



Arbitration CAS 2014/A/3842 World Anti-Doping Agency (WADA) v. Confederação Brasileira de Futebol (CBF) & Erivonaldo Florêncio De Oliveira Filho, award of 9 July 2015

Panel: Mr Juan Pablo Arriagada (Chile), Sole Arbitrator

Football

Doping (stanozolol)

Standing to be sued

WADA standing to appeal to the CAS

Observance of the athlete's right to laboratory documentation

Requirements related to a reduction of the standard sanction

1. Under well-established CAS jurisprudence, (at least) for international purposes the decisions of a national sport tribunal that, although independent in its adjudicating activity, is an integral part of the organisational structure of the national federation and does not pass the “stand-alone test”, must be considered to be the decisions of that national federation. This is exactly the same legal situation in public international law, where States are internationally liable for judgments rendered by their courts, even if under their constitutional law the judiciary is wholly independent of the executive branch. Even though the national sport tribunal may be “autonomous” from the national federation, the latter entrusts its disciplinary powers to the national sport tribunal which is an integral part of the organizational structure of the national federation. As a result, the national federation has standing to be sued.
2. According to the FIFA Statutes and to the FIFA ADR, WADA has the right to file an appeal before the CAS against an internally final and binding doping-related decision notably where the sanction was modified and reduced.
3. Evidence of the non-observance of an athlete's right to laboratory documents is not brought where the athlete does not provide any evidence sustaining that he was not informed of his right to request copies of the A & B documentation package.
4. Under FIFA ADR, in order to establish that there were specific circumstances providing for the reduction of his sanction under No Fault or Negligence and No Significant Fault or Negligence, an athlete shall first prove (i) how the Prohibited Substance entered his system and also (ii) establish that he bears No Significant Fault or Negligence. Even if an athlete complies with the first requirement, he must fulfil his personal duty to ensure that no Prohibited Substance enters his body. The risks associated with food supplements in the sports framework are widely known in the sporting community. Where these risks were seemingly just ignored by the athlete, who blindly consumed them without the minimal care, the athlete did not discharge his burden of proof in this regard. Therefore, the athlete's degree of fault or negligence, viewed in the totality of

the circumstances, is clearly significant in relation of the anti-doping rule violation, and the standard sanction cannot be reduced.

I. PARTIES

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is the independent international anti-doping agency, constituted as a private law foundation under Swiss Law with its seat in Lausanne, Switzerland, and having its headquarters in Montreal, Canada. Its aim is to promote and coordinate the fight against doping in sport internationally.
2. The Confederação Brasileira de Futebol (“CBF” or the “First Respondent”) is the governing body of football in Brazil.
3. Mr. Erivonaldo Florêncio De Oliveira Filho (the “Athlete” or “Second Respondent”) is a professional football player affiliated with the club SC do Recife, which plays in the B Series of the Brazilian Championship. The Athlete is also affiliated with the CBF.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 16 November 2013, the Athlete took part in an in-competition doping control (urine) test which resulted in an anti-doping rule violation for the use of Stanozolol. Stanozolol is a prohibited Substance classified under S1+ (Anabolic Agents) on the 2013 World Anti-Doping Agency (“WADA”) Prohibited List. This substance is prohibited both in and out of competition, and is not a specified substance.
6. Further to the Athlete’s adverse analytical finding, the Prosecution of the Superior Court of Sports Justice (the “Prosecution”) initiated disciplinary proceedings against the Athlete (Process No. 045/2014).
7. On 10 March 2014, the Athlete waived his right to test his B Sample.
8. On 12 March 2014, as a result of such proceedings, the Prosecution determined that an anti-doping rule violation had been committed and therefore, the Athlete’s case was referred to Disciplinary Commission of the Superior Tribunal De Justica Desportiva Do Football (the

“STJD”) in accordance with Article 103 of the CBJD for sentencing purposes. The Athlete was provisionally suspended.

9. On 31 March 2014, the Athlete submitted a statement of defence explaining that he unknowingly ingested Stanozolol through a food supplement provided by his friends while he was training for the Sao Bernardo Futebol Clube. Following the sample collection, and after becoming notified of his anti-doping rule violation, the Athlete ceased taking the supplement and consulted his team doctor. The Athlete asserted that he had no intent to enhance his performance while ingesting the supplement. In his statement of defence, the Athlete sought *inter alia* the annulment of the procedure, or in the alternative, a reduction of any sanction due to an absence of significant fault or negligence, as well as the excessive delays in the procedure.
10. On 9 April 2014, the 3rd Disciplinary Commission of the STJD issued its decision sanctioning the Athlete for a period of two years in accordance with Article 14 of the FIFA Anti-Doping Regulations for violating Article 6, items 1, 2, and 3 of such regulations. The sanction was backdated to 14 March 2014.
11. In its report, the STJD auditor (i.e. the judge) determined that the Athlete ingested the substance with the “*clear and evident intention of enhancing his sports performance*” as it is not reasonable to believe that someone would ingest a supplement without the intention of benefitting his performance. The STJD auditor found no mitigating factors in support of a reduction in sanction and therefore, the Player was suspended for a period of two years (the “First Instance Decision”).
12. On 16 April 2014, the Athlete appealed the First Instance Decision to the President of the STJD seeking an annulment of the First Instance Decision or alternatively, a reduction in penalty due to an absence of significant fault or negligence.
13. On 5 June 2014, the STJD issued its decision reducing the Athlete’s period of ineligibility to one year on the condition that the Athlete submits to monthly blood and urine tests which confirm that his body is free of any prohibited substances listed on the WADA List of Prohibited Substances, or otherwise prohibited by the CBF for a period of two years, failing which the Athlete’s initial two-year period of ineligibility would be reinstated (the “Appealed Decision”).
14. It is from the Appealed Decision that WADA now appeals to the Court of Arbitration for Sport (the “CAS”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 4 December 2014, WADA filed its Statement of Appeal at the CAS against the CBF and the Athlete in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). Within such Statement of Appeal, WADA requested that this appeal be referred to a Sole Arbitrator and that the proceedings be conducted in English.

