Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2011/A/2522 WADA v. Federación Colombiana de Patinaje & Nicolás Bermúdez

AWARD

delivered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Conny **Jörneklint**, Chief Judge in Kalmar, Sweden
Arbitrators: Mr. Lars **Hilliger**, Attorney-at-law in Copenhagen, Denmark
Dr. Miguel Angel **Fernández-Ballesteros**, Professor in Madrid, Spain

in the arbitration between

WORLD ANTI-DOPING AGENCY, Montreal, Canada
Represented by Mr. Me François Kaiser, Mr. Olivier Niggli and Mr Ross Wenzel, attorneys-at –law, Lausanne, Switzerland

- Appellant-

and

FEDERACIÓN COLOMBIANA DE PATINAJE, Bogotá, Colombia

- First Respondent–

and

NICOLÁS BERMUDÉZ CORREDOR, Bogotá, Colombia
Represented by Mr. Andrés Charria Sáenz, attorney-at –law, Bogotá, Colombia

- Second Respondent -

1. THE PARTIES

1.1 The World Anti-Doping Agency ("the Appellant" or "WADA") is a Swiss private law Foundation. Its seat is in Lausanne Switzerland, and its headquarters are in Montreal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.

1.2 The Federación Colombiana de Patinaje ("the First Respondent" or "the FCP"), is the governing body for rollersports in Colombia and is a member federation of the Fédération Intertionale de Rollersports ("FIRS"). The head office of FIRS shall, according to its Statues, be in the country where the President resides or any other place proposed by him and approved by the Federation.

1.3 Mr. Nicolas Bermudez Corredor ("the Second Respondent" or "the Athlete") is a Colombian international level roller sports athlete, affiliated with the FCP, and was born on 28 July 1994.

2. FACTUAL BACKGROUND

2.1 On 22 and 24 October, 2010, the Athlete provided urine samples during two in-competition tests during the World Speed Rollersport Championships ("the Competition") held in Guarne, Colombia, between 22 and 30 October 2010. The Athlete tested positive for methylhexaneamine and androstatrienedione with respect to the 22 October sample and methylhexaneamine with respect to the 24 October sample.

2.2 Methylhexaneamine is a prohibited substance under the 2010 WADA Prohibited List, classified under S6 STIMULANTS (a) Non-Specified Stimulants but it was reclassified under S6 (b), Specified Stimulants on the 2011 WADA Prohibited List.

2.3 Androstatrienedione is a prohibited substance which is classified under S4 HORMONE ANTAGONISTS AND MODULATORS on both 2010 and 2011 WADA Prohibited List.

2.4 On 18 May 2011, the FCP Disciplinary Commission, following an oral hearing, imposed a 12-month ineligibility sanction on the Second Respondent and disqualified the results of the Athlete at the Competition ("the Appealed Decision" or "the FCP Decision"). It is the FCP Decision which is the subject of the present appeals proceedings.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 On 9 August 2011, WADA filed its Statement of Appeal with the Court of Arbitration for Sport ("CAS") requesting it to rule:

1. *The Appeal is admissible.*
2. *The Decision by the FCP is set aside*
3. *The Athlete is sanctioned with a two-year period of ineligibility starting from the date on which the CAS award enters into force and that any ineligibility period shall be credited against the total period of ineligibility to be served*
4. *All competitive results obtained by the Athlete from 22 October 2010 through the commencement of the applicable period of ineligibility shall be annulled*
5. *WADA is granted an award for costs.*

3.2 On 12 October 2011, WADA filed its Appeal Brief and Exhibits with the CAS.

3.3 On 18 November 2011, the Athlete submitted its Answer Brief. The Athlete made the request for a reduction of the period of ineligibility and that he gets a reprimand alleging that the presence of the prohibited substances in his samples were due to insurmountable errors unfeasible to defeat, errors which were committed by the doping control laboratory in Colombia, and that there was no intent of taking these substances nor of enhancing his performance. The First Respondent did not file an Answer.

3.4 By letter dated 15 December 2011, the CAS informed the parties that the Panel responsible to hear the present appeal had been constituted as follows: President: Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden; Mr. Lars Hilliger, Copenhagen, Denmark as Arbitrator appointed by the Appellant; and Dr. Miguel Ángel Fernández-Ballesteros, Madrid, Spain, Arbitrator appointed by the Athlete and the Respondent. The parties did not raise any objection as to the constitution and composition of the Panel.

3.5 Since none of the parties had requested the holding of a hearing and after having reviewed the CAS file, the Panel decided, in accordance with Article R57 of the Code of Sports-related Arbitration ("the Code"), to issue an award on the basis of the parties' written submissions and to replace the holding of a hearing by final written observations. Consequently, the Appellant and Respondents were given the opportunity to file its final observations, respectively on 7 and 16 February 2012.

3.6 On 9 February 2012 WADA confirmed that it did not intend to file any final written submissions and that it confirmed all the arguments, evidence and requests made in the Statement of Appeal and Appeal Brief.

3.7 On 23 February 2012 the Athlete confirmed that he would not file any final written submissions. However, the Athlete submitted that the period of ineligibility logically should start the day the samples were taken. The First Respondent did not file any answer to the request for final submissions.

