

Decision

by

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

Alejandro Flores Salas
(born 4 December 1981)

hereafter:
(“the Player”)

(Nationality: Dominican)

Whereas, the Player underwent an in-competition doping test on 31 October 2011 in Bogota, Colombia;

Whereas, the analysis of the Player's sample (sample No: 2639018) was conducted at the WADA-accredited Laboratory in Bogota, Colombia (“Laboratory”). On 10 November 2011 the Laboratory entered into the Anti-Doping Administration and Management System (“ADAMS”) an analysis result record, according to which the analysis of the Player's A sample showed the presence of metabolites of the prohibited substance stanozolol, which is included in the 2011 WADA Prohibited List;

Whereas, some time in the first week of November 2011, the Player terminated the contract with the Colombian club Orgullo Paisa due to an injury at his heel and an alleged breach of contract by the club. He returned to his home in the Dominican Republic, in order to play in the local league;

Whereas, on 15 November 2011 the Colombian Institute for Sport ("COLDEPORTES") sent a letter to the Player's former address in Medellin, Colombia. Said letter contained information regarding the adverse analytical finding and the Player's right to request the analysis of the B sample;

Whereas, by letter dated 24 February 2012 the Puerto Rican Basketball Federation ("FBPUR") requested a letter of clearance for the Player from the Colombian Basketball Federation ("CBF");

Whereas, on 27 February 2012 the CBF forwarded to FBPUR and FIBA the doping control form and the analysis result of the Laboratory, without replying however to the request for a letter of clearance;

Whereas, the Player played in Puerto Rico for approximately 1 month, until the beginning of April 2012;

Whereas, on 11 April 2012 the Disciplinary Committee of CBF decided to impose a sanction of one (1) year ineligibility on the Player, starting on the date of the decision;

Whereas, on 13 April 2012 the Disciplinary Committee of CBF revised its previous decision and imposed a sanction of two (2) years ineligibility on the Player;

Whereas, on 22 May 2012 the CBF sent copies of such decisions to FIBA;

Whereas, on 23 May 2012 FIBA informed the Dominican Basketball Federation ("DOM NF") about a) the Player's adverse analytical finding, b) the 2-year sanction imposed by CBF and c) the fact that the case would be submitted to the FIBA Disciplinary Panel;

Whereas, on 12 July 2012 the DOM NF requested that the FIBA Disciplinary Panel review the case, since the Player wished to participate in the Dominican basketball league with the club Los Metros de Santiago;

Whereas, on 13 July 2012 FIBA informed DOM NF that a) the Player was invited to submit his position in writing as well as a possible request for a hearing by telephone conference until 23 July 2012; b) as a result of the sanction imposed by CBF and the pending proceedings before FIBA, the Player was not eligible to play in any national or international competitions;

Whereas, by letter dated 16 July 2012 the Player submitted his position along with supporting documentation;

Whereas, by letter dated 19 July 2012 the DOM NF submitted its position in support of the Player;

Whereas, by letter dated 22 August 2012 FIBA informed the Player that the FIBA Disciplinary Panel would decide whether and to what extent a sanction should be imposed upon him for the purposes of FIBA competitions. In the same letter, the Player was informed about his right to be heard either in person (for which a hearing in FIBA's headquarters in Geneva would have to be organised) or via telephone conference on 31 August 2012;

Whereas, on the same day the Player confirmed his preference to and participation in a hearing by telephone conference;

Whereas, on 31 August 2012 the Player – assisted by Mr José A. Ureña, general manager of the club Los Metros de Santiago, and Ms Juliana Ramia, translator – was heard via telephone conference by a FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, member of FIBA's Legal Commission and of Dr. Heinz Günther, former Chairman of FIBA's Medical Commission. Ms. Virginie Alberto, FIBA Anti-Doping Officer as well as Mr. Andreas Zagklis, FIBA Legal Advisor, were also in attendance;

