

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2017/A/5315, World Anti-Doping Agency (WADA) v. Federación Colombiana de Fútbol (FCF) and Yobani Jose Ricardo Garcia**

**CAS 2017/A/5316, World Anti-Doping Agency (WADA) v. Federación Colombiana de Fútbol (FCF) and Daniel Londono Castaneda**

## **ARBITRAL AWARD**

**delivered by the**

### **COURT OF ARBITRATION FOR SPORT**

**Sitting in the following composition:**

President: Mr. Romano F. Subiotto QC, Attorney-at-law in Brussels, Belgium,  
and Solicitor-Advocate in London, United Kingdom

Arbitrators: Mr. Massimo Coccia, Professor, Attorney-at-law in Rome, Italy  
Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland

Ad hoc clerk: Ms. Rikki Stern, Attorney-at-law in New York, United States

**in the arbitration between**

**World Anti-Doping Agency**, Montreal, Canada  
Represented by Mr. Ross Wenzel and Mr. Nicolas Zbinden, Attorneys-at-law, Kellerhals  
Carrard, Lausanne, Switzerland

**Appellant**

**and**

**Federación Colombiana de Fútbol**, Bogotá, Colombia  
Represented by Mr. Andres Tamayo Iannini

**First Respondent**

**Yobani Jose Ricardo Garcia**, Bogotá, Colombia  
Represented by Mr. Cesar Mauricio Giraldo Hernandez, Attorney-at-law, GHER &  
Asociados, Bogota, Colombia

**Second Respondent**

**and in the arbitration between**

**World Anti-Doping Agency**, Montreal, Canada  
Represented by Mr. Ross Wenzel and Mr. Nicolas Zbinden, Attorneys-at-law, Kellerhals  
Carrard, Lausanne, Switzerland

**Appellant**

**and**

**Federación Colombiana de Fútbol**, Bogotá, Colombia  
Represented by Mr. Andres Tamayo Iannini

**First Respondent**

**Daniel Londono Castaneda**, Bogotá, Colombia  
Represented by Mr. Cesar Mauricio Giraldo Hernandez, Attorney-at-law, GHER &  
Asociados, Bogota, Colombia

**Second Respondent**

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## **I. THE PARTIES**

1. The Appellant is the World Anti-Doping Agency (“WADA”), an international independent organization created in 1999 to promote, coordinate and monitor the fight against doping. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada.
2. The First Respondent is the Federación Colombiana de Fútbol (“FCF”), the Colombian Football Association. Its seat is in Bogota, Colombia.
3. The Second Respondents are Yobani Jose Ricardo Garcia and Daniel Londono Castaneda, players in the Colombian Football Association (“Athletes”).

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. 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 Panel has considered all of the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. The Athletes underwent a doping control test under the testing authority of the national anti-doping organization of Colombia, COLDEPORTES, on 13 July 2016.
6. The analysis of the Athletes’ A Samples revealed the presence of boldenone and a metabolite of boldenone. Boldenone is prohibited under S1.1a of the 2016 Prohibited List (Exogenous Anabolic Androgenic Steroids).
7. The analysis of the Athletes’ B Samples confirmed their A Sample results.
8. On 2 February 2017, the Disciplinary Commission of the Division Mayor del Futbol Colombiana (“DC DIMAYOR”) found that the Athletes committed intentional anti-doping rule violations and accordingly imposed four-year ineligibility periods on each of the Athletes.
9. The Athletes appealed the decisions issued by the DC DIMAYOR.
10. In its 19 July 2017 decisions, the Disciplinary Commission of the Federación Colombiana de Fútbol (“DC FCF”) revoked the four-year ineligibility periods imposed upon the Athletes and overturned the DC DIMAYOR’s decisions. The DC FCF found numerous errors and inconsistencies in the Laboratory Documentation Packages for which neither the laboratory nor COLDEPORTES could account, and as such the DC FCF was uncomfortable accepting the Adverse Analytical Findings based upon such information.
11. This present arbitration is an appeal by WADA against the decisions rendered by the DC FCF.

12. Based on each of the parties' submissions in the present arbitration, it is clear that the doping control was far from best practice.
13. First, there were a number of irregularities and inconsistencies in the Laboratory Documentation Packages, including but not limited to: omitting three individuals, Ms. Angela Barragan, Ms. Lucia Toscano and Ms. Viviana Gonzalez, who handled the Samples, from the List of Personnel; providing inconsistent information concerning when they handled the Samples; and offering contradictory information on the specific tasks performed by laboratory personnel.
14. Second, the records of the Colombian WADA-accredited laboratory regarding the qualifications and authorizations of Ms. Barragan, Ms. Toscano and Ms. Gonzalez are disorganized. However, curriculum vitae and training records demonstrate that they were qualified scientists trained to receive and manipulate Samples.
15. Third, the external chain of custody of the Athletes' A and B Samples raises questions as to the conditions in which the Samples were transported from Neiva, Huila, until they were dropped off with the courier company in Ibague, Tolima, for transfer to the laboratory.
16. The parties disagree as to the role that these factors played in causing the Athletes' Adverse Analytical Findings.
17. The Athletes also submitted that if the above factors did not cause their Adverse Analytical Findings, then the presence of boldenone and its metabolite in their Samples were the result of inadvertent consumption of boldenone in contaminated meat and/or endogenous production. The Athletes offered evidence from the Executive Director of the Cattle Farmers Association that boldenone is regularly used by cattle farmers in Huila and the menu from the hotel restaurant where the Athletes ate in Huila both the days before and of their doping control. The Athletes also drew on WADA technical documents in order to show that boldenone is produced naturally.

### **III. PROCEEDINGS BEFORE CAS**

18. WADA submitted its Statements of Appeal on 8 September 2017.
19. WADA requested a 45-day extension to file its Appeal Briefs (i.e., on or before 2 November 2017), which the CAS Court partially granted on 28 September 2017, after having duly consulted the Respondents.
20. WADA submitted its Appeal Briefs on 20 October 2017.
21. Further to a request filed by the Respondents and with the Appellant's agreement, the CAS Court Office confirmed on 10 November 2017 that the Respondents were invited to submit their Answers by 27 November 2017.
22. On 21 November 2017, the CAS Court confirmed the constitution of the Panel:

President: Mr. Romano F. Subiotto QC, Attorney-at-law in Brussels, Belgium

Arbitrators: Mr. Massimo Coccia, Professor, Attorney-at-law in Rome, Italy  
Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland.

23. The FCF submitted its Answers on 24 November 2017, together with an objection of inadmissibility.
24. The Athletes submitted their Answers on 27 November 2017, together with an objection of lack of jurisdiction.
25. WADA submitted Observations to the Respondents' jurisdictional objections on 7 December 2017.
26. On 1 February 2018, the CAS Court Office issued Orders of Procedure, to which all of the parties subsequently agreed and duly signed. The Orders of Procedure provided for the holding of a single hearing for both procedures CAS 2017/A/5315 and CAS 2017/A/5316. Subsequently, all parties also agreed with the issuance of a single "*written, reasoned award*" for both cases.
27. On 20 February 2018, a hearing was held at the CAS Court Office in Lausanne, Switzerland. The Panel heard from counsel for WADA, FCF and each of the Athletes. The parties offered no witness testimony.
28. At the end of the hearing, the parties confirmed that their rights to a fair hearing had been respected.