4. THE PARTIES' SUBMISSIONS

A. THE APPELLANT'S SUBMISSIONS

4.1 In summary, the Appellant submits the following in support of its appeal:

(i) Admissibility of the Appeal

a. Applicable rules

4.2 FIRS is the world governing body for rollersports. FIRS is a signatory of the World Anti-doping Code ("WADC"). The Anti-Doping Policy of the FIRS ("FIRS ADP") was approved by WADA on 18 November 2008. The in-competition tests giving rise to the Appealed Decision took place at the Competition, an International event for the purpose of the FIRS ADP. Furthermore, the Athlete is an International-Level athlete. Therefore, the FIRS ADP (December 2009 Edition) is applicable to this dispute.

b. WADA's Right of Appeal

4.3 According to Art. 13.2.1 of the FIRS ADP: *"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court."*

4.4 In the Art. 13.2.3 (f) of the FIRS ADP, WADA is explicitly listed as one of the persons with a right of appeal under Art. 13.2.1.

4.5 WADA therefore has a right of appeal to CAS under 13.2.1 of the FIRS ADP.

c. Compliance with the deadline to appeal

4.6 Art. 13.6 FIRS ADP states inter alia that *"the filing deadline for an appeal or intervention filed by WADA shall be the later of:*

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

4.7 WADA received the Appealed Decision on 19 July 2011. The Statement of Appeal dated 9 August 2011 was therefore filed within the deadline prescribed by the FIRS

ADP. The Appeal Brief was sent on 12 October 2011 and is filed within the time limit fixed by CAS in its letter dated 30 September 2011.

(ii) Anti-Doping Violation

4.8 Art. 4.1 of the FIRS ADP states that *"these Anti-Doping Rules incorporate the Prohibited List."*

4.9 Methylhexaneamine (dimethylpentylamine) is a prohibited substance, which was classified under "S6 (a)" *(Non-specified Stimulants)* of the 2010 WADA Prohibited List but has been re-classified under "S6 (b)" *(Specified Stimulants)* on the 2011 WADA Prohibited List. Androstatrienedione is a prohibited substance which is classified under "S4" (Hormone Antagonists and Modulators) on both the 2010 and 2011 WADA Prohibited Lists and is also a specified substance.

4.10 Notwithstanding the occurrence of the anti-doping violation in 2010, methylhexaneamine (dimethylpentylamine) shall, in accordance with the doctrine of *lex mitior*, be treated as a Specified Substance for the purposes of these appeal proceedings.

4.11 The Athlete did not seek to challenge the presence of the prohibited substances in his bodily samples within the context of the first instance proceedings.

4.12 The presence of a prohibited substance in the bodily sample of the Athlete is therefore established.

4.13 Consequently, the violation by the Athlete of Art. 2.1 of the FIRS ADP (presence of a prohibited substance or its metabolites or markers in an athlete's sample) is established.

(iii) Determining the Sanction

a. General

4.14 Pursuant to article 10.5 of FIRS ADP, an athlete can establish that, in view of the exceptional circumstances of his/her individual case, the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence as per article 10.5.1) or reduced (in case of no significant fault or negligence as per article 10.5.2).

4.15 With respect to Specified Substances, Article 10.4 of the FIRS ADP further states:

"Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility. [...]"

4.16 As a preliminary matter, it is worth recalling that Art. 10.5.1 (no fault) is not relevant to these proceedings. The Athlete has not appealed against the Decision, which imposed a period of ineligibility of twelve months. In any event it will be demonstrated below that the Athlete clearly bears fault.

b. Origin of the prohibited substance in the athlete's bodily specimen

4.17 In order to have the period of ineligibility eliminated or reduced under Art. 10.4, or reduced under Art. 10.5.2 of the FIRS ADP, the Athlete must first establish how the prohibited substance entered his system.

4.18 In that respect, the standard of proof imposed upon the Athlete pursuant to art. 3.1 of the FIRS ADP is the balance of probability.

4.19 Pursuant to CAS precedents (CAS 2008/A/1515) *"the balance of probability standard entails that the athlete has the burden of persuading the Panel that the occurrence of circumstances on which the athlete relies is more probable than their non-occurrence or more probable than other possible explanations of the positive test"*.

4.20 The Athlete has sought to explain the presence of methylhexaneamine (dimethylpentylamine) and androstatrienedione in his bodily samples by the fact that he substituted two supplements known as "Pre-Surge" and "Myo Fusion" shortly before the start of the Competition for two other supplements which he customarily used (but which was not available to him), namely "No-x Plod" and "Elite Mass".

4.21 More particularly, methylhexaneamine (dimethylpentylamine) is an ingredient of Pre-Surge and the Athlete claims that the Myo Fusion he consumed must have been contaminated.

4.22 The Athlete failed to declare the use of Pre-Surge or Myo Fusion on any of the doping control forms at the Competition. Furthermore, the Athlete did not mention his consumption of such supplements at the outset of the disciplinary procedure or even during the preliminary hearing.

4.23 When asked why he did not mention Pre-Surge or Myo Fusion on the doping control forms or at the Preliminary Hearing, the Athlete ascribed this to his forgetfulness and the fact that he was bad with names. The explanation is not convincing: either the Athlete forgot he had taken the additional supplements or he remembered but could not recall the precise names. Not only are both explanations mutually exclusive; each of them also lacks credibility when considered in isolation (as discussed below).

4.24 According to the Athlete's version of events, he had gone to some effort to obtain his usual supplements (i.e. No-x Plod and Elite Mass): Whilst at the pre-Competition training camp, he asked a relative to source and send them to him. The relative could only find Myo Fusion and Pre-Surge, which the vendor had assured him were similar. When the Athlete discovered that the supplements were not the usual ones, he phoned his relative who told him that the vendor believed they were similar. In these circumstances, it seems extremely unlikely that the Athlete could have completely forgotten that he was consuming the substitute supplements i.e. Myo Fusion and Pre-Surge.