16. On 15 December 2014, the Respondents agreed with WADA's suggestion that this matter be referred to a Sole Arbitrator and that the proceedings be conducted in English.
17. On 12 December 2014, WADA filed its Appeal Brief in accordance with Article R51 of the Code.
18. On 6 January 2015, the First Respondent filed its Answer in accordance with Article R55 of the Code.
19. On 19 January 2015, the parties were advised that the President of the CAS Appeals Arbitration Division appointed Mr. Juan Pablo Arriagada Aljaro, attorney-at-law in Santiago, Chile as Sole Arbitrator in accordance with Article R54 of the Code.
20. On 9 February 2015, the Second Respondent filed his Answer in accordance with Article R55 of the Code.
21. On 13 February 2015, the CAS Court Office asked the Second Respondent to clarify his statement in accordance with Article R55 and R56 of the Code at point 7.1 of his Answer that he intended to file written testimonials of doctors and other evidence. The Second Respondent did not respond or clarify his position on this point.
22. On 13 February 2015, the Autoridade Brasileira de Controle de Dopagem ("ABCD") requested that it be allowed to attend the hearing as a non-party observer.
23. On 23 February 2015, the CAS Court Office confirmed the attendance of ABCD at the hearing based upon the agreement of the parties and in accordance with Article R44.2 of the Code.
24. On 13 March 2015, a hearing was held in Rio de Janeiro, Brazil. The Sole Arbitrator was assisted by Mr. Brent J. Nowicki, CAS Counsel, and was joined by the following:

For the Appellant: Mr Yvan Henzer (Counsel) and Mr. Julien Sieveking (Chief Legal Manager at WADA).

For the First Respondent: Mr Pedro Fida (Counsel)

For the Second Respondent: Mr. André Oliveira de Meira Ribeiro (Counsel)

For the ABCD: Mr. Marco Aurelio Klein (Secretary), Mr. Luis Horta (Consultant for ABCD), and Mrs. Cristiane Caldas (Legal Affairs).
25. At the beginning of the hearing, the parties confirmed that they had no objection to the appointment of the Sole Arbitrator and at the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

26. WADA's submissions, in essence, may be summarized as follows:

- According to Article 14 of the FIFA ADR, the Athlete shall incur a two-year period of ineligibility unless the conditions set forth under Article 16 and 22 of the FIFA ADR are met. In particular, an athlete can establish, in view of the exceptional circumstances of his case, that the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence as per Article 17) or reduced (in case of no significant fault or negligence as per Article 18).
- However, in order to have the period of ineligibility eliminated or reduced, the Athlete must first establish how the prohibited substance entered his body. The Athlete explained that he tested positive further to the ingestion of a food supplement, and WADA has no reason to believe that these explanations are inaccurate.
- With regard to the fault of the Athlete, WADA submits that the ordinary two-year ban applicable for a first anti-doping rule violation cannot be reduced since the Athlete clearly bears significant fault. According to CAS case law, if an athlete uses a product and fails to inquire or ascertain whether the product contains a prohibited substance, the athlete's conduct constitutes a significant fault or negligence, which excludes any reduction of the applicable period of ineligibility.
- In the case at hand, the Athlete's fault is particularly significant because the Athlete did not take any precautions whatsoever before ingesting the supplement. In particular: (i) he ignored the well-known risk that supplements may contain a prohibited substance, (ii) he did not obtain any assurance from a specialist, that the product he took did not contain any prohibited substance, (iii) the Athlete did not conduct any research on the product, (iv) he did not contact the supplier about the product or its ingredients before taking it, and (v) the substance found in the sample provided by the Athlete is a steroid, that is, a powerful sport-enhancing substance.
- In conclusion, the Athlete cannot validly invoke any mitigating factors which would justify a reduction of the period of ineligibility.

27. In its statement of appeal, WADA makes the following request for relief:

1. *The Appeal of WADA is admissible.*
2. *The decision rendered by the Superior Tribunal de Justiça Desportiva on 5 June 2014, in the matter of Mr. Erivonaldo Florencio De Oliveira Filho, is set aside.*
3. *Mr. Erivonaldo Florencio De Oliveira 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 on, or voluntarily accepted by, Mr. Erivonaldo Florencio De Oliveira Filho 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.*

28. The CBF's submissions, in essence, may be summarized as follows:

- The STJD is not part of its administrative organization or organization structure according to Brazilian Constitution and Brazilian Law, as the STJD is a wholly independent entity. Consequently, it has no standing to be sued in this procedure and should be dismissed accordingly.
- Given the lack of standing to be sued, the costs of the procedure shall not be imposed on CBF.