#### IV. JURISDICTION

29. The applicable procedure in this case is set out under Article R47 *et seq.* of the Code of Sports-related Arbitration ("CAS Code"), which provides in relevant part:

*"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."*

30. The parties agree that the applicable statutes or regulations are the Fédération Internationale de Football Association ("FIFA") Anti-Doping Regulations ("ADR"). However, the parties disagree as to whether CAS has jurisdiction to hear WADA's appeal under the FIFA ADR.

##### *Submissions by the FCF*

31. The FCF accepts that CAS has jurisdiction to hear the present appeal.

##### *Submissions by the Athletes*

32. The Athletes assert that they are national-level players, not international-level players, tested during a national game, and as such appeals are governed by Article 75(2) of the FIFA ADR, which provides:

*“[T]he decision may be appealed to a national-level appeal body, being an independent and impartial body established in accordance with rules adopted by the National Anti-Doping Organisation having jurisdiction over the Player or other Person. The rules for such appeal shall respect the following principles: a timely hearing; a fair and impartial hearing panel; the right to be represented by counsel at the Player’s or other Person’s own expense; and a timely, written, reasoned decision. If the National Anti-Doping Organisation has not established such a body, the decision may be appealed to CAS in accordance with the provisions applicable before such court.”*

33. The Athletes assert that the competent national-level body to hear appeals from the DC FCF is the Colombian General Disciplinary Commission (“GDC”). The GDC is an independent and impartial appeal body designated by COLDEPORTES. The Athletes also note that the GDC is established by law under Article 42 of the Colombian Anti-Doping Act, Law 845 of 2003, as an appellate body for anti-doping appeals.

34. The Athletes acknowledged that the FIFA ADR exempt WADA from exhausting internal remedies under Article 74(3) of the FIFA ADR (“WADA not required to exhaust internal remedies”), which states:

*“Where WADA has a right to appeal under arts 74 to 80 and no other party has appealed a final decision within FIFA’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in FIFA’s process.”*

35. However, the Athletes submitted that this exemption is limited to those remedies in “FIFA’s process” and does not extend to the national anti-doping organization’s processes. Accordingly, for national-level players, WADA must exhaust internal remedies within the national anti-doping organization’s process – i.e., WADA must appeal the decision of the DC FCF to the GDC before making any appeal to CAS.

36. In short, the Athletes assert that they are entitled to three hearings before any appeal to CAS: DIMAYOR, DC FCF and GDC. It is only after each of these three hearings that a decision may be appealed to CAS.

37. Accordingly, it is the Athletes’ submission that the GDC, not CAS, has jurisdiction over the present appeal.

*Submissions by WADA*

38. WADA asserts that CAS has jurisdiction over the present appeal.

39. The DC DIMAYOR rendered the decision in the first instance, which the Players appealed and which the DC FCF, a national-level appeal body, overturned on appeal. WADA therefore has a right of appeal to CAS pursuant to Article 75(3) of the FIFA ADR, which provides that “[f]or cases under art. 75 par. 2 (Appeals involving other

*Players or other Persons), WADA [...] shall also have the right to appeal to CAS with respect to the decision of the national-level appeal body.”*

40. WADA asserts that, even assuming that, for whatever reason, the decision of the DC FCF could have been appealed to the GDC, WADA is not required to exhaust internal remedies. It has an absolute right to appeal any national-level appeal to CAS, provided that no appeal was filed by another party within the internal process of the organization under Article 74(3) of the FIFA ADR. Because neither the Athletes nor the FCF lodged an appeal with the GDC, WADA’s appeal is also proper under Article 74(3) of the FIFA ADR.
41. WADA also opposes the Athletes’ interpretation of Article 74(3) of the FIFA ADR, which they claim only exempts WADA from exhausting internal remedies “*in FIFA’s process.*” WADA encouraged the Panel to interpret this provision in accordance with the spirit and purpose of Articles 74-80, which spirit and purpose is to create a workable process for appeals by WADA and exempt WADA from having to exhaust any internal remedies, whether in FIFA’s process or the national anti-doping organization’s process.
42. In support of this claim, WADA asserted that references to “*FIFA’s process*” as used in Article 74(3) must include processes set out by national anti-doping organizations; otherwise appeals by WADA would be highly impractical. For example, WADA would be required to appear before one or more national-level appeal bodies in proceedings that are often not conducted in English before reaching CAS. This would be highly inefficient, particularly where WADA is the only party lodging an appeal, and contradictory to the swift procedures set forth in the FIFA ADR that are intended to allow WADA to appeal “*directly*” to CAS.
43. WADA also noted that the FIFA ADR are based on and intended to implement the WADA Code, which exempts WADA from exhausting any internal remedies without distinction. Specifically, Article 13.1.3 of the WADA Code provides that: “*Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within the Anti-Doping Organization’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in the Anti-Doping Organization’s process.*”
44. Accordingly, the most reasonable interpretation of Article 74(3) exempts WADA from having to resort to national-level appeal bodies, such as the GDC, before appealing to CAS, where no other party has lodged an appeal.
45. Accordingly, WADA contends that CAS has jurisdiction over the present appeal pursuant to Articles 74(3) and 75(3) of the FIFA ADR.

*The Panel’s Decision*

46. The applicable statutes or regulations, the FIFA ADR, provide:

***“Article 74 Decisions subject to appeal***

*Decisions made under these Regulations may be appealed as set forth below in arts 75 to 80 or as otherwise provided in these Regulations, the Code or International Standards. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, any post-decision review provided in the Anti-Doping Organisation's rules must be exhausted, provided that such review respects the principles set forth in art. 75 par. 2 (Appeals involving other Players or other Persons) (except as provided in art. 74 par. 3 (WADA not required to exhaust internal remedies)).*

[...]

### 3. WADA not required to exhaust internal remedies

Where WADA has a right to appeal under arts 74 to 80 and no other party has appealed a final decision within FIFA's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in FIFA's process.