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

- he does not contest the result of the test;
- in July 2011 *"I started in Dominican Republic a treatment with Dr. Franklin Jimenez because I had pain in the heel, which prescript me the medical product **VALERPAN (BETAMETHASONE)**. I warned the doctor of the team **Orgullo Paisa**, at the moment of starting my training about the treatment I was following, product of a fracture in the heel diagnosed as **PLANTAR FASCIITIS or FEET BONE SPUR**, reason why such doctor initiated me therapy, maintaining the team administration aware of all the medications I was taking."* (emphasis in the original)
- during his stay in Colombia the pain became more acute and, being under pressure by the club to compete, he received initially pills and later injections by a member of the team's personnel named Oscar Mario, once per every week for a period of 3-4 weeks, during October 2011;
- he didn't inquire the nature of the substance because he thought it was painkillers, similar to the medication that Dr Jimenez prescribed to him by in Dominican Republic;
- the pain in his heel was so strong that he could hardly walk at times, however he received continuous pressure from the club to compete;

- at the doping control station he did not remember all the substances he was taking and for this reason he noted some vitamins and supplements on the doping control form (B12, B16, plajoB, Tylenol, Whey100%, Aminfoil) and informed the doping control officer that he was undergoing a treatment for his heel injury;
- he was never informed of the adverse analytical finding nor of his right to request a B sample analysis and therefore his right to defend himself was violated by the Colombian authorities, which imposed a 2-year sanction on him;
- in fact *"After I abandoned [Orgullos Paisa], I traveled to La Vega, Dominican Republic, to play in the city tournament, but that's when I received an offer from the Puerto Rican team LOS VAQUEROS DE BAYAMON. That's when the Federation of Puerto Rico asked my transfer letter to the Federation of Colombia, all this time I was not aware about my suppose suspension neither about the positive doping. In June of 2012 is that the president of the Dominican Basketball Federation, Mr. Rafael Uribe, informs me that I can't play with the Dominican National Team for CENTROBASKET or the Pre-Olympics games in Venezuela, because of a positive doping in Colombia, in which I was shocked."*
- he has played professional basketball for 8 years, both in and outside the Dominican Republic;
- he requested the Panel *"[...] for a revision in my case, because I was NEVER NOTIFIED and denied to be heard from the Discipline Commission of Colombia. I think this is a big injustice to sanction a professional player without making a prudent previous investigation. I have been a very careful athlete all my life with the substances I take, since I've been a member of the National Dominican Team in basketball and in volleyball. I ask you, as supreme organism of world basketball to make justice with my case, and if necessary to be HEARD in a conference the date and time you establish. I attach to this email the medical certification of my treatment and the name of the medicine I was prescript, along with the x-rays done to me in Colombia."*

- his last participation in an official competition was in April 2012 in Puerto Rico, but was unable to remember the specific date;
- it is the first time in his whole career as professional basketball player that he is accused of an anti-doping rule violation;

Whereas, the DOM NF supported the Player's position by submitting the following:

- the Player has had a clean sportive record and has been a role model for young players in his country;
- the Player did not take any prohibited substance voluntarily and was not aware of having tested positive in a tournament in Colombia;
- during the Player's stay in Puerto Rico and participation in the local league, he was submitted again to doping control and the results were negative, which means that there is no prohibited sanction in his body;
- due to the sanction he is unable to play basketball, which is his primary source of income;

Whereas, following the hearing, on 7 September 2012 the Panel wrote to the Player as follows:

"The FIBA Disciplinary Panel has considered your argument that you were not informed by the Colombian authorities regarding the adverse analytical finding and therefore you had not, until today, been given the right to request the analysis of the B bottle.

In view of the above and in accordance with Article 7.1.3 of the 2010 FIBA Internal Regulations governing Anti-Doping, you shall have the right to request in writing and within ten (10) days of the receipt of this communication the analysis of bottle B at your own cost.

This analysis shall be carried out at the same laboratory (in Bogota, Colombia) by different people from those who carried out the analysis of bottle A. The cost of this analysis will be 1 400 400 Colombian pesos.

You have the right, as well as a representative of your team, to be present and

witness the opening of bottle B and its identification.

In case you decide to make use of such right, the laboratory will perform the B sample analysis on 18 September 2012. After receipt of the result, the FIBA Disciplinary Panel will invite you to make further comments prior to issuing its decision on your case.

If you have not requested the analysis of the B bottle within the 10-day deadline mentioned above, you will be deemed to have waived your right in this respect. In such case, the FIBA Disciplinary Panel will proceed with issuing its decision on your case."

Whereas, by letter dated 12 September 2012 the Player replied as follows:

"In the present letter I want to request the analysis of the B bottle on September 18, 2012, in order for FIBA to make a proper decision about my case, in accordance to the Article 7.1.3 of the FIBA Regulations, since until today I wasn't giving (sic) this right."

