



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS/2010/A/2072 WADA v/ Federação Bahiana de Futebol (FBF) & Mr. Nivaldo Araújo Carneiro Filho

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Rui Botica Santos, Attorney-at-law, Lisbon, Portugal

Arbitrators: Mr. Massimo Cocchia, Attorney-at-law, Rome, Italy
Mr. José Juan Pintó Sala, Attorney-at-law, Barcelona, Spain

Ad hoc Clerk: Mr. Felix Majani, Attorney-at-law, Nairobi, Kenya

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Quebec, Canada
Represented by Mr. François Kaiser, Attorney-at-law, Lausanne, Switzerland

As the "Appellant"

and

Federação Bahiana de Futebol (FBF), Salvador, Bahia State, Federal Republic of Brazil
Represented by Mr. Marcos Motta and Mr. Bichara Abidão Neto, Attorney-at-law, Rio de Janeiro, Brazil

As the "First Respondent"

and

Mr. Nivaldo Araújo Carneiro Filho, Salvador, Bahia State, Federal Republic of Brazil

As the "Second Respondent"

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I. THE PARTIES

1. The World Anti-Doping Agency (hereinafter referred to as the “Appellant” or “WADA”) is the International independent organisation that promotes, coordinates and monitors the anti-doping programs in sport. It is responsible for the worldwide harmonisation and implementation of national and international anti-doping programs in sport. It is a Swiss private law foundation with its seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.
2. The Federação Bahiana de Futebol (hereinafter referred to as the “First Respondent” or the “FBF”) is a regional football association in the Federal Republic of Brazil, and is affiliated to the Confederação Brasileira de Futebol (hereinafter referred to as the “CBF”). The latter is a member of Fédération Internationale de Football Association (hereinafter referred to as “FIFA”) and is the body in charge of governing football in the Federal Republic of Brazil.
3. Mr. Nivaldo Araújo Carneiro Filho (hereinafter referred to as the “Second Respondent” or the “Athlete”) is a professional football player of Brazilian nationality who played for the club Fluminense de Feira (hereinafter referred to as the “Club”) at the time the facts giving rise to the present appeal arose. The Club is affiliated to the FBF. According to the information provided by the FBF, the Athlete is currently unemployed; his last employment contract was with the Brazilian club Alagoinhas Atlético Clube and was effective from 5 December 2009 to 9 May 2010. In this arbitration, the Athlete chose not to defend himself and did not appear before this Panel.

II. THE FACTS

4. This appeal was filed by WADA against the FBF and the Athlete (hereinafter jointly referred to as “Respondents”), in relation to the decision rendered by the 2nd Disciplinary Committee of the Tribunal de Justiça Desportiva de Futebol da Bahia (hereinafter referred to as the “TJDF”). This decision (hereinafter referred to as the “TJDF Decision”) relates to a case involving an anti-doping rule violation attributed to the Athlete and was notified by FIFA to WADA on 8 February 2010.
5. This section contains a summary of the main and relevant background facts, as established on the basis of the Parties’ written submissions and evidence examined in the course of the proceedings.

II.1. The Origin of the Dispute

6. On 19 April 2009, a 1st Division Bahiano professional championship match was held between the Club and Esporte Club de Bahia. The Athlete took part in this match, representing the Club.
7. After the said match, anti-doping authorities requested the Athlete to provide a sample of his urine for purposes of conducting an in-competition anti-doping test.

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8. While filling in the doping control form provided to him by the anti-doping authorities, the Athlete stated that he had used some medicines called “BCAA Aminoácido” and “Maltodextrina” and declared his satisfaction with the doping control procedure.
9. The sample of urine collected from the Athlete was inserted in two sample bottles (A and B) and labelled “CBF-12610” and was taken for analysis by the WADA-approved “Laboratório de Apoio ao Desenvolvimento Tecnológico do Instituto de Química da Universidade Federal do Rio de Janeiro” (hereinafter referred to as “Ladetec”).
10. Upon conducting a laboratory analysis of the A sample, Ladetec reported that an adverse analytical finding in the Athlete’s urine marked as Sample A-12610, stating that it had tested positive for Nandrolone (Norandrosterone and Noretiocholantone). Nandrolone is a prohibited substance classified under “S1. Anabolic Agent” of the 2009 WADA Prohibited List.
11. On 9 June 2009, the FBF notified the President of the Club of the positive results of the Athlete’s sample. He was informed that in case the Athlete was interested, the FBF was ready to open and analyse his B Sample.
12. On 10 June 2009, the President of the Club informed the FBF that the Athlete would not be requesting for an analysis of his B Sample. The Club indicated that the Athlete had already explained that certain medicines had been prescribed to him, and were the cause of his adverse analytical finding.