### **Article 75 Appeals against decisions regarding anti-doping rule violations, consequences, Provisional Suspensions, recognition of decisions and jurisdiction**

*A decision that an anti-doping rule violation was committed, a decision imposing consequences or not imposing consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed; a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription); a decision by WADA not to grant an exception to the six months' notice requirement for a retired Player to return to Competition under art. 58 (Retired Player returning to Competition); a decision by WADA assigning results management under art. 7.1 of the WADA Anti-Doping Code 2015; a decision by FIFA not to bring forward an Adverse Analytical Finding or an Atypical Finding as an anti-doping rule violation, or a decision not to go forward with an anti-doping rule violation after an investigation under these Regulations; a decision to impose a Provisional Suspension as a result of a Provisional Hearing; FIFA's failure to comply with chapter VII; a decision that FIFA lacks jurisdiction to rule on an alleged anti-doping rule violation or its consequences; a decision to suspend, or not suspend, a period of Ineligibility or to reinstate, or not reinstate, a suspended period of Ineligibility under art. 23 par. 1 (Substantial assistance in discovering or establishing anti-doping rule violations); a decision under art. 29 par. 3 (Violation of the prohibition of participation during Ineligibility); and a decision by FIFA not to recognise another Anti-Doping Organisation's decision under art. 72 (Application and recognition of decisions), may be appealed exclusively as provided in arts 75 to 80.*

#### *1. Appeals involving International-Level Players or International Competitions*

*In cases arising from participation in an International Competition or in cases involving International-Level Players, a final decision within FIFA's, the Confederation's or the Association's process may be appealed exclusively to CAS.*

#### 2. Appeals involving other Players or other Persons

In cases where art. 75 par. 1 (Appeals involving International-Level Players or International Competitions) is not applicable, the decision may be appealed to a national-level appeal body, being an independent and impartial body established in accordance with rules adopted by the National Anti-Doping Organisation having jurisdiction over the Player or other Person. The rules for such appeal shall respect the following principles: a timely hearing; a fair and impartial hearing panel; the right to be represented by counsel at the Player's or other Person's own expense; and a timely, written, reasoned decision. If the National Anti-Doping Organisation has not established such a body, the decision may be appealed to CAS in accordance with the provisions applicable before such court.

### 3. Persons entitled to appeal

*In cases under art. 75 par. 1 (Appeals involving International-Level Players or International Competitions), the following parties shall have the right to appeal to CAS: (a) the Player or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) FIFA; (d) the National Anti-Doping Organisation of the Person's country of residence or countries where the Person is a national or licence holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (f) WADA.*

In cases under art. 75 par. 2 (Appeals involving other Players or other Persons), the parties having the right to appeal to the national-level appeal body shall be as provided in the National Anti-Doping Organisation's rules but, at a minimum, shall include the following parties: (a) the Player or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) FIFA; (d) the National Anti-Doping Organisation of the Person's country of residence; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (f) WADA. For cases under art. 75 par. 2 (Appeals involving other Players or other Persons), WADA, the International Olympic Committee, the International Paralympic Committee, and FIFA shall also have the right to appeal to CAS with respect to the decision of the national-level appeal body. Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the Anti-Doping Organisation whose decision is being appealed and the information shall be provided if CAS so directs.

*Notwithstanding any other provision herein, the only Person who may appeal from a Provisional Suspension is the Player or other Person upon whom the Provisional Suspension is imposed."*

47. As an initial matter, it is undisputed that the Athletes are national-level players, and as such Article 75(2) ("Appeals Involving other Players or other Persons") and

Article 75(3) (“Persons entitled to appeal”) are relevant to determining the applicable appeals process.

48. Article 75(2) specifies that “*the decision may be appealed to a national-level appeal body,*” and Article 75(3) provides that WADA has “*the right to appeal to CAS with respect to the decision of the national-level appeal body.*” There is nothing in these articles that requires WADA to appeal to a national-level appeal body, nor will this Panel import any such requirement.
49. The DC DIMAYOR issued the first-instance decision on 2 February 2017, which the Athletes appealed to the DC FCF. The DC FCF overturned the DC DIMAYOR’s decision on 19 July 2017. The DC FCF is a national-level appeal body, notwithstanding that the GDC may also be empowered to review decisions by the DC FCF. Accordingly, WADA has the right to appeal the decision of the DC FCF to CAS under Articles 75(2) and 75(3) of the FIFA ADR.
50. There is disagreement among the parties as to whether Article 74(3) also exempts WADA from exhausting internal remedies within the national anti-doping organization’s process.
51. Article 74(3) states that “[w]here WADA has a right to appeal under arts 74 to 80 and no other party has appealed a final decision within FIFA’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in FIFA’s process.” This provision expressly exempts WADA from following any internal remedies in “FIFA’s process,” and therefore allows WADA to appeal directly to CAS without exhausting internal remedies in FIFA’s process.
52. The Panel believes that such reference to the “FIFA’s process”, put in proper context, must be interpreted so as to include any antidoping process within the so-called FIFA pyramidal system. The Panel has no reason to believe that the drafters of the FIFA ADR intended to distinguish between “FIFA’s process” *stricto sensu* and the national processes for the purposes of exempting WADA from exhausting internal remedies. Logically, the exemption from the burden of exhausting all internal remedies appears to be particularly appropriate for national processes, considering that WADA’s mandatory participation in all instances at the national level would render unmanageable and cumbersome (and would thus undermine) its worldwide task of fighting doping in football. This logical and teleological reading of Article 74(3) of the FIFA ADR is confirmed by a contextual interpretation.
53. Indeed, Article 74(3) of the FIFA ADR implements Article 13.1.3 of the WADA Code, which exempts WADA from exhausting any and all internal remedies without distinction. Article 13.1.3 is among the provisions, as set forth in Article 23.2.2 of the WADA Code, that Signatories, including FIFA, are required to implement “*without substantive change.*” This Panel will not adopt an interpretation of Article 74(3) of the FIFA ADR that requires WADA to exhaust internal remedies within the national anti-doping organization’s process and, therefore, introduces a substantive change in the FIFA ADR. The Panel has no reason to believe that the FIFA ADR intended to impose any such requirement contrary to its obligations under the Code.

54. The Panel observes that the FIFA ADR refer to “FIFA’s process” in Article 74(3) but elsewhere refer to “*FIFA’s, the Confederation’s or the Association’s process*” (i.e., Article 75(1), “Appeals involving International-Level Players or International Competitors”) but, under a contextual and purposive approach, believes that the distinction was not intentional but was the result of inadvertent drafting. The Panel agrees with WADA that the spirit and purpose of Article 74(3) is to streamline the legal fight against doping and create a workable appeals process that exempts WADA from exhausting internal remedies within FIFA’s process and the national anti-doping organization’s process.
55. Accordingly, WADA is not required to appeal the DC FCF’s decision to the GDC because it is expressly exempt from exhausting internal remedies under Article 74(3) of the FIFA ADR where, as here, neither the Athletes nor the FCF challenged the decision of the DC FCF before the GDC.
56. Thus, WADA’s appeal against the DC FCF’s decision to CAS is proper, and this Panel has jurisdiction over WADA’s appeal.
57. The Panel is also comforted that the parties unanimously agreed that they preferred this Panel to decide the present appeal (rather than any national appellate body); unanimously agreed that they fully pleaded all of their claims and defenses before CAS; and unanimously agreed that they suffered no prejudice by not having another opportunity for appellate review at the national level before any review by CAS.

## V. ADMISSIBILITY

58. Article R49 of the CAS Code provides:
- “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.”*
59. Article 80, paragraph 1.2, of the FIFA ADR provides:
- “[T]he filing deadline for an appeal filed by WADA shall be the later of:*
- a) Twenty-one days after the last day on which any other party in the case could have appealed; or*
- b) Twenty-one days after WADA’s receipt of the complete file relating to the decision.”*
60. The relevant date for determining whether WADA’s appeal is timely under Article 80, paragraph 1.2, of the FIFA ADR is measured by reference to the date that WADA received the complete case file, not the date that the relevant national anti-doping organization, COLDEPORTES, was requested to communicate the case file to WADA.
61. WADA filed its Statement of Appeal on 8 September 2017, which was within 21 days of receipt of the complete file on 18 August 2017. Accordingly, WADA’s appeal is admissible.