29. In its answer, the CBF makes the following request for relief:

- (i) *To be excluded as a respondent from the proceedings CAS 2014/A/3842 WADA v. Confederação Brasileira de Futebol (CBF) & Mr. Erivonaldo Florêncio De Oliveira Filho based on its lack of standing to be sued; and*
- (ii) *CAS no to impose any amount in connection with the arbitration costs of this case on CBF. Consequently, the allocation of the arbitration costs shall be distributed only and exclusively between WADA (Appellant) and Mr. Nivaldo Araujo Careiro Filho (Respondent)*¹.

30. The Athlete's submissions, in essence, may be summarized as follows.

- WADA has mistakenly interpreted the Appealed Decision because it did, as WADA asserts, reduce the Athlete's period of ineligibility from two years to one year. However, the Appealed Decision confirmed the two-year period of ineligibility. Therefore, WADA does not have any interest in challenging the Appealed Decision.
- The Athlete further asserts that his essential rights were not duly respected, since at the time he was first notified of his adverse analytical finding, he received no information concerning his right to request the laboratory documentation associated with his results.
- To the extent a period of additional ineligibility is imposed on the Athlete, any such suspension should be backdated to the date of the test. This is especially true since more than one year has passed since the Athlete completed his one-year period of ineligibility. Such delay is not attributable to the Athlete in any fashion.
- The Athlete never received any orientation from the medical department of any of the clubs in which he had played before to about prohibited substances. He ingested the prohibited substance thinking he was using a permitted food supplement. He only knew about the presence of the prohibited substance after the sample collection.

31. In his answer, the Athlete makes the following request for relief:

¹ As Mr. Araujo is not a party to these proceedings, it is presumed the inclusion of his name was a typographical error.

- *In a preliminary and prejudicial basis that it be recognized that the CAS has no jurisdiction to render an award in the present appeal, due to lack of WADA's interest to appeal as the STJD has imposed a two-year period of ineligibility upon the Defendant.*
- *That article 172, first paragraph of the CBJD be applicable to the present case and that the Panel agrees on the fact that the STJD may decide to replace up to a half of any suspension sanction imposed on any athlete by alternative sanctions such as the Athlete's making regular test to prove he is clean from any prohibited substance.*
- *That article 18 of the FIFA ADR be applicable to the present case, since the Athlete has established how the prohibited substance entered his body and that he bears no significant fault.*
- *That the Panel decides that the Athlete did not intend to enhance his performance.*
- *That any period of ineligibility commence as early as the date of the sample collections, considering the delay on samples tests and further notification to the Defendant about the adverse analytical finding (article 28.2 of the FIFA ADR).*
- *That the Appellant shall bear with all arbitration and legal costs incurred by the Respondent.*

V. ADMISSIBILITY

32. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

33. Article 80 para. 6 of the FIFA ADR provides that “*The filing 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 case file in an official FIFA language*”.
34. WADA received the complete case file concerning the Appealed Decision on 14 November 2014. Their statement of appeal was filed on 4 December 2014. The Sole Arbitrator therefore confirms that such appeal was timely filed at the CAS.

VI. JURISDICTION

35. Article R47 of the 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.

36. Article 67 para. of the FIFA Statutes provide that WADA “*is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by FIFA, the Confederations, Members or Leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations*”.
37. Moreover, Article 80 para. 5 of the FIFA ADR specifies that “*FIFA and WADA shall have the right to appeal to CAS against any internally final and binding doping-related decision in accordance with the relevant articles of the FIFA Statutes*”.
38. The Appealed Decision was rendered as a result of an appeal at a national level, and for purposes of CAS jurisdiction, such decision is internally final and binding. Additionally, the Sole Arbitrator notes that all parties signed the Order of Procedure expressly confirming CAS jurisdiction.
39. Moreover, the Sole Arbitrator also notes the Athlete’s assertion that the CAS lacked “jurisdiction” but reiterates that the Athlete confirmed at the hearing that CAS had “jurisdiction”, but that WADA lacked “legal interest” in the appeal.
40. Therefore, the Sole Arbitrator determines that CAS has jurisdiction to hear this appeal.

VII. APPLICABLE LAW

41. Article R58 of the 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.

42. The Appellant asserts that the FIFA rules and regulations, namely, the FIFA Statutes and the FIFA Anti-Doping Regulations (“FIFA ADR”) are exclusively applicable to this dispute. In addition, the Brazilian regulations may apply, provided that the application of such regulations does not result in a breach of CBF’s obligations towards the statutes and regulations of FIFA. The Second Respondent, however, invokes Article 172 para. 1 of the Brazilian Sports Justice Code (“CBJD”), by means of which the STJD decided to modify – not reduce - the sanction imposed by the 3rd Disciplinary Commission of the STJD. In its opinion, that decision does not imply any reduction of the sanction, but a replacement of up to half of the period of ineligibility with alternative kind of sanctions. The Second Respondent proceeds to assert that such decision neither violates any provision of the WADA Code nor the FIFA ADR.
43. According to the Sole Arbitrator’s opinion, the applicable law to this dispute principally is the FIFA ADR. It is important to consider that Article 1, para. 2, of the CBF Statutes provide *inter alia* that all athletes must comply with the rules of FIFA (“*atletas [...] devem observar [...] os Estatutos, regulamentos, diretrizes, decisões e o Código de Ética da Federação Internacional de Football Association - FIFA*”). This also results from the application of the Brazilian regulations, provided that they are not contradictory in nature.

