



Arbitration CAS 2014/A/3787 World Anti-Doping Agency (WADA) v. Confederação Brasileira de Canoagem (CBC) & Igor Alex Tofalini, award of 4 May 2015

Panel: Mr. Juan Pablo Arriagada Aljaro (Chile), Sole Arbitrator

Canoe

Doping (stanozolol)

CAS jurisdiction

Athlete's degree of fault or negligence

- 1. WADA has the right to appeal a final decision that has not been appealed by the athlete directly to CAS, which has jurisdiction to hear the case.**
- 2. The simple fact that an athlete has not duly established how the Prohibited Substance entered his/her body is enough to conclude that there are no exceptional circumstances that may lead to the reduction of the sanction. In any event, a late and shallow research conducted by the athlete after the notification of the adverse analytical finding clearly demonstrates that the athlete was at least careless, and does not meet the personal duty of the athlete to ensure that no Prohibited Substance enters his/her body. Moreover, the low-level of the sport (i.e. canoe) and the fact that the athlete is not a professional are of no relevance when determining the athlete's degree of fault.**

I. PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is a Swiss private law foundation with its seat in Lausanne, Switzerland, and its headquarters in Montréal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate and monitor the fight against doping in all its forms.
2. Confederação Brasileira de Canoagem ("CBC" or the "First Respondent") is the governing body of canoeing in Brazil. The CBC is a member of the International Canoe Federation ("ICF"), the international sports federation governing the sport of canoe worldwide.
3. Mr. Igor Alex Tofalini ("Athlete" or the "Second Respondent") is a Brazilian canoer affiliated to the CBC.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 15 December 2013, during the Brazilian Championship of Canoeing and Paracanoeing ("*Campeonato Brasileiro de Canoagem e Velocidade e Paracanoagem*"), the Athlete underwent an in-competition doping control.
6. On 19 January 2014, the Athlete's urine sample was tested in the WADA-accredited laboratory located in Quebec (INRS-Institut Armand-Frappier).
7. On 22 January 2014, the laboratory reported that the Athlete's A sample produced an adverse analytical finding for the substance *Stanozolol* (hereinafter also referred to as the "Prohibited Substance") and its metabolites. *Stanozolol* is a prohibited substance included in section "S1" (Anabolic Agents) of the 2013 WADA Prohibited List published by WADA.

B. Proceedings before the Brazilian *Superior Tribunal de Justiça Desportiva Da Canoagem* ("STJD")

8. At the request of the President of the CBC, the STJD brought disciplinary proceedings against the Athlete because of the adverse analytical finding resulting from the anti-doping test.
9. In the disciplinary proceedings carried out before the STJD, the Athlete filed the following statement of defence:

"Em 15/12/2013 fui submetido a exame antidopagem após competir no Campeonato Brasileiro de Canoagem e Velocidade e Paracanoagem. Em 31/01/2013 recebi o resultado que apontou resposta positiva para a substancia [Sic] Stanozolol.

Após receber a notificação do resultado positivo de substancia [Sic] proibida pesquisei e descobri que tal substancia [Sic] foi ingerida, equivocadamente, e sem má-fé, vez que jamais tive conhecimento que o suplemento chamado M Stante continha substancias [Sic] proibidas.

Destaco aqui, em razão ausência de apoio de profissionais especializados, ou até mesmo diante da falta de informativos da CBCa que durante tão curto espaço de treinamento nunca fui devidamente informado a respeito dos risco e das substancias [Sic] proibidas no esporte.

Reconheço o erro de ingerir suplementos sem o devido cuidado, contudo, estou praticando a paracanoagem a apenas 7 meses, sem nenhum apoio particular, sendo ainda um atleta não profissional, tendo participado de apenas 1 competição, qual seja, Campeonato Brasileiro de Canoagem e Velocidade e Paracanoagem”.

which can be freely translated into English (as provided by the Appellant with its Appeal Brief) as follows:

“On 15/12/2013 I was subjected to an anti-doping test after competing in the Brazilian Canoe and Paracanoe Spring Championships. On 31/01/2014 I received the results, which recorded a positive response to the substance Stanozolol.

After receiving notification of the positive result for a banned substance, I carried out some research and found that without doubt I had ingested such a substance, but not in bad faith, and I have since learned that the supplement called M Stante contains banned substances.

