Tribunal Arbitral du Sport
Court of Arbitration for Sport

**CAS 2005/A/872 Union Cycliste Internationale v. Federico Muñoz Fernandez & Federación Colombiana De Ciclismo**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition

President: Mr Peter **Leaver QC**, Barrister-at-Law, London, England
Arbitrators: Mr Beat **Hodler**, Attorney-at-Law, Berne, Switzerland
Mr Miguel Angel **Fernandez-Ballesteros**, Attorney-at-Law, Madrid, Spain

in the arbitration between

**UNION CYCLISTE INTERNATIONALE (UCI)**, Aigle, Switzerland
Represented by Me Philippe Verbiest, Attorney-at-Law, of Leuven, Belgium

Appellant

v/

**FEDERICO MUÑOZ FERNANDEZ,**
Represented by Mr Alvaro Grillo Rodriguez, Attorney-at-Law, Bucaramanga, Colombia

**FEDERAÇION COLOMBIANA DE CICLISMO**, Bogotá, Colombia

Respondents

## 1. INTRODUCTION

1.1 The Appellant, the International Cycling Union ("the UCI") is the international federation which is responsible for the organisation of the sport of cycling worldwide. It is an association of national cycling federations. The UCI's purpose is to direct, develop, regulate, control and discipline all forms of cycling.

1.2 The First Respondent, Federico Muñoz Fernandez ("Mr Muñoz"), is a cyclist in the elite category. He is a Colombian national.

1.3 The Second Respondent, Federación Colombiana de Ciclismo ("FCC"), is the national cycling federation of the Republic of Colombia.

1.4 The FCC granted Mr Muñoz a licence to participate in elite cycling events.

1.5 On 27 October 2004 Mr Muñoz participated in the Vuelta a Guatemala. The race is on the UCI's international calendar so that, under the UCI's regulations, doping control was initiated and conducted by the UCI. The applicable Regulations are the "Anti-Doping Rules of the UCI" (ADR), which entered into force on 13 August 2004.

1.6 After the race Mr Muñoz provided a doping control sample of urine. The sample was sent to the INRS-Institut Armand-Frappier, the Doping Control Laboratory ("the Laboratory") in Pointe-Claire, Québec, Canada. The sample was received by the Laboratory on 15 November 2004.

1.7 On 17 December 2004 the Laboratory reported to the UCI that the analysis of the A sample showed the presence of recombinant erythropoietin ("EPO").

1.8 On 20 December 2004 the UCI reported the result of the analysis of the A sample to the FCC, and requested the FCC to commence disciplinary proceedings against Mr Muñoz.

1.9 On 18 January 2005 the FCC informed Mr Muñoz of the result of the analysis of the A sample. Mr Muñoz did not then request that the B sample be analysed. Although Article 191 ADR provided that, inter alia, Mr Muñoz was *"entitled to demand the analysis of the B Sample"*, it does not appear that the FCC informed him of that entitlement. Instead, the FCC informed Mr Muñoz that disciplinary proceedings would be taken against him.

1.10 On 4 February 2005 the FCC Disciplinary Committee heard the disciplinary proceedings against Mr Muñoz, and on 18 February 2005 found that he was in breach of the UCI Anti-Doping Rules. A suspension of 18 months was imposed on Mr Muñoz, with effect from 18 February 2005, and he was fined COP 381,500 (381,500 Colombian Pesos). The FCC did not retrospectively disqualify Mr Muñoz from the Vuelta a Guatemala.

1.11 In late February or early March 2005 Mr Muñoz notified the FCC of an appeal against its decision. That appeal was to the General Disciplinary Committee of the Colombian National Olympic Committee.

1.12 The UCI was notified of the FCC's decision on 2 March 2005, and on 10 March 2005 requested the FCC to send the file to it. The file was received by the UCI on 21 March 2005.

1.13 Also on 10 March 2005 the FCC, following the appeal lodged by Mr Alvaro Rodriguez on behalf of Mr Muñoz, resolved to stay the execution of its decision and to remit the matter to the General Disciplinary Committee of the Colombian National Olympic Committee.