Whereas, on 27 September 2012 the Laboratory wrote to FIBA as follows:

"I would like to inform you that the analysis of the Sample B 2639018 have not been performed yet because Mr. Uribe from Federacion Dominicana de Baloncesto did not answer the e-mail we sent and did not perform the payment for the cost of the analysis. Neither, he sent the documentation requested by us. Without the fulfillment of the requirements we cannot perform the B analysis."

Whereas, on 28 September 2012 the Panel was informed that the analysis of the B bottle was not performed due to non payment of the required costs by the Player;

Now, therefore, the Panel takes the following:

DECISION

A period of two (2) years' ineligibility, i.e. from 11 April 2012 until 10 April 2014 is imposed on Mr. Alejandro Flores Salas.

Reasons:

1. Article 2.1 of the FIBA Anti-Doping Regulations ("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. [...]"

2. The Player's complaint that he was never informed of his right to request the opening and analysis of the B sample was addressed during the proceedings before this Panel: after FIBA's communication with the Laboratory, the Player was given the opportunity to request such analysis and indeed he filed a request in writing but subsequently did not pay the necessary administrative costs as required by Article 7.1.3.b of the FIBA ADR. Therefore, the Laboratory correctly discontinued the procedure and informed FIBA accordingly, allowing the Panel to proceed with the adjudication of this case. The Player's (and Mr Ureña's) subsequent emails and telephone calls to FIBA inquiring the status of

his case and the date the decision would be notified confirm that he was expecting a decision and that he had no further interest in the B sample analysis.

3. Further, despite the delay in such procedure – caused by the Player's leaving Colombia approximately a week after he was submitted to the doping control in question and by the inability of CBF to communicate with him – at no stage in these proceedings did the Player question the Laboratory procedures or the result of the analysis. Therefore, the analysis having been performed by a WADA-accredited laboratory, it is presumed to be in accordance with the International Standard for Laboratories.
4. It follows that the Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA ADR since 3-OH-stanozolol, a metabolite of stanozolol which is a prohibited substance listed in WADA's 2011 Prohibited List (the “2011 Prohibited List”) under letter S.1.1.a (Exogenous Anabolic Androgenic Steroids) was found in his urine sample. This fact remained uncontested.
5. 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.”

6. Therefore, the applicable sanction for the presence of stanozolol metabolites in a player's sample is, in principle, two (2) years of ineligibility.
7. In this respect, 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 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 must also establish how the Prohibited Substance entered his system.

8. The Player has submitted x-rays, confirming a heel injury, and also a letter from his doctor in the Dominican Republic which reads as follows:

"Me, Dr. Franklin Jimenez, exequatur 56-89, certify that Mr. Alejandro Flores Salas, passport No. 1494496, started a treatment in this institution in July 28 of 2011, with the medicine Valerpan (Betamethason), injectable for a feet bone spur or plantar fasciitis treatment. Such treatment must be continued every twenty-one (21) days, for about 5 or 6 months, conjunctly with the analgesic."

9. The Panel finds that the intake of Betamethason or of painkillers does not explain the presence of stanozolol in the Player's body. The same applies to the vitamins and supplements declared by the Player on the doping control form: none of the above can scientifically qualify as the source of stanozolol.
10. Further, the Player submitted that he received weekly injections by a member of the staff of his Colombian club Orgullo Paisa, including on the day of the doping control. He is still not aware of the content of those injections. When asked by the Panel "if Dr Jimenez's treatment is not the source of the prohibited substance, how do you explain the presence of stanozolol in your body?", the Player referred to these injections. However, he insisted that he thought these were just painkillers that would help him participate in the game despite the pain in his heel.
11. The Panel finds that the evidence brought forward by the Player is not sufficient to explain how the substance stanozolol entered his body. There is no documentation or witness testimony which could shed light on the question "what did the injections performed in Colombia contain?". Even the Player himself, in a very honest and

straightforward manner, confessed that he had no idea what the injected substance was. Therefore, even on a balance of probability, the Panel is unable to accept that stanozolol was contained in such injections and the application of Article 10.5 to this case shall be excluded. As a result, the Player cannot benefit from a reduction of the otherwise applicable sanction and a period of ineligibility of 2 (two) years is to be imposed on him.