I stress here, that because of the absence of specialised professional support, and also the lack of information from the CBCa, that during such a short period of training I was never properly informed about the risks and the banned substances in sport.

Whilst I recognise the error of ingesting supplements without proper care, I have been practicing Paracanoeing for only seven months without any specific support, and I am still a non-professional athlete, having participated in only 1 competition, i.e. the Brazilian Canoe and Paracanoe Sprint Championships”.

10. On 3 April 2014, the STJD passed the following decision (hereinafter the “Appealed Decision”):

“ACORDAM, por maioria de votos, vencido o Ilmo Relator, os Auditores da Seção Especializada no Controle de Dopagem e os Auditores Convocados do Superior Tribunal de Justiça Desportiva da Confederação Brasileira de Canoagem, pela procedência da denúncia para, no mérito, acatar o posicionamento da acusação no sentido de confirmar o uso de substância proibida pela atleta IGOR ALEX TOFALINI, configurando caso de doping direto e primeira infração, para DECIDIR, pela pena de pena desportiva de um (1) ano (6) meses, com redução prevista nas atenuantes do artigo 217 da CF/88 c/c com artigo 182 do CBJD para um (1) ano de suspensão e inegibilidade a partir da data de coleta, qual seja 15 de dezembro de 2013, desqualificando os resultados obtidos assim como seus prêmios, classificações e convocações para compor os quadros atléticos da CBCA e demais entidades de desporto de sua modalidade esportiva, porém, mantendo o Atleta nos quadros e registros da Confederação Brasileira de Canoagem”.

which can be freely translated into English (as provided by the Appellant with its Appeal Brief) as follows:

“The Auditors of the Specialised Anti-Doping Section and the Invited Auditors from the Superior Sports Tribunal of the Brazilian Canoe Confederation AGREE, by majority vote, in favour of the Presiding Member, based on the provenance of the complaint, on merit, to accept the submission of the indictment and confirm the use of banned substance by the athlete IGOR ALEX TOFALINI, representing a case of direct

doping and first offence, and DECIDE, on the sanction of a sporting penalty of 1 (one) year 6 (six) months, with a specified reduction in mitigation with regard to Article 217 of the CF/88 c/c with Article 182 of the Brazilian Code of Sports Justice (Código Brasileiro de Justiça Desportiva -CBJD) of 1 (one) year's suspension and ineligibility from the date of the sample, which was 15 December 2013, disqualifying the results obtained as well as his awards, classifications and achievements listed in the athletic tables of the Brazilian Canoe Federation (Confederação Brasileira de Canoagem -CBCa) and any other sports bodies involved in his sport, whilst retaining the athlete however in the tables and records of the Brazilian Canoe Confederation”.

11. On 1 October 2014, the *Autoridade Brasileira de Controle de Dopagem* (ABCD) notified WADA of the complete file relating to the decision of the STJD.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 22 October 2014, WADA filed its Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the “Code”). Furthermore, the Appellant requested that the present be submitted to a Sole Arbitrator.
13. On 24 October 2014, the CAS Court Office sent a letter to the parties acknowledging receipt of the Appellant’s Statement of Appeal and inviting them to file his Appeal Brief with the CAS within 10 days following the expiry of the time limit for the appeal. In this same letter, the CAS sent a copy to both Respondents of the Appellant’s Statement of Appeal, and invited them to inform the CAS Court Office within five days of receipt of that letter whether they agreed to the appointment of a Sole Arbitrator.
14. On 3 November 2014, WADA timely filed its Appeal Brief.
15. On 5 November 2014, the CAS Court Office invited the Respondents to file their Answer to the Appeal Brief within 20 days of receipt of that letter.
16. None of the Respondents filed an Answer to the Appeal.
17. On 19 December 2014, the CAS Court Office informed the parties that the deadline granted to the Respondents to file their Answer to the Appeal Brief had expired on 27 November 2014 and that, up to that date, the CAS Court Office had not received the Respondents’ Answers or any communication from the Respondents in this regard, advising them that, pursuant to Article R55 of the Code, the Sole Arbitrator might nevertheless proceed with the arbitration and deliver an award in this case. In this same letter, the CAS Court Office invited the parties to confirm their position on whether they preferred a hearing to be held in this case or for the Sole Arbitrator to issue an award based solely on their written submissions.
18. On 29 December 2014, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that Mr. Juan Pablo Arriagada Aljaro had been appointed as Sole Arbitrator in this case.