62. The Panel notes that Article R51 of the CAS Code specifies that the appellant must file an appeal brief “[w]ithin ten days following the expiry of the time limit for the appeal.”
63. WADA requested an extension of 45 days to file its appeal brief due to the necessity of translating the case file, which it received in Spanish, and the complexity of the case. CAS partially granted WADA’s request for an extension and extended until 20 October 2017 the time-limit for the filing of the appeal brief.
64. WADA filed its appeal brief on 20 October 2017, which was within the time limit for filing an appeal brief under the CAS Code, as extended by CAS.
65. Accordingly, WADA’s appeal brief was also timely and the objection of inadmissibility raised by the First Respondent shall be dismissed.

## **VI. SCOPE OF THE PANEL’S REVIEW**

66. According to Article R57 of the CAS Code, the Panel shall have full power to review the facts and the law. It may issue a new decision that replaces the challenged decision or annul the decision and refer the case back to the previous instance.
67. However, the Panel also “*has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered*” under the third paragraph of Article R57 of the CAS Code.
68. In these proceedings, WADA has introduced evidence of the service contracts of Ms. Barragan, Ms. Toscano and Ms. Gonzalez; their respective curriculum vitae; and their respective training records by Colombia’s then-WADA-accredited laboratory.
69. The Athletes and the FCF have urged the Panel to exercise its discretion and exclude this evidence. The Athletes and the FCF assert that this information is not only not new but, despite multiple requests by the FCF for this same information in the first instance and on appeal, was also never made available to the FCF until the present appeal proceedings.
70. While it is lamentable that this information was not made available by the Colombian laboratory to the FCF prior to the proceedings before CAS, the Panel is of the opinion that WADA cannot be held responsible for an accredited laboratory’s insufficient cooperation in providing all the evidence within the context of a national anti-doping process to which WADA was not privy. Under the established CAS jurisprudence on Article R57, para. 3, CAS panels should resort to this discretionary power to exclude evidence only in extreme cases, such as when it is utterly evident that a party is acting in bad faith or is ambushing the other party. Moreover, this information is material to the present appeals and neither the Athletes nor the FCF are prejudiced by the Panel’s consideration of this evidence. All of the parties have had time to review, analyze and comment on this new information and, as the right to be heard and to contradict the other party has been respected, the Panel finds no compelling reason to exercise its discretion under Article R57 of the CAS Code and strike these materials.

## VII. APPLICABLE LAW

71. Article R58 of the CAS Code provides that:

**“R58 Law Applicable to the merits**

*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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

72. All parties agree that the FIFA ADR, in their 2015 version, apply to the present proceedings.

73. There was some dispute among the parties as to which law applies subsidiarily. WADA asserted that Swiss law applied subsidiarily, but the Athletes submitted that Colombian law applied subsidiarily.

74. Article 86(2) of the FIFA ADR stipulate that “[t]hese Regulations shall be implemented and construed according to Swiss law and the FIFA Statutes, FIFA Disciplinary Code and FIFA Regulations.” Accordingly, Swiss law applies subsidiarily to the dispute for matters not addressed by the FIFA ADR.

75. According to Article 6 of the FIFA ADR, an anti-doping rule violation is established by the “*presence of a Prohibited Substance or its Metabolites or Markers in the Player’s ‘A’ Sample [...and...] where the Player’s ‘B’ Sample is analysed and the analysis of the Player’s ‘B’ Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player’s ‘A’ Samples.*”

76. An anti-doping rule violation may be established by “*any reliable means*” under Article 67(1) of the FIFA ADR. Article 67(2)(b) of the FIFA ADR sets forth various “*rules of proof*” applicable to establishing an anti-doping rule violation, including the following evidentiary presumption:

*“WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Player or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Player or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, FIFA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.”*

77. If an anti-doping rule violation not involving a Specified Substance is established, the FIFA ADR foresees a four-year ineligibility period, unless the athlete can establish that the violation was not intentional, under Article 19(1)(a) of the FIFA ADR.

78. Article 22(2) of the FIFA ADR also provide for reductions of sanctions for No Significant Fault or Negligence for non-Specified Substances: “*the otherwise applicable period of Ineligibility may be reduced based on the Player 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.*” In order to demonstrate No Significant Fault or Negligence, an athlete “*must establish how the Prohibited Substance entered his system.*”
79. The standard of proof for the Athletes is the balance of probabilities as set forth in Article 66(2) of the FIFA ADR.

### VIII. SUBMISSIONS BY THE PARTIES

#### *Submissions by WADA*

80. WADA requests that the Panel overturn the decision of the DC FCF finding that the Athletes did not commit an anti-doping rule violation and impose a four-year ineligibility period on each of the Athletes.
- a. The Athletes committed anti-doping rule violations
81. WADA asserted that the Athletes committed anti-doping rule violations because each of their A and B Samples confirmed the presence of boldenone, which is a prohibited steroid under S1.1.a of the 2016 Prohibited List, and of a metabolite of boldenone, in violation of Article 6 of the FIFA ADR.
82. WADA accepted that there were irregularities in the Laboratory Documentation Packages, but alleges that they are insufficient to establish a departure from the International Standard for Laboratories (“ISL”), much less “*could have reasonably caused the Adverse Analytical Finding.*” As such, according to WADA the presumption that the Colombian then-WADA-accredited laboratory acted in accordance with the ISL under Article 67(2)(b) of the FIFA ADR shall apply.
83. First, WADA accepted that the Laboratory Documentation Packages did not list three individuals, Ms. Barragan, Ms. Toscano and Ms. Gonzalez, in the List of Personnel involved in the analysis of the Samples. However, WADA maintains that this deviation from the requirements of Technical Document for Laboratory Documentation Packages, TD2009LDOC, does not give rise to a departure from the ISL.
84. Second, even if these individuals were not full-time employees but under contract to the laboratory, then this too is insufficient to rebut the presumption that the Colombian then-WADA-accredited laboratory complied with the ISL. Article 5.4.2.1 of the ISL contemplates that laboratory personnel include both employees and persons “*under contract to*” the laboratory.

