



**Arbitration CAS 2016/A/4609 World Anti-Doping Agency (WADA) v. Indian National Anti-Doping Agency (Indian NADA) & Dane Pereira, award of 19 January 2017**

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

*Football*

*Doping (nandrolone metabolite)*

*(Indirect) intent under Article 10.2.3 of the NADA Rules*

*Indirect intent in case of use of medication labelled as containing prohibited substances*

*Doctor's advice and duty of care of athletes*

*Intentional anti-doping rule violation and no (significant) fault or negligence*

1. The application of Article 10.2.3 of the NADA Anti-Doping Rules (NADA Rules) and the World Anti-Doping Code (WADA Code) do not require that the athlete knowingly ingested a prohibited substance and therefore had “direct intent” in committing the anti-doping rule violation; it already suffices if the athlete had “indirect intent” or “*dolus eventualis*” only, *i.e.* if his or her behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. Accordingly indirect intent is established where the athlete i) knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation; and ii) manifestly disregarded that risk.
2. An athlete who takes a medication on the package of which a prohibited substance is listed knows or should at least know that the medication contains the prohibited substance. Furthermore, if *e.g.* the same medication is prescribed to the athlete on four different occasions, the athlete has ample time at his or her disposal to verify whether the medication contains any prohibited substances. If under those circumstances the athlete does not even *e.g.* perform a simple internet research regarding the medication, but only relies on – wrong – advice by his (team) doctor(s), he or she manifestly disregards the risk and commits the anti-doping rule violation with “indirect intent”. In this context there is an inherent significant risk that medications may contain prohibited substances; this is all the more so with respect to medications that are taken by intramuscular injection and are certainly not administered inadvertently through, *e.g.* a tablet.
3. Given that athletes are under a constant duty to personally manage and make certain that any medication administered is permitted under the anti-doping rules, an athlete cannot simply rely on a doctor's advice; it follows that *e.g.* the prescription of a particular medicinal product by an athlete's doctor does not excuse the athlete from investigating to his or her fullest extent that the medication does not contain prohibited substances.

4. **The finding that a violation was committed intentionally excludes the possibility to eliminate the period of ineligibility based on no fault or negligence or no significant fault or negligence.**

## **I. PARTIES**

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is the independent international anti-doping agency, constituted as a private law foundation under Swiss Law with its seat in Lausanne, Switzerland, and having its headquarters in Montreal, Canada, which aim is to promote and coordinate the fight against doping in sport internationally.
2. The Indian National Anti-Doping Agency (the “Indian NADA” or the “First Respondent”) is the agency responsible for the implementation of the World Anti-Doping Code (the “WAD-Code”), the regulation of anti-doping control programs, and the promotion of anti-doping education and research throughout India. The Indian NADA has its headquarters in New Delhi, India.
3. Mr Dane Pereira (the “Player” or the “Second Respondent”) is a professional football player of Indian nationality.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and the evidence examined in the course of the present appeals arbitration proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
5. On 20 February 2015, the Player underwent an in-competition doping control in Mumbai, India. During this doping control a urine sample was collected from the Player.
6. On 15 April 2015, the result of the analysis of the A-sample revealed the presence of a Nandrolone metabolite (19-norandrosterone) (“Nandrolone”), estimated at 15 ng/mL whereas a threshold of 2 ng/mL applies. Nandrolone is an Exogenous Anabolic Androgenic Steroid prohibited under S1.1 of the 2015 Prohibited List and it is not a specified substance. The laboratory found that the *“GC-C-IRMS result [was] consistent with the administration of exogenous steroids”*.
7. On 16 April 2015, the Player was provisionally suspended by the Indian NADA.

8. On 21 April 2015, the Player informed the Indian NADA that he accepted the adverse analytical finding and waived his right to have the B-sample analysed.

