



**ANTI-DOPING SPORTS JUSTICE
COURT
FULL**

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TJD-AD Decision No. 58/2019

CASE nº: 71000.045130/2019-38 DATE OF

SESSION: 09/26/2019 JUDGING BODY /

INSTANCE: FULL / 2nd Instance TYPE OF HEARING:

Judgment RAPPOREUR: ALEXANDRE FERREIRA,

original rapporteur and MARCEL RAMON PONIKWAR DE SOUZA, rapporteur

for the MEMBERS Judgment : EDUARDO HENRIQUE DE ROSE, MARCEL DE

SOUZA, TATIANA MESQUITA NUNES, MARTA WADA BAPTISTA, HUMBERTO

FERNANDES DE MOURA, MARTINHO NEVES MIRANDA AND GUILHERME FARIA

DA SILVA MODE: Rowing

REPORTED: [...]

**SUBSTANCE(S) / CLASSIFICATION: Prednisolone and its metabolites and
prednisone; Class Glucocorticoids (S9).**

SUMMARY: SPORTS LAW. VIOLATION OF ANTI-DOPING RULES.

AUTHORSHIP AND MATERIALITY CONFIRMED. USE OF PROHIBITED AND

SPECIFIED SUBSTANCES. Prednisolone and its metabolites and prednisone.

COLLECTION MADE IN COMPETITION. UNCHARACTERIZED INTENTIONALITY.

MODERATE NEGLIGENCE. NON-OBSERVANCE OF ANTI-DOPING RULES. ABSENCE

OF AUTHENTICITY PROOF. ATHLETE BURDEN.

CORRUPTION TO ARTICLE 9 OF THE CBA. INELIGIBILITY FOR 12 (twelve) MONTHS

**AS BASIS OF ARTICLE 93, ITEM II, WITH THE MITIGATION OF ARTICLE 101 BOTH
OF THE CBA.**

JUDGMENT

Agree the Auditors of the Plenary of the Court of

Anti-Doping Sports Justice, BY MAJORITY of votes, the rapporteur won

originator, punish the Athlete [...] in 12 (twelve) months of suspension, based on Art. 9, combined with Art. 93, item II and Article 101, all of the Brazilian Anti-Doping Code for the presence of Prednisolone and its metabolites and prednisone; Class Glucocorticoids (S9), in the urine sample collected in an exam carried out IN competition, and such penalty must start from the date of collection, that is, 06.17.2018, pursuant to Art. 114, § 1 of the same diploma, with all the resulting consequences, including the confiscation and/or annulment of any medals, points and awards from that date and also, if applicable, suspension of receipt of amounts of Government Incentive Programs for Athletes, in all spheres, under the terms of the relevant legislation.

Brasilia, December 9, 2019.

electronically signed

MARCEL RAMON PONIKWAR DE SOUZA
Auditor of the Anti-Doping Court of Sports Justice

REPORT

This is an appeal filed by the Attorney General's Office, which requests the removal of the mitigating factor contained in article 101 of the CBA and the incidence of article 114, § 1 of the same diploma, after a judgment in judgment carried out by the 3rd Chamber of the Anti-Doping Court of Sports Justice (TJD-AD).

On 06/17/2018, ABCD carried out a doping control exam in the Championship [...], held in Brasília - DF, according to the rules established by the World Anti-Doping Agency - AMA.

The result of the doping control test performed on the athlete [...], Sample 6228965, revealed the presence of the substances prednisolone and its metabolites 20beta-dihydro-prednisolone, 6beta hydroxyprednisolone and prednisone, as reported by the Brazilian Laboratory for Doping Control - LBCD, submitted to ADAMS on 7/27/2018.

The substances prednisolone and its metabolites and prednisone are considered specified substances, according to the World Anti-Doping Agency's List of Prohibited Substances and Methods, part of the Glucocorticoid Class (S9). It is a prohibited substance in competition.

In the analysis of the doping control process, it is observed that the athlete declared in the Doping Control Form the use of the substances Cerazette, Flanax, Miosan, Tandrilax, Vitamin C, Propolis, Centrum, Omega 3.

There is no record in the ADAMS Use Authorization System Therapeutic for the substance(s) found in the athlete's sample.

The 3rd Chamber of the TJD-AD held on the 12th of July Instruction and Judgment Session, and promoted the TJD-AD Judgment, with the following conclusion:

THE THIRD PANEL, decided, **UNANIMOUSLY**, in accordance with the reasoning of the Rapporteur, Dr. Humberto Fernandes de Mouta, the suspension of the athlete [...] For a period of 06 (six) months retroactive to the date of collection, which is 06/17/2018, ending on 06/17/2018, with all the resulting consequences, including the confiscation and/or annulment of any medals, points and awards from that date, and also, if applicable, suspension of receipts of Athlete Scholarship Program amounts, under the terms of the relevant legislation.

As mentioned above, there was an Appeal by the PG-JDA, which was timely filed with the case file, with the exception of the aspects already outlined above.