4.25 The theory of the non-disclosure being due to the Athlete's bad memory for names seems equally implausible. At least at the preliminary hearing, nothing would have prevented the Athlete from mentioning the fact that he did consume additional supplements but could not recall the names thereof.

4.26 In short, the Athlete did not disclose his use of Myo Fusion and Pre-Surge until well after the preliminary hearing; his explanations for such non-disclosure are unconvincing and contradictory. Furthermore, the Athlete's version of events – relating to the non-availability of No-x Plod and Elite Mass and the purchase and consumption of Myo Fusion and Pre-Surge – is not supported by any other independent compelling evidence.

4.27 In particular, the tardiness of the disclosure of these substances must at least raise a suspicion that the Athlete has fabricated a story in order to elude or mitigate the consequences of an anti-doping violation. Against this background WADA submits that the Athlete must provide compelling evidence in addition to his word to demonstrate that he did consume Myo Fusion and Pre-Surge. In the absence of such evidence, the Athlete will have failed to establish the origin of the prohibited substances and must be sanctioned with a period of ineligibility of two years.

4.28 Even if the Athlete does provide such evidence and satisfy the Panel on the balance of probabilities that he consumed both Pre-Surge and Myo Fusion, he will also need to provide concrete and compelling evidence that supports his contention that the Myo-Fusion he consumed was contaminated with androstatrienedione. Certainly, the FCP DC gave little weight to the contamination theory and held that the scientific report by the Coldeportes laboratory (on which such theory was based) did not contain *"any attestation, concept or conclusion in such a sense"*.

4.29 In short, if the Panel finds that the Athlete fails to establish either (i) that he consumed Myo Fusion or Pre-Surge at the relevant times or (ii) that the Myo Fusion was contaminated with androstatrienedione, the Athlete will have failed to explain the presence of both prohibited substances in his bodily samples and must therefore be sanctioned with a period of ineligibility of two years.

c. Art. 10.4 FIRS ADP – Applicability

4.30 As Art. 10.5.2 (no significant fault or negligence) does not apply in cases involving Art. 10.4 FIRS ADP (see Art. 10.5.5 FIRS ADP including the comment thereto), it is necessary to consider Art. 10.4 before Art. 10.5.2 FIRS ADP.

4.31 Even if the Athlete is able to establish that the Myo Fusion and Pre-Surge are the sources of the respective prohibited substances, he must still satisfy one additional pre-condition for Art. 10.4 to apply; namely that he did not take the supplements for the purpose of enhancing sport performance.

4.32 One need only to look at the product description on the website of the manufacturer to understand that Pre-Surge is manifestly a supplement designed to improve athletic (and therefore sport) performance: It refers to a "surge" of creatine, priming muscular growth and maximizing blood flow. The very purpose of a pre-workout supplement is to increase the performance and intensity of the athlete during the ensuring work-out. Indeed, even the name of the manufacturer – Athletic Edge Nutrition – confirms the self-evident fact that such supplements are taken precisely to gain an advantage or "edge".

4.33 The Athlete concedes that he took Pre-Surge *"twenty minutes before the 300 meters final competition, on 22 October"*, and *"twenty minutes before the final competition in the evening"* on 24 October. The fact that the Athlete took Pre-Surge so shortly before his events is a further (albeit superfluous) indication that he took the substance in order to improve his performance during such events.

4.34 Myo Fusion describes itself as a muscle building protein. Muscles are the motors of athletic performance and building muscle mass can only sensibly be considered as an attempt to enhance performance.

4.35 As the sport-performance pre-condition of Art. 10.4 FIRS ADP is not satisfied, Art. 10.4 FIRS ADP does not apply.

d. Art. 10.5.2 FIRS ADP – No significant fault or negligence

The fault of the Athlete

4.36 If an athlete establishes that he bears no significant fault or negligence (as defined in the WADC and FIRS ADP), then the period of ineligibility may be reduced, but the reduced period of ineligibility may not be less than one half of the minimum period of ineligibility otherwise applicable, in this case a one-year minimum period of ineligibility (Art. 10.5.2 FIRS ADP).

4.37 In order to benefit from a reduction of the sanction for no significant fault or negligence, the Athlete must establish that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for "no fault or negligence", was not significant in relation to the anti-doping rules violation (See Definition of "No Significant Fault or Negligence").

4.38 A reduction of the otherwise applicable period of ineligibility is meant to occur only in cases where the circumstances are truly exceptional, i.e. when an athlete can show that the degree of fault or negligence in the totality of the circumstances was such that it was not significant in relation to the doping offence (comment to Art. 10.5.2 FIRS ADP).

4.39 According to Art. 2.2.1 FIRS ADP, it is each athlete's personal duty to ensure that no prohibited substance enters his or her body. The fundamental duty of care is to check the composition of any product they ingest (or have it checked, but in any event remaining personally responsible).

4.40 Methylhexaneamine/dimethylpentylamine is one of the ingredients of Pre-Surge. The list of ingredients of Pre-Surge often refers to an alternative name for methylhexaneamine/ dimethylpentylamine, namely: 1, 3-dimethylamylamine. This alternative name does not feature on the 2010 or 2011 Prohibited List but is very similar to dimethylpentylamine, which does so feature.