II.2. The Dispute – The TJDF Proceedings

13. On 12 June 2009, the FBF forwarded the matter to the TJDF which imposed a provisional suspension of 30 days on the Athlete in accordance with art. 102 of the Brazilian Code of Sport Justice (hereinafter referred to as the “CBJD Statutes”).
14. On 22 June 2009, the Club informed the TJDF that it had “(...) *no knowledge whatsoever about any medication (...) athlete (...) may have taken during the match (...)*” and that “(...) *there are no other matters to be discussed (...).*”
15. On 25 June 2009, the secretary of the TJDF confirmed that the Athlete had renounced his right to file a defence.
16. On 8 July 2009, Mr. Milton Jordão, the General Attorney of the TJDF wrote to the said tribunal informing it that he was of the view that the Athlete had committed an anti-doping rule violation.
17. The relevant parts of the General Attorney’s letter read as follows (as translated in English):

“(...) From these records we are allowed to conclude that there is no question about the fact that the Respondent has used a prohibited substance during the said football match (...).

Therefore, the violation described in art. 244 of the CBJD is crystal clear (...).

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Thus, this office is hereby requesting to have this charge accepted and attached to the records (...) hoping that by the end of the proceedings of the Respondent will be found guilty as charged. (...)."

18. On 13 July 2009, the matter was heard before the TJDF. The TJDF jury unanimously declared the Athlete guilty and suspended him for a period of 120 days, deducting the 30 days of provisional suspension previously imposed and already served (cf paragraph 13 above).
19. On 8 February 2010, FIFA notified WADA of the TJDF Decision.
20. Dissatisfied with the TJDF Decision, WADA appealed to the Court of Arbitration for Sport (hereinafter referred to as "CAS") requesting it to enhance the aforesaid ban to 2 years.

III. THE ARBITRAL PROCEEDINGS

21. On 1 March 2010, the Appellant filed its Statement of Appeal at the CAS pursuant to art. 63.6 of the FIFA Statutes and art. 62.4 of the FIFA Anti Doping Regulations adopted by the FIFA Executive Committee on 19 March 2009 and entered into force on 1st May 2009 (hereinafter referred to as the "FIFA ADR edition May 2009").
22. In its Statement of Appeal, the Appellant informed the CAS that it was unable to prepare an Appeal Brief stating all the facts and legal arguments giving rise to the appeal because it did not participate in the TJDF proceedings and therefore had no access to the TJDF file.
23. On 8 March 2010, the CAS granted the FBF 10 days within which to send the complete TJDF file and invited the Respondents to nominate their arbitrator. WADA was also granted 10 days following receipt of the complete TJDF file within which to file its Appeal Brief.
24. By 30 March 2010, the FBF was yet to submit a complete copy of the TJDF file and the CAS consequently requested it to confirm whether it had sent the said file. Pending such receipt and/or confirmation, the CAS suspended the Appellant's deadline for filing its Appeal Brief.
25. By 8 April 2010, the Respondents were yet to appoint their arbitrator and pursuant to art. R53 of the CAS Code, the President of the CAS Appeals Arbitration Division appointed Mr. José Juan Pintó, attorney-at-law in Barcelona, Spain, *in lieu* of them.
26. On 9 June 2010, the FBF reverted to the CAS with a complete copy of the TJDF file in Portuguese language.
27. On 16 June 2010, WADA requested the deadline within which to file its Appeal Brief be extended to 10 July 2010, reasons being that it wanted to translate the TJDF into English in order to understand the grounds behind the TJDF Decision.

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28. On 17 June 2010, the CAS invited the Respondents to state on or before 21 June 2010, their position in relation to the Appellant's request for extension of time to file its Appeal Brief.
29. By 22 June 2010, the CAS had not received any reply from the Respondents. Consequently the Appellant's deadline within which to file its Appeal Brief was extended to 10 July 2010.
30. On 5 July 2010, the Appellant filed its Appeal Brief, stating the facts and legal arguments on which the appeal was based, together with some documents and evidence upon which it intended to rely on, and paid the advance costs.
31. In the Appeal Brief, the Appellant stated that it reserved its right to ask the Panel for authority to supplement its arguments, file additional exhibits and specify further evidence in accordance with art. R56 of the CAS Code once the Player had filed his answer. It also reserved its right to summon Dr. Olivier Rabin, WADA science Director, to testify via tele- or video-conference.
32. On 6 July 2010, the CAS notified the Respondents of the Appeal Brief and informed them that they had 20 days pursuant to art. R55 of the CAS Code within which to file their respective Answers. This letter was addressed to the 2nd Respondent via the 1st Respondent's postal address in the expectation that the latter would transmit a copy of the Appeal Brief to the former.
33. On 6 July 2010, by communication of CAS, the Parties were informed that the Panel was constituted by Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal, as President and, as co-arbitrators, by Mr. Massimo Coccia, Attorney-at-law, Rome, Italy, appointed by the Appellant and Mr. José Juan Pintó Sala, Attorney-at-law, Barcelona, Spain appointed *in lieu* of the Respondents. The Panel also appointed Mr. Felix Majani, Attorney-at-law in Nairobi, Kenya, to serve as *ad hoc clerk*.
34. On 26 July 2010, the 1st Respondent wrote to the CAS informing that:
 - a) it did not deem its participation in these arbitral proceedings necessary since any award rendered by the CAS would only have an impact on the 2nd Respondent's eligibility to participate in organised football;
 - b) it consequently renounced its right to participate in these proceedings, undertaking to comply with any decision rendered by the CAS in connection with any disciplinary sanctions imposed on the 2nd Respondent; and
 - c) the arbitral costs be solely borne by the 2nd Respondent.
35. On 27 July 2010, the CAS wrote to the 1st Respondent asking it to confirm before 2 August 2010 whether it had transferred all the CAS correspondences and its enclosures related to this matter to the 2nd Respondent. In case it was yet to transfer, the 1st