12. The Panel wishes to underline that, even if it could be established that such injections were the source of stanozolol, the Player would still not be entitled to a reduction of the 2-year applicable sanction.
13. It is relevant to point out in this regard that according to Article 2.2.1 “It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body”. This provision clearly introduces a duty of care for all athletes, in view of which the Panel cannot accept the Player’s argument.
14. The Panel makes reference to the case Eddin Orlando Santiago (FIBA DP decision of 15.02.2010, imposing a 2-year period of ineligibility), involving also an experienced professional player who was treated with stanozolol by his foreign club's medical personnel in order to address an injury:

"Firstly, it has not been established that the Player was obliged under genuinely exceptional circumstances (e.g. treatment in the emergency room on account of an acute heart failure, CAS 2005/A/990) to take the medication provided by the club’s doctor. [...]"

Secondly, the Panel finds that the Player had a very clear obligation arising from the applicable rules to ensure that the medication he was receiving did not contain a prohibited substance which he delegated to the team physician Dr. López. The delegation of such duty, however, does not excuse the Player from his responsibility. It would indeed be to the severe detriment of the fight against doping if players were in a position to assign their obligations to third persons and consequently avoid any liability for the presence of a prohibited substance in their sample (CAS 2008/A/1597). [...]

Hence, under the applicable rules, an athlete who takes no precautions and relies totally on the decisions made by his support personnel should be ready to bear the consequences for the latter's fault or negligence. The Panel regrets to find that such harsh –but indeed fair– rule applies also in the case of the Player."

15. The Panel concurs with such analysis and finds it applicable to this case. This is also corroborated by the views expressed in CAS 2008/A/1488:

“In consideration of the fact that athletes are under a constant duty to personally manage and make certain that any medication being administered is permitted under the anti-doping rules, the prescription of a particular medicinal product by the athlete’s doctor does not excuse the athlete from investigating to their fullest extent that the medication does not contain prohibited substances. [...]

While it is understandable for an athlete to trust his/her medical professional, reliance on others and on one’s own ignorance as to the nature of the medication being prescribed does not satisfy the duty of care as set out in the definitions that must be exhibited to benefit from finding No Significant Fault or Negligence. It is of little relevance to the determination of fault that the product was prescribed with “professional diligence” and “with a clear therapeutic intention”. To allow athletes to shirk their responsibilities under the anti-doping rules by not questioning or investigating substances entering their body would result in the erosion of the established strict regulatory standard and increased circumvention of anti-doping rules.”

16. As mentioned by the Panel in the recent case of Riste Stefanov (FIBA DP decision of 09.07.2012, imposing a 22-month period of ineligibility)

"An international-level player with considerable experience like the Player in this case is expected to refuse an injection from a doctor who fails to mention even its content. Solely the fact that this one injection was able to improve his medical condition more than the continuous treatment with other (permitted)

substances were able to, should have alarmed the Player. At a minimum, he was expected to have the curiosity of personally inquiring the nature of the medication which was injected to him."

17. However, unlike Stefanov who benefitted from a small reduction of two months, the Player in this case received *multiple* injections in Colombia. A 30-year old international-level professional athlete with considerable experience like the Player is expected to refuse an injection from a team support personnel who fails to mention even its content. As mentioned above, he is expected at least to have the curiosity of personally inquiring the nature of the medication which was injected to his buttock on a *repetitive* basis (at least three times) and for over a period of two weeks.
18. Furthermore, the Panel took note of the Player's statement that he received pressure from his club to play although some days he could barely walk, suggesting that he had no right of choice of the doctor and no right to refuse the treatment. The Panel acknowledges that players often have to take decisions under great pressure by their employer-club; however, the Panel finds that the Player had, in any event, a very clear obligation arising from the applicable rules to ensure that the medication he was receiving did not contain a prohibited substance. The Player failed to take any precaution to that effect.
19. Thus, even in the case where the Player would have proven the origin of the prohibited substance, the high level of his negligence would not justify any reduction of the 2-year applicable sanction.
20. With respect to the start date of the sanction, publicly available records show that the Player's last official game was on 2 April 2012. Therefore, pursuant to Article 10.9 of the FIBA ADR the period of ineligibility is to start on the date of the CBF decision, i.e. on 11 April 2012.

21. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached “Notice about Appeals Procedure”.

Geneva, 5 November 2012

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert
President of the Disciplinary Panel