85. Third, there is no evidence to show that these individuals were unqualified to perform the tasks that they in fact performed on the Samples. In particular, they are all trained and qualified scientists, being either pharmacists or bacteriologists.
86. Fourth, the doping control officer was authorized by COLDEPORTES.
87. Accordingly, none of the Respondents is able to establish departures from the ISL.
88. Even assuming, *arguendo*, that there was a departure from the ISL, in view of WADA none of the Respondents has established that such a departure could have reasonably caused the Adverse Analytic Findings. WADA cites the standard set forth in CAS 2013/A/3112 for establishing such a departure:
- “[A] mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an antidoping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis. Further, the Panel remarks that such athlete’s rebuttal functions only to shift the burden of proof to the anti-doping organization, which may then show, to the Panel’s comfortable satisfaction, that the departure did not cause a misreading of the analysis.”*
89. Neither the Athletes nor the FCF have offered any explanation as to how any of the above-discussed alleged departures could have caused boldenone to materialize in their Samples; at most, their evidence demonstrates minor clerical and other administrative issues with the Laboratory Documentation Packages.
90. Instead, the record demonstrates that Ms. Barragan, Ms. Toscano and Ms. Gonzalez are trained scientists and well-qualified to perform the tasks they performed. WADA asserts that the fact *“any of the three persons would have not only made one mistake, but that mistakes would have been made on four different occasions, which all caused the exact same parent compound metabolite to be found in four different A and B Samples in the relevant concentrations, is nothing short of baseless speculation.”*
91. Accordingly, in WADA’s view, the Adverse Analytic Findings are valid and establish that the Athletes committed anti-doping rule violations.

b. The Athletes should be sanctioned for a four-year ineligibility period

92. WADA asserts that the Athletes committed intentional anti-doping rule violations and shall therefore be sanctioned for a four-year ineligibility period under the applicable FIFA ADR.
93. Ample CAS jurisprudence puts the burden on the athlete to demonstrate that an anti-doping rule violation was not intentional. Furthermore, in order to satisfy that burden the athlete must demonstrate the origin of the prohibited substance, with actual evidence, not mere speculation.
94. WADA rejects that the Athletes have met their burden because the Athletes have offered nothing more than mere speculation as to the origin of boldenone and its metabolite in their Samples. The Athletes have not demonstrated that the meat they consumed came from cattle treated with boldenone, nor have they substantiated that their claims are scientifically plausible (i.e., that the amount of contaminated meat they consumed could have caused the specific concentration of boldenone present in their Samples).

*Submissions by the Athletes*

95. The Athletes requested that the Panel uphold the decision of the DC FCF, declaring that there were a series of irregularities that could have reasonably caused the Adverse Analytical Findings. Alternatively, the Athletes requested that the Panel declare that they did not have any significant fault or negligence for their Adverse Analytical Findings, which, on the balance of probabilities, resulted from the consumption of contaminated meat and/or naturally occurring boldenone.
  - a. There were a number of violations of the ISL and Colombian law that could have caused the Adverse Analytical Findings
96. The Athletes claimed that a number of violations of the ISL and Colombian law occurred and could have caused their Adverse Analytical Findings.
97. First, contrary to the ISL, Ms. Barragan, Ms. Toscano and Ms. Gonzalez were not authorized laboratory staff based on Colombian law and jurisprudence. The Colombian laboratory is a state entity subject to public administration laws and Constitutional Colombian Court jurisprudence, which prohibit the use of independent contractors except for tasks that cannot be performed by full-time employees or require specialized knowledge. Because Ms. Barragan, Ms. Toscano and Ms. Gonzalez performed the day-to-day duties of laboratory staff, they cannot be considered authorized laboratory staff.
98. Second, the Athletes raised doubts as to the authenticity of the training and qualifications of Ms. Barragan, Ms. Toscano and Ms. Gonzalez. The Athletes asserted that the evidence of their qualifications and training were created solely for the purpose of this arbitration because the records reflected training for the exact tasks that the laboratory staff performed on their Samples and because all documents were made on the same day, by the same person and with the same ink.

99. Third, the Athletes submitted that there are gaps in the external chain of custody in violation of Article 8 of the Urine Sample Collection Guidelines, which provides:

*“The Sample Collection Authority defines criteria ensuring that each Sample collected is stored in a manner that protects its identity, integrity and security prior to transport from the Doping Control Station.*

*At a minimum, these criteria should include detailing and documenting up until the Sample arrives at its intended destination, the location where Samples are stored; how the Samples are stored; who has custody of the Samples; and/or who is permitted access to the Samples. The DCO ensures that any Sample stored complies with these criteria.”*

100. In particular, there is no information on the location of the Samples nor on how they were stored between the time that they were collected in Neiva, Huila, and transferred to the courier company in Ibague, Tolima, three hours from Neiva.
101. Upon investigation by the Athletes, they discovered that the doping control officer took the Samples from Neiva to his home near Ibague by car. The doping control officer stored the Samples overnight and only then mailed them to the Colombian laboratory. The Athletes submitted the presence of boldenone could be explained by prolonged exposure to heat, particularly since both Neiva and Ibague are very hot cities.
102. The Athletes also alleged that there is limited information on who precisely had custody and access to the Samples from Ibague until they reached the laboratory (though the Athletes accept that the chain of custody specifies that they were delivered to the courier company).
103. Fourth, the Athletes submitted that the doping control officer who collected their Samples lacked the necessary accreditation in violation of WADA’s Sample Collection Personnel: Recruitment, Training, Accreditation and Re-Accreditation Guidelines, which provide, in relevant part:

*“H.5.4 Only Sample Collection Personnel who have an accreditation recognized by the Sample Collection Authority shall be authorized by the Sample Collection Authority to conduct Sample collection activities on behalf of the Sample Collection Authority.”*

The Athletes asserted that the doping control agent was only accredited by COLDEPORTES, not the National Commission for Anti-doping and Sports Law as required by Colombian Law.

104. These gaps in the internal and external chain of custody – which the Athletes referred to as a “black box” – give rise to a reasonable inference that the Samples could have been altered or manipulated.
105. The Athletes also emphasized that the irregularities in the conduct of the Colombian laboratory and the doping control officer described above are not isolated instances, but part of a wider pattern of problems in Colombia with doping control. Indeed, in early 2017, the Colombian laboratory that analyzed the Samples lost its accreditation from

WADA and remains suspended. The Athletes urged the Panel to use the present cases, which are based on highly irregular doping control, as an opportunity to send a strong message to the Colombian anti-doping authorities that their conduct compromises the reliability of doping control and will not be tolerated.

106. Thus, the Athletes alleged that the sample collection process was illegal under Colombian law and also violated numerous provisions of ISL, requiring that the Adverse Analytical Findings be dismissed.
- b. In the alternative, consumption of contaminated meat caused the Athletes' Adverse Analytical Findings and, as such, they bear no significant fault or negligence
107. In the alternative, the Athletes offered several reasons why, on the balance of probabilities, the Panel should conclude that the Adverse Analytical Findings were the result of consumption of contaminated meat, namely: (i) a declaration from Huila's Cattle Farmer Association states that boldenone is regularly used in cattle farming; (ii) the Athletes consumed meat in Huila on both the days before and during their doping control; and (iii) a decision from the World Archery Federation finding that consumption of contaminated meat caused the Adverse Analytical Finding of an athlete from Neiva, Huila.
108. The Athletes submit that they need only "*demonstrate that there is a real possibility [of] having consumed contaminated meat*" in order to satisfy the balance of probabilities standard. This is because it is impossible for them to demonstrate with "*100% certainty*" that they consumed contaminated meat, which would require testing meat that the Athletes already ate, which is "*obviously impossible.*" Accordingly, the above information is sufficient to establish on the balance of probabilities that their Adverse Analytical Findings were the result of the consumption of contaminated meat.
- c. Also in the alternative, the sum total of irregularities in the handling of the Athletes' Samples, the possibility of contaminated meat and naturally-occurring boldenone also explains the presence of boldenone in the Athletes' Samples
109. The Athletes submitted that if the Panel does not find either irregularities in doping control or contaminated meat explain the presence of boldenone in the Athletes' Samples, the combination of these factors, together with the fact that boldenone is produced endogenously, on the balance of probabilities, account for it. In particular, the Athletes referenced research findings by Oslo University Hospital that humans produce boldenone naturally, and, in recognition of this fact, cited WADA technical documents treating boldenone as a threshold substance.
110. The Athletes accepted that the amount of boldenone detected in their Samples exceeded the threshold amount of 30 ng/mL, but suggested that the presence of boldenone above this threshold amount was the result of contaminated meat and/or mishandling of their Samples.