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Respondent was requested to do so immediately and provide the CAS with proof of receipt as soon as possible.

36. On 27 July 2010, the 1st Respondent informed the CAS that it was not in a position to serve the 2nd Respondent a copy of the Appeal Brief because since May 2010 he had not been registered with any club in Brazil.
37. On 28 July 2010, the CAS invited the Appellant to provide within 5 days, an address pursuant to art. R31 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code"), through which the Appellant could be notified of the Appeal Brief.
38. On 29 July 2010, the 1st Respondent reverted to the CAS, informing it that the 2nd Respondent was currently domiciled at:

"Rio Madeira St, Santa Monica (Centro Industrial Subae), Feira de Santana, Bahia, Brazil, P.O Box 44055-480, Tel/Fax +55 75 3623 3047, Mobile +55 75 9165 0424 or +55 75 9152 2919."
39. On 30 July 2010, the CAS invited the 1st Respondent to notify the 2nd Respondent of the Statement of Appeal and Appeal Brief through the abovementioned address and to send proof that the 2nd Respondent has received the said pleadings.
40. On 6 August 2010, the 1st Respondent sent evidence proving that it had sent the Appellant's pleadings to the 2nd Respondent on 4 August 2010 through the address indicated in its letter dated 29 July 2010.
41. On 9 August 2010, the CAS requested the 1st Respondent to send documents proving that the 2nd Respondent had received the Appellant's pleadings.
42. On 11 August 2010, the 1st Respondent sent evidence proving that the 2nd Respondent had received a copy of the Appellant's pleadings on 5 August 2010.
43. On 11 August 2010, the CAS wrote to the Parties confirming that the 2nd Respondent had received notice of the Appellant's pleadings on 5 August 2010. Consequently, it granted the 2nd Respondent a time limit until 25 August 2010 within which to file its answer pursuant to art. R55 of the CAS Code.
44. The abovementioned letter was sent via DHL with the 2nd Respondent being served through the address indicated on paragraph 38 above. It also contained a statement to the effect that "[i]f Mr Nivaldo Araújo Carneiro Filho fails to submit his answer by the given time limit, the Panel may nevertheless proceed with the arbitration and deliver an award."
45. By 30 August, the 2nd Respondent had not filed his Answer, and following this, the CAS sent a letter to all Parties informing them as follows:

"(...) This is to inform you that, to date, the CAS (...) did not receive Mr Nivaldo Araújo Carneiro Filho's answer which was to be filed by 25 August 2010. Pursuant to Article

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R55 of the Code of Sports-related Arbitration (...), I inform you that the Panel has decided to nevertheless proceed with the arbitration. (...)."

46. On 7 September 2010, the Panel met by way of conference call to discuss the case. Present were all members of the Panel assisted by Mr. William Sternheimer, the CAS Legal Counsel as well as Mr. Felix Majani, the ad-hoc clerk.
47. On the same day, the Order of Procedure was sent to the Parties and was only signed by the Appellant. The Parties were also requested (i) to provide the Panel with a copy of the statutes of the FBF in force in April 2009, (ii) to confirm the period of suspension already served by the 2nd Respondent. The Parties were also informed that the Panel had decided not to hold a hearing and to render an award on the basis of the Parties' written submissions.
48. On 17 September 2010, the 1st Respondent provided the CAS with a version of the FBF Statutes 2004. It confirmed that the 2nd Respondent "(...) was sentenced to a suspension of 120 (...) days considering the period of the preventive suspension that he has already served."
49. On 22 September 2010, the CAS requested the 1st Respondent to send a copy of the FBF Rules "*Campeonato Baiano de Futebol Profissional*" in force as at April 2009.
50. On 23 September 2010, the 1st Respondent reverted with a copy of the said rules.