1.14 Art. 248 ADR prohibits an appeal from a national federation's disciplinary committee to another national federation body, but permits an appeal to the Court of Arbitration for Sport ("CAS").

1.15 Arts. 280 and 281 ADR respectively give to the cyclist and the UCI a right of appeal to the CAS from the decision of the national federation hearing body provided that, in the case of the UCI, the appeal is submitted to the CAS within one month from the receipt by the UCI of the full case file from the hearing body of the relevant national federation. On 20 April 2005 the UCI submitted its appeal to the CAS.

1.16 On 20 April 2005 the UCI filed a statement of appeal with the CAS against the FCC's decision of 18 February 2005. In the statement of appeal the UCI contended that, pursuant to Art. 261 of the UCI Anti-Doping Rules, the FCC should have suspended Mr Muñoz for 2 years, and, pursuant to Art. 274, should have disqualified him from the Vuelta a Guatemala and from all competition results between that race and 18 February 2005.

1.17 On 22 March 2005 the General Disciplinary Committee of the Colombian National Olympic Committee purported to accept Mr Muñoz's appeal, and on 21 April 2005 purported to declare the decision of the FCC Disciplinary Committee to be null and void, and remitted the matter to the FCC for re-hearing.

1.18 On 19 May 2005 the FCC informed the UCI and the CAS that, in consequence of the decision of General Disciplinary Committee of the Colombian National Olympic Committee, the FCC Disciplinary Committee had "annulled all legal proceedings" against Mr Muñoz.

1.19 The UCI contends that the FCC had no jurisdiction to quash the decision of its Disciplinary Committee, and that its purported decision to do so was contrary to Art. 248 of the UCI Anti-Doping Rules.

1.20 There appear to be three grounds upon which the General Disciplinary Committee of the Colombian National Olympic Committee decided to annul the FCC Disciplinary Committee's decision. First, that there was no proof that Mr Muñoz was notified of the positive result of the doping test in conformity with the requirements of Colombian law. Secondly, that there was no evidence that Mr Muñoz was notified of the right to have the B sample analysed. Thirdly, that Mr Muñoz was deprived of the right to a fair hearing before the FCC Disciplinary Committee: the principal reason for this finding appears to have been that there was no or insufficient evidence that Mr Muñoz was informed of his right to have the B sample analysed.

1.21 On 20 October 2005 the CAS, inter alia, requested the FCC to make its file available and to inform the Panel as to the steps that it had taken since the decision of the General Disciplinary Committee of the Colombian National Olympic Committee. The CAS also requested the UCI to use its best endeavours to make available the documents relating to the certification of the doctor who, Mr Muñoz asserts gave him the prohibited substance that was revealed by the analysis.

1.22 On 4 November 2005 the CAS requested UCI to obtain and file a copy of the notification to Mr Muñoz of the adverse analytical finding in order to verify that he had been informed of his right to have the B sample analysed.

1.23 On 11 November 2005 the UCI sent to the CAS the complete file that it had received from the FCC.

1.24 On 23 November 2005 the CAS ordered the UCI to proceed with the analysis of the B sample.

1.25 On 29 November 2005 the UCI informed the CAS that it would ask the Laboratory to proceed with the analysis.

1.26 On 3 December 2005 Mr Muñoz requested the CAS to arrange for a CAS representative to attend the analysis because he was unable to afford to do so.

1.27 On 7 December 2005 the CAS informed Mr Muñoz that it had no authority to make such an arrangement. However, the Director of the Laboratory made arrangements for a Professor at the Laboratory, who was not involved with the Doping Control carried out at the Laboratory, to attend the opening of the B sample on behalf of Mr Muñoz.

1.28 On 20 December 2005 the B sample was tested, and on 22 December 2005 the Laboratory reported that both the A and B samples showed the presence of recombinant erythropoietin.

## 2. JURISDICTION

2.1 Mr Muñoz challenges the jurisdiction of the CAS. He contends that the General Disciplinary Committee of the Colombian National Olympic Committee has annulled the proceedings against him in accordance with Colombian Law, and that, consequently, there is no judgment or order against which the UCI can appeal.