44. It is also undisputed that the CBF is the governing body of football in Brazil and is a member of the FIFA. Indeed, at the time of the Athlete's test, the match he had competed in was organized by the CBF, which was confirmed on the face of the doping control form wherein it was provided that the CBA was the authority supervising the test.
45. Therefore, in light of the foregoing, the FIFA ADR must prevail over national laws, as it is of the essence of the WADA goal to harmonize anti-doping policies, rules and regulations within sport organizations and among public authorities around the world. To determine otherwise could result in the misapplication of doping sanctions around the world.
46. Consequently, pursuant to Article R58 of the Code, and taking into account the facts described above, the Sole Arbitrator concludes that the present appeal shall be decided on the basis of the FIFA ADR and the WADC, with the Brazilian regulations only applying to the extent they do not result in a breach of CBF obligations with respect to the statutes and regulations of FIFA.

VIII. MERITS

A. *Standing to be sued*

47. The CBF submitted that the STJD is not part of its administrative organization or organization structure according to Brazilian Constitution and Brazilian Law, as the CBF-STJD is a wholly independent entity. Consequently, it has no standing to be sued in this procedure and should dismiss accordingly.
48. The Sole Arbitrator notes that a similar situation to this particular one was solved in cases CAS 2010/A/1370 & 1376 and CAS 2010/A/2307. As the Panels in such cases noted: *"the Panel is of the view that (at least) for international purposes the decisions of the STJD, although independently reached, must be considered to be the decisions of the CBF. In other words, the CBF is to be considered responsible vis-à-vis FIFA (or other international sports bodies) for the decisions adopted by the STJD. This is exactly the same legal situation as we have in public international law, where States are internationally liable for judgments rendered by their courts, even if under their constitutional law the judiciary is wholly independent of the executive branch"*.
49. In this regard, there is no doubt that the event where the doping control was carried out was organized by the CBF, and moreover, that the CBF controlled and directed the doping control. Indeed, even though the STJD may be "autonomous" from the CBF, the CBF entrusts its disciplinary powers to the STJD and the STJD is an integral part of the organizational structure of the CBF as set forth in CAS 2010/A/1370 & 1376. Nothing in the facts of this case or jurisprudence as a whole justifies the modification of such CAS precedent on this exact point. As such, the Sole Arbitrator determines that the CBF has standing to be sued.

B. WADA's Alleged Lack of Interest to Appeal to the CAS

50. As an initial matter, the Sole Arbitrator notes the Second Respondent's argument that WADA has mistakenly interpreted the Appealed Decision because it did, as WADA asserts, reduce the Athlete's period of ineligibility from two years to one year. As the Second Respondent argues, the Appealed Decision actually confirmed the two-year period of ineligibility. Therefore, WADA does not have any interest in challenging the Appealed Decision.
51. The Second Respondent's argument is not accurate. According to Article 67, paragraph 6 of the FIFA Statutes, "*WADA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by FIFA, the Confederations, Members or Leagues...*". Additionally, the Article 80 paragraph 5 of the FIFA ADR states that "*FIFA and WADA shall have the right of appeal to CAS against any internally final and binding doping-related decision in accordance with the relevant articles of the FIFA Statutes*", which is in fact what happens in the present dispute.
52. So as an initial matter, WADA has the right to file an appeal, and it did so when, based upon its review of the Appealed Decision, the Athlete's sanction was modified and reduced by the STJD. Whether such a reduction was a proper application of the applicable rules is a substantial matter which is to be resolved in the merits of the proceedings on appeal.
53. Therefore, the Sole Arbitrator determines that WADA's appeal to challenge the Appealed Decision is properly before the CAS.

C. Non-Observance of the Athlete's Right to Laboratory Documentation

54. The Second Respondent further asserts that at the time he was first notified of his adverse analytical finding, he received no information concerning his right to request the laboratory documentation associated with his results. In particular, the Second Respondent refers to Article 60, para. 4, item g) of the FIFA ADR ("*g) the Player's right to request copies of the 'A' and 'B' Sample laboratory documentation package, which includes information as required by the International Standard for Laboratories*"). and notes that since he was not informed of his right to request such documentation, his essential rights were violated and therefore, his test results should be disregarded.
55. As an initial matter, the Sole Arbitrator notes that the Player did not provide any evidence during the proceedings sustaining this argument, yet along satisfy the Sole Arbitrator that the Athlete was not made aware of his right to make such a request. For this reason alone, the Athlete's argument fails.
56. Nevertheless, the Sole Arbitrator emphasizes that the Athlete expressly waived his right to open and analyse his "B" Sample (both upon notification of his adverse analytical finding and during the hearing). Indeed, the Athlete has never challenged the adverse analytical finding (quite the opposite – he accepted it).
57. Further, even assuming the Athlete properly established that his right to request such documentation was violated, therefore resulting in a violation of some fundamental right, the

Athlete has put forth no evidence (or argument) that such violation could have reasonably caused the adverse analytical finding. *See e.g.* CAS 2014/A/3487; CAS 2014/A/3639.

