



**Arbitration CAS 2012/A/2779 International Association of Athletics Federation (IAAF) v. Confederação Brasileira de Atletismo (CBAt) & Simone Alves da Silva, award of 31 January 2013**

Panel: Mr. Rui Botica Santos (Portugal), Sole Arbitrator

*Athletics (10'000 m)*

*Doping (recombinant EPO)*

*Filing of new evidence in appeal*

*First or second violation of the anti-doping regulations*

1. Pursuant to Article R57 of the CAS Code, a panel has the power to review the facts and the law. In addition, Article R51 of the CAS Code allows the appellant to file all exhibits and specification of other evidence it intends to rely on together with the Appeal Brief. These provisions therefore entitle any party to file evidence which was not filed in the proceedings leading to the appealed decision.
2. By virtue of taking part in a competition organised by a national federation, the athlete falls under the jurisdiction of that federation's judicial bodies. In case the latter sanction the athlete with a suspension for infringing the anti-doping regulations, this must count as a first anti-doping offense rather than as a mere administrative decision. Any subsequent infringement must therefore count as a second anti-doping offense.

**I. THE PARTIES**

1. The International Association of Athletics Federation (hereinafter referred to as the "IAAF" or the "Appellant") is the International Federation governing the sport of athletics worldwide. It has its registered seat in Monaco.
2. The Confederação Brasileira de Atletismo (hereinafter referred to as the "CBAt" or the "First Respondent") is the body governing the sport of athletics in the Federal Republic of Brazil.
3. Simone Alves da Silva (hereinafter referred to as the "Athlete" or the "Second Respondent") is an athlete of Brazilian nationality specialising in the 5,000 and 10,000 metres events.

## II. THE FACTS

4. This appeal was filed by the IAAF against the decision rendered by the Superior Tribunal de Justiça Desportiva do Atletismo (hereinafter referred to as the “STJD”) passed on 27 February 2012 (hereinafter referred to as the “Appeal Decision”). The grounds of the Appeal Decision were notified on 9 March 2012.
5. A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the Parties’ submissions and the evidence adduced during the hearing. Additional factual background may also be mentioned in the legal considerations of the present award. In this award, the Sole Arbitrator only refers to the submissions and evidence he considers necessary to explain the reasoning.

### II.1 The Origin of the Dispute

6. On 3 August 2011, the Athlete took part and won the 10,000 metres race at the Troféu Brasil event held in Brazil (hereinafter referred to as the “Race”). In winning the Race, the Athlete broke the national and South American record and also posted her personal best time in the women’s 10,000 metres race.
7. On 3 August 2011 and immediately after the Race, the Athlete underwent an anti-doping test. The Athlete’s urine sample was collected by the CBAAt’s Agência Nacional Anti-Doping of Brazil (hereinafter referred to as the “ANAD”). The sample was sent to the WADA accredited laboratory known as the Laboratoire de Contrôle du Dopage in Montreal (hereinafter referred to as the “Laboratoire de Contrôle”), Canada for analysis.
8. During the sample collection process by the ANAD, the Athlete was requested to pick a set containing two sample collection bottles, into which her urine would be collected, one bottle for collecting her A urine sample and the other for collecting her B urine sample. The Athlete proceeded to choose a set (hereinafter referred to as the “Sample Bottle”), which already had the code numbers 2612468 A and 2612468 B engraved on them for the A and B sample respectively.
9. The Athlete first gave a portion of her urine before the ANAD officials allowed her to leave the Doping Control Station carrying a Sample Bottle to attend an interview with sports station Spor-Tv (hereinafter referred to as the “Interview”).
10. After the Interview, the Athlete returned to the Doping Control Station and gave the remaining portion of her urine sample, which was then sent to the Laboratoire de Contrôle.
11. Upon receiving the Sample Bottle, the Laboratoire de Contrôle allocated it laboratory code number 11-11436A and 11-11436B for Sample Bottle A and Sample Bottle B respectively. The Athlete then signed a form (hereinafter referred to as the “Doping Control Form”) confirming her consent and satisfaction with the manner in which her urine sample had been collected.