2.2 The FCC has taken no active part in these proceedings. It has notified the CAS that, in accordance with the directive of the General Disciplinary Committee of the Colombian National Olympic Committee, it has quashed the decision against Mr Muñoz and will re-commence the disciplinary proceedings against him.

2.3 The UCI contends that the decision by the General Disciplinary Committee of the Colombian National Olympic Committee was contrary to Article 248 of its Anti-Doping Rules, and asks the CAS to annul the decision of the FCC to quash the decision against Mr Muñoz.

2.4 This dispute as to the jurisdiction of the CAS brings into sharp focus the possibility of a tension between the municipal law of an athlete's country of nationality and the rules of the sporting federation under which the athlete competes. That possibility has become a reality in the present case.

2.5 The Panel proposes to approach the issue of jurisdiction from first principles. The UCI is an international sporting federation, which is recognised by the International Olympic Committee as being responsible for the organisation of the sport of cycling worldwide. The UCI is the association of national cycling federations, and its purpose is to direct, develop, regulate, control and discipline all forms of cycling.

2.6 Mr Muñoz is a professional cyclist who participates in cycle races which are organised under and in accordance with the UCI's Cycling Regulations, of which the Anti-Doping Rules are a part. Mr Muñoz participates in those races as a cyclist in the elite category under a licence granted by the FCC. He was the holder of a licence (No. 19650705) granted to him by the UCI.

2.7 In order to obtain the UCI licence, and to be permitted to participate in cycling races in the elite category, Mr Muñoz had to agree to comply with and be bound by the UCI Cycling Regulations: see Articles 1.1.001 – 1.1.006. The licence is "an identity document confirming the commitment of its holder to respecting the statutes and regulations that authorise him to participate in cycling events": Article 1.1.001.

2.8 It follows, therefore, that the relationship between the UCI, the FCC and Mr Muñoz is a contractual relationship, and it is to the terms of the contract between the parties that one must look to ascertain the parties' rights and obligations. That contract is contained in various documents, such as the application forms to obtain a licence and to participate in cycling races, as well as in the UCI Cycling Regulations.

2.9 As has been stated above, the Anti-Doping Rules are a part of the UCI Cycling Regulations. Article 248 ADR is in the following terms:

*"The decision by the hearing body of a License-Holder's National Federation shall not be subject to an appeal before another body (appeals board, Tribunal, etc.) at National Federation level.*

*If such an appeal is entered, it must be declared inadmissible. Any other decision is void as of right. However, the UCI may ask the Court of Arbitration for Sport (CAS) to pronounce nullity where appropriate upon supplementary application in an appeal procedure against the decision of the competent body. This application may be made at any time during the procedure before the CAS."*

2.10 Articles 280-291 ADR provide for appeals to the CAS from, inter alia, decisions of the hearing body of the National Federation when that decision is made under Article 242 ADR, as was the decision in the present case in respect of Mr Muñoz.

2.11 In the Panel's opinion, the provisions of Articles 248 and 280-291 ADR are clear. Mr Muñoz should have appealed to the CAS from the decision by the FCC and not to the General Disciplinary Committee of the Colombian National Olympic Committee. It was a breach of the contract between him and the UCI and the FCC to appeal to that body rather than to the CAS.

2.12 The Panel is prepared to accept that as a matter of Colombian Law it was possible for Mr Muñoz to appeal to the General Disciplinary Committee of the Colombian National Olympic Committee. However, to do so was a breach of his contract with the UCI. At best, the decision of the General Disciplinary Committee could only have an effect within Colombia. It would not entitle Mr Muñoz to participate in cycle races organised under the auspices of the UCI, or to avoid the UCI's disciplinary code.

2.13 In those circumstances, the Panel has concluded that Mr Muñoz's challenge to the jurisdiction of the CAS fails. The Panel concludes that it has jurisdiction pursuant to Articles 280-291 ADR of the UCI Anti-Doping Rules.