58. For the above reasons, the Athlete's argument that his results should be disregarded because he was allegedly not made aware of his right to request laboratory documentation is rejected.

D. *The Anti-Doping Rule Violation*

59. Pursuant to Article 3.1. of the FIFA ADR "Player, other individuals, organizations and entities shall be responsible for knowing what constitutes an anti-doping rule violation and the substance and methods that have been included in the Prohibited List".

60. Furthermore, Article 6.1. of the FIFA ADR states: "It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping violation under this article". It follows in para. 2 that "Sufficient proof of an anti-doping rule violation under this Article is established by either of 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 analyzed".

61. Stanolozol is a Prohibited Substance which are classified under Section "S1" of the 2013 WADA Prohibited List, being an Anabolic Androgenic Steroid (AAS) which is also listed in the WADA Technical Document on the Decision Limits for the Confirmatory Quantification of Threshold Substances.

62. In the present case, it is undisputed that a Prohibited Substance was found in the Player's urine sample. The Player did not challenge the scientific conclusion as to the identification of the Prohibited Substance in his urine sample nor its analytic value in excess of the threshold level (i.e. 2.5 ng/mL) established by WADA. Moreover, the Player waived analysis of the "B" Sample. In addition, the Sole Arbitrator also notes that the Athlete did not contest before the STJD the scientific accuracy of the analysis carried out by the WADA-accredited laboratory in Quebec (INRS-Institut Armand-Frappier). On the contrary, the Player recognized that he consumed the prohibited substance, but asserted that such ingestion was "without bad faith" ("*Nesse período em que esteve afastado, o Atleta fez uso de suplementos alimentares que lhe foram sugeridos e fornecidos por amigos que fez na época em que defendeu o São Bernardo Futebol Clube. O Atleta não desconfiou em momento algum que pudesse estar ingerindo qualquer substância proibida, na medida em que já havia ingerido suplementos alimentares em outros clubes pelos quais passou, inclusive com a orientação de profissionais da área de saúde dos referidos clubes*").

63. Therefore, under the Sole Arbitrator's view, it is undisputed that the analysis of the Athlete's urine sample delivered on 16 November 2013, on the occasion of the B Series of Brazilian Championship of Football, established an adverse analytical finding of Stanolozol. As a consequence thereof, the Sole Arbitrator agrees with the Appealed Decision and thus finds that the presence of Stanolozol in the Athlete's urine is proven and constitutes an anti-doping rule violation under Article 6.2 of the FIFA ADR.

E. *The Sanction*

a) The Standard Sanction

64. Pursuant to Article 14 of the FIFA ADR, the standard sanction for a first violation of Article 6 of said rules (Presence of Prohibited Substance or its Metabolites or Markers) is a two-year period of ineligibility, “*unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 16 to 22 FIFA ADR, or the conditions for increasing the period of Ineligibility, as provided in Article 23 FIFA ADR, are met*”.

65. Therefore, unless the conditions for eliminating or reducing (no party has requested to increase such standard sanction) the period of ineligibility envisaged in the FIFA ADR are met, the sanction to be imposed to the Athlete is a two-year period of ineligibility.

b) Was the Sanction “Reduced” by STJD?

66. Before engaging in an analysis of whether certain conditions authorizing the application of a reduction of the applicable standard sanction are present, the Sole Arbitrator considers necessary to set forth the scope of the Appealed Decision and the special conditions applied by the STJD which allowed for a reduction of the term of the Athlete’s period of ineligibility from two years to one year.

67. Initially, the Sole Arbitrator notes in that in his Answer, the Second Respondent contradicts his own argument that the Appealed Decision did not “reduce” his sanction (i.e. the Appealed Decision confirmed the two-year sanction but allowed the Athlete an opportunity to return to competition after one year if certain conditions were met) since Athlete seems to recognize that the STJD effectively applied a reduction to the sanction. See e.g. Answer, p. 2, para. 1.2 (“... *the Appealed Decision ... also decided on a reduction of the period of ineligibility imposed on the athlete*”). Nevertheless, even assuming such statements in the Second Respondent’s Answer were unconscious assertions, the Appealed Decision itself literally indicates that “*By unanimous vote, the appeal was examined and on merit, to grant it partially, reducing athlete Erivonaldo Florencio de Oliveira Filho’s ineligibility penalty to one year suspension...*” (emphasis added). This alone shows the intent of the STJD when giving the Athlete the opportunity to return to completion prior to the expiration of the two-year period.

68. Moreover, the fact that the Player had the possibility of reducing the period of ineligibility from two years to one year - even if such reduction required him to comply with certain conditions – is enough to qualify as a reduction (especially considering that such conditions were, indeed, met by the Athlete). The Sole Arbitrator finds that the Athlete cannot hide behind such conditions to satisfy his argument that his suspension was not “reduced”. The reduction of the sanction was clearly set forth in the Appealed Decision (and certainly the Athlete was encouraged to comply with the condition to obtain such reduction).