**B. Proceedings before the Anti-Doping Disciplinary Panel of the Indian NADA**

9. On 5 May 2015, a “provisional suspension hearing” was held where the Player explained his case to the Indian NADA’s Senior Project Officer.
10. The Player apparently further explained his case to the Indian NADA Anti-Doping Disciplinary Panel (the “NADA ADDP”) during hearings held on 8 December 2015 and on 5, 22 and 27 January 2016.
11. On 30 December 2015, the Indian NADA filed its reply.
12. On 30 March 2016, the NADA ADDP rendered its decision (the “Appealed Decision”), with the following operative part:

*“On the basis of conjoint reading of Article 10.2.2 and 10.5.2 an ineligibility of one (1) year is imposed on Mr. Dane Pereira. The period of ineligibility shall commence from the period of provisional suspension i.e. 16.04.2015. We also direct that that [sic] under Rule 10.8 all other competitive results obtained by the athlete from the date of sample collection till the expiry of one year from that date, shall be disqualified with all resulting consequences including forfeiture of medals, points and prizes”.*

13. On 5 April 2016, the grounds of the NADA ADDP’s decision were notified to the parties, determining the following:

- *“After going through the entire record, as well as submissions made by NADA and also submissions made by [the Player], the [NADA ADDP] felt that the [Player] was not aware of the prohibited medicines prescribed by the doctor. Secondly, the [Player] was suffering from the severe knee pain”.*
- *Turning its attention to the period of ineligibility to be imposed on the Player, the NADA ADDP reasoned that “[f]or the reasons we have elaborated in the preceding paragraphs namely that the [Player] was prescribed injection of Decadurabolin (an anabolic steroid) which is supported by medical prescription, we are of the view that anti-doping rules violation was not “intentional” and hence the period of ineligibility would be two years as per in Article 10.2.2.*

*“10.2.2 If Article 10.2.1 does not apply: the period of Ineligibility shall be two years”.*

- *We have already held that the [Player] in the present case has been able to establish that he bears no significant fault or negligence and hence he is entitled to a reduced period of ineligibility. The reduced period of ineligibility as prescribed under 10.5.2 is one half of the period of ineligibility otherwise applicable (in the present case being 2 years for the reasons as stated above. Article 10.5.2 reads as under:*

*“10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1.*

*If an athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If otherwise applicable period of Ineligibility is a lifetime, the reduced period under this article may be no less than eight years".*

- *Considering the Article 10.2.2 is applicable to the facts of the present athlete [sic] and considering the fact that the [Player] is covered within the parameters of No Significant Fault and Negligence [sic], we award a punishment of reduced period of ineligibility of one-half of the period of ineligibility otherwise applicable to the [Player]. The [Player] is awarded an ineligibility of one (1) year.*
  - *On the other hand, the [NADA ADDP] is also of the view that the [Player] should have taken extreme precautions and have applied for the Therapeutic Use Exemption (TUE) Certificate to NADA before taking such banned medicine. The same was not done by the [Player]; further the [Player] did not disclose these information in the Doping Control Form at the time of sample collection which is evident from the Doping Control Form.*
  - *No aggravating circumstances have been alleged for enhanced sanctions.*
  - *The [Player] has succeeded to get reduction of period of ineligibility.*
  - *For the reasons, as stated above, the [Player] has been able to establish "no significant fault or negligence" on his part and one (1) year sanction is imposed on the [Player]. The [Player] is entitled to the benefit of credit for the period of provisional suspension. In the present case, the [Player] was provisionally suspended by the NADA w.e.f. 16.04.2015".*
14. On 22 April 2016, the Indian NADA provided WADA with certain documents of the case file.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

15. On 13 May 2016, WADA filed a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") with the Court of Arbitration for Sport ("CAS"). WADA requested for the case to be submitted to a sole arbitrator.
16. On 19 May 2016, the CAS Court Office acknowledged receipt of WADA's Statement of Appeal and granted the Respondents the opportunity to inform the CAS Court Office whether they agreed with the appointment of a sole arbitrator and that in the absence of an answer, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide.
17. On 30 May 2016, WADA filed an Appeal Brief, pursuant to Article R51 of the CAS Code, submitting the following requests for relief:

*"1. The Appeal of WADA is admissible.*

2. *The decision dated 30 March 2016 rendered by the Anti-Doping Disciplinary Panel of NADA in the matter of Dane Pereira is set aside.*
  3. *Dane Pereira is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility that is effectively served before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*
  4. *WADA is granted an award for costs”.*
18. On 31 May 2016, since the Respondents failed to provide their positions on WADA’s request for a sole arbitrator, the CAS Court Office informed the parties that it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on this issue.
  19. On 21 June 2016, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:
    - Prof. Dr. Martin Schimke, Attorney-at-Law in Düsseldorf, Germany, as Sole Arbitrator.
  20. On 23 June 2016, the CAS Court Office informed the parties that it appeared impossible to notify the Player at the address initially provided by WADA. WADA and the Indian NADA were therefore invited to provide an alternative address of the Player.
  21. On 28 June 2016, the CAS Court Office informed the parties that the Indian NADA failed to file an Answer within the prescribed deadline.
  22. On 31 August 2016, following several attempts from the CAS Court Office spanning several months to notify the relevant documentation to the Player, the Player finally acknowledged receipt. The Player was also granted a new deadline to file his Answer.
  23. On 19 September 2016, the Player requested a 30-day extension of the deadline to file his Answer, which was granted with the approval of WADA. The Player was also informed by the CAS Court Office of the possibility to apply for legal aid in order to get the assistance of a *pro bono* lawyer.
  24. On 20 October 2016, the Player requested an additional 30-day extension of the deadline to file his Answer and informed the CAS Court Office that he was in the process of applying for legal aid.
  25. On 25 October 2016, WADA informed the CAS Court Office that, if the Player had not applied for legal aid yet, only a short extension should be granted, but that if the Player had already applied for legal aid, it did not object to a further extension.

26. On 27 October 2016, the CAS Court Office, on behalf of the Sole Arbitrator, informed the parties that the Player's request was partially granted and that his deadline to file an Answer was extended until 7 November 2016.
27. On 9 November 2016, the CAS Court Office informed the parties that the Player failed to file an Answer within the prescribed deadline, but that the Sole Arbitrator, pursuant to Article R55 of the CAS Code, could nevertheless proceed with the arbitration and deliver an award.
28. On 15 November 2016, WADA informed the CAS Court Office that it preferred for the Sole Arbitrator to render an award based solely on the written submissions, whereas the Player informed the CAS Court Office that he preferred for a hearing to be held. The Indian NADA failed to respond.
29. On 17 November 2016, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing.
30. On 24 November 2016, the Player was provided with the Legal Aid Order rendered by the Board of ICAS, together with a list of possible *pro bono* lawyers.
31. On 1, 5 and 6 December 2016 respectively, WADA, the Indian NADA and the Player returned duly signed copies of the Order of Procedure to the CAS Court Office.
32. On 6 December 2016, the Player informed the CAS Court Office that he had retained a *pro bono* lawyer.
33. On 21 December 2016, a hearing was held in Lausanne, Switzerland. At the outset of the hearing the parties confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.
34. In addition to the Sole Arbitrator, Mr William Sternheimer, Deputy Secretary General to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
  - a) For WADA:
    - 1) Mr Ross Wenzel, Counsel;
    - 2) Mr Nicolas Zbinden, Counsel
  - b) The Indian NADA was not represented during the hearing.
  - c) For the Player:
    - 1) Mr Anton Sotir, Counsel, by videoconference;
    - 2) Mr Dane Pereira, the Player, by videoconference.
35. No witnesses or expert witnesses were heard, the Player however testified in respect of the circumstances of the incident with his bike and the administration of the medication by a doctor

in the hospital. The parties were afforded ample opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

36. Before the hearing was concluded, the parties expressly stated that they did not have any objection with the procedure adopted by the arbitral tribunal and that their right to be heard had been respected.
37. The Sole Arbitrator confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