*Submissions by FCF*

a. The presumption that the Colombian WADA-accredited laboratory acted in accordance with the ISL should not apply

111. The FCF submits that there were a number of deviations from the ISL that could have reasonably caused the Adverse Analytical Findings.
112. First, the Laboratory Documentation List did not include three individuals, Ms. Barragan, Ms. Toscano and Ms. Gonzalez.
113. Second, there were a number of inconsistencies in the internal chain of custody in the Laboratory Documentation Packages, which cast doubt on the integrity of the Samples, including, *inter alia*:
- Ms. Barragan, Ms. Toscano and Ms. Gonzalez were not included on the List of Personnel in the Laboratory Documentation Packages even though they in fact handled the Samples.
  - Pages 7-9 of the Laboratory Documentation Packages state that Ms. Monica Malagón received the Samples on 15 July 2017 at 16:00 hours, whereas page 11 states that Ms. Barragan performed the same task on the same date and time.
  - Page 14 of the Laboratory Documentation Packages state that Ms. Barragan did not come into contact with the Samples for the first time until several days later on 22 July 2017.
114. Third, DC DIMAYOR and the DC FCF requested clarification concerning the Laboratory Documentation Packages in the first instance and on appeal, respectively, but the responses of the Laboratory Director, Ms. Gloria Gallo, and the National Anti-Doping Group Coordinator, Mr. Orlando Reyes Cruz, only compounded the inconsistencies set forth in the Laboratory Documentation Packages. For example:
- In response to requests by the DC FCF, Mr. Reyes asserted that Ms. Barragan and Ms. Toscano were auxiliary staff who were not involved in the analysis of the Samples, which is why they were not included in the Staff List to analyze the Samples.
  - By contrast, in response to requests from the DC DIMAYOR, Ms. Gallo noted that only managers responsible for overseeing sample analysis were included in the List of Personnel.
115. Fourth, there was no credible evidence that Ms. Barragan, Ms. Toscano and Ms. Gonzalez were qualified to perform the tasks that they in fact performed when the DC FCF rendered its decision. Ms. Gallo claimed that they received training and authorization from Organismo Nacional de Acreditación de Colombia (“ONAC”). However, the FCF notes that ONAC is unaffiliated with WADA and as such this is not evidence that such training and authorization was sufficient for the purposes of WADA.

Although Mr. Reyes stated that WADA received Ms. Barragan, Ms. Toscano and Ms. Gonzalez's qualifications when it accredited the Colombian anti-doping laboratory, he failed to provide the FCF with any documentation in support of this assertion. The FCF concedes that the new evidence introduced by WADA, however, demonstrates that Ms. Barragan, Ms. Toscano and Ms. Gonzalez were qualified scientists and trained to handle and/or manipulate Samples.

116. Fifth, the FCF alleges that Ms. Barragan, Ms. Toscano and Ms. Gonzalez acted as independent contractors, and as such needed authorization from the Colombian laboratory to conduct Sample analysis. In the absence of documentary evidence of such authorization, their actions cannot be attributed to the Colombian laboratory for the purposes of applying the presumption under Article 67(b)(2) of the FIFA ADR that *“WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories.”*
117. Finally, the FCF emphasizes that the Colombian laboratory failed to cooperate with the DC FCF's requests for information. The FCF gave the Colombian laboratory at least two opportunities to provide the same information that it gave to WADA. Without the benefit of the same information, the FCF issued a reasonable decision based on the facts available to it. The Colombian laboratory's procedures were unreliable, and the DC FCF had no confidence in the integrity of the doping control.
118. The FCF also encouraged the Panel not to overturn its decision based on new information available to CAS that was not before the DC FCF, which would send a strong message to the Colombian laboratory that it cannot flout the DC FCF's requests for information. Otherwise, the Colombian laboratory will continue to believe that it need only respond to WADA's requests for information for review by CAS and ignore the DC FCF's requests for the same materials.
119. The FCF noted that the Colombian laboratory lost its accreditation, but accepted that the suspension occurred well after the Athletes' doping control and that the reasons it lost its accreditation had nothing to do with the present proceedings.
120. For the foregoing reasons, the FCF submits that the Panel cannot presume that the Colombian WADA-accredited laboratory acted in accordance with the ISL, and as such WADA has not demonstrated that the Athletes committed anti-doping rule violations.

b. Contaminated meat

121. The FCF does not accept that the Adverse Analytical Findings are the result of the consumption of contaminated meat and/or naturally occurring boldenone.

**IX. MERITS**

122. There are three possible explanations for the Athletes' Adverse Analytical Findings: laboratory error and mishandling by the doping control officer; contaminated meat; and endogenous production of boldenone. The Athletes have asserted that if the Panel does

not find that any one of the above factors was sufficient to cause the presence of boldenone in their Samples, then the sum total of these factors account for it. The Panel considers each possible explanation within the relevant legal framework, that is, (a) whether WADA has established anti-doping rule violations and (b) whether the Athletes bear No Significant Fault or Negligence.

a. Has WADA established anti-doping rule violations?

123. The first question before this Panel is whether there was a departure from the ISL that could reasonably have caused the Athletes' Adverse Analytical Findings, such that the presumption that the Adverse Analytical Findings were valid no longer applied under Article 67(2)(b) of the FIFA ADR.
124. The Panel accepts that the conduct of the Colombian laboratory, which was accredited by WADA at the time of the Athletes' doping control but has since lost its accreditation, was flawed.
125. There were some inconsistencies in the Laboratory Documentation Packages regarding the chain of custody.
126. When the DC FCF requested more information in order to clarify these inconsistencies, the Laboratory Director, Ms. Gloria Gallo, and the National Anti-Doping Group Coordinator, Mr. Orlando Reyes Cruz, failed to cooperate with the DC FCF's simple requests for information regarding the training and qualifications of laboratory staff and gave conflicting descriptions as to why Ms. Barragan and Ms. Toscano were omitted from the List of Personnel. The Panel empathizes with the FCF's exasperation that "*nobody [...] from the Laboratory [felt] obliged to provide the exact information*" as to who handled the Samples and whether they were qualified to do so.
127. The Panel observes that when WADA requested basically the same information, it was provided without delay. This demonstrates that Ms. Gallo and Mr. Reyes Cruz could have, but chose not to cooperate with the DC FCF. Their conduct was, in the Panel's view, unacceptable and compromised the DC FCF's ability to engage in the meaningful review of the DC DIMAYOR's decisions. The Panel recognizes that the DC FCF rendered its decision based on the very limited information available to it despite its requests for the information that is now available to the Panel. The Panel therefore strongly encourages the Colombian laboratory and COLDEPORTES to cooperate in the future with the DC FCF's requests for information in the same manner as they do in relation to requests by WADA.
128. However, in view of the evidence before this Panel, neither the FCF nor the Athletes have demonstrated how irregularities by the laboratory or doping control officer were "*a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding*" as required by Article 67(2)(b) of the FIFA ADR.
129. The Panel finds that the laboratory's omission of Ms. Barragan, Ms. Gonzalez and Ms. Toscano from the List of Personnel who handled the Athletes' Samples, while not in

compliance with WADA Technical Document no. TD2009LDOC, paragraph 2, and therefore the ISL, could not in and of itself have caused boldenone and its metabolite to materialize in the four Athletes' Samples.