4.41 A basic internet search would have revealed that Pre-Surge possibly contained substances banned by sports organizations. For example, the reputed website bodybuilding.com contains the following specific warning in relation to Pre-Surge:

"Athletes, check this product with your testing organization before using. User assumes all risks and liabilities related to the use of this product, if you are governed by any athletic or governing body, make sure to contact that body to ensure the use of this product is not in violation of their rules and regulations. Not for use by individuals under the age of 18."

4.42 If the Athlete had entered the listed ingredient of the Pre-Surge (1, 3-dimethylamylamine) into Google, the first "hit" would have been the Wikipedia page for methylhexaneamine (one of the names featuring on the Prohibited List).

4.43 Even if the Athlete's version of events is taken at face value, he relied merely on checking the ingredients of Pre-Surge and Myo Fusion against a copy of the Prohibited List, entering the same into a verification tool on the WADA website and obtaining assurances from his relative (who had purchased the products for him) that the two supplements were similar to No-x Plod and Elite Mass.

4.44 Firstly, a simple cross-check of ingredients against the prohibited list is an inherently unsatisfactory process; as substances with similar chemical structures and similar bio-

logical effects to prohibited substances are also caught by the list, a purely textual cross reference is fraught with risk. Secondly, the verification tool on the WADA website which the Athlete claims to have used does not exist (and has never existed) on that site. Whereas the Athlete will no doubt claim he meant a different site and again blame the error on his poor memory for names, it is a further element that makes it difficult to accept the Athlete's version of events at face value.

4.45 Leaving aside the Athlete's inadequate internet search and textual cross-checking, there is simply no reason for him not to have checked the substitute supplements with a doctor. The Athlete realized that this was a product which he had not previously taken and should therefore have exercised the utmost caution and diligence. The Athlete had ready access to the team physician at the training camp and subsequent at the Competition in Guarne – namely Dr. Juan Gregorio Mojica Cerquera – and decided not to disclose his consumption of Pre-Surge or Myo Fusion to him or any other medically qualified person.

4.46 This omission becomes all the more serious when one considers the evidence of the team physician. Dr. Cerquera, who stated that all *"athletes were advised to use products acquired by the Federation, under my prescription but in the case of Nicolas and Paola, they preferred to continue using the products that had previously been prescribed"*.

4.47 The Athlete concedes in his own statement that *"it was better to inform or ask the doctor about which products I was consuming."* Whereas he claims to have done this with respect to the product known as "Tribulus Terrestris", even the Athlete does not seriously claim that he consulted the doctor after realizing that the supplements he had received were different to those he usually took.

4.48 Dr. Cerquera recalled the reaction of the Athlete when he (and the other athletes) were told to only use products acquired by the Federation: *"Sportsman Nicolas Bermudez looked worried or uneasy with respect to which products he should or could consume, and I repeat that he was asked to stop all of the supplements that he was consuming and to clearly enquire about their composition and whether or not they contained prohibited substances. On some occasion, he stated that his father had checked the prohibited list and that one of his supplements contained a substance that appeared in such a list"*.

4.49 In short, the Athlete was aware of the risk of consuming prohibited substances. Even assuming that he did undertake the basic and inadequate verification measures described above, it is nothing short of reckless in the extreme to choose not to avail himself of free and readily available sports-medical advice in relation to products he had not used before and which came from an unknown source. The Athlete therefore fell well short of the required standard of behavior.

4.50 In a previous CAS case, a Panel considered that an athlete could not benefit from a reduction of the sanction for "no significant fault or negligence" on the basis that she *"did not apply the standard of care to be expected of a top-level athlete, i.e. obtain assurances from her physician, pharmacist or team doctor that supplements did not contain a prohibited substance"*. (CAS 2007/A/1284 & CAS 2007/A/1308, § 118).

4.51 For the sake of completeness and assuming that the Athlete is able to provide further compelling evidence to support the Myo Fusion contamination theory, WADA submits that the Athlete would, with respect to his consumption of contaminated Myo Fusion, still be at significant fault.

4.52 The CAS case law makes clear that, in cases of contamination, the level of diligence expected from athletes is much higher with respect to nutritional supplements (as opposed to common multiple vitamins purchased from a reliable source) (CAS 2009/A/1870, § 117 & 118). The CAS Panel in the case CAS 2009/A/1870 agreed that the maximum reduction of the two-year sanction to twelve months for no significant fault or negligence was appropriate in that case. However, it based its decision on a number of concrete steps which the athlete had taken to satisfy herself as to the quality of the relevant nutritional supplements. For example Hardy had obtained the samples directly from the manufacturer and not from an unknown source, used the supplements for 8 months without an adverse finding, obtained an indemnity from the manufacturer with respect to its products and consulted a nutritionist and her coach about the quality products.

4.53 The numerous measures taken by such athlete in the case CAS 2009/A/1870 put into greater relief the reckless behavior of the Athlete in his consumption of both Myo Fusion and Pre-Surge. In particular, the case CAS 2009/A/1870 (§ 118) clarifies the importance of checking the source of the supplements and implies that a reduction based on exceptional circumstances can only be considered where an athlete has checked that the source of a given supplement has no connection to prohibited substances:

"It is in fact clear to this Panel that an athlete can avoid the risks associated with nutritional supplements by simply not taking them; but the use of a nutritional supplement "purchased from a source with no connection to prohibited substances, where the athlete exercised care in not taking other nutritional supplements" and the circumstances are "truly exceptional", can give rise to "ordinary" fault or negligence and do not raise to the level of "significant" fault or negligence."