The secretariat of this E. Tribunal, by the Presidency of this Court, informed the holding of a lottery for judgment in plenary and the appointment of this Auditor to report the case.

It is necessary to describe.

WISHES

The Auditor **ALEXANDRE FERREIRA** - Original Rapporteur:

1. PRELIMINARY

Auditor **GUILHERME FARIA DA SILVA** was absent.

The minimum quorum for the existence of a plenary session was respected in accordance with anti-doping legislation.

In this case, no preliminaries were raised, which is why I proceed to the analysis of the merits.

2. MERIT

The violation of article 9 of the Brazilian Anti-Doping Code (CBA) is uncontroversial, as can be seen in v. judgment of the 3rd Chamber, due to the presence of prohibited and specified substances, namely, Prednisolone and its metabolites and prednisone, in the sample collected in a doping control test carried out in competition.

At this procedural stage and in the face of the appeal, which in turn asks for the reformulation of the sentence in view of the degree of culpability of the accused, in relation to the removal of the mitigating factor and the incidence of the penalty from the judgment of the offered irresignation, it is up to this plenary to analyze the modification of the penalty applied or the maintenance of the completeness of what has already been decided.

Following the guidance of the World Anti-Doping Code regarding the application of the appropriate sanction to the present case and, having as parameters the sentence of the first instance and the jurisprudence of this same court, the sanction established is ratified.

As the Third Chamber pointed out, there was no proof of intentionality, therefore, the sentence of 6 (six) months was established, as provided for in article 93, II c/c article 101 of the CBA.

Furthermore, what is prescribed by Article 28, Sole Paragraph of the CBA, when it categorically cites that "Specified Substances are not considered less important or less dangerous than Unspecified Substances, as they are only substances for which there is a greater probability of the Athlete having consumed them with a purpose other than improving their sports performance". (emphasis not original)

In any case, the process has its guidelines for analyzing the evidence set, and we cannot lose sight of the fact that the weight of evidence must be established through a fair balance of properties and possibilities.

As a result, the Attorney General's Office did not discharge its onus, namely, to prove intentionality (willful misconduct) and that there was significant negligence on the part of the athlete, since the comparison of the evidence offered shows that the accused acted with honesty, rectitude and ignorance, as he was not aware that the use of a common drug (predsin) for allergic rhinitis would bring him an administrative doping process.

Due to the above, there is no basis for the possibility of non-application of mitigating factors that may increase the arbitrated penalty, since the entire cognitive phase demonstrated the athlete's lack of intention to use substances for sports improvement.

Within this context, in the absence of any other legal provision of the Brazilian sports legal system in order to progress the applicable penalty as well as the provision of the Brazilian Anti-Doping Code that grants the attenuation of penalties for cases in this sense, I understand that the application of 6 (six) months of suspension is the most appropriate penalty in the case.

To reinforce what has already been concluded by the 3rd Chamber of this Court, the period of ineligibility must start on 06.17.2018, based on the provisions of article 114, § 1, of the CBA.

3. DEVICE

In view of the entire context of the case file, I am aware of the Appeal filed by the PG-JDA, and on the merits I DENY it, maintaining the penalty of 6 (six) months of suspension based on art. 93, II of the CBA, and such penalty must start from the date of collection, that is, 06.17.2018, pursuant to article 114, § 12, of the CBA, with all the resulting consequences, including confiscation and/or or cancellation of any medals, points and awards from the aforementioned date, and also, if applicable, the suspension of receipts of amounts from the Athlete Scholarship Program and Government Incentive Programs, in all spheres, under the terms of the relevant legislation .

It's like a vote, under the censorship of my peers.

The Auditor TATIANA MESQUITA NUNES - Member

Contrary to the original rapporteur, sentence increased to 12 months.

The Auditor EDUARDO HENRIQUE DE ROSE - Member

With the original rapporteur.

The Auditor MARCEL RAMON PONIKWAR DE SOUZA - Member

Contrary to the original rapporteur, the sentence was increased to 12 months for believing that this was the dosimetry most applicable to the case, since the

Specified substances found in the athlete's sample and justification for their use demonstrate a moderate degree of negligence.

The Auditor MARTINHO NEVES MIRANDA - Member

Contrary to the original rapporteur, sentence increased to 12 months.

The Auditor HUMBERTO FERNANDES DE MOURA - Member

Contrary to the original rapporteur, sentence increased to 12 months.

The Auditor MARTA WADA BAPTISTA - Member

Contrary to the original rapporteur, application of a warning.

The Auditor GUILHERME FARIA DA SILVA - Member

Absent.

DECISION

THE APPEAL FILED IS ACKNOWLEDGED AND ON THE MERIT GIVEN MAJORITY PROVISION.

I assign the usual communications to the Secretariat.



Document signed electronically by Marcel Ramon Ponikwar de Souza, Auditor at the Anti-Doping Court of Sports Justice, on 01/17/2020, at 15:59, according to Brasília official time, based on art. 10, item II, of Ordinance No. 390/2015 of the Ministry of Social Development.



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