19. On 19 January 2015, the Appellant informed the CAS Court Office that WADA would request that a hearing be held only to the extent that the Sole Arbitrator was of the opinion that such hearing was necessary. The Respondents did not file any comments in this regard.
20. On 26 January 2015, the CAS Court Office informed the parties that the Sole Arbitrator decided to render a decision in this appeal based upon the written submissions and without a hearing in accordance of Article R57 of the Code.
21. On 4 February 2015, the CAS Court Office sent the parties the Order of Procedure, which was duly signed by the Appellant. The Respondents did not sign and return the Order of Procedure, and did not otherwise object to its contents.

IV. SUBMISSIONS OF THE PARTIES

IV.1. The Appellant

22. In his Appeal Brief, the Appellant requested the following relief:

“WADA hereby respectfully requests CAS to rule:

1. *The Appeal of WADA is admissible.*
2. *The decision rendered by the Superior Tribunal de Justiça Desportiva de Canoagem on 3 April 2014, in the matter of Mr. Igor Alex Tofalini, is set aside.*
3. *Mr. Igor Alex Tofalini is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, Mr. Igor Alex Tofalini before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*
4. *All competitive results obtained by Mr. Igor Alex Tofalini from 15 December 2013 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
5. *WADA is granted an award for costs”.*

The Appellant’s submissions, in essence, may be summarized as follows:

- The Anti-Doping rule violation:
 - The presence of Stanozolol was detected in the bodily sample provided by the Athlete (this currently remains unchallenged by the Athlete).
 - Stanozolol is an anabolic androgenic steroid classified as prohibited substance in and out of competition that appears on the WADA 2013 Prohibited List under class S1.1.

- Therefore, the violation of article 2.1 of the Anti-Doping Rules adopted by the ICF (“ICF ADR”) - i.e. the presence of a prohibited substance or its metabolites or markers in an athlete’s bodily specimen - is established.
- Elimination or reduction of the period of ineligibility based on exceptional circumstances:
 - According to article 10.2 ICF ADR, the Athlete shall incur a two-year period of ineligibility for his doping offence, unless the conditions for eliminating or reducing the period of ineligibility (art. 10.5 ICF ADR) are met.
 - In particular, an athlete can establish that, in view of the exceptional circumstances of his individual case, the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence as per article 10.5.1 ICF ADR) or reduced (in case of no significant fault or negligence (art. 10.5.2 ICF ADR)).
 - In addition to the above, a prerequisite in establishing an absence of fault or no significant fault is the proof provided by the Athlete on how the prohibited substance entered his system. In any case, the Athlete is required to prove his allegations on the “balance of probability”, convincing the deciding body that the occurrence of the circumstances on which the athlete relies is more probable than their non-occurrence or more probable than other possible explanations of the positive testing.
- Determining the sanction:
 - With regard to the origin of the prohibited substance, the Athlete has explained that he tested positive subsequent to the ingestion of a food supplement, and WADA has no reason to believe that these explanations are inaccurate.
 - With regard to the fault of the Athlete, WADA submits that the ordinary two-year ban applicable for a first anti-doping rule violation cannot be reduced since the Athlete clearly bears significant fault. According to CAS case law, if an athlete uses a product and fails to inquire or ascertain whether the product contains a prohibited substance, the Athlete’s conduct constitutes a significant fault or negligence, which excludes any reduction of the applicable period of ineligibility.

In the case at hand, the Athlete’s fault is particularly significant because the Athlete did not take any precautions whatsoever before ingesting the supplement. In particular: (i) he ignored the well-known risk that supplements may contain a prohibited substance, (ii) he did not obtain any assurance from a specialist, that the product he took did not contain any prohibited substance, (iii) the Athlete did not conduct any research on the product, (iv) he did not contact the supplier about the product or its ingredients before taking it, and (v) the substance found in the sample provided by the Athlete is a steroid, that is, a powerful sport-enhancing substance.
 - In addition, the anti-doping rules do not distinguish between amateur or professional athletes.
- In conclusion, the Athlete cannot validly invoke any mitigating factors which would justify a reduction of the period of ineligibility.