4.54 Of course, the Athlete did not necessarily have time to perform detailed checks on the source of Myo Fusion and Pre-Surge whilst at the training camp/Competition. However, such temporal exigencies do not lower the level of diligence required. In such circumstances, the Athlete should (as intimated in the quote above) simply not have taken the supplements in question.

e. Alleged Mitigating Elements- The Age/Experience of the Athlete

4.55 CAS Panels have been reluctant to apply Art. 10.5.2 on the basis of the alleged youth and/or inexperience of athletes.

4.56 In the case CAS 2006/A/1032 (par. 137 to 145), the Panel stated in particular that:

"[...] in order to achieve the goals of equality, fairness and promotion of health the anti-doping rules are pursuing, the anti-doping rules must apply in equal fashion to all participants in competitions they govern, irrespective of the participant's age.

[...] The reason for ignoring the age of the athlete is that either an athlete is capable of properly understanding and managing her/his anti-doping responsibilities, whatever her/his age, in which case she/he must be deemed fully responsible for her/his acts as a competitor, or the athlete is not mature enough and must either not participate in competitions or have her/his anti-doping responsibilities exercised by a person – coach, parent, guardian, etc. – who is capable of such understanding and management.

[...] For the above reasons, the Panel finds that in this case the player's responsibility under articles 5.1 and 5.2 of the TADP must be assessed according to the same criteria as for an adult even if she was only 15 years old when the doping offences occurred, and that to the extend she was represented by her father in exercising her anti-doping duties his degree on diligence must count as hers in determining the degree of fault."

In another CAS award, the Panel *"has determined that age does not fall within the category of "Exceptional Circumstances" which warrant consideration in reducing the term of ineligibility. At the age of 16 years, the Appellant was able to discern what constitutes negligent conduct, especially when the applicable standard of caution evidenced in the numerous warnings and instructions regarding vitamins and food supplements of unidentified origin was clearly communicated to athletes by their respective sport federations."* (CAS 2003/A/447, §10.8).

4.57 Although the Athlete was a minor at the time of the anti-doping violation, he had significant experience at domestic and International-Level competitions. With respect to his experience in anti-doping matters, the Athlete's assertion to have received little or no training runs counter to the following statement made by Mr. Pedro Nel Giraldo Zuluaga, a delegate of the Colombian national team at the Competition:

"Yes, every Monday we met with the group and informed them that they could not and should not have any WADA prohibited substance, since, as they all knew, they are substances that at any moment could yield a positive sample [...]."

4.58 Furthermore, the President of the FCP, Mr. Alberto Herrera Ayala, also stated that: *"In all national events and through the Medical Commission, the Federation keeps the athletes and delegates informed about the need to avoid using prohibited substances, warning them about those new products that keep appearing from time to time in the WADA list"*.

4.59 Finally, the Athlete certainly had some experience with anti-doping controls, having been subjected to *"approximately twenty anti-doping controls"* and *"around 25 hematocrit controls"* in his career to date.

f. Conclusion on fault

4.60 Based on the evidence and submissions made within the context of the Appealed Decision, the Appellant submits that the Athlete bears significant fault for taking nutritional supplements from an unknown source with only minimal and inadequate efforts to verify their suitability and quality. Taking the supplements without specific medical advice in these circumstances certainly involves significant negligence. Indeed, the athlete specifically ignored the advice of the team doctor only to take products provided by the FCP.

4.61 Even if the Panel, despite WADA's submissions, finds that the Athlete has established the origin of the prohibited substances, WADA maintains that the Athlete is at significant fault with respect to each of the prohibited substances and finds no exceptional circumstances that would justify a reduction of the period of ineligibility below two years.

(iv) Appellant's Conclusion

4.62 On the basis of (i) the inconsistent submissions of the Athlete concerning his consumption of Pre-Surge and Myo Fusion (ii) the fact that such consumption raised only at a late stage in the first instance disciplinary proceedings and (iii) the lack of any other compelling evidence to demonstrate that such consumption occurred at the relevant times and was the origin of the prohibited substance in the positive samples (in particular, that Myo Fusion was contaminated), WADA's primary submission is that the Athlete has failed to establish the origin of the substance in his system. A two-year period of eligibility is therefore applicable.

4.63 In the event that the Panel, notwithstanding WADA's submissions, holds that the origin is sufficiently established (i.e. by the consumption of Pre-Surge and contaminated Myo Fusion respectively), WADA submits that such consumption was clearly made in an effort to enhance sport performance. Art. 10.4 FIRS ADP is therefore not applicable.

4.64 Under Art. 10.5.2, a period of ineligibility cannot be reduced below 12 months. Indeed, the period can be reduced at all only on the basis of exceptional circumstances

and taking into account the Athlete's ultimate responsibility to control the substances he/she ingests. In this instance, the Athlete (if one accepts his version of events) consumed two nutritional supplements he had not used before and from an unknown source; certain websites warn that the product contains ingredients that may be prohibited by sports organizations.

4.65 Regardless of the Athlete's age, he should have taken one of two approaches: either not to take the supplement or at least to make use of the free and available medical advice in order to be able to make an informed decision. In failing to do so, the Athlete is at significant fault for the presence of the prohibited substances in his system and should be sanctioned with a two-year period of ineligibility.