IV. THE PARTIES' POSITIONS

IV.1. WADA

a. Submissions on applicable law

51. WADA submits that the law applicable to this dispute is the FIFA rules and regulations, supplemented, where necessary, by Brazilian regulations, provided that the application of such regulations does not result in a breach of the FBF/CBF obligations to respect the statutes and regulations of FIFA.
52. In supporting its stance on the application of the aforementioned regulations, WADA explains as follows:
 - a) the FBF, as a regional football association in Brazil and affiliated to the CBF has specific rules called the "*Campeonato Bahiano de Futebol Profissional*" which were in force at the time the challenged decision was rendered (hereinafter referred to as the "*FBF Rules 2009*");
 - b) under art. 1 of the FBF Rules 2009, the FIFA Statutes, the CBF Statutes and various Brazilian sports legislations such as the CBJD Statutes and Law No. 9615/98 (hereinafter referred to as the "*Lei Pelé*") have been incorporated into such rules; indeed, Art.1 of the FBF Rules 2009 so reads (as translated in English): "*All the*

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provisions of Sport Law applicable to Professional Football in the Country and which are superior to the present regulations are necessarily and obligatory part of the legal parameters governing the Championship, such as FIFA Statutes, the Federal laws 9.615/98 and 10.671/03 (Supporters' Statute), CBF Statutes, organic provisions of Brazilian football (adapted by CBF), the Brazilian Code of Sport Justice (CBJD), FBF Statutes and general norms of official competitions of FBF and RDI'S/CBF/FBF."

- c) under art.1 of the FBF Rules 2009, the FIFA Statutes have been recognised as being the superior regulation;
- d) pursuant to art. 13.1 (a) of the FIFA Statute and art. 145.1 of the FIFA Disciplinary Code (hereinafter referred to as the "FDC"), FIFA members are respectively obliged to comply with the FIFA Statutes and to adapt their own provisions to comply with the FDC;
- e) pursuant to art. 2.1 of the FIFA ADR edition May 2009, all FIFA members are obliged to comply with the aforementioned regulation, which shall be incorporated either directly or by reference into the rules of each association;
- f) in the case CAS 2007/A/1370, FIFA v/Superior Tribunal de Justiça Desportiva do Futebol & Confederação Brasileira de Futebol & Mr Ricardo Lucas Dodô (hereinafter referred to as the "Dodô Case") it was considered that the Lei Pelé imposed a duty on professional athletes to abide by the international rules and ruled that the FIFA provisions must prevail; and
- g) since the Athlete was affiliated to the FBF, which is part of the CBF, he was bound to comply with the FIFA rules and applicable Brazilian law.

b. Submissions on admissibility

- 53. WADA derives its right to appeal from art. 63.6 of the FIFA Statutes and, in particular, art. 62.4 of the FIFA ADR edition May 2009, which provides as follows: "(...) WADA shall have the right to appeal to CAS against any internally final and binding doping-related decision in accordance with art. 63.5 and 6 of the FIFA Statutes."
- 54. WADA states that the TJDF Decision is final and binding since it expressly states that no appeal has been filed at national level.
- 55. In relation to the timeliness of the appeal, WADA claims to have received notice of the TJDF Decision on 8 February 2009 from FIFA and filed its Statement of Appeal on 1 March 2010, which was within the deadline set forth under art. 62.5 of the FIFA ADR edition May 2009.
- 56. It further claims to have filed its Appeal Brief within the time limit fixed by the CAS on 22 June 2010, meaning that it is admissible.

c. Submissions on the merits

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57. WADA submits that Nandrolone is a substance banned in both “*In and out-of competition*” tournaments under the WADA 2009 Prohibited List class 1. It avers that FIFA has incorporated the aforementioned Prohibited List into its regulations, under art. 15.1 of the FIFA ADR edition May 2009 – “*The FIFA Anti-Doping Regulations incorporate the Prohibited List (App.B) that shall be published and revised by WADA*” – and that the presence of such a substance in an athlete’s body has specifically been prohibited under art. 5 of the said regulations.
58. WADA asserts that the presence of the mentioned prohibited substance in the Athlete’s body has been “established and accepted” by the Athlete, and thus he violated art. 5 of the FIFA ADR edition May 2009.
59. The minimum sanction for the presence of a prohibited substance in an athlete’s body is an ineligibility period of 2 years as established under art. 45 of the FIFA ADR edition May 2009.
60. WADA avers that this 2 year period can only be reduced, eliminated or alternatively increased depending on whether the conditions set forth under articles 47 to 50 and 51 of the FIFA ADR edition May 2009 are met.
61. WADA emphasises that in order for the period of ineligibility to be eliminated or reduced on grounds of “no fault or negligence”, or “no significant fault or negligence”, the Athlete must establish how the prohibited substance entered in his system.
62. In relation to the above, WADA states that it has no reason to doubt the accuracy of the Athlete’s explanations that the prohibited substance entered his body as a result of a certain medicine prescribed by his physician.
63. It proceeds to submit the following in relation to the elimination or reduction of the sanction on grounds of no fault or negligence or no significant fault or negligence:

c.1. No fault or negligence (art. 47.2 of the FIFA ADR edition May 2009)
64. WADA states that CAS jurisprudence (in particular the award rendered in the case CAS 2006/A/1025) placed an athlete’s burden of proving no fault or negligence at an “*extremely high*” level and that in accordance with CAS 2006/A/1133 and CAS 205/A/951 “*(...) athletes are responsible for the choice of their medical personnel and the possible failure for a doctor to check the prescribed substance does not exclude the personal responsibility of the player in connection with prohibited substances.*”
65. WADA avers that the Athlete has failed to establish that he did not know or suspect and could not reasonably have known or suspected, even with the exercise of the utmost caution, that he used or had been administered the prohibited substance.
66. It stresses that the Athlete has (i) not proved that he exercised any precaution or made an inquiry to assess whether the medicine he took was free from prohibited substances and (ii) failed to demonstrate that he informed his doctor of his status as a professional athlete bound by a duty of care to avoid ingesting the substance as required under

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art. 2.1.1 of the World Anti-Doping Agency Code (hereinafter referred to as the “WADA Code”).

e.2. No significant fault or negligence

67. WADA states that under art. 47.3 of the FIFA ADR edition May 2009, an athlete’s period of ineligibility may be reduced to a minimum period of 1 year in case it is proved that he bears no significant fault or negligence.
68. In relation to this, WADA pleads that 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 and that a reduction of the sanction is only permissible under circumstances which are truly exceptional (cf comment to art. 10.5.2 of the WADA Code).
69. WADA relies on the CAS awards rendered in the cases (i) CAS OG 04/003 paragraph 5.11; (ii) CAS 2005/A/847 paragraph 7.3.6; (iii) CAS 2006/A/1032 paragraph 146; and (iv) CAS 2006/A/1067 paragraph 6.13, and submits that “(...) *if an athlete ingests a product failing to inquire or ascertain whether the product contains a prohibited substance, such athlete's conduct constitutes a significant fault or negligence which excludes any reduction of the applicable period of ineligibility (...)*”.
70. It makes further references to the award CAS 2008/A/1565, which held that “(...) *it is the duty of an athlete to consult the rules and to be well aware of all the duties an athlete has to fulfil (...) to ensure that no Prohibited Substance enters his body. As said in the Commentary to WADC, the athlete cannot rely on advice from his personal physician (...) especially when the doctor is no expert on sports medicine*” and the award CAS 2007/A/1284 which held that “[w]hen taking unknown food supplements for the first time, [the athlete] 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 the supplements did not contain a prohibited substance.”
71. In light of this, WADA submits that the Athlete has not established having taken any precaution before ingesting his medication and consequently failed to establish exceptional circumstances whereby he would bear no significant fault or negligence.
72. Consequently, the ordinary 2 year ineligibility provided under art. 47.3 of the FIFA ADR edition May 2009 must be applied.
73. In conclusion, WADA requests the CAS to rule as follows:
 1. *The Appeal of WADA is admissible.*
 2. *The decision rendered by the Court of Sports Justice in Football of Bahia, on July 13, 2009, in the matter of Mr. Nivaldo Araújo Carneiro Filho is set aside.*
 3. *Mr. Nivaldo Araújo Carneiro Filho is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed to or voluntarily accepted by the Player*

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before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.
4. *WADA is granted an award for costs."*

IV.2. The FBF

74. The FBF renounced its right to participate in these proceedings, stating that its status was that of a passive party since any award could only have an impact on the Athlete's eligibility to take part in organised football. However, the FBF has been very cooperative with the CAS from a procedural viewpoint.
75. It assured the CAS that it would comply with any award rendered in relation to the disciplinary sanctions imposed on the Athlete, and asked the CAS to lay all the costs related to these proceedings on the Athlete.
76. Its defence partially reads as follows:

" (...)

We refer to your letter dated as 06 July 2010 according to which you provided us with the Appeal Brief addressed by WADA, also granting a time-limit of twenty days for the Respondents to submit their respective answers.

(...) from such correspondence we noticed that any award rendered by this CAS would have an impact on the player's eligibility to participate in the organised football only. Under these circumstances we deem that our client's participation to the present arbitration as a party of the dispute is passive and therefore not necessary. As a result we kindly ask you to accept our renouncement to participate in this file.

(...) FBF hereby undertakes to comply with the CAS decision passed in connection with the disciplinary sanctions might imposed on the Respondent player.

Finally, we request that the costs of the present arbitration shall be borne solely by the Respondent player.

(...)."

IV.3. The Athlete

77. The Athlete filed no Answer, appointed no counsel to represent him and did not set forth any defence.

V. LEGAL ANALYSIS

V.1. Jurisdiction of the CAS

78. Art. 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. An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance.”

79. In accordance with Art. 98 of the CBF Statutes, the FBF is an affiliate member of the CBF, being one of the several regional football bodies in Brazil, recognized as “*entidades regionais de administração do desporto*” by Art. 13 of Lei Pelé.