#### IV. SUBMISSIONS OF THE PARTIES

38. The submissions of WADA, in essence, may be summarised as follows:
- WADA submits that, since Nandrolone is an exogenous anabolic androgenic steroid prohibited under S1.1.a of the WADA Prohibited List and because the Player waived his right to have the B-sample opened and analysed, there is no doubt that the Player breached Article 2.1 of the NADA Anti-Doping Rules (“NADA Rules”).
  - As to the Player’s explanation that the adverse analytical finding resulted from an ingestion of Decadurabolin (Nandrolone) prescribed by his doctor for treatment of a *patellar tendinitis*, WADA submits, with reference to an expert statement of Mr Alan Verneq, WADA’s Medical Director, that Nandrolone is not an indicated treatment for a *patellar tendinitis*.
  - Since Nandrolone is not a specified substance, the period of ineligibility shall be four years, unless the athlete can establish that the anti-doping rule violation was not intentional. WADA submits that the anti-doping rule violation of the Player falls at least within the ambit of the second limb of Article 10.2.3 of the NADA Rules (“Indirect Intention”).
  - WADA sustains that the burden of proof with respect to intent lies with the Player, who thus has the duty of establishing “*on a balance of probability that he did not know that his conduct might result in an anti-doping rule violation and did not manifestly disregard that risk*”.
  - Regarding the first requirement (*i.e.* the Player did not know that his conduct might result in an anti-doping rule violation), WADA submits that the Player manifestly did not discharge his burden of proof, since he ignored an overwhelming amount of stop signs:
    - 1) The prohibited substance was contained in a medication. It is generally accepted that the duties of athletes in terms of anti-doping are heightened with respect to medications. There is indeed an inherent significant risk that medications may contain prohibited substances;
    - 2) Decadurabolin is taken by intramuscular injection. The Player did not simply inadvertently ingest a tablet without double-checking the package. An injection

is a serious process, which can in certain circumstances even constitute a prohibited method under M2 of the Prohibited List;

- 3) The package of Decadurabolin expressly states that it contains Nandrolone. Its only active substance is Nandrolone Decanoate. This fact alone should have alerted the Player;
  - 4) As he expressed it himself, the Player had been a professional football player for a decade when he was tested positive, he had been tested many times and was thus perfectly aware of his duties, including the duty to ensure that no prohibited substance enters his body.
- WADA further maintains that the Player must satisfy the CAS Panel that he did not perceive the significant risk that he might be committing an anti-doping rule violation when the unknown substance was intramuscularly injected into his body. Any athlete in the circumstances described above with similar experience to the Player would have perceived the obvious risk. On the face of the evidence, it is objectively more probable that the Player perceived the significant risk. The Player does not provide any elements to establish the contrary.
  - As to the second requirement (*i.e.* the Player did not disregard the risk of committing an anti-doping rule violation), WADA maintains that the Player necessarily has to demonstrate that he undertook some kind of action. However, the evidence shows that the Player failed to make a single attempt to check whether Decadurabolin was prohibited. A simple internet search would have been sufficient to find out that the product's only active ingredient is an anabolic steroid. The Player completely disregarded the risk that he might be committing an anti-doping rule violation.
  - WADA concludes that the Player has not satisfied his burden of proof under Article 10.2.1.1 of the NADA Rules. The anti-doping rule violation must thus be considered (indirectly) intentional. The applicable period of ineligibility shall therefore be four years.
  - In the unlikely event that the Panel considers the anti-doping rule violation to be not intentional within the meaning of Article 10.2.3 of the NADA Rules, a two-year period of ineligibility would be applicable.
  - In that scenario, the period of ineligibility may be further reduced in case the Player establishes that he bears *No Significant Fault or Negligence*. The two year period of ineligibility may then be reduced to a period of ineligibility of not less than one year. Such reduction is only applicable in exceptional cases, for which it is necessary to consider what the Player could and should have done to prevent the respective substance from entering his body. The starting point in the 'fault' analysis is the fundamental duty of the Player to do everything in his power to avoid ingesting any prohibited substance or using any prohibited method. Such duty is heightened in circumstances where an athlete takes medication because of the significant risk that such medication may contain prohibited substances.