69. Such reduction, however, is not permitted under the law applicable to the Athlete’s anti-doping rule violation. Therefore, for the Sole Arbitrator determines that the Appealed Decision reduced the sanction awarded in the first instance.

- c) There Are No Conditions Entailing the Reduction of the Sanction
70. While the Appealed Decision applied correctly by the FIFA ADR, the Sole Arbitrator notes that the STJD nevertheless applied the mitigating circumstances envisaged by such national regulation when determining the Athlete's sanction, thereby imposing a period of ineligibility of one year on the Athlete. Furthermore, the Sole Arbitrator notes that the STJD applied this reduction arbitrarily, without duly justifying or explaining the specific reasons or circumstances that lead to such a reduction, limiting its reasoning to the fact that the "*Sport Court has applied the ineligibility period with the possibility of reduction by half if the athlete demonstrates that he is off prohibited substances. This punitive but educational orientation has a widely positive reaction in the national media*".
71. Based on the foregoing, the Sole Arbitrator shall review the facts and, taking into account the applicable regulatory framework (which, as discussed above, is primarily FIFA ADRR), to determine if there is any exceptional circumstance that may lead to the elimination or reduction of the standard two-year sanction.
72. In this regard, the Sole Arbitrator notes that under the FIFA ADR the conditions for eliminating or reducing the period of ineligibility are those provided under Arts. 17 and 18 of the FIFA ADR, which provide as follows:

Art. 17 Elimination or reduction of the period of Ineligibility based on exceptional circumstances- No fault or Negligence

1. If a Player establishes in an individual case that he bears No fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated.

2. When a Prohibited Substance or its Markers or Metabolites is detected in a Players Sample in violation of Article 6 (presence of Prohibited Substance), the Player must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility eliminated.

3. 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 violations under Article 10.7.

Art. 18 Elimination or reduction of the period of Ineligibility based on exceptional circumstances- No Significant fault or Negligence

1. If a Player establishes in an individual case that he bears No Significant Fault or Negligence, then the otherwise applicable 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 8 years.

2. When a Prohibited Substance or its Markers or Metabolites is detected in a Player's Sample in violation of art. 6 (Presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility reduced".

73. In addition to the above-cited provisions, the Sole Arbitrator also notes that one can conclude that an athlete bears No Fault or Negligence when he is able to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the Prohibited Substance or Prohibited Method. In line with this, it can be concluded that an athlete bears No Significant Fault or Negligence when he is able to 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 relationship to the anti-doping rule violation.
74. In this context, taking into account the scope of the present appeal and the findings of the Appealed Decision (which merely considered the reduction of the sanction, but not its elimination), as well as the statement of defence filed by the Athlete before the STJD, the Sole Arbitrator shall only analyse whether the conditions under Art. 17 and 18 FIFA ADR for reducing the sanction are met in the case at stake. No analysis is to be made on the elimination of the sanction (Art. 16 FIFA ADR), as no evidence or statement has been submitted by the Athlete before the Sole Arbitrator, nor before the STJD, in this regard.
75. In accordance with the foregoing, the Sole Arbitrator observes that in order to establish that there were specific circumstances providing for the reduction of his sanction under Articles 17 and 18 FIFA ADR, the Athlete shall first prove (i) how the Prohibited Substance entered his system and also (ii) establish that he bears No Significant Fault or Negligence.
76. Finally, the Sole Arbitrator shall also emphasize that in accordance with constant CAS jurisprudence (i.e. CAS 2013/A/3262, para. 99 and 100) *“with regard to the standard of proof required from the indicted athlete, the Panel notes that, in accordance with the CAS jurisprudence and the WADA Code, the Player must establish the facts that he alleges to have occurred on the “balance of probability”. In particular, the balance of probability standard means that the indicted athlete bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence (see CAS 2004/A/602, para. 5.15, or TAS 2007/A/1411, para. 59). Finally, in order to determine the duty of caution required under the applicable rules, the Panel considers that “No fault” means that the athlete has fully complied with the duty of care. [...] “No significant fault” means that the athlete has not fully complied with his or her duties of care. The sanctioning body has to determine the reasons which prevented the athlete in a particular situation from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the specific and individual circumstances. However, only if the circumstances indicate that the departure of the athlete from the required conduct under the duty of utmost care was not significant, the sanctioning body may [...] depart from the standard sanction (CAS 2005/C/976 & 986)”*.
- ca) Evidence on how the Prohibited Substance entered the Athlete’s body
77. The Athlete has asserted that the Prohibited Substance was mistakenly consumed by means of a food supplement which was given to him by a friend. While the Athlete did not provide any direct evidence in this regard, the Sole Arbitrator notes that based on the evidence brought forth before the STJD, the fact that WADA accepted that such supplement was the source of the substance in question, and noting that nothing in the file supports a contamination theory,

the Sole Arbitrator accepts the Appellant's concession on the source of the Prohibited Substance.

78. In this regard, the Sole Arbitrator confirms that the Athlete effectively established the source of the Prohibited Substance detected at the doping control thereby complying with the first requirement in the application of Art. 16 FIFA ADR.

cb) Athlete's Degree of Fault or Negligence

79. Having adequately established the source of the Prohibited Substance, the Sole Arbitrator shall now analyze whether the Athlete bears No Significant Fault or Negligence, as set forth in Article 18 FIFA ADR.