2.14 The CAS also has jurisdiction pursuant to Article R47 of the Code of Sports-related Arbitration ("the Code").

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## 3. THE HEARING

3.1 By letter dated 16 January 2006, Mr Muñoz's lawyer, Mr Alvaro Rodriguez, notified the CAS that neither he nor Mr Muñoz would be able to attend the hearing that had been fixed to take place on 18 January 2006.

3.2 In addition, Mr Alvaro Rodriguez enclosed with that letter a copy of an e-mail exchange that he had conducted with Professor Christiane Ayotte of the Laboratory in May 2005. He did so in order to *"call the attention of the panel about the credibility of the result related to the "B" sample"*, and enclosed what purported to be a translation of Professor Ayotte's e-mail to him.

3.3 On the direction of the President of the Panel, the CAS Court Office wrote to Mr Alvaro Rodriguez , referring him to Art. 56 of the Code, and asking him to state any *"exceptional circumstances"* that would entitle him to rely upon material that had been in his possession for such a long time. By that same letter, the CAS Court Office requested the reaction of the UCI and the FCC to Mr Alvaro Rodriguez's letter.

3.4 It was of particular concern to the Panel that the May correspondence between Mr Alvaro Rodriguez and Professor Ayotte had taken place within a few days of the filing of the UCI's statement of appeal and prior to the filing of Mr Muñoz's answer, but had not been mentioned in that pleading.

3.5 The UCI notified the CAS that it objected to the attempt to adduce further evidence, and Mr Alvaro Rodriguez did not attempt to justify the late production of that material. In the circumstances, the Panel refused Mr Alvaro Rodriguez permission to adduce the material.

3.6 In any event, the Panel took the view that the translation by Mr Alvaro Rodriguez of Professor Christiane Ayotte's statement was inaccurate. Professor Ayotte simply expressed the opinion, that a sample analysed five months after its collection *might (peut-être)* not be usable, and that the prohibited substance *might* not be detectable after such a period of time. Mr Alvaro Rodriguez did not translate *peut-être* in the translation of Professor Ayotte's statement that he provided to the Panel. In the present case, however, the analysis of the B sample confirmed the finding of the first analysis (A sample), and EPO was again detected.

3.7 As neither Mr Muñoz nor Mr Alvaro Rodriguez was able to attend a hearing in Lausanne, arrangements were made for a hearing to be conducted by telephone on 18 January 2006, the date fixed for the hearing in Lausanne.

3.8 The hearing duly took place, and the Panel would wish to place on record its thanks to all parties, and their representatives, for making themselves available for such a hearing at short notice, and to the CAS Court staff for making the necessary arrangements.

3.9 During the telephone hearing Mr Muñoz and Mr Alvaro Rodriguez told the Panel that they were *"totally satisfied"* with the procedure adopted by the Panel during the hearing and with the results of the analysis of the B sample, as reported by the Laboratory on 22 December 2005.

## 4. THE APPEAL

4.1 In addition to the challenge to the jurisdiction of the CAS, Mr Muñoz appeals on the following grounds. First, he contends that he did not receive a fair hearing before the FCC. He relies, in particular, on the failure of the FCC to notify him of his right to have the B sample tested and on the failure to give him an adequate opportunity to defend himself. He says that he was given only "several minutes" to put his case. Secondly, he contends that the FCC had no jurisdiction to hear the case against him. He relies upon a provision of Colombian Law, Law 49 of 1993, which, he contends restricts the FCC to hearing cases arising out of "events tournaments organised" by it. Thirdly, he contends that, notwithstanding the result of the analysis of the B sample, he was not at fault: he did not knowingly take erythropoietin, and he relied upon the team doctor, Dr Ricardo Rodriguez. He says that if erythropoietin was found in his sample, it was because he was given a substance, which contained erythropoietin, by Dr Rodriguez.