12. On 29 August 2011, the Laboratoire de Contrôle filled in a form entitled “Isoforms of rhEPO in Urine Samples 2612468A and B”. In this form, the laboratory technician who analysed the Sample Bottle handwritten that he had analysed the urine sample collected in Sample Bottle code number 2612468 and laboratory code number 11-11436, whose results revealed the presence of recombinant EPO.
13. On 1 September 2011, the Laboratoire de Contrôle released the Anti-Doping Results, which revealed the presence of recombinant EPO in Sample Bottle code number 2612468. Recombinant EPO is a substance prohibited under S.2 of the 2011 World Anti-Doping Agency (hereinafter referred to as “WADA”) list of prohibited substances (hereinafter referred to as the “Prohibited List”).
14. On 5 September 2011, the ANAD informed the Athlete of the Anti-Doping Results. The Athlete was granted seven days to request the analysis of the B sample, which she did.
15. On 11 October 2011, the Laboratoire de Contrôle filled in a form entitled “Isoforms of rhEPO in Urine Samples 2612468A and B”. In this form, the laboratory technician who analysed the Athlete’s urine samples handwritten that he had analysed the urine sample collected in Sample Bottle number 2612448 and laboratory code number 11-11436B, whose results revealed the presence of recombinant EPO.
16. On 13 October 2011, the Laboratoire de Contrôle released the Anti-Doping Results of the Athlete’s B sample. The results revealed the presence of isoforms of recombinant EPO in “*Sample Code 2612468 Lab Code 11-11436B*”.
17. On 14 October 2011, the ANAD informed the Athlete that following the results of the anti-doping tests conducted on Sample Bottle code number 2612468 collected at the Race, the Athlete had violated Rule 32.2(a) of the IAAF Competition Rules 2009 edition (hereinafter referred to as the “IAAF Rules”), and that pursuant to the powers vested on the ANAD by both the CBAAt and under IAAF Rules 35.2, the Athlete had been provisionally suspended from all competition as provided under IAAF Rules 38.1(a) and 38.2.

## **II.2 Relevant facts prior to the Race to determine if the alleged offence was the first or second anti-doping rule violation**

18. On 17 July 2010, the Athlete took part in the Circuito Fluminense de Corrida event held in Volta Redonda, Brazil. During the event, the Athlete underwent an in-competition anti-doping test, and the sample was sent to the WADA accredited laboratory known as the “Laboratório de Apoio ao Desenvolvimento Tecnológico do Instituto de Química da Universidade Federal do Rio de Janeiro” (hereinafter referred to as “Ladetec”) in Rio de Janeiro for testing.

19. On 16 August 2010, Ladetec submitted the results to the CBAAt. The results revealed the presence of a substance known as Oxilofrine. Oxilofrine is one of the “substances and methods prohibited in-competition” as a stimulant under S6 of the 2010 Prohibited List.
20. On 22 September 2010, the CBAAt issued a resolution stating that the Athlete had been found guilty of an anti-doping rule violation for ingesting Oxilofrine. The Athlete was suspended for a period of three months pursuant to IAAF Rules 40.4.
21. After serving her three month ban, the Athlete returned to competition. In this appeal, the Athlete denies having previously been banned for an anti-doping rule violation. The Athlete claims that the ban imposed on 22 September 2010 was an administrative sanction rather than a sanction imposed by an international tribunal.

### **II.3 The CBAAt Disciplinary Committee proceedings**

22. The Athlete contested the anti-doping results and the provisional suspension imposed by the ANAD on 14 October 2011 to the CBAAt Disciplinary Committee (hereinafter referred to as the “Disciplinary Committee”).
23. On 23 January 2012, the Disciplinary Committee issued its decision. It cleared the Athlete from any anti-doping rule violation on the following grounds:
  - a) The results of the Laboratoire de Contrôle, which was the basis on which the Athlete’s anti-doping results were conducted, contained two different code numbers for sample A and sample B. Whereas sample A contained code number 2612468, sample B contained code number 2612448, meaning they were from different athletes.
  - b) The doping test was of substantial importance to the Athlete’s career. It was unimaginable for a renowned laboratory to make such a mistake which could lead to the annulment of the whole laboratory procedure.
  - c) Although the error in numbering the sample codes is a mere filling mistake, it could prevail due to the fact that the whole documentation underlined the Athlete’s conviction.
  - d) The Interview proves that a reporter took advantage of the Athlete by managing to take her out of the Doping Control Station after the Race. This was a procedural error which warranted the annulment of the urine collection process and it points to a technical failure perpetrated by the doping control officials.
  - e) The Athlete was not accompanied by a chaperone for the Interview. This was contrary to Articles 13, 14, 15 and 20 of *Resolução nº 2 de 5 de Maio de 2004*, (hereinafter referred to as “Resolution No. 2 of 5 May 2004”) and section 5.4 of the WADA International Standard for Laboratories (hereinafter referred to as the ISL”) 2003 edition.
  - f) Although the above procedural errors do not rebut the findings made from the doping test, they cannot be used to effectively demonstrate to which athlete sample B belonged to, because the said sample was coded 2612448 whereas the Athlete’s true code was 2612468.