80. Before the STJD, the Athlete intended to excuse his behaviour on the basis that (i) he ingested the food supplement by indication of a friend who is neither an athlete or a doctor; (ii) he took the Prohibited Substance mistakenly and without bad faith, (iii) the substance did not enhance his performance; (iv) he had never been informed that he was responsible for what entered his body and had never been informed by any doctor about the issue; and (v) he did not remember the name of the supplement.

81. In response, WADA asserted that despite the Athlete's excuses, he was unquestionably grossly negligent. He ignored well-known risks that supplements may contain prohibited substances. He received no assurances from a doctor or his coaches (until after the notification of his adverse analytical finding). He conducted no internet research and did not contact the supplier or manufacturer about the ingredients of the supplement. All this is especially troubling given that the Athlete ingested a steroid.

82. In the Sole Arbitrator's view, none of the arguments put forward by the Athlete can establish that his fault or negligence, when viewed in the totality of the circumstances of the present case, and taking into account the criteria for determining a "No Fault or Negligence", was not significant in relationship to the anti-doping rule violation. In fact, the Athlete's acknowledgement before the STJD that *"only after the sample collection during match held on 16/11/2013, against the Paraná Club team, did the Athlete show the bottle of the supposed food supplement to the Sport Club do Recife doctor, having been told about the presence of prohibited substances in those capsules ("Somente após a coleta da amostra, em partida realizada no dia 16/11/2013, contra a equipe do Parnaá Clube, é que o Atleta procurou o médico do Sport Club do Recife e mostrou o recipiente do suposto suplemento alimentar, tendo então sido alertado sobre a presença de substância proibida em tais cápsulas")*, reveals precisely the contrary.

83. Indeed, the Athlete's late reaction after the sample collection demonstrates that he was at least careless, and did not fulfil with his personal duty to ensure that no Prohibited Substance enters his body (Article 3.1 FIFA ADR).

84. In line with this, the Sole Arbitrator rejects the Athlete's statement made before the CAS, according to which: i) he never knew that he was ingesting a prohibited substance; ii) he did not intend to enhance his performance; iii) he did not know that Stanolozol's side effects were

very serious; iv) he only intended to use an ordinary food supplement; (v) he has little anti-doping education.

85. Being these the main arguments in which the Appellant bases his case, they had to be proven during the arbitral procedure. It constitutes a universal legal principle, across all national legal systems, that the party alleging the existence, termination or modification of an obligation must prove such circumstances. Or in other words, he who claims the existence of circumstances disclaiming responsibility based on certain facts or factual propositions has the burden of proving the effectiveness of such facts, being always insufficient to merely affirm or declare them, without proving them. This is the doctrine known as the “burden of proof”.
86. This general principle has been repeatedly recognized by the CAS jurisprudence, in the sense that the party that wishes to prevail in a controversial issue, must comply with the burden of proof, that is, must present suitable and sufficient means of proof to credit the facts in which the claims have been based on. The CAS jurisprudence in this matter is vast, and the ruling on the following cases should be reiterated: CAS 2005/A/968; CAS 2004/A/730; CAS 2012/A/2818; CAS 2007/A/1380; CAS 2009/A/1811; CAS 2012/A/3009; CAS 2013/A/3431.
87. In this case, the Athlete failed to fulfill this burden of proof, as he did not in any way establish the facts in which support his defense. Indeed, the Sole Arbitrator notes that despite that the Second Respondent indicating that he would offer the testimony of witnesses to discuss the substance in question and its true effects upon ingestion, no witness to his extent were ever presented. Moreover, the Sole Arbitrator notes that the Athlete himself did not come to the hearing, which prevented the Sole Arbitrator from assessing his credibility and asking direct questions to him as deemed necessary by the Sole Arbitrator. The Sole Arbitrator notes that the Athlete should have been more diligent in this regard and having presented as witnesses, for example, the doctor of the club or, the testimony of the Appellant’s teammates who could have shed light on the circumstances in which the Athlete ingested the food supplement, the level of anti-doping education provided by the club to the team, etc. However, no such evidence was provided to verify the Athlete’s arguments, which prevented the Sole Arbitrator from confirming the veracity therein.
88. Separately, while the Athlete may not have directly intended to enhance his sporting performance while ingesting the supplement, the Sole Arbitrator (noting that Stanazolol is a non-specified substance and therefore intent is not an element of reduction), deems that his intent to enhance was certainly indirect. In this regard, the Sole Arbitrator follows the reasoning of set forth in the Report of the Appealed Decision: *“The behaviour of a twenty-four year old professional is reprehensible, in making use at his own risk, of an objectionable expedient to enhance his performance”*, and that he ingested the supplement for
89. Notwithstanding the above, the risks associated with food supplements in the sports framework are widely known in the sporting community. These risks were seemingly just ignored by the Athlete, who blindly consumed them without the minimal care.