B. THE FIRST RESPONDENT SUBMISSIONS

4.66 The First Respondent remained silent during the present proceedings and, consequently, did not file an answer as requested by the CAS Court Office on 17 October 2011, notification which was correctly delivered by courier to the Respondents.

C. THE SECOND RESPONDENT'S SUBMISSIONS

4.67 In summary, the Athlete submits the following in his defense:

(i) Facts

4.68 All facts presented by WADA according to the organization of rollersport, the Competition, the testing, the analysis of the samples and the classification of the prohibited substances are correct.

(ii) Presence of the prohibited substances in the samples

4.69 The presence of methylhexaneamine and androstatrienedione in the Athlete's samples was due to the ingestion of contaminated and poorly labeled products. This made it impossible to take any precautionary measures to avoid the presence of these drugs in the body of the Athlete.

a. Has the Athlete established how the prohibited substance entered his body?

4.70 It has been established in an irrefutable manner, that the methylhexaneamine was present in the supplement Pre Surge. This supplement is similar to another supplement, No-x-Plod, used by the Athlete on a regular basis and that never showed any problems. On the label of this supplement that was used before it was not indicated that methylhexaneamine is among the components. The components mentioned on the label of the product Pre Surge were searched by the Athlete in the databases of the pages of the doping control and none were present in the list of prohibited substances.

Therefore the Athlete ingested Pre Surge and this is how methylhexaneamine entered in his system.

b. Was the substance intended to enhance the Athlete's sport performance?

4.71 The Athlete always used No-x-Plod, a product similar to Pre Surge and never tested positive. Based on this he was reassured and ingested Pre Surge without any intention to enhance his performance. Intention to improve his performance can hardly be proven when there was an intimate conviction that there was no substance to improve performance in the supplements he ingested. The Athlete never intended to improve his performance with methylhexaneamine because he never even suspected that he ingested products which contained methylhexaneamine.

c. Androstatrienedione

4.72 The Athlete consumed a new product and this component was not presented in the label. It is a mistake that is was impossible to avoid. Not even the most diligent athlete or doctor could have avoided androstatrienedione in the samples. The intake of a contaminated product makes it impossible for any athlete to take measures to prevent it. The Athlete consumed the supplement Myo Fusion with total conviction that he was not infringing the anti-doping rules.

d. The laboratory of Coldeportes

4.73 The Athlete refers to the results of the studies performed by the Doping Control Laboratory of the Colombian Sports Institute of the products Pre Surge and Whey Protein Myo Fusion. These two products were the ones that the Athlete ingested moments before the start of the Competition and which caused his Adverse Analytical Findings. The laboratory of Coldeportes is one of two laboratories accredited by WADA in South America. The laboratory found that the products Pre Surge and Myo Fusion contain the substances methylhexaneamine and androstatrienedione without being listed in their composition and not being mentioned on the label of any of the two products. These facts confirm that it was an insurmountable error made by the Athlete. It was impossible for him to avoid the intake of these compounds.

5. LEGAL ANALYSIS

I. JURISDICTION OF THE CAS

5.1 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the

Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

5.2 Article 13.1 of the Anti-Doping Policy of FIRS ("FIRS ADP") states as follows:

13.1 Decisions Subject to Appeal
Decisions made under these Anti-Doping Rules may be appealed as set forth below in Article 13.2 through 13.4 or as otherwise provided in these Anti-Doping Rules.

5.3 Article 13.2.1 of the FIRS ADP states:

13.2.1 Appeals Involving International-Level Athletes
In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

5.4 In article 13.2.3 FIRS ADP it is said that WADA is one of the persons that are entitled to appeal in cases under Article 13.2.1.

5.5 It is not contested that the CAS has jurisdiction in this dispute.

5.6 According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

II. ADMISSIBILITY

5.7 In reference to para. 5.3 above article 13.2.1 of the FIRS ADP states that in cases arising from competition in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to the CAS in accordance with the provisions applicable before such court.

5.8 Article 13.6 of the FIRS ADP provides that "*The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party.*"

5.9 It is further said in the same article:

The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be the later of:
(a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or
(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.

5.10 WADA has stated that it received the appealed decision on 19 July 2011, which has not been contradicted by the Respondents. WADA filed the Statement of Appeal on 9 August 2011.

5.11 In light of the above, the Panel finds the Appeal admissible.

III. APPLICABLE LAW

5.12 Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

5.13 It is common ground between the parties that the applicable regulations of this case are the FIRS ADP which applies to all members and participants in the activities of the FIRS or of its member federations. Therefore, the FIRS ADP shall apply.

IV. THE PANEL'S FINDINGS ON THE MERITS

(i) Anti-Doping Violation:

5.14 The Athlete has accepted the results of the A Sample analysis and has waived analysis of the B Sample. According to Article 2.1.2 FIRS ADP, sufficient proof of an anti-doping rule violation under Article 2.1 is established by presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed.

5.15 In Article 4.1 of the FIRS ADP it is stated that "*These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code.*"

5.16 The presence of the two prohibited substances methylhexaneamine and androstatrienedione in the Athlete's bodily samples are therefore established.

(ii) Determining the sanction

5.17 According to Art. 10 of the FIRS ADP the following sanctions are applicable:

> ***10.1 Disqualification of Results in Event During which an Anti-Doping Rule Violation Occurs***
>
> *An Anti-Doping Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Athlete's individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.*
>
> *10.1.1 If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competition shall not be Disqualified unless the Athlete's results in Competition other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.*
>
> ***10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods***
>
> *The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:*
>
> *First violation: Two (2) years' Ineligibility.*

5.18 As a result, the Panel now has to put under scrutiny whether Art. 10.4 or 10.5 of the FIRS ADP may apply to the present case.