## **II.4 The STJD proceedings**

24. Dissatisfied with the Disciplinary Committee decision, the CBAAt appealed to the STJD.
25. During the CBAAt High Court proceedings, the CBAAt's counsel filed an application to adduce new evidence from the Laboratoire de Contrôle trying to explain a handwriting mistake related to the identification of the Athlete's B sample. However, by majority decision, the STJD dismissed the application.
26. On 27 February 2012, the STJD issued the Appeal Decision and by majority, dismissed the appeal on the following grounds:
  - a) Following the dismissal of the CBAAt's request to adduce new evidence explaining the handwriting mistake, there existed no valid and/or different grounds on which the Disciplinary Committee Decision could be set aside pursuant to Article 140 of the Brazilian Code of Sport Justice (hereinafter referred to as the "CBJD Statutes"); and
  - b) The grounds of the Disciplinary Committee were adopted in upholding the Disciplinary committee decision.
27. Dissatisfied with the Appeal Decision, the Appellant sought recourse before the Court of Arbitration for Sport (hereinafter referred to as the "CAS").

## **III. THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

28. On 18 April 2012, the Appellant filed its Statement of Appeal at the CAS.
29. On 25 April 2012, the CAS Court Office granted the Appellant 15 (fifteen) days to file its Appeal Brief pursuant to IAAF Rules 42.13 as read together with Article R51 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code").
30. On 3 May 2012, the Appellant requested an extension of its deadline to file the Appeal Brief.
31. On 3 May 2012, the CAS Court Office extended the Appellant's deadline to file its Appeal Brief to 10 May 2012.
32. On 10 May 2012, the Appellant filed its Appeal Brief together with documents and evidence it intended to rely on.
33. On 14 May 2012, the CAS Court office granted the Respondents 30 days to file their respective Answers, pursuant to IAAF Rules 42.13 as read together with Article R55 of the CAS Code.
34. On 15 June 2012, the First Respondent filed its Answer.
35. On 25 June 2012, the CAS Court office invited the Parties to state on or before 2 July 2012, whether they preferred a hearing or wanted the matter decided on the basis of their written

submissions. The CAS Court Office also took note of the fact that the Second Respondent had not filed her Answer within the stipulated deadline.

36. On 1 July 2012, the Appellant stated its wish to have the matter decided on the basis of the Parties' written submissions.
37. On 3 July 2012, the Appellant indicated its wish to have the matter decided by a Sole Arbitrator.
38. On 3 July 2012, the CAS Court office granted the Respondents two days to state whether they preferred to have the matter resolved by a Sole Arbitrator.
39. On 3 July 2012, the Second Respondent filed her Answer and indicated her wish for a hearing. In her Answer, the Second Respondent claimed that the Appellant had adduced new documents, to be precise, document number six of annex 8 of the Appeal Brief, entitled "FORMULÁRIO DE CONTROLO DE DOPING", and annexes 10, 11 and 12 of the Appeal Brief. The Second Respondent objected to the admission of these documents (hereinafter referred to as "New Documents"), claiming that:
  - a) the New Documents were different from those which were used in the STJD proceedings in issuing the Appeal Decision;
  - b) the New Documents concealed the mistake made by the Laboratoire de Contrôle by replacing code number 2613368, which is the code that was adduced during the STJD proceedings, with code number 2612468. This further proves the mistakes made in collecting the sample; and
  - c) the above contravened the national and international law principles of the right to self-defence, sample collection, and was an act of bad faith.
40. On 5 July 2012, the CAS Court Office invited the Appellant to state whether it objected to the late admission of the Second Respondent's Answer.
41. On 9 July 2012, the First Respondent agreed to have the matter decided by a Sole Arbitrator.
42. By 9 July 2012, the Second Respondent was yet to state whether she agreed to have the matter decided by a Sole Arbitrator. Consequently, the CAS Court Office informed the Parties that pursuant to Article R53 of the CAS Code, this issue would be decided by the President of the CAS Appeals Arbitration Division, or his Deputy.
43. On 10 July 2012, the Appellant objected to the late admission of the Second Respondent's Answer pursuant to Article R56 of the CAS Code.
44. On 12 July 2012, the CAS Court Office informed the Parties that the issue of admissibility of the Second Respondent's Answer would be decided by the Panel or Sole Arbitrator, upon constitution.