- WADA maintains that, in principle, an athlete's failure to inquire or ascertain whether the product contains a prohibited substance, such athlete's conduct constitutes a significant fault or negligence, which excludes any reduction of the applicable period of ineligibility. A simple reliance on a doctor is not enough to excuse the athlete from investigating to the fullest extent whether the medication contains prohibited substances. In addition, the negligence of a doctor who prescribed a prohibited substance to an athlete is indeed attributable to the athlete himself.
  - WADA argues that the Player clearly failed to fulfil his duties under Article 2.1 of the NADA Rules, that the application of the reduction for No Significant Fault is entirely unjustifiable and that the application of that reduction to its full fifty percent is nothing short of shocking, for the following reasons:
    - 1) The Player has been a professional for a decade and knows his obligations in terms of anti-doping, which he admits;
    - 2) The Player blindly followed the instructions of a doctor who appears to be a surgeon and cancer specialist and thus does not seem to have any particular experience in the field of sports medicine;
    - 3) The Player never made any inquiries as to whether Decadurabolin was prohibited. A simple internet search for Decadurabolin would have alerted him. Moreover, Decadurabolin is one of the most commonly used anabolic steroids;
    - 4) The Player never asked any questions to his doctor as to whether Decadurabolin could contain prohibited substances;
    - 5) The Player overlooked the clear indication on the package that Decadurabolin contains Nandrolone. Again, with a simple internet search for Nandrolone, the Player would have realised that the product contained an anabolic steroid;
    - 6) The Player does not even claim that he informed the doctor that he should not be prescribed prohibited substances.
39. Both the Indian NADA and the Player did not provide any written submission, pursuant to Article R55 of the CAS Code, within the prescribed deadline, the Player however put forward the following arguments during the hearing:
- The Player does not deny to have committed an anti-doping rule violation, but maintains that there was no significant fault or negligence. The Player submits that there are mitigating factors that should be taken into account in determining the period of ineligibility to be imposed.
  - The Player also argues that he did not commit the anti-doping rule violation intentionally. The Player argues that he did not know what substance was injected by his doctor following the incident with his bike. The Player also submits that he discussed the situation with the team doctor of his club two days after the incident. Neither of the two doctors raised any doubts despite being aware of the fact that the Player was an athlete subjected to anti-doping regulations. The Player admits that he

could have checked the prescribed product on the internet, but argues that he asked his doctors for their opinion and relied upon their professional opinions.

- The Player disputes that there is something like “indirect intention” and argues that WADA failed to establish that he wanted to cheat. The Player also submits that he did not act recklessly and that the substance does not enhance the performance of football players, as opposed to other sports.
- Finally, the Player submits that he was not educated about doping properly and that he was only required to submit himself to anti-doping tests two or three times during his entire career and therefore lacked experience.

## V. JURISDICTION

40. The Sole Arbitrator observes that Article R47 of the CAS 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 it prior to the appeal, in accordance with the statutes or regulations of that body”.*

41. Article 13.2.1 of the NADA Rules determines the following:

*“In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS”.*

42. Article 13.2.2 of the NADA Rules determines as follows:

*“In cases where Article 13.2.1 is not applicable, the decision may be appealed to the National Anti-Doping Appeal Panel”.*

43. Article 13.2.3 of the NADA Rules determines as follows:

*“In cases under Article 13.2.2, the following parties, at a minimum, shall have the right to appeal:*

*[...]*

*(f) WADA.*

*[...] For cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal to CAS with respect to the decision of the national-level appeal body”.*

44. Article 13.1.3 of the NADA Rules determines the following:

*“Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within NADA’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in NADA’s process”.*

45. In accordance with Article 13.2.3, second paragraph under (f), in conjunction with Articles 13.2.2 and 13.2.1 of the NADA Rules, WADA submits that it has the right to appeal a decision in a case that is not *“arising from participation in an International Event or [...] involving International-Level Athletes”*.
46. The Sole Arbitrator observes that it remained undisputed that no party has challenged the Appealed Decision and that the present matter neither arises from participation in an International Event nor involves an International-Level Athlete.
47. The Sole Arbitrator finds that in such situation, WADA is indeed not required to exhaust the internal legal remedies, but can challenge the Appealed Decision directly to CAS.
48. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
49. It follows that CAS has jurisdiction to decide on the present dispute.