> ***10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances***
> *Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:*
>
> *First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.*
>
> *To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substance. The Athlete's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.*

Comment to Article 10.4: Specified Substances as now defined in Article 4.2.2 are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances (for example, a stimulant that is listed as a Specified Substance could be very effective to an Athlete in competition); for that reason, an Athlete who does not meet the criteria under this Article would receive a two-year period of Ineligibility and could receive up to a four-year period of Ineligibility under Article 10.6. However, there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation.

This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or Possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non-sport-related prescription for the Specified Substance. Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance.

While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability.

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases.

10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

10.5.1 No Fault or Negligence

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

mited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

10.5.2 No Significant Fault or Negligence

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

Comment to Articles 10.5.1 and 10.5.2: FIRS' Anti-Doping Rules provide for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. Article 10.5.2 may be applied to any anti-doping rule violation even though it will be especially difficult to meet the criteria for a reduction for those anti-doping rule violations where knowledge is an element of the violation.

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction

may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

For purposes of assessing the Athlete's or other Person's fault under Articles 10.5.1 and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Article 10.5.2, as well as Articles 10.3.3, 10.4 and 10.5.1.

Article 10.5.2 should not be applied in cases where Articles 10.3.3 or 10.4 apply, as those Articles already take into consideration the Athlete or other Person's degree of fault for purposes of establishing the applicable period of Ineligibility.

5.19 To prevail under Art. 10.4 of the FIRS ADP, the Athlete must first (i) establish how the Specified Substance entered his or her body and then (ii) that such Specified Substance was not intended to enhance the Athlete's sport performance. The Panel shall put both these requirements under scrutiny.

5.20 Prior to this analysis, the Panel considers it worth pointing out that it is to be kept in mind that the Anti-Doping Rules adopt the rule of strict liability. From the strict liability principle follows that, once WADA has established that an anti-doping rule violation has occurred, as in the present case, it is up to the Athlete to demonstrate that the requirements foreseen under Art. 10.4 of the FIRS ADP are met. Such a burden of proof is expressly stated under Art. 3.1 second phrase of the FIRS ADP, which provides that: "*where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6, where the Athlete must satisfy a higher burden of proof. [...]*".

5.21 As to the first requirement, i.e. the ingestion of the Prohibited Substance, the Athlete argues that such ingestion must have occurred when he was taking two named nutritional supplements, which he took prior to the testing, namely Pre-Surge and Myo Fusion. As to Pre-Surge the Laboratory of Coldeportes found that it contained high levels of methylhexaneamine. Concerning Myo Fusion the laboratory found the presence of androstatrienedione.

5.22 It has to be pointed out that the FCP DC found it surprising that a State laboratory as Laboratory of Coldeportes agrees to carry out chemical analysis for products which are taken out of their original packing and seals, as this gives rise to the possibility of manipulation prior to the expert's appraisal and, thence, invalidates its evidentiary capacity. The FCP DC expresses that it believes that the only way in which an analysis can responsibly be made is on an uncapped product so the chain of custody is duly guaranteed.

5.23 Concerning Art. 10.4, the Athlete must satisfy a higher burden of proof than the balance of probability. To justify any elimination or reduction of his sanction, the Athlete must produce corroborating evidence in addition to his word that establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance his sport performance.

5.24 As WADA has pointed out the Athlete did not declare the use of Pre-Surge or Myo Fusion on any of the doping control forms at the Competition and he did not mention his consumption of such supplements at the beginning of the disciplinary procedure or even during the preliminary hearing.

5.25 The Athlete has explained his mistake not to mention the supplements by his forgetfulness and the fact that he could not remember the names of the supplements. Neither of these explanations strengthens his cause to fulfill his burden of proof concerning how the prohibited substances entered his bodily system.

5.26 What the Athlete has explained concerning his intake of the named supplements is not convincing. The Panel finds that his explanation how the prohibited substance entered his body is not supported by any evidence. Consequently it cannot be accepted by the Panel. This means that Art 10.4 can not be applied in this case.

5.27 The conclusion of para 5.26 means that the Panel has to go further to analyze whether Art. 10.5.1. or 10.5.2. can be applied.

5.28 Art. 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases. For purposes of assessing the Athlete's or other Person's fault or negligence under either of these articles, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault or negligence under Article 10.5.2.

5.29 The official WADA Comment of Art. 10.5.1 and Art.10.5.2 mentions that a sanction could not be completely eliminated on the basis of No Fault or Negligence in the cir-

cumstances when a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination). But the Comment adds that depending on the unique facts of a particular case, the referenced *illustration could result in a reduced sanction based on No Significant Fault or Negli*gence. (For example, reduction may well be appropriate if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.) The Panel finds that this means that the FCP DC was right when it found that the situation is not such that the Athlete has established that he bears No Fault or Negligence. This means also that Art 10.5.1 FIRS ADP cannot be applied in this case.

5.30 In this case the Athlete relied on two supplements which he had not used before and to the answers which a relative to him had allegedly got from the vendor concerning these two supplements. When he took these two supplements, which came from an unknown source to him, he opposed the advice he had got from his team doctor.