80. In addition to this, the Panel notes that under art. 1.2¹ of the CBF Statutes:

“All members, bodies and components of CBF, as well as clubs, athletes, referees, trainers, physicians, and other officers belonging to clubs or leagues of the affiliated federations must comply and enforce the compliance, in Brazil, with the Statutes, regulations, guidelines, decisions and the Code of Ethics of the Fédération Internationale de Football Association – FIFA and the Confederación Sudamericana de Fútbol – CONMEBOL”.

81. Furthermore, art. 5.paragraph V of the CBF Statutes states that “[t]he CBF has the following basic purposes: (...) respect, comply with and enforce compliance with the statutes, regulations, guidelines, decisions and other acts issued by the FIFA, CONMEBOL and other international entities to which CBF is affiliated.”

82. In addition to being a regional body established under the CBF, which is a FIFA member, under art. 1 of the FBF Rules 2009 in force as at April 2009, the FBF recognises the FIFA regulations and its superiority by providing as follows:

“All the provisions of Sport Law applicable to Professional Football in the Country and which are superior to the present regulations are necessarily and obligatory part of the legal parameters governing the Championship, such as FIFA Statutes, the Federal laws 9.615/98 and 10.671/03 (Supporters’ Statute), CBF Statutes, organic provisions of

¹ The original Portuguese text of this provision reads: “*Todos os membros, órgãos e integrantes da CBF, assim como clubes, atletas, árbitros, treinadores, médicos e outros dirigentes pertencentes a clubes ou ligas das federações filiadas devem observar e fazer cumprir no Brasil os Estatutos, regulamentos, diretrizes, decisões e o Código de Ética da Fédération Internationale de Football Association – FIFA e da Confederación Sudamericana de Fútbol – CONMEBOL*”.

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Brazilian football (adapted by CBF), the Brazilian Code of Sport Justice (CBJD), FBF Statutes and general norms of official competitions of FBF and RDI'S/CBF/BBF."

83. It is not in dispute that CBF and its members, including the FBF and the Athlete have submitted themselves to the FIFA regulations.
84. Art. 63.6 of the FIFA Statutes stipulates that "[t]he World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or leagues (...)."
85. Under art. 66.2 of the FIFA ADR edition May 2009, "[w]here WADA has a right to appeal (...) and no other party has appealed a final decision within the anti-doping organisation's process, WADA may appeal such a decision directly to CAS without having to exhaust other remedies in the anti-doping organisation's process."
86. It is not clear under Brazilian laws whether WADA has *locus standi* ("légitimation active") to appeal the TJDF Decision to a higher judicial body in Brazil. This is further corroborated by the fact that the TJDF did not notify WADA of its decision dated 13 July 2009 but rather, it was only FIFA which notified WADA of the appealed decision on 8 February 2010.
87. Neither the CBJD Statutes nor the TJDF Decision mentions the deadline within which WADA or any interested third party ought to have filed the said appeal.
88. In the Panel's view, the absence of any such expression implies that the CBF has decided to waive WADA's right to exhaust all the remedies available at internal level, and that WADA has the right to appeal the TJDF Decision once it has become final and binding at national level.
89. It follows that the CAS has jurisdiction to decide this dispute. The mission of the Panel follows art. R57 of the CAS Code, according to which a Panel has full power to review the facts and the law of the case. Furthermore, the same article provides that a Panel may issue a new decision which replaces the decision challenges, set the decision aside or refer the case back to the previous instance.

V.2. Admissibility

90. Art. 62.5 of the FIFA ADR edition May 2009 states that "[t]he final deadline for FIFA and WADA to lodge an appeal to CAS shall be 21 days after receipt of both the internally final and binding decision and the complete the file in an official FIFA language."
91. The TJDF Decision was notified to WADA on 8 February 2009. WADA filed its Statement of Appeal on 1 March 2010, which was within the deadline set forth under art. 62.5 of the FIFA ADR edition May 2009.

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92. WADA filed its Appeal Brief on 10 July 2010 following a notice dated 22 June 2010 issued by the CAS granting it until 10 July 2010 to file its Appeal Brief. It therefore follows that both the Statement of Appeal and the Appeal Brief are admissible.

V.3. Applicable Law

93. Art. R58 of the CAS Code provides the following:

"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."