45. In a letter dated 6 July 2012 and received by the CAS Court Office on 16 July 2012, the Second Respondent sent two videos of an audio CD (hereinafter referred to as “Videos”) as evidence in support of her defence. The first CD audio was an interview given by the Athlete’s coach, Mr. Adauto Domingues (hereinafter referred to as the “Coach”) after the Race, while the second CD audio contained the Interview.
46. In a letter dated 18 July 2012, the Second Respondent requested the CAS to admit her Answer on the following grounds:
  - a) The Answer was sent by both mail and fax, and was therefore filed within the deadline;
  - b) The Athlete used all her financial means to file the Answer as soon as possible;
  - c) The cost of filing the Answer is high, given the fact that the Athlete has no sponsor and that the matter related to doping; and
  - d) The Athlete wanted to meet the deadline, but because she lives in Brazil, sending the Answer by mail required a few days and it was hence impossible to send them within 48 hours.
47. On 19 July 2012, the CAS Court Office informed the Parties that the Videos were unreadable. The Second Respondent was requested to re-send the said Videos. The Parties were further informed that the admissibility of the Videos would be decided by the Panel or Sole Arbitrator, upon constitution.
48. In a letter dated 31 July 2012, the Second Respondent re-sent six copies of the Videos to the CAS Court office.
49. On 13 August 2012, the Parties were informed on behalf of the President of the CAS Appeals Arbitration Division that Mr. Rui Botica Santos, attorney-at-law in Lisbon, had been appointed as the Sole Arbitrator.
50. On 31 August 2012, the CAS Court office informed the Parties that the Sole Arbitrator had issued the following preliminary and evidentiary measures:
  - a) The First Respondent was granted five days to comment on the admissibility of the Second Respondent’s Answer;
  - b) The Appellant was granted five days to comment on the admissibility of the Videos adduced on 10 and 13 July 2012 in light of Article R56 of the CAS Code; and
  - c) The Appellant and the First Respondent were granted five days to comment on the admissibility of the New Documents.

The Parties were also informed that Mr. Felix Majani, attorney-at-law, Nairobi, Kenya had been appointed to act as the *ad hoc* clerk.

51. On 5 September 2012, the First Respondent informed the CAS Court Office that the New Documents were admissible by virtue of the hearing *de novo* and also pursuant to IAAF Rules 42.20, which allows the CAS to reassess the matter, including new documents and evidence.
52. On 5 September 2012, the Second Respondent informed the CAS Court office that the Videos were admissible because they aimed at proving that the Athlete left the Doping Control Station during the sample collection process to attend the Interview un-accompanied by a chaperone. The Second Respondent claimed that the Videos did not amount to new evidence since they had in fact been used by the Disciplinary Committee and the STJD.
53. On 5 September 2012, the Appellant informed the CAS Court Office as follows:
  - a) The Videos were adduced after the close of submissions, contrary to Article R56 of the CAS Code. There existed no exceptional circumstances warranting its late admission;
  - b) Without prejudice to the above, it was unable to fully respond to the issues related to the Videos because:
    - The IAAF did not receive any Videos on 10 July 2012;
    - Out of the four Videos sent on 31 July 2012, only three were readable. The IAAF was unable to open the Videos entitled “*entrevista-auduto-domingues\_sport.mp4*”; and
    - The Videos are in Portuguese. Pursuant to Article R29 of the CAS Code, the Sole Arbitrator should order that transcripts of the Videos be provided in English, since English was the language of the arbitration; and
  - c) From the Second Respondent’s Answer, the IAAF was unable to identify the area where the Second Respondent objected to the admission of the New Documents. The IAAF sought clarification on this issue. Pending the said clarification, the IAAF concurred with the First Respondent’s views in relation to the admission of the New Documents.
54. On 12 September 2012, the Second Respondent informed the CAS Court Office as follows:
  - a) As the body which governs the STJD at national level in Brazil, the First Respondent ought not to be a party in this appeal because it played a role in the issuance of the Appeal Decision;
  - b) The Answer was filed within the deadline fixed under IAAF Rules 42 and the CAS Code;
  - c) The Appellant adduced New Documents in its Appeal Brief. These documents were not part of the STJD proceedings and hence ought to be excluded from the file; and
  - d) The Videos formed part of the evidence before the STJD proceedings.
55. On 18 September 2012, the CAS Court Office enclosed readable Videos for the Appellant’s attention and further informed the Parties as follows:
  - a) Exhibit 4 page 13 and exhibit 5 pages 12 – 16 of the Appeal Brief were in Portuguese, and the Second Respondent had not raised any objection;