IV.2. The First Respondent

23. The Sole Arbitrator is satisfied to confirm that all communications and submissions were sent to the CBC's address and according to the DHL track reports those were indeed delivered to it.
24. However, the CBC did not submit any Answer to the Appeal and has not expressed any position in the present proceedings.

IV.3. The Second Respondent

25. The Sole Arbitrator is satisfied to confirm that all communications and submissions were sent to the Athlete's address and according to the DHL track reports those were indeed delivered to him.
26. However, the Athlete did not submit any Answer to the Appeal and has not expressed any position in the present proceedings.

V. ADMISSIBILITY

27. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders his decision after considering any submission made by the other parties".

28. Pursuant to this provision of the Code, it is necessary to determine if there is any specific time limit established in the regulations of the ICF that provides as much. In this regard, article 13.6 of the ICF ADR envisages that:

"[...] The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be the later of:

- (a) *Twenty-one (21) days after the last day on which any other party in the case could have appealed or,*
- (b) *Twenty-one (21) days after WADA's receipt of the complete file relating to the decision".*

29. Taking into account that the complete file relating to the Appealed Decision was sent to WADA on the 1 October 2014, and that WADA filed its Statement of Appeal on the 22 October 2014, the Sole Arbitrator considers that the Appellant has complied with the applicable time limit

under Article R49 of the Code and Article 13.6 of the ICF ADR. Consequently, the Appeal is deemed admissible.

VI. JURISDICTION

30. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

31. The Appealed Decision was rendered by the STJD, which is the highest sports court in Brazilian sport. However, in this particular case the STJD acted as a mere first instance national body and, as previously established by the CAS Jurisprudence (CAS 2007/A/1370 & 1376) it can be considered as an integral part of the organisational structure of the relevant Sport Federation (in this particular case, the CBC) as it is one of the sports justice bodies established by the CBC Statutes, which entrusted the CBC's vested disciplinary power to such body.

32. The Sole Arbitrator notes that under Article 13.2 of the ICF ADR, WADA has the right to appeal to CAS against decisions regarding Anti-Doping Rule Violations, both with regard to International-Level Athletes (Article 13.2.1 ICF ADR) and to National-Level Athletes (Article 13.2.2 ICF ADR). Besides this, pursuant to article 13.1.1 of the ICF ADR, "*Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within the ICF or its National Federation's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in the ICF or its National Federation's process*".

33. Therefore, since the Appealed Decision is a final decision that has not been appealed by the Athlete, WADA has the right to appeal such decision directly to CAS, which in turn has jurisdiction to hear the present case.

VII. APPLICABLE LAW

34. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according

to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

35. The Sole Arbitrator notes that in the Appealed Decision the STJD explicitly excluded the applicability of the *Código Brasileiro de Justiça Desportiva* (CBJD), declaring that the applicability of the WADA World Anti-Doping Code (hereinafter the “WADC”) is undisputed (*“In casu, a aplicação do CMAD é incontroversa, haja vista que após a publicação do Decreto nº 6.653, de 18 de novembro de 2008, o qual promulgou sem nenhuma ressalva a Convenção Internacional contra o Doping nos Esportes (UNESCO), celebrada em Paris, em 19 outubro de 2005, [...] as normas antidopagem passaram a ser consideradas como leis internas”*) and that they shall be reconciled with the ICF ADR, which are indeed based in the WADC.
36. Given the foregoing and pursuant to Article R58 of the Code, the Sole Arbitrator concludes that the present appeal shall be decided on the basis of the ICF ADR, which provides a full regulation on the matter and, if necessary, the WADC.

VIII. MERITS OF THE APPEAL

VIII.1 The Anti-Doping Rule Violation

37. Pursuant to Article 2.1.1 of the ICF ADR *“It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete’s part be demonstrated in order to establish an anti-doping violation under Article 2.1”*.
38. Furthermore, as per Article 2.1.2 of the ICF ADR, *“Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed [...]”*.
39. Consequently, according to the applicable regulations the presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily sample constitutes an anti-doping rule violation.
40. In the present case it is undisputed that a Prohibited Substance was found in the Athlete’s urine sample. The Athlete did not challenge the scientific conclusion as to the identification of the Prohibited Substance in his urine sample. In addition, the Sole Arbitrator also notes that the Athlete did not contest before the STJD the scientific accuracy of the analysis carried out by the WADA-accredited laboratory in Quebec (INRS-Institut Armand-Frappier). On the contrary, the Athlete recognized that he consumed the prohibited substance, although *“without bad faith”* (*“Após receber a notificação do resultado positivo de substancia [Sic] proibida pesquisei e descobri que tal substancia [Sic] foi ingerida, equivocadamente, e sem má-fé, vez que jamais tive conhecimento que o suplemento chamado M Stante continha substancias [Sic] proibidas”*).