## **VI. ADMISSIBILITY**

50. Article 13.7.1(b) of the NADA Rules determines as follows:

*“The time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*

- (a) Within fifteen days from notice of the decision, such party/ies shall have the right to request a copy of the case file from the body that issued the decision;*
- (b) If such a request is made within the fifteen-day period, then the party making such request shall have twenty-one days from receipt of the file to file an appeal to CAS”.*

51. The Sole Arbitrator notes that the appeal was filed within the deadline of twenty-one days set by Article 13.7.1(b) of the NADA Rules. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
52. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

53. WADA submits that the present dispute is governed by the NADA Rules (2015 edition), which is not disputed by the Player.
54. Article R58 of the CAS Code provides the following:

*“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”.*

55. Given the foregoing, the Sole Arbitrator is satisfied that the present appeal arbitration proceedings shall be adjudicated and decided on the basis of the NADA Rules.

## VIII. MERITS

### A. The Main Issues

56. The main issues to be resolved by the Sole Arbitrator are:
- i. Did the Player commit the anti-doping rule violation intentionally?
  - ii. Did the Player have no (significant) fault or negligence in committing the anti-doping rule violation or should the period of eligibility otherwise be reduced or suspended?
  - iii. When shall the period of ineligibility start?

#### *i. Did the Player commit the anti-doping rule violation intentionally?*

57. The Sole Arbitrator notes that it is not disputed by the Player that he violated Article 2.1 of the NADA Rules. The Sole Arbitrator will therefore solely direct his attention towards the sanction to be imposed on the Player.

58. In this respect, Article 10.2 of the NADA Rules determines as follows:

*“The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*

*10.2.1 The period of Ineligibility shall be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional”.*

59. It is not in dispute that Nandrolone is not a Specified Substance in the context of Article 10.2.1.1. As such, the period of ineligibility to be imposed on the Player is in principle four years, unless he can establish that the anti-doping rule violation was not intentional.
60. The burden of proof in establishing that the anti-doping rule violation was not committed intentionally thus lies with the Player. Should the Player fail to prove his lack of intent on a balance of probability, the period of ineligibility is given.
61. Article 10.2.3 of the NADA Rules defines the term “intent” as used in Article 10.2 of the NADA Rules:

*“As used in Article 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation **or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.** [...]” [Emphasis added by Sole Arbitrator].*

62. The Sole Arbitrator finds that the Player’s argument that no such thing as “indirect intent” exists, must be dismissed based on the clear language of Article 10.2.3 as emphasised above. Indeed, as argued by WADA, in order to apply this provision it is not required that the Player had “direct intent” in committing the anti-doping rule violation, but that it already suffices if the Player had “indirect intent”, *i.e.* that the Player i) knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation; and ii) manifestly disregarded that risk.
63. Even before the introduction of the legal concept of “intent” in the 2015 edition of the World Anti-Doping Code, CAS panels already elaborated on the concept of “indirect intent” or “*dolus eventualis*” and the Sole Arbitrator sees no reason to deviate therefrom:

*“[...] the term “intent” should be interpreted in a broad sense. Intent is established – of course – if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete’s behaviour as intentional, if the latter acts with indirect intent only, *i.e.* if the athlete’s behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. If – figuratively speaking – an athlete runs into a “minefield” ignoring all stop signs along his way, he may well have the primary intention of getting through the “minefield” unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (*i.e.* adverse analytical finding) may materialize and therefore acts with (indirect) intent” (CAS 2012/A/2822, para. 8.14).*

*“[...] the Athlete took the risk of ingesting a Specified Substance when taking the Supplement and therefore of enhancing his athletic performance. In other words, whether with full intent or per “*dolus eventualis*”, the Panel finds that the Appellant’s approach indicates an intent on the part of the Appellant to enhance his athletic performance within the meaning of Art. 10.4 IWF ADP” (CAS 2011/A/2677, para. 64).*

64. The Sole Arbitrator commences with the first element of “indirect intent”, *i.e.* whether the Player knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation.
65. In the matter at hand, the Sole Arbitrator is not convinced to his comfortable satisfaction that the Player’s bike accident was a kind of emergency where he could not reasonable prevent the administration of the medication. Indeed, the Player testifies that he informed Dr. Pawar of the fact that he was a professional athlete before he was administered anything. Also, it appears that the Player already suffered from and was treated for *patellar tendinitis* before the bike accident.
66. The Sole Arbitrator finds the Player’s allegation that he informed Dr. Pawar about his status as athlete subjected to anti-doping controls before being administered the medicines not very convincing as it is not corroborated by any evidence besides the Player’s own testimony.