130. Even though Ms. Barragan, Ms. Gonzalez and Ms. Toscano were independent contractors, the Panel agrees with WADA that Article 5.4.2.1 of the ISL specifically contemplates that laboratory staff includes both employees and those “*under contract to*” the laboratory and, as such, there was no departure from ISL. The Athletes and FCF refer to Colombian law in an effort to distinguish Ms. Barragan, Ms. Gonzalez and/or Ms. Toscano from laboratory staff and argue that they were not authorized staff. However, the Panel notes that the ISL are international standards intended to achieve harmonization across WADA-accredited laboratories, and interpreting them based on national law would defeat this purpose. Even if national law were relevant, the Panel notes that the FIFA ADR and Statutes expressly provide that Swiss, not Colombian, law shall apply (see *supra* at para. 74).
131. Moreover, the evidence before this Panel demonstrates that Ms. Barragan, Ms. Gonzalez and Ms. Toscano are qualified scientists and trained to handle athletes' Samples, and as such there is no reason to believe that they mishandled the Samples of the Athletes and caused boldenone and its metabolite to appear in such Samples. The Panel observes that WADA and the FCF accepted that the evidence before the Panel demonstrates that Ms. Barragan, Ms. Gonzalez and Ms. Toscano are qualified and trained to handle athletes' Samples. The Athletes also accepted that this evidence demonstrates that Ms. Barragan, Ms. Gonzalez and Ms. Toscano were trained to perform the tasks, but instead attempted to cast doubt on the authenticity of these materials. However, these allegations were not supported by any credible evidence. Based on the lack of any convincing ground and evidence, the Panel has no reason to doubt the authenticity of the CVs and training records of Ms. Barragan, Ms. Gonzalez and Ms. Toscano, which appear to be contemporaneous documents.
132. Accordingly, the Panel finds no evidence that any laboratory irregularities could have reasonably caused the Athletes' Adverse Analytical Findings.
133. The Panel likewise finds that there is no credible evidence that the doping control officer caused the presence of boldenone in the Athletes' Samples. The Athletes suggested that the doping control officer lacked the proper authorization under Colombian law, which could cast doubt on the integrity of the Athletes' Samples. However, for the same reasons above, the Panel is satisfied that Colombian law is irrelevant. In any event, the doping control officer is a trained medical doctor authorized by COLDEPORTES, the relevant national anti-doping organization in accordance with the Urine Sample Collection Guidelines. Upon due review of all of the evidence submitted, the Panel is not convinced that the actions of the doping control officer may have had an impact on the integrity of the Athletes' Samples.
134. The Athletes also asserted that the external chain of custody omitted information on the handling of their Samples, such as how the Samples were stored. Even if the absence of such information was a breach of Article 8.0 of the Urine Sample Collection

Guidelines<sup>1</sup> – which the Panel is not convinced this is the case – the Athletes have not demonstrated that such alleged breaches could have caused the Adverse Analytical Findings. The Athletes suggested that mishandling and/or very hot temperatures during the three-hour journey from Neiva to Ibague could have caused the Adverse Analytical Findings, but this was nothing more than bare speculation. They offered no evidence supporting these assertions, such as scientific articles or expert testimony (such as doctors or laboratory scientists or professors). The Panel is mindful of the Athletes' financial constraints, but believes that, even within those financial constraints, they could have, but did not, adduce evidence as to how hot temperatures or mishandling could have caused boldenone to appear in their Samples.

135. Accordingly, the Athletes and the FCF have not established a departure from the ISL that could reasonably have caused the Adverse Analytical Findings. Accordingly, the Panel accepts the Adverse Analytical Findings and finds that the Athletes committed anti-doping rule violations.

b. Have the Athletes established that they bear No Significant Fault or Negligence?

136. Because the Panel finds that the Athletes committed anti-doping rule violations, the Panel considers whether the Athletes bear No Significant Fault or Negligence, which requires each Athlete under the FIFA ADR to “*establish how the Prohibited Substance entered his system.*”
137. The Athletes put forward several reasons, individually and collectively, as to the origin of boldenone: heat and mishandling, contaminated meat and endogenous production.
138. First, the Athletes suggested that heat and mishandling caused boldenone to appear in their Samples, but, for the reasons discussed above, the Athletes have not established how boldenone could have originated in their Samples as a result of heat and/or mishandling by the laboratory personnel.

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<sup>1</sup> Article 8.0 of the Urine Sample Collection Guidelines, which provides that:

*“The Sample Collection Authority defines criteria ensuring that each Sample collected is stored in a manner that protects its identity, integrity and security prior to transport from the Doping Control Station.*

*At a minimum, these criteria should include detailing and documenting up until the Sample arrives at its intended destination, the location where Samples are stored; how the Samples are stored; who has custody of the Samples; and/or who is permitted access to the Samples. The DCO ensures that any Sample stored complies with these criteria.”*

The Athletes submit that the absence of information on each of the above criteria constitutes a violation of the Guidelines. However, the Panel notes that the minimum criteria are not cumulative but separated by “and/or,” and the Athletes concede that some of this information was documented in the external chain of custody. In any event, there is no evidence in the record as to the criteria required by the Sample Collection Authority, here COLDEPORTES, which, according to the Guidelines, sets forth the required information.