4.2 An appeal to the CAS is a hearing *de novo*. Art. R57 of the Code is in the following terms:

*"The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Upon transfer of the file, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments. He may also request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Articles R44.2 and R44.3 shall apply."*

4.3 It follows from the provisions of Art. R57 that any deficiencies in the hearing before the FCC can be remedied. This has been consistently confirmed by the CAS jurisprudence, according to which "*even if the "hearing" in a given case was insufficient in the first instance [...] the fact is that as long as there is a possibility of a full appeal to the Court of Arbitration for Sport the deficiency may be cured*" (see USA Shooting and Q. v. International Shooting Union, CAS 94/129, published in the Digest of CAS Awards 1986-1998, page 203). Thus, the first ground of appeal is of no weight. Mr Muñoz has acknowledged that he has been given the opportunity to put his case as fully as he wishes. In addition, Mr Muñoz's request to have the B sample tested was granted. As has been stated above, the result of that test confirmed the presence of recombinant erythropoietin shown by the test of the A sample.

4.4 For the sake of completeness, the Panel would wish to make it clear that during the telephone hearing, Mr Vargas of the FCC did not attempt to assert that the FCC had informed Mr Muñoz of his right to have the B sample tested, but is of the opinion that that failure is not material. The testing of a B sample is confirmatory of the results of the analysis of the A sample. An anti-doping body could, if it wished, attempt to prove a doping violation without a B sample. It can establish its case *"by any reliable means"* both under the WADA Code and under Article 17 of the UCI Anti-Doping Rules. Whether it could discharge the burden on it in any case would depend upon the facts of that case.

4.5 Mr Muñoz's submission that the FCC had no jurisdiction to hear the case against him by reason of the provisions of Colombian Law must be rejected. The hearing before the FCC was in accordance with the contract between Mr Muñoz, the FCC and the UCI. Whatever may be the content of Colombian Law, the contract into which Mr Muñoz entered gave jurisdiction to the FCC.

4.6 The third ground upon which Mr Muñoz relies, that he did not knowingly take erythropoietin must also be rejected. It is the established case law of the CAS that an athlete is responsible

for any substance that enters his body, even when that substance has been provided to him by a medical practitioner (see for example Arbitration CAS ad hoc Division (OG Athens) 2004/003 Torri Edwards v. IAAF and USATF, award of 21 August 2004, published in CAS awards Salt Lake City 2002 & Athens 2004, p. 89ff, sp. p. § 38: "*To ignore these facts* [the content of a tablet given to the athlete] *was at a minimum negligence on the part of the chiropractor and such a negligence must be attributed to the athlete who uses him in supplying the athlete either a food source or a supplement. It would put an end to any meaningful fight against doping if an athlete was able to shift his/her responsibility with respect to substances which enter the body to someone else and avoid being sanctioned because the athlete himself/herself did not know of that substance.*")

4.7 The only relevance of knowledge is as to sanction.

4.8 It, therefore, follows that the UCI's appeal must be allowed.

## 5. SANCTION

5.1 The relevant provisions of the UCI Anti-Doping Regulations are:

*"256. A violation of the Anti-Doping Rules in connection with an In-Competition test automatically leads to Disqualification of the individual results obtained in that Competition.*

*257. Except as provided in articles 258 and 259, an anti-doping rule violation occurring during or in connection with and Event leads to Disqualification of the Rider's individual results obtained in that Event according to the following rules:*

.....

*2. If the violation involves*
*a) the presence ... of a Prohibited Substance ...*

*all of the Riders's results are disqualified, except for the results obtained (i) in Competitions prior to the Competition in connection with which the violation occurred and for which the Rider was tested with a negative result, and (ii) in Competitions prior to that Competition.....*

*258. If the anti-doping violation includes the presence ... of a Prohibited Substance ...and the Rider establishes that he bears No Fault or Negligence, his individual results in the other Competitions shall not be disqualified except to the extent that they were likely to have been affected by the Rider's anti-doping violation.*

*261. Except for the specified substances identified in article 262, the period of Ineligibility imposed for a violation of article 15.1 (presence of Prohibited Substance or its Metabolites or markers) ... shall be:*

*First violation: 2 (2) years' Ineligibility.*

*264. If the Rider establishes in an individual case involving an anti-doping rule violation under article 15.1 (presence of Prohibited Substance or its Metabolites or Markers) ...that he bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Rider's Specimen a violation of article 15.1 ...the Rider must also establish how the Prohibited Substance entered his 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 limited purpose of determining the period of Ineligibility for multiple violation s....*