94. As established on the jurisdiction section hereinabove, the CBF Statutes oblige the TJDF to comply with the FIFA regulations and the CBJD Statutes.
95. This is reiterated under art. 70.3 of the CBF Statutes which stipulates that *"[t]he autonomy and independence of the sports tribunals does not allow and/or imply that the sports tribunals can dispense away with the duty to comply with the Statutes, regulations, circulars and decisions of the FIFA Code of Ethics, and the sports tribunals are bound to respect the norms and principles of the FIFA Disciplinary Code, which is of universal application, as well as the Brazilian Code of Sports Justice (CBJD), which is of national application."*
96. It is therefore apparent that both the CBF Statutes and the FBF Rules 2009 (cf paragraphs 81 and 82 above) recognise and provide for the application by the TJDF of the FIFA regulations as well as Brazilian sports laws.
97. The application of the FIFA regulations is further corroborated by art. 62.2 of the FIFA Statutes which establishes the additional application of Swiss law by stating that *"[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA [...] and, additionally, Swiss law."*
98. By participating in the FBF championship, the Athlete has also clearly agreed to abide by the FBF Rules and consequently those of the CBF and FIFA. Moreover, in accordance with art. 1.2 of the CBF Statutes (quoted above at paragraph 80), all athletes must comply with the rules of FIFA.
99. For all the foregoing, the Panel is of the view, as did the Panel in the Dodô Case and in CAS 2009/A/1903 that the law applicable to the present dispute shall primarily be the FIFA regulations, the FBF Rules, the CBF regulations and Brazilian law in subsidiary. In case of a conflict between these regulations, the provisions of the FIFA regulations shall prevail. Swiss law may also be additionally applied, particularly in reference to the interpretation and application of FIFA rules, being rules issued by a private association incorporated in Switzerland.

100. In relation to the specific FIFA regulations applicable timewise, the Panel shares the findings made in CAS 2000/A/274 Susin v. FINA, at paras. 207 et seq² that the procedural aspects facing the appeal shall be governed by the applicable regulations which were in force at the time the TJDF Decision was notified *i.e* on 13 July 2009. The substantive aspects of the appeal shall be governed by the applicable regulations which were in force at the time the doping test was carried out on the Athlete, *i.e* on 19 April 2009.
101. In light of the abovementioned, the substantive aspects of the appeal shall be addressed through reference to (i) the FIFA Anti Doping Regulations adopted by the FIFA Executive Committee on 20 December 2008 and which came into force on 1 January 2009 (hereinafter referred to as the “FADR edition January 2009”), and where relevant and necessary (ii) the FBF Rules 2009 (iii) the CBF Statutes in force in April 2009, and (iv) the FBF Statutes 2004 in force as at April 2009.
102. The FIFA ADR edition May 2009 shall be referred in addressing the procedural aspects of the appeal.

V.4. The Merits of the Appeal

103. Moving to the substance of the matter, the Panel has identified the following issues for analysis in order to determine the dispute.
- a) Whether the Athlete committed an anti-doping rule violation
 - b) If the Athlete is found to have committed an anti-doping rule violation, what is the sanction applicable?

V.4.a Whether the Athlete committed an anti-doping rule violation

104. It is not in dispute that Nandrolone is a prohibited substance classified under “S1. Anabolic Agent” of the 2009 WADA Prohibited List. FIFA has also incorporated WADA’s list of prohibited substances under section 15.1 of the FIFA ADR edition January 2009.
105. Under art. 5.1 of the FIFA ADR edition January 2009, *“[i]t is each player’s personal duty to ensure that no prohibited substance enters his body. Players are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the player’s part be demonstrated in order to establish an anti-doping violation under this article.”*

² CAS 2000/A/274 Susin v. FINA, at para. 208-209 “Under Swiss law, the prohibition against the retroactive application of law is well-established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time the facts at issue occurred (...). This general principle is however subject to several exceptions, including an exception for laws or rules that are procedural in nature. In the absence of an express provision to the contrary, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts at issue occurred (...).”

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106. Art. 5.2 of the FIFA ADR edition January 2009 adds that “[s]ufficient proof of an anti-doping rule violation (...) is established by either the following: the presence of a prohibited substance or its metabolites or markers in the player’s “A” Sample where the player waives analysis of the “B” sample and the “B” sample is not analysed.”
107. Art. 13.1³ of the FIFA ADR edition January 2009 sets the burden of proving that an anti-doping rule violation has occurred to the “comfortable satisfaction” of the deciding body, i.e. not greater than a mere balance of probability but less than proof beyond reasonable doubt.
108. Once a prosecuting party (in this case WADA) has met this required standard, the burden of proof shifts to the Athlete, who is required to establish specified facts or circumstances rebutting the presumption that he has committed an anti doping rule violation (cf art. 13.2⁴ of the FIFA ADR edition January 2009).
109. Despite having failed and/or waived his right to defend himself before the CAS, the Panel notes that the Athlete has not disputed the results issued by Ladetec, and has particularly not denied that Nandrolone was found to be present in his body.
110. This is evidenced in the letter dated 10 June 2009 sent by the President of the Club to the FBF (cf. paragraph 12). The contents of this letter were clear of the Athlete’s position that although an adverse analytical finding of Nandrolone had been found in his body, it had been caused by certain medicines which had been prescribed to him⁵.
111. Corroborating the fact that a prohibited substance had been found in the Athlete’s body are:
- I. the letter dated 8 July 2009 by the General Attorney of the TJDF stating that “(...)there is no question about the fact that the Respondent has used a prohibited substance during the said football match (...).Therefore, the violation described in art. 244 of the CBJD is crystal clear (...).”, and;
 - II. the TJDF Decision, which unanimously found him guilty of having used a prohibited substance.
112. In light of the facts and evidence tabled and following the absence of any evidence from the Athlete rebutting the said facts and evidence, the Panel is comfortably satisfied that the 2nd Respondent committed an anti-doping rule violation contrary to art.5 of the FIFA ADR edition January 2009.

