2009 and 4 February 2010 FIBA sent reminders to the Portuguese Basketball Federation and the Portuguese National Anti-Doping Agency (“POR NADO”) requesting information about the results management of this case;

Whereas, on 4 and 8 February 2010 the POR NADO informed FIBA that, since the Player participated in the Games with the national team of Cape Verde and since the Organising Committee of the Games had completed its activities after the Games’ closure, the POR NADO considered itself not competent to take a decision in this matter and that the Cape Verde Olympic Committee should be contacted;

Whereas, on 9 February 2010 FIBA contacted the Cape Verde Olympic Committee inquiring whether a disciplinary procedure had been opened with respect to the above-mentioned positive findings. Said request remained unanswered;

Whereas, on 11 February 2010 the POR NADO sent to FIBA a copy of the Doping Control Manual for the Games;

Whereas, on 23 March 2010 FIBA referred the matter to its Disciplinary Panel and informed the Player of her right to be heard either by telephone conference (on 22 April 2010) or in person;

Whereas, despite several reminders, the Player did not participate in the telephone conference organised by FIBA on 22 April 2010 at 4pm. However, Ms. Luisete Piloto, member of the Disciplinary Committee of the Cape Verde Basketball Federation (“CVBF”) attended the hearing and represented the Player before a FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, Member of FIBA's Legal Commission and of Dr. Heinz Günter, Vice President of FIBA's Medical Commission. Ms. Cendrine Guillon, FIBA Anti-Doping Manager, and Andreas Zagklis, FIBA Legal Advisor, were also in attendance;

Whereas, the Panel allowed the Player to submit a post-hearing brief until 27 April 2010, which the Player timely did;

Whereas, the Player

- did not contest the result of the test;
- submitted that she had a knee surgery in November 2008;
- submitted that during her stay in Portugal for the Games she felt weak and decided to buy some vitamins (“Immunotec Thermal Action”) from a nearby mall;
- stated that this supplement must have been the source of the prohibited substances;
- submitted that she “was under the impression that this supplement was natural and not harmful in any way and still provide the energy [she] needed”;
- stated that this was her first anti-doping control and that she has not committed another anti-doping rule violation;
- asked for “clemency and understanding from the FIBA-International Federation to excuse [her] lack of knowledge on the subject matter”, since there is hardly any anti-doping education in Cape Verde;
- affirmed that she had committed no previous anti-doping rule violation;
- stated that since the last game of her national team on 18 July 2009 she had not participated in any basketball competitions.

Now, therefore, the Panel takes the following:

DECISION

A period of two years' ineligibility, i.e. from 18 July 2009 to 17 July 2011, is imposed on Ms. Rosangela Lopes.

Reasons:

1. According to Article 8.b. of the Doping Control Manual for the Games:

“The management of the violations of antidoping rules and the organisation of additional legal auditions as a consequence of auditions and decision of [the Organising Committee of the Games], including the order of punishments that go beyond the ones referred to the 2nd Lusofonia games – Lisboa 2009, will be managed by relevant FI.”

(translation and emphasis by the Panel)

2. According to Article 2 of the same rules, “FI” refers to the “International Federation”.
3. In the present case, the laboratory results were announced to FIBA on 28 July 2009, i.e. after the end of the Games. Therefore, FIBA being the “relevant International Federation”, the FIBA Disciplinary Panel has jurisdiction to decide this case in accordance with Article 8 of the FIBA Internal Regulations governing Anti-Doping (the “FIBA ADR”).
4. Article 2.1 of the FIBA ADR edition 2009 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. [...]”

5. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA ADR, since fenproporex and amphetamines, both prohibited substances listed in WADA's 2009 Prohibited List under letter S.6.a (Non-specified Stimulants), were found in her urine sample. This fact remained uncontested.
6. 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."

7. In that respect, Article 10.5 of the FIBA ADR provides that if a Player establishes that he/she 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 reduced or even eliminated. In the event that the Player has violated Article 2.1 of the FIBA ADR, like in the present case, he/she must also establish how the Prohibited Substance entered his/her system.
8. In the present case and after reviewing the evidence before it, the Panel has serious doubts whether the intake of "Immunotec Thermal Action" can be considered as a plausible explanation for the presence of fenproporex and amphetamines in the Player's sample. The said supplement contains "Chromium, Green Tea, and Guarana" which, despite their stimulant effect, cannot be metabolized in the human body in fenproporex or amphetamines. In addition, the Player failed to provide any scientific evidence in support of her argument.
9. Further, even in the event that the Panel accepted that the anti-doping rule violation was a result of the above-mentioned use of "Immunotec Thermal Action", the Player could not

benefit from the application of Article 10.5 of the FIBA ADR. The Panel finds that the Player acted –at least– negligently by ingesting a nutritional supplement without ensuring that it does not contain a prohibited substance and, as admitted, without asking the team doctor. FIBA and WADA have released numerous public warnings with regards to supplements or medication that can be purchased “over the counter” in some countries but may contain prohibited substances. Despite the fact that the Player comes from a country where no extensive anti-doping education is provided, her experience as a 30-year old national team player participating in international events should have prevented her from buying a supplement from a commercial store during her stay in Portugal and using it without the approval of the Cape Verde delegation’s medical expert.

10. For the above reasons, the Panel has no choice but to apply the regular sanction provided for in Article 10.2 of the FIBA ADR and impose a sanction of two years’ ineligibility on the Player.
11. In accordance with Article 10.9 of the FIBA ADR, since the Player has not participated in any national or international competitions after 18 July 2009, the Panel deems fair that the period of ineligibility is to start on that date.
12. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached “Notice about Appeals Procedure”.

Geneva, 29 April 2010

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert
President of the Disciplinary Panel