90. The Sole Arbitrator considers that the arguments exposed by the Athlete to require the reduction of the period of ineligibility must be analyzed in the light of the normative standard of “duty of care” which is required of all athletes regarding substances that they freely decide to ingest. In this regard, as one of the main principles in the context of anti-doping, it is abundantly clear that all athletes must be extremely careful with the food contents, fluids, and in general, with any products that he or she may ingest, either for nutrition or therapeutic purposes, as they may contain some substance identified on the WADA Prohibited List. As has been expressly established by CAS jurisprudence: *“In each case, the Athlete’s fault is measured against the fundamental duty which he or she owes under the Program and the WADC to do everything in his or her power to avoid ingesting any Prohibited Substance”* (CAS 2011/A/2518).
91. In the same respect, in case CAS 2003/A/484 the Panel stated: *“We begin with the basic principle, so critical to anti-doping efforts in international sport... that “[i]t is each Competitor’s personal duty to ensure that no Prohibited Substance enters his or her body” and that “Competitors are responsible for any Prohibited Substance or its Metabolites or Markers found to be present their bodily Specimens”. The essential question is whether [the athlete] has lived up to this duty...”. Furthermore, in case CAS 2005/C/976 & 986 the Panel offered the following: “The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body... The Panel underlines that this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition... It is this standard of utmost care against which the behavior of an athlete is measured if an anti-doping violation has been identified. “No fault” means that the athlete has fully complied with the duty of care”.*
92. Therefore, the Sole Arbitrator finds that the Athlete’s degree of fault or negligence, viewed in the totality of the circumstances, is clearly significant in relation of the anti-doping rule violation, and thus the sanction cannot be reduced under Article 18 of the FIFA ADR. In consequence, the sanction to be imposed to the Athlete in this case shall be fixed at two-year period of ineligibility.
- d) Possibility of Sanction Reduction According to the Brazilian Regulation
93. As set forth above, the STJD partially accepted the Athlete’s appeal and reduced the Athlete’s period of ineligibility from two years to one year, backdated to the date of the preventive suspension (i.e. 10 March 2014), whereas the Athlete must present his laboratory tests monthly demonstrating that his body is free of prohibited substances. In other words, the Athlete’s penalty was reduced to a twelve-month period of ineligibility followed by three months of public lecture (i.e. educational outreach), based upon on Article 172 of the Brazilian Code of Sport Justice.
94. According to the rules applicable to this proceeding (i.e. the FIFA ADR), the Sole Arbitrator considers that the STJD erred by reducing the ordinary two-year ban to a one-year ban and by conditioning part of the sanction upon the player showing that his body would be clean for the total period of the sanction. There is no such possible sanction available to the Athlete under the applicable regulations.

F. *The Starting Date of the Sanction*

95. The Appellant requests that in the event a two-year suspension is applicable, the start date for any such offence shall be the date of sample collection (i.e. 13 November 2013). In this respect, the Athlete directs the Sole Arbitrator to the substantial delays in his case, principally related to time it took WADA to involve itself in this case and file an appeal. In this regard, WADA seems to regrettably accept the delays in the case but notes that the delays were caused by the CBA and in handling of the Athlete's case from its inception.
96. Article 28.2 of FIFA ADR provides: *"Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, the hearing panel imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of the sample collection or the date on which another anti-doping rule violation last occurred"*.
97. In this regard, the Arbitrator acknowledges that the sample collection took place on 13 November 2013 following which the Athlete's initial hearing and appeal finally were determined by 5 June 2014. To the Athlete's credit, he admitted his mistake and cooperated with the CBA in all accounts. However, due to circumstances not attributable to the Athlete, WADA presented his appeal only on 4 December 2014. While the Sole Arbitrator understands the issue behind WADA's receipt of the case file, and the failure of the CBA to provide WADA with the necessary information needed to determine whether an appeal was necessary, the Athlete should not bear the brunt of these logistical shortcomings. The Sole Arbitrator highlights that the Athlete fulfilled his entire initial sanction (including his service requirement) despite such sanction not even complying with the appropriate regulations. Therefore, any delays are not attributable to the Athlete.
98. Moreover, following the hearing, and upon the agreement of the parties, the Athlete agreed to voluntarily remove himself from competition and provided a written statement from Mr. Rodrigo Barros, Head of Legal at Sport Club do Recife, confirming that the Athlete has not taken part in any official matches or training sessions since 7 February 2014. The Sole Arbitrator determines that given the procedural shortcomings faced by the Athlete since the inception of his anti-doping rule violation, such voluntary act of recognition given the circumstances should be held in favour of the Athlete.
99. Based on the foregoing, the Sole Arbitrator determines that the Athlete's two-year period of ineligibility shall begin from the date of sample collection (i.e. 13 November 2013).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by World Anti-Doping Agency against the Appealed Decision rendered by the Superior Tribunal de Justiça Desportiva of CBF on 4 December 2014 with regard to the athlete Mr. Erivonaldo Florêncio De Oliveira Filho is upheld.
2. The Decision of the Superior Tribunal de Justiça Desportiva of the CBF dated 5 June 2014 is set aside.
3. Mr. Erivonaldo Florêncio De Oliveira Filho is sanctioned with a two-year period of ineligibility, starting on 13 November 2013, and all results, medals, points and prizes obtained during this period of ineligibility are forfeited.
4. (...).
5. (...).
6. All other prayers for relief are dismissed.