41. Therefore, under the Sole Arbitrator's view, it is undisputed that the analysis of the Athlete's urine sample delivered on 15 December 2013, on the occasion of the *Brazilian Championship of Canoeing and Paracanoeing Sprint Championship*, showed evidence of an adverse analytical finding of *Stanozolol*, which is an anabolic agent (in particular, an Anabolic Androgenic Steroid) included in section S.1 of the 2013 Prohibited List. As a consequence, the Sole Arbitrator agrees with what was declared by the Appealed Decision and thus finds that the presence of *Stanozolol* in the Athlete's urine is proven and constitutes an anti-doping rule violation under Article 2 of the ICF ADR.

VIII.2 The Sanction

A. *The Applicable Standard Sanction*

42. Pursuant to Article 10.2 of the ICF ADR, the standard sanction for a first violation of article 2.1 of said rules (Presence of Prohibited Substance or its Metabolites or Markers) is a two-year period of ineligibility, "*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*".
43. Therefore, in the present case the Sole Arbitrator considers that, unless the conditions for eliminating or reducing (no party has requested to increase such standard sanction) the period of Ineligibility envisaged in the ICF ADR are met, the principal sanction to be imposed to the Athlete is a two-year period of ineligibility.

B. *Ad casum: no conditions entailing the reduction of the sanction*

44. In the case at stake, and although the grounds of the Appealed Decision had previously and accurately declared that the CBJD was not applicable, for some at least surprising reason the STJD applied the mitigating circumstances envisaged by such national regulation when determining the sanction, thereby imposing a period of ineligibility of 1 (one) year on the Athlete. Furthermore, the Sole Arbitrator notes that the STJD applied this reduction arbitrarily, without duly justifying or explaining the specific reasons or circumstances that lead to such a reduction, limiting its reasoning to the fact that the Athlete had admitted using the prohibited substance ("*pelo fato do Atleta ter admitido o uso da substancia proibida*").
45. Taking the aforementioned into account, the Sole Arbitrator shall review the facts and, taking into account the applicable regulatory framework (which is not the CBJD, but the ICF ADR for the reasons explained in Section VII of this award), determine if there is any exceptional circumstance that may lead to the elimination or reduction of the standard sanction.
46. In this regard, under the ICF ADR the conditions for eliminating or reducing the period of ineligibility are those provided under art. 10.5.1 and 10.5.2 ICF ADR, that read as follows:

“10.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he or she bears No fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete’s Sample in violation of Article 2.1 (presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

10.5.2 No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete’s Sample in violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced”.

47. The Sole Arbitrator notes that the conditions established by Articles 10.5.1 and 10.5.2 ICF ADR are exactly the same as the ones established by Articles 10.51 and 10.5.2 of the WADC.
48. The Sole Arbitrator shall also stress that, in accordance with the definitions given by the same ICF ADR in its Appendix 1, one can conclude that an Athlete bears no fault or negligence when he is able to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the Prohibited Substance or Prohibited Method. In line with this, it can be concluded that an Athlete bears No Significant Fault or Negligence when he is able to establish that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.
49. In this context, taking into account the scope of the present Appeal and the findings of the Appealed Decision (which merely considered the reduction of the sanction, but not its elimination), as well as the statement of defence filed by the Athlete before the STJD, the Sole Arbitrator shall only analyse whether the conditions under art. 10.5.2 ICF ADR for reducing the sanction are met or not in the case at stake. No analysis is to be made on the elimination of the sanction (10.5.1 ICF ADR), as no evidence or statement has been submitted by the Athlete before the Sole Arbitrator, nor before the STJD, in this regard.
50. In accordance with the foregoing, the Sole Arbitrator observes that in order to establish that there were specific circumstances providing for the reduction of his sanction under Article 10.5.2 ICF ADR, the Athlete shall first prove (i) how the Prohibited Substance entered his system and also (ii) establish that he bears No Significant Fault or Negligence.