- b) The Videos were part of the evidence adduced in the STJD proceedings which led to the Appealed Decision. The Appellant must have viewed the said Videos before preparing its CAS appeal;
  - c) In view of this, there existed exceptional and sufficient circumstances warranting the admission of the Videos pursuant to Articles R44.3 and R56 of the CAS Code. The Appellant was granted five days to state whether it wanted English translations of the Videos, or whether it preferred that the Sole Arbitrator request for the production of the entire file before the STJD proceedings, together with English translations;
  - d) The New Documents were to be found in the following sections of the Second Respondent's Answer: page 2 paragraphs 2 and 4, sub paragraphs 1, 2, and 3 of page 3, the last paragraph of page 3 and the first paragraph of page 4, i.e annex 10, 11 and 12 of the Appeal Brief. The Appellant was granted five days to comment on the admissibility of the New Documents.
  - e) Pursuant to Article R56 of the CAS Code, the Second Respondent's Answer was admitted on the following grounds:
    - i. Article R55 of the CAS Code grants the Sole Arbitrator discretion to continue the proceedings even if an Answer has been filed out of time;
    - ii. Since the Second Respondent had requested a hearing, she was likely to raise the same arguments as those contained in her Answer, and the Appellant's position would not be prejudiced; and
    - iii. The issue at stake related to a doping matter, which had the potential of placing the Athlete's life and career at stake.
56. On 25 September 2012, the Appellant requested one more day to respond to the CAS Court Office letter dated 18 September 2012. This request was granted.
57. On 26 September 2012, the Appellant informed the CAS Court Office that it had contacted the First Respondent, who had agreed to adduce an English translation of the Videos. The Appellant further stated that:
- a) There was no need for the production of the entire file from the STJD proceedings;
  - b) It would adduce English translations of the exhibits mentioned in the CAS letter dated 18 September 2012;
  - c) The Second Respondent had also filed some documents in Portuguese. In order to avoid unnecessary additional translation costs, the Second Respondent ought to be requested to translate only those documents she intended to rely on at the hearing;
  - d) The New Documents were admissible pursuant to Article R57 of the CAS Code and IAAF Rules 42.20, and also met the requirements of Article R51 of the CAS Code; and
  - e) It acknowledged the Sole Arbitrator's decision to admit the Second Respondent's Answer.

58. On 26 September 2012, the First Respondent adduced a written English translation of the Athlete's Interview.
59. On 27 September 2012, and pursuant to Article R56 of the CAS Code, the CAS Court Office informed the Parties as follows:
  - a) The Second Respondent's letter dated 12 September 2012 was inadmissible, having been adduced after the expiry of the phase related to the submission of the Appeal Brief and the Answer;
  - b) The Second Respondent was invited to adduce certified English translations of the documents she specifically intended to rely on during the hearing. These documents were to be filed not later than 10 days before the hearing date; and
  - c) The New Documents had been admitted pursuant to Article R51 and R57 of the CAS Code.
60. On 8 October 2012, the Appellant sent English translations of the second CD audio related to the Coach, exhibit 4 page 13, and exhibit 5 pages 12, 13, 15 and 16 of the Appeal Brief.
61. On 9 October 2012, the Second Respondent informed the CAS Court Office of the people who would represent her during the hearing. She also named M. as a witness.
62. On 9 October 2012, the CAS Court Office informed the Parties that the matter would be heard on 16 October 2012 at the CAS headquarters in Lausanne, Switzerland. The Order of Procedure was also sent to the Parties, who all signed the same. In its signed copy of the Order of Procedure, the Appellant stated that the law applicable was not to be guided by Article R58 of the CAS Code, but by IAAF Rules 42.25 and 42.26. On her part, the Second Respondent signed the Order of Procedure, but stated that it was subject to the award being rendered in two languages, English and Portuguese so as not to prejudice her right to self-defence.
63. On 12 October 2012, the Appellant sent a copy of a proposed time table for the hearing. The Appellant claimed to have agreed on the said time table with the First Respondent. The Appellant also objected to M. being allowed to testify, claiming the