139. Second, the Athletes suggested that the source of boldenone in their Samples was contaminated meat. The Athletes offered a letter from the Huila Cattle Farmers' Association regarding the regular use of boldenone in cattle farming in the region; the menu from the restaurant hotel where the Athletes ate the day before and the day of their doping control tests; and a decision by the World Archery Federation to not bring forward an Adverse Analytical Finding of an athlete, also from Neiva, due to contaminated meat.
140. However, none of these documents shows that the beef the Athletes allegedly consumed was sourced, or likely to be sourced, from Huila, such as confirmation from the hotel restaurant where the Athletes ate the day before and of their doping control tests that it regularly purchased beef from local growers or testimony from local cattle farmers that they, in fact, treated their cattle with boldenone. The Panel is mindful of the Athletes' financial constraints, but believes that the Athletes could have made this minimum showing despite their budgetary limitations (for example, having the restaurant manager or some local farmers testify at the hearing by teleconference or video-conference, as allowed by Article R44.2 of the CAS Code).<sup>2</sup>
141. Also, the Panel would have found some pharmacokinetic evidence useful, such as an analysis of the amount of boldenone that would need to be present in meat in order to yield the concentrations of boldenone in their Samples, whether any such amount is in the range of boldenone that cattle farmers in Huila regularly give to their cattle and the processes by which and the amount of time that the body metabolizes boldenone.
142. In the present circumstances, submitting a copy of a menu, a letter of a cattle farmers' association and the reference to a previous case are for the Panel by far insufficient evidence to be satisfied, under balance of probabilities, that some meat consumed by the Athletes is the cause of the presence of boldenone and of metabolites of boldenone in the four Samples of the Athletes. Accordingly, the Athletes have not established, on the balance of probabilities, that the boldenone in their Samples was the result of the consumption of contaminated meat.
143. Third, the Athletes suggested that endogenous boldenone could have been present in their Samples. The parties agreed that boldenone is a naturally occurring substance, and, as such, WADA technical documents recommend additional tests for Samples with concentrations of boldenone between 5ng/mL and 30 ng/mL to confirm their exogenous origin. However, the Athletes expressly recognized that the amount of boldenone in their Samples was above the maximum threshold in WADA technical documents (i.e. 36.7 ng/mL and 51.9 ng/mL in each of the Athletes' respective Samples). Thus, the Panel finds that the boldenone in the Samples exceeded the threshold for naturally occurring boldenone and that the Athletes have not demonstrated that the boldenone detected in their Samples was naturally-occurring.

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<sup>2</sup> The Panel does not find the decision of the World Archery Federation decision offered by the Athletes persuasive. It does not offer any of the information which the Panel would need to assist it in determining that the source of boldenone in the Athletes' Samples was the inadvertent consumption of contaminated meat.

144. The Panel also rejects the Athletes' suggestion that the combination of laboratory error and mishandling, contaminated meat and endogenous production explained the presence of boldenone in their Samples. The Athletes have not demonstrated that laboratory error and mishandling or contaminated meat could have caused any amount of boldenone in their Samples for the reasons above, leaving endogenous production of the amount of boldenone as the only remaining explanation. Given the Athletes' admissions that the amount of boldenone in their Samples exceeded the threshold for naturally occurring boldenone and the absence of any other evidence that their anti-doping rule violations were not intentional, the Panel concludes that the presence of boldenone in their Samples was the result of intentional doping.

#### **X. Sanction**

145. Pursuant to Article 19(1) of the FIFA ADR, the Panel imposes a four-year period of ineligibility on the Athletes, running from the date of this award onward. Any period of suspension already supported shall be credited against the period of ineligibility.
146. The Panel notes that the duration of a four-year suspension has been reviewed by human rights experts, who have confirmed that it is in line with the European Convention on Human Rights.<sup>3</sup>
147. WADA has also requested that all competitive results for each of the Athletes from and including 13 July 2016 until 19 July 2017 be disqualified, with all resulting consequences (including forfeiture of medals, points and prizes). The Athletes and the FCF, however, requested that CAS uphold the decisions of the DC FCF, thereby implicitly contesting WADA's request for disqualification. The Panel has found that the Athletes committed intentional anti-doping rule violations, and consistent with that finding grants WADA's request to disqualify all competitive results for each of the Athletes from and including 13 July 2016 until 19 July 2017 under Article 25 of the FIFA ADR.
148. Against the above background, any other request of the parties shall be dismissed.

#### **XI. Costs**

149. Taking in consideration the outcome of the proceedings, the behavior of the parties during the proceedings and the financial capabilities of the parties, the Panel considers appropriate and just, giving particular weight to the financial imbalance between the parties, that each party shall bear its own legal costs for this arbitration.
150. Pursuant to Article R64.5 of the CAS Code, the Panel orders the Respondents to share the costs of the arbitration. Mindful of the Athletes' financial constraints and the FCF's institutional resources, the Panel orders the FCF to bear 50% of the arbitration costs of

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<sup>3</sup> See, e.g., Jean-Paul Costa, "Legal opinion regarding the draft 3.0 revision of the World Anti-doping Code," pp. 9-10, available at <https://www.wada-ama.org/sites/default/files/resources/files/WADC-Legal-Opinion-on-Draft-2015-Code-3.0-EN.pdf>.

each procedure and each Athlete to bear 50% of the arbitration costs of the procedure where he is a Respondent.

## **ON THESE GROUNDS**

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

**In the case CAS 2017/A/5315, World Anti-Doping Agency (WADA) v. Federación Colombiana de Fútbol (FCF) and Yobani Jose Ricardo Garcia**

1. The CAS has jurisdiction to hear the appeal of the World Anti-Doping Agency filed on 8 September 2017 and the appeal is admissible;
2. The appeal of the World Anti-Doping Agency is upheld and the decision of the Disciplinary Commission of the Federación Colombiana de Fútbol of 19 July 2017 is overruled;
3. Mr Yobani Jose Ricardo Garcia committed an anti-doping rule violation and is suspended for a period of four years beginning from the date of this award onward, with any period of suspension already suffered to be credited against the period of ineligibility;
4. All competitive results for Mr Yobani Jose Ricardo Garcia from and including 13 July 2016 until 19 July 2017 are disqualified;
5. The Federación Colombiana de Fútbol (50%) and Mr Yobani Jose Ricardo Garcia (50%) shall jointly bear the costs of the arbitration procedure CAS 2017/A/5315, World Anti-Doping Agency (WADA) v. Federación Colombiana de Fútbol (FCF) and Yobani Jose Ricardo Garcia;
6. Each party shall bear its own legal costs;
7. Any other request for relief is dismissed.

**In the case CAS 2017/A/5316, World Anti-Doping Agency (WADA) v. Federación Colombiana de Fútbol (FCF) and Daniel Londono Castaneda**

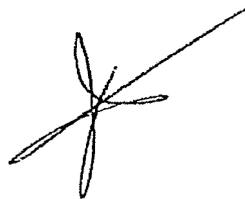
1. The CAS has jurisdiction to hear the appeal of the World Anti-Doping Agency filed on 8 September 2017 and the appeal is admissible;
2. The appeal of the World Anti-Doping Agency is upheld and the decision of the Disciplinary Commission of the Federación Colombiana de Fútbol of 19 July 2017 is overruled;
3. Mr Daniel Londono Castaneda committed an anti-doping rule violation and is suspended for a period of four years beginning from the date of this award onward, with any period of suspension already suffered to be credited against the period of ineligibility;

4. All competitive results for Mr Daniel Londono Castaneda from and including 13 July 2016 and 19 July 2017 are disqualified;
5. The Federación Colombiana de Fútbol (50%) and Mr Daniel Londono Castaneda (50%) shall jointly bear the costs of the arbitration procedure CAS 2017/A/5316, World Anti-Doping Agency (WADA) v. Federación Colombiana de Fútbol (FCF) and Daniel Londono Castaneda;
6. Each party shall bear its own legal costs;
7. Any other request for relief is dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 May 2018

## **THE COURT OF ARBITRATION FOR SPORT**

A handwritten signature in black ink, consisting of a central vertical stroke with several horizontal and diagonal strokes intersecting it, forming a stylized, abstract mark.

Romano F. Subiotto Q.C.  
President of the Panel