Particularly a confirmation of Dr. Pawar in this respect was incumbent in order for the Sole Arbitrator to accept the Player's allegations.

67. Moreover, as argued by WADA, even if the Player had informed Dr. Pawar about his status as athlete subjected to anti-doping controls, the Sole Arbitrator finds it very unlikely that Dr. Pawar would have prescribed Decadurabolin and informed the Player that this would not cause any problems in respect of anti-doping controls.
68. Be this as it may, the Sole Arbitrator observes that it is established CAS jurisprudence that there is an inherent significant risk that medications may contain prohibited substances (CAS 2011/A/2615, para. 108). This all the more so because the relevant medication, *i.e.* Decadurabolin, is taken by intramuscular injection and is certainly not administered inadvertently through, *e.g.* a tablet.
69. Finally, the Player knew or should at least have known that Decadurabolin contains Nandrolone as the package clearly says so.
70. For the above-mentioned reasons, the Sole Arbitrator concludes to his comfortable satisfaction that the Player knew that there was a significant risk that the injection of Decadurabolin might contain prohibited substances and may result in an anti-doping rule violation.
71. Turning his attention to the second element of "indirect intent", *i.e.* whether the Player manifestly disregarded such risk, the Sole Arbitrator notes that Decadurabolin was prescribed on four different occasions, *i.e.* on 15 January, 26 January, 2 February and 10 February 2015. The Player therefore had ample time at his disposal to verify whether Decadurabolin contains any prohibited substances, the Player however failed to do so.
72. The Sole Arbitrator finds that, even if it were true, the Player cannot simply hide behind his contention that he asked Dr. Pawar and the team doctor whether the medication prescribed contained any prohibited substances and relied on their assurance that it did not.
73. The Sole Arbitrator notes that the Player's contention that he asked his team doctor is not corroborated by any evidence except for his own testimony.
74. Also, the Player testified that the team doctor was mainly serving as massager of the team. The Sole Arbitrator finds that the Player should not have turned to his team doctor with such request, but to someone who had the required knowledge about doping.
75. Furthermore, even assuming that the Player indeed asked such question to the team doctor, the Sole Arbitrator finds it unlikely that the team doctor would have ensured the Player that the medication would not cause any problems with anti-doping controls, because a package of Decadurabolin expressly states that it contains Nandrolone.
76. In any event, the Sole Arbitrator fully endorses the view that an athlete cannot simply rely on a doctor's advice, as is an established principle in CAS jurisprudence: "[...] *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"* (CAS 2008/A/1488, para. 12 of the abstract published on the CAS website).

77. The Sole Arbitrator is satisfied to accept that a simple internet search would have revealed that Decadurabolin contains Nandrolone and that it is an anabolic steroid, but that the Player did not take any such precaution. Likewise, the Player does not contend to have even attempted to verify whether the medication contained any substances included on the 2015 Prohibited List.
  78. In view of the above, the Sole Arbitrator finds that the Player's behaviour was not only extremely negligent, but indeed reckless, and failed to comply with his duties as an athlete subjected to anti-doping testing. The Player neglected all stop signs and accepted the manifest risk that the medication that was prescribed and injected would indeed contain a prohibited substance and result in an anti-doping rule violation.
  79. Consequently, the Sole Arbitrator concludes that the Player manifestly disregarded the significant risk that the medication prescribed to him would result in an anti-doping rule violation and, as a result, committed the anti-doping rule violation with "indirect intent", or at least failed to establish to the comfortable satisfaction of the Sole Arbitrator that the anti-doping rule violation was not committed intentionally. A four-year period of ineligibility is therefore in principle warranted.
- ii. Did the Player have no (significant) fault or negligence in committing the anti-doping rule violation or should the period of eligibility otherwise be reduced or suspended?***
80. In view of the above and as set out in Article 10.2 of the NADA Rules, the period of ineligibility to be imposed on the Player is in principle four years, subject to potential reduction or suspension pursuant to Articles 10.4 (*i.e.* Elimination of the Period of Ineligibility where there is No Fault or Negligence), 10.5 (*i.e.* Reduction of the Period of Ineligibility based on No Significant Fault or Negligence) or 10.6 (*i.e.* Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons Other than Fault).
  81. Since it is already concluded above that the Player failed to establish that the anti-doping rule violation was not committed intentionally, the Sole Arbitrator does not deem it necessary to assess whether the Player may have had no fault or negligence (Article 10.4 of the NADA Rules) in committing the anti-doping rule violation, as the threshold of establishing that an anti-doping rule violation was not committed intentionally is lower than proving that an athlete had no fault or negligence in committing an anti-doping rule violation. Indeed, the Sole Arbitrator finds that the finding that a violation was committed intentionally excludes the possibility to eliminate the period of ineligibility based on no fault or negligence.
  82. Although the Sole Arbitrator finds that the above reasoning also applies to "no significant fault or negligence" (Article 10.5 of the NADA Rules), he observes that the comment to Article 10.5.2 of the NADA Rules takes away any possible doubts in this respect:

*“Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation [...] or an element of a particular sanction (e.g., Article 10.2.1) [...]”.*

83. As such, since the Player is found guilty of violating Article 10.2.1 of the NADA Rules, it is impossible to establish that the violation was committed with no significant fault or negligence.
84. Having dealt with two of the three provisions (Articles 10.4 and 10.5 of the NADA Rules) that may lead to elimination, reduction or suspension of an otherwise applicable period of ineligibility, the Sole Arbitrator is left with the task of assessing whether Article 10.6 of the NADA Rules is relevant in the matter at hand.
85. The Sole Arbitrator observes that the Player does not argue that the application of this provision should lead to a reduction or suspension of the period of ineligibility, nor does there appear to have been any “substantial assistance” or an “admission” from the side of the Player that should lead to a reduction or suspension of the period of ineligibility of four years.
86. Consequently, the Sole Arbitrator finds that the Player did not have no (significant) fault or negligence in committing the anti-doping rule violation, nor shall the period of ineligibility of four years otherwise be reduced or suspended.

***iii. When shall the period of ineligibility start?***

87. Turning his attention to the commencement date of the period of ineligibility, the Sole Arbitrator observes that Articles 10.11 and 10.11.3.1 of the NADA Rules determine respectively the following:

*“Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed”.*

*“If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility, which may ultimately be imposed on appeal”.*

88. The Sole Arbitrator finds that, for practical reasons and in order to avoid any eventual misunderstanding in the calculation of the period of ineligibility, the period of ineligibility should start on 16 April 2015, *i.e.* the date of commencement of the provisional suspension, and not on the date of the present arbitral award.
89. Consequently, the Sole Arbitrator finds that a four-year period of ineligibility is to be imposed on the Player commencing as from 16 April 2015.



## **B. Conclusion**

90. Based on the foregoing, and after having taken into due consideration both the regulations applicable and all the evidence produced and all arguments submitted, the Sole Arbitrator finds that:
- i. The Player committed the anti-doping rule violation with “indirect intent”. A four-year period of ineligibility is therefore in principle warranted.
  - ii. The Player did not have no (significant) fault or negligence in committing the anti-doping rule violation, nor shall the period of ineligibility of four years otherwise be reduced or suspended.
  - iii. A four-year period of ineligibility is to be imposed on the Player, commencing as from 16 April 2015.
91. All other and further motions or prayers for relief are dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by the World Anti-Doping Agency on 13 May 2016 against the Decision issued on 30 March 2016 by the Anti-Doping Disciplinary Panel of the Indian National Anti-Doping Agency is upheld.
  2. The Decision issued on 30 March 2016 by the Anti-Doping Disciplinary Panel of the Indian National Anti-Doping Agency is modified as follows: a period of ineligibility of four years is imposed on Mr Dane Pereira starting as from 16 April 2015.
- (...)
5. All other and further motions or prayers for relief are dismissed.