5.31 There is extensive CAS case law concerning the standard of behavior required of the Athlete concerning nutritional supplements. There are examples when a CAS Panel has used Art. 10.5.2 to reduce the sanction when the source of the Adverse Finding has been supplements. See for example CAS 2009/A/1870. In this case the CAS Panel found that the maximum reduction of the two-year sanction to twelve months for No Significant Fault or Negligence was appropriate. It was based on a number of concrete steps which the athlete had taken to satisfy her as to the quality of the relevant nutritional supplements. The Athlete had obtained the samples directly from the manufacturer and not from an unknown source, used the supplements for 8 months without an adverse finding, obtained an indemnity from the manufacturer with respect to its products and consulted a nutritionist and her coach about the quality products.

5.32 Compared to this case the Athlete in our case has been much more careless. And he has ignored the advice from his team doctor not to use other supplements than those acquired by the Federation and under the doctor's prescription. He did not check the source of Myo Fusion and Pre-Surge. As WADA has pointed out, a simple search on the internet could have revealed to him that it was a great risk for him to use these supplements.

5.33 As already mentioned above the Comment to Art. 10.5.2 clarifies that Minors are not given special treatment per se in determining the applicable sanction, but youth and lack of experience are relevant factors to be assessed in determining the Athlete's fault under Art. 10.5.2.

5.34 The Athlete in this case is an International-Level athlete and he competed in the World Speed Rollersport Championships. From the decision of FCP DC it appears that the athletes of the Colombian team in the Championships had got due information about doping and the risks to take prohibited substances.

5.35 According to CAS case law there are several cases concerning young athletes, two of them pointed out by WADA in its Appeal Brief. It is worth citing the award in CAS 2003/A/447 where the Panel found that *"At the age of 16 years, the Appellant was able to discern what constitutes negligent conduct, especially when the applicable standard of caution evidenced in the numerous warnings and instructions regarding vitamins and food supplements of unidentified origin was clearly communicated to athletes by their respective sport federations."*

5.36 It is the Panel's view that an athlete, in order to fulfill his or her duty according to Art. 2.1 FIRS ADP, has to be active to ensure that a medication or a supplement that he or she uses does not contain any compound that is on the Prohibited List. In the present case, the Athlete has not done enough to ensure this, even if one considers his youth. The Panel is of the view that the Athlete has not established that he bears No Significant Fault or Negligence. Therefore the Panel finds no ground to reduce the sanction according to Art. 10.5.2 FIRS ADP.

(iii) <u>What is the starting point of Ineligibility?</u>

5.37 Pursuant to Art. 10.9 FIRS ADP *"the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed".*

5.38 According to Art. 10.9.1 *"the FIRS or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred".*

5.39 According to the Appealed Decision of the FCP DC, the start date of the ineligibility period was on 11 May 2011 with a deduction of the 30-day period of provisional suspension.

5.40 The Panel finds that the period of Ineligibility shall start on 11 May 2011 with deduction of the provisional period served by the Athlete.

(iv) Disqualification of the Results

5.41 Art. 9 of FIRS ADP provides that "*An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes*". Art. 10.8 states "*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes*".

5.42 Based on Art 9 FIRS ADP the Panel hereby confirms the Appealed Decision of the FCP DC with respect to the disqualification of the result of the Athlete obtained in the Competition. FCP DC has not ruled that further results be disqualified. WADA has requested that further results be disqualified. According to Art. 10.8, the Panel finds that all competitive results obtained by the Athlete from 22 October 2010 until the date of this award shall be disqualified with all the resulting consequences including forfeiture of any medals, points and/or prizes.

6. COSTS

6.1 The Panel notes that the present case is of disciplinary nature and that the appeal has been filed against a decision rendered by a national federation acting by delegation of powers of an international federation (FIRS). Article R65.1 CAS Code provides that:

"[t]*he present Article R65 is applicable to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by* [...] *a national sports-body acting by delegation of powers of an international federation or sports-body.*"

6.2 Article R65.2 CAS Code stipulates:

"[...] *the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS.*"

6.3 Article R65.3 CAS Code stipulates:

"[t]*he costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

6.4 Since this matter can be assimilated to a disciplinary case of an international nature ruled in appeal, no costs are payable to the CAS beyond the Court Office fee of CHF 1'000 paid by the Appellant prior to its Statement of Appeal, which in any event is kept by the CAS.

6.5 In the case at hand, the appeal filed by WADA is upheld. As a general rule, the CAS grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. The CAS may however depart from that principle under certain circumstances, in particular when such a burden put on the losing party would put its financial situation at stake. Such appears to be the case here. As a consequence, the Panel takes the view that it is reasonable in the present case to order that each party shall bear its own costs.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of WADA is admissible.

2. The decision rendered by the Disciplinary Commission of the FCP on 18 May 2011 against Nicolás Bermúdez Corredor is set aside.

3. Nicolás Bermúdez Corredor is sanctioned by a two-year period of ineligibility, which started on 18 May 2011. The period of provisional suspension of 30 (thirty) days shall be credited against the total period of ineligibility to be served.

4. All competitive results obtained by Nicolás Bermúdez Corredor from 22 October 2010 shall be disqualified with all the resulting consequences including forfeiture of any medals, points and/or prizes.

5. This award is pronounced without costs, except for the Court Office fee of CHF 1'000 (one thousand Swiss Francs) already paid by WADA which is retained by the CAS.

6. Each party shall bear its own costs.

7. All other prayers for relief are dismissed.

Lausanne, 23 August 2012

THE COURT OF ARBITRATION FOR SPORT

Conny Jörneklint
President