*265. This article 265 applies to anti-doping rule violations involving article 15.1 (presence of a Prohibited Substance or its Metabolites or Markers)... . If a License-Holder establishes in an individual case involving such violations that he 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 minimum period of Ineligibility otherwise applicable ....When a Prohibited Substance or its Markers or Metabolites is detected in a Rider's Specimen in violation of article 15.1 (presence of Prohibited Substance), the Rider must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility reduced."*

5.2 It follows from those provisions that a two-year period of ineligibility should have been imposed on Mr Muñoz by the FCC unless he established either that he bore no fault or negligence, in which case the period of ineligibility could have been eliminated, or no significant fault or negligence, in which case the period of ineligibility could have been reduced.

5.3 It is Mr Muñoz's case that he was not at fault at all. He contends that he was given "recuperative" substances by Dr Rodriguez, who was the Technical and Medical Director of the Café Quetzal team, and that he had no reason to suspect that Dr Rodriguez was giving him substances which contained a prohibited substance.

5.4 Thus, Mr Muñoz's contention is that the Panel should find that the prohibited substance was in his body without any fault or negligence on his part so that no sanction should be imposed on him in accordance with the provisions of Article 264 ADR. Alternatively, he contends that the Panel should find that he was not significantly at fault or negligent so that the sanction which would otherwise be imposed should be reduced in accordance with Article 265 ADR .

5.5 In answer to Mr Muñoz's contentions, the UCI makes three submissions. First. it says that there is no evidence that Dr Rodriguez administered EPO to Mr Muñoz, and that the Panel is being asked to draw an inference that it should not draw. Secondly, the UCI points out that it is the personal duty of an athlete to ensure that no prohibited substance enters his body: reliance is placed on Article 15.1 ADR which specifically so states. Thirdly, the UCI contends that even if it were established that EPO had been administered to Mr Muñoz without his knowledge, he was an experienced rider with more than 20 years experience, and was "extremely negligent" not to have checked what he was being given and, in those circumstances, remains liable.

5.6 The Panel's attention has been drawn to two previous CAS Awards, namely, *UCI v/s Magnien* (CAS 2000/A/300) and *UCI v/s Israel et FFC* (CAS 2004/A/613). In *Israel*, at paragraphs 26-8, the following statement of principle appears:

> *26. Dans une jurisprudence constante, le TAS a posé comme principe que l'athlète est responsable de la présence de produits dopants dans son organisme. Tout athlète bénéficie de la présomption d'innocence jusqu'à ce que la présence d'une substance prohibée dans son organisme soit établie. Dès qu'une telle présence est établie, l'intention de se doper et la culpabilité de l'athlète sont présumées.*
>
> *27. Le système de responsabilité objective doit prévaloir lorsque l'équité sportive est en jeu et la présence d'une substance interdite dans le corps de l'athlète entraîne deux conséquences. La première est que le sportif est disqualifié de la compétition à l'occasion de laquelle le contrôle antidopage a eu lieu. La deuxième est que la présence de la substance interdite*

*entraîne une présomption de culpabilité que l'athlète peut renverser en démontrant qu'il a été trompé sur le produit ou dopé a son insu, par exemple. (cf TAS 98/214 in Mathieu Reeb, op. cit. p. 302).*

*28. En vertu de cette responsabilité, il appartient en premier lieu au coureur de se montrer vigilant et de vérifier le contenu des médicaments qu'il absorbe, même si ces médicaments lui sont prescrits par un médecin et que le médecin sait que le coureur est susceptible d'être soumis à des contrôles. Il serait, en effet, trop facile pour un coureur de se retrancher derrière les prescriptions ordonnées par un médecin en alléguant qu'il n'a fait que se soumettre aux injonctions dudit médecin.*

5.7 The Panel endorses those words. It has been said many times by many CAS Panels that it is an athlete's responsibility to ensure that what goes into his body does not contain a prohibited substance (see Torri Edwards, above at § 4.6). It is not open to an athlete simply to say "I took what I was given by my doctor, who I trusted". At the very least, an athlete who is being given medicines by a doctor should specifically ask to be informed what are the contents of those medicines. He should ask whether the medicines contain any prohibited substance. He should attempt to obtain written confirmation from the doctor that the medicines do not contain any prohibited substances.