51. Finally, the Sole Arbitrator shall also emphasize that in accordance with the CAS continuous jurisprudence (i.e. CAS 2013/A/3262, para. 99 and 100) *“with regard to the standard of proof required from the indicted athlete, the Panel notes that, in accordance with the CAS jurisprudence and the WADA Code, the Player must establish the facts that he alleges to have occurred on the “balance of probability”. In particular, the balance of probability standard means that the indicted athlete bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence (see CAS 2004/A/602, para. 5.15, or TAS 2007/A/1411, para. 59). Finally, in order to determine the duty of caution required under the applicable rules, the Panel considers that «No fault» means that the athlete has fully complied with the duty of care. [...] «No significant fault» means that the athlete has not fully complied with his or her duties of care. The sanctioning body has to determine the reasons which prevented the athlete in a particular situation from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the specific and individual circumstances. However, only if the circumstances indicate that the departure of the athlete from the required conduct under the duty of utmost care was not significant, the sanctioning body may [...] depart from the standard sanction” (CAS 2005/C/976 & 986)”*.
- B.1. Evidence on how the Prohibited Substance entered the Athlete’s body
52. The Athlete explained before the STJD that the Prohibited Substance was mistakenly consumed by means of a food supplement called “M Stante”.
53. However, the STJD declared in the Appealed Decision, there is no evidence to conclude that the ingestion of the food supplement “M Stante” was the cause of the presence of the Prohibited Substance in the Athlete’s body (*“Pos bem, register-se que o atleta não demonstrou cabalmente como a substância proibida ingressou em seus fluidos corporais, sequer aportou nos autos à composição (nome molecular) do referido suplemento”*; *“Não há como concluir que o suplemento que o atleta diz ter ingerido tenha sido o causar da presença do Stanozolol em seus fluidos corporais. Registre-se que, tampouco, o atleta fez prova cabal disto”*). In this regard, the Sole Arbitrator notes that the Athlete, who has the burden of proof, has not produced any evidence, or carried out any probationary activity to proof or even to try to convince the STJD and/or the Sole Arbitrator that this alleged food supplement was the cause of the presence of *Stanozolol* in his body.
54. For this reason the Sole Arbitrator concludes that the Athlete has not duly established how the Prohibited Substance entered his body, what in turn entails that the prerequisite needed to potentially reduce the standard sanction on the basis of article 10.5.2 ICF ADR has not been fulfilled.
- B.2. Athlete’s degree of fault or negligence
55. Although this fact that the Athlete has not duly established how the Prohibited Substance entered his body would be enough to determine the inapplicability of article 10.5.2 ICF ADR and to conclude that there are no exceptional circumstances that may lead to the reduction of the sanction, taking into account the statement of defence filed by the Athlete before the

STJD, the Sole Arbitrator deems convenient to also analyse the Athlete's degree of fault or negligence, in order to dispel any doubt about the adequacy of the standard sanction to the anti-doping rule violation.

56. Before the STJD the Athlete intended to excuse his behaviour on the basis that (i) he took the Prohibited Substance mistakenly and without bad faith, (ii) he is not a professional athlete, (iii) during his short period of training -7 months - he had no support from professional experts and (iv) the CBC did not inform him properly about the risks and the banned substances in sport. However, at the same time, from his own statements it appears that the Athlete also recognized that he was negligent, by stating (emphasis added) *"I recognise the error of ingesting supplements without proper care"* (*"Reconheço o erro de ingerir suplementos sem o devido cuidado"*).
57. In the Sole Arbitrator's view, none of the arguments put forward by the Athlete can lead to establish that his fault or negligence, when viewed in the totality of the circumstances of the present case, and taking into account the criteria for determining a "No Fault or Negligence", was not significant in relationship to the anti-doping rule violation. In fact, the Athlete's acknowledgement before the STJD that *"after receiving the notification of the positive result for a Prohibited Substance, I carried out some research and found that without doubt I had ingested such substance, but not in bad faith, and I have since learned that the supplement called M Stante contained banned substances"* –emphasis added- (*"Após receber a notificação do resultado positivo de substância proibida pesquisei e descobri que tal substância foi ingerida equivocadamente, e sem má-fé, vez que jamais tive conhecimento que o suplemento chamado M Stante continha substâncias proibidas"*), reveals precisely the contrary.
58. This late and shallow research conducted by the Athlete after the notification of the adverse analytical finding clearly demonstrates that the Athlete was at least careless, and did not fulfil with his personal duty to ensure that no Prohibited Substance enters his body (Article 2.1.1 ICF ADR).
59. In line with this, the Sole Arbitrator shall reject the Athlete's statement according to which the CBC did not inform him properly about the risks and the Prohibited substances in sport. On the contrary, as declared by the STJD in the Appealed Decision and corroborated by the Sole Arbitrator during this proceedings, the CBC web site (<http://www.canoagem.org.br>) provides a lot of information about doping and its consequences (Regulations, Control Doping Forms, publications about doping and its risks, List of Prohibited Substances, Frequent Asked Questions, etc.), and even offers to athletes an online educational programme for athletes called "RealWinner", explaining the content of the WADC, which is incompatible with the lack of information alleged by the Athlete.
60. On the other hand, the fact that the Athlete is not a professional is irrelevant, as the ICF ADR apply to amateur or professional athletes (CAS 2009/A/2012), and makes no distinction between them for doping purposes. When the Athlete registered into the Brazilian Championship of Canoeing and Paracanoeing organized by the CBC, he committed himself to comply with the rules of the competition and, particularly, with the Statutes and Regulations of the CBC (including the ICF ADR). Therefore, it is not relevant for the present appeal if

the Athlete was an amateur or professional sportsman, as the ICF ADR would be applicable in any case.

61. Finally and although under the strict liability principle the fact that the Athlete had no intention to enhance his sportive performance would be irrelevant, taking into account the circumstances of the present case, the Sole Arbitrator shall conclude that it is highly probable that the Athlete intended to enhance his sportive performance by taking the Prohibited Substance. It is at least surprising that although the Athlete had been only practicing canoeing for 7 months he won his first competition at national level, with a big distance to the second placed athlete.
62. Therefore, the Sole Arbitrator finds that the Athlete's degree of fault or negligence, viewed in the totality of the circumstances, is clearly significant in relation of the anti-doping rule violation, and thus the sanction cannot be reduced under article 10.5 of the ICF ADR. In consequence, the sanction to be imposed to the Athlete in this case shall be fixed at two-year period of ineligibility starting on the date of notification of the present award.
63. In this regard, the Sole Arbitrator wants to clarify that any period of ineligibility already imposed or voluntarily accepted by the Athlete before such date shall be credited against the two-year suspension.
64. In addition, pursuant to articles 9 and 10.8 of the ICF ADR, the Athlete is also disqualified of the results obtained during the Brazilian Championship of Canoeing and Paracanoeing ("Campeonato Brasileiro de Canoagem e Velocidade e Paracanoagem"), and of all the results obtained from the date on which the positive sample was collected (i.e. 15 December 2013) through the one year period of ineligibility already fulfilled by the Athlete (i.e. from the 15 December 2013 to the 15 December 2014), with all resulting consequences, including forfeiture of any medals, points and prizes. For the sake of clarity, all other competitive results (as well as its resulting consequences such as medals, points and prizes) that the Athlete may have obtained between 16 December 2014 until the date of notification of the present award will be valid and will not be affected in anyway by the present award.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by WADA against the Decision rendered by the Superior Tribunal de Justiça Desportiva de Canoagem on 3 April 2014 with regard to the athlete Mr. Igor Alex Tofalini is upheld.
2. The referred Decision of the Superior Tribunal de Justiça Desportiva de Canoagem dated 3 April 2014 is set aside.
3. Mr. Igor Alex Tofalini is sanctioned with a two-year period of ineligibility, starting on the date on which this award is communicated to the athlete. Any period of suspension (whether imposed to or voluntarily accepted by the Athlete) shall be credited against the total period of ineligibility imposed.
4. Mr. Igor Alex Tofalini is disqualified of the competitive results obtained during the “*Campeonato Brasileiro de Canoagem e Velocidade e Paracanoagem*”, and of all the results obtained from 15 December 2013 through the one year period of ineligibility already fulfilled by the Athlete (i.e. from the 15 December 2013 to the 15 December 2014), with all resulting consequences, including forfeiture of any medals, points and prizes.
5. (...).
6. (...).
7. Any other prayers for relief are rejected.