³ Art. 13.1 FIFA ADR edition January 2009: “The standard of proof shall be (...) to the comfortable satisfaction of the Disciplinary Committee bearing in mind the seriousness of the allegation that is made. In all cases, this standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.”

⁴ Art. 13.2 of the FIFA ADR edition January 2009: “Where the FIFA Anti-Doping Regulations place the burden of proof upon the player 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 (...).”

⁵ The Panel however notes that on 22 June 2009, the Club personally denied having any knowledge whatsoever in relation to any medication the Athlete may have taken.

V.4.b The relevant sanction and period of commencement

113. In accordance with art. 45 of the FIFA ADR edition January 2009 “[t]he period of ineligibility imposed for a violation of art. 5 (presence of prohibited substance) (...) shall be two (2) years unless the conditions for eliminating or reducing the period of ineligibility, as provided in art. 47-50, or the conditions for increasing the period of ineligibility, as provided in art. 51, are met.”
114. No defence has been filed by the Athlete pleading a reduction of the minimum two year sanction imposed under art. 45 above. The Panel is therefore not called upon to consider whether there are any mitigating circumstances or evidence which warrant a reduction of the minimum sanction on grounds of either “no fault or negligence” or “no significant fault or negligence”.
115. Consequently, and in accordance with art. 54.1 of the FIFA ADR edition January 2009, the Panel hereby declares the Athlete ineligible to participate, in any capacity, in any competition or activity authorised or organised by FIFA or an association, a club or other member organisation of an association, the International Olympic Committee, the International Paralympics Committee or any other International Federation or their member associations, or in competitions authorised or organised by any professional league, or any international or national level competition organisation, for a period of two (2) years.
116. However, Art. 53.1 of the FIFA ADR edition January 2009 states that “(...) the period of ineligibility shall start as soon as the decision providing for ineligibility is communicated to the player concerned. Any period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility imposed.”
117. The Panel notes that the TJDF banned the Athlete for a period of 120 days, deducting the 30 days temporary suspension he had provisionally served before the TJDF Decision (cf. paragraph 13).
118. On 17 September 2010, the FBF confirmed that the Athlete had been suspended for 120 days considering the 30 day period of preventive suspension he had earlier served. It hence means that the Athlete served a total of 120 days of suspension. This period already served by the Athlete shall be credited against the 2 year ineligibility period to be imposed on him and which comes into effect on the day of service of the present arbitral award.

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VI. COSTS

119. Pursuant to art. R64.4 of the CAS Code, the Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of the arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators, computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters, if any. In accordance with the consistent practice of the CAS, the award states only how those costs must be apportioned between the parties. Such costs are later determined and notified to the parties by separate communication from the Secretary General of CAS.
120. The Panel notes that this appeal was directed against a decision of a national sports body and for this reason does not fall under art. R65 of the CAS Code.
121. The Panel is of the view that the Appellant incurred no substantial legal costs and other expenses in relation to this proceeding. This view takes into account the fact that the appeal was brought by WADA in partial execution of its public function as a monitoring and regulatory institution of the WADA Code. In addition, the fact that no hearing was held, the 1st Respondent's waiver of its right to participate in this proceeding, and the absence of any defence from the 2nd Respondent thereby implying its admission and consent to the sanction are further elements which aid the Panel's position in relation to the legal costs.
122. Bearing in mind the outcome of the arbitration, in particular the fact that the appeal has succeeded in full, the Panel holds that the costs of this appeal should only be borne by the 2nd Respondent in an amount to be notified by the CAS Court Office.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the World Anti-Doping Agency against the decision dated 13 July 2009 rendered by the 2nd Disciplinary Committee of the Tribunal de Justiça Desportiva do Futebol da Bahia is upheld.
2. The decision dated 13 July 2009 rendered by the 2nd Disciplinary Committee of the Tribunal de Justiça Desportiva do Futebol da Bahia is set aside.
3. Mr. Nivaldo Araújo Carneiro Filho is found guilty of an anti-doping rule violation under article 5.1 of the FIFA Anti Doping Regulations edition 1 January 2009.
4. Mr. Nivaldo Araújo Carneiro Filho is declared ineligible for a period of two (2) years with effect from the date of this award, deducting the period of one hundred and twenty (120) days already served.
5. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Mr. Nivaldo Araújo Carneiro Filho.
6. All Parties shall bear their own legal costs and other expenses incurred in connection with this proceeding.
7. All other motions or prayers for relief are dismissed.

Lausanne, 21 October 2010

The Court of Arbitration for Sport

Rui Botelho Santos
President of the Panel