5.8 It will no doubt be objected that to require an athlete to ask such questions and to obtain such confirmation would be to place too heavy a burden on the athlete. The Panel rejects such an objection. It rarely, if ever, is the case that medicines are given to an athlete in circumstances in which it would not be possible for him to ask such questions or to obtain such confirmation.

5.9 If an athlete wants to persuade an anti-doping tribunal, or a CAS Panel, that he has been found to have a prohibited substance in his body, but that he was not at fault or negligent, or that he was not substantially at fault or negligent, he must do more than simply rely on his doctor.

5.10 There is an additional reason for adopting what might be considered to be an extremely strict approach. That additional reason is that, if the fight against doping in sport is to succeed, it is essential that doctors who treat athlete play their full part in the waging of that fight. It can be no excuse for a doctor who is treating an athlete not to make himself familiar with the list of prohibited substances. Athletes will soon learn which doctor can be relied upon, and which doctor should be rejected.

5.11 It was urged upon the Panel by Mr Alvaro Rodriguez that it should take into account Mr Muñoz's psychology, that he was a *"gregarious and collaborative fellow"*. The Panel is not persuaded of the relevance of those matters, although it is prepared to accept those words as an accurate description of Mr Muñoz's personality.

5.12 Mr Muñoz took no precautions. He must bear the responsibility for his failure. On the facts of this case, the Panel cannot eliminate or reduce the 2-year sanction that must follow from Mr Muñoz's failure. That period will commence, in accordance with Article 275 ADR, on 18 February 2005, the date of the FCC decision. Indeed, there is no evidence that the rider was actually suspended or suspended himself before such date. In addition, in accordance with Article 274 ADR, any of Mr Muñoz's competitive results between 27 October 2004 and 18 February 2005 will be cancelled.

5.13 It should also be recorded, although it had no influence on the Panel's decision, that during the telephone hearing Mr Vargas of the FCC candidly accepted that the FCC should have imposed a 2-year sanction on Mr Muñoz.

## 6. COSTS

6.1 Art. R65 of the Code is in the following terms:

*R65 Disciplinary cases of an international nature ruled in appeal*

*R65.1 Subject to Articles R65.2 and R65.4, 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.*

*R65.2 Upon submission of the statement of appeal, the Appellant shall pay a minimum Court Office fee of Swiss francs 500.— without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee.*

*R65.3 The 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.*

6.2 As this is a disciplinary case of an international nature, which was brought to CAS by UCI, the proceedings will be free, except for the minimum Court Office Fee, already paid by the Appellant, which is retained by the CAS.

6.3 In the circumstances of the present appeal, the Panel has concluded that it was the FCC's failure to impose the appropriate sanction that led to the appeal. Accordingly, the Panel orders the FCC to make a contribution to the legal and other costs of the UCI, in an amount of CHF 5,000.

**ON THESE GROUNDS**

The Court of Arbitration for Sport rules that:

1. The appeal by the Union Cycliste Internationale against the decision issued on 18 February 2005 by the Disciplinary Commission of the Federación Colombiana de Ciclismo is allowed.

2. Mr Muñoz is disqualified from the Vuelta a Guatemala and all of his results since 27 October 2004 are cancelled.

3. Mr Federico Muñoz Fernandez is ineligible to compete in cycling races for two years from 18 February 2005 until 17 February 2007.

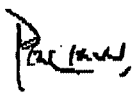
4. This award is pronounced without costs, except for the court office fee of CHF 500 (five hundred Swiss Francs) paid by the Union Cycliste Internationale, which is retained by the CAS.

5. The Federación Colombiana de Ciclismo shall pay the Union Cycliste Internationale a contribution of CHF 5,000 (five thousand Swiss Francs) towards the latter's legal and other costs relating to this arbitration.

Done in Lausanne, 30 January 2006

**THE COURT OF ARBITRATION FOR SPORT**

The President



Peter **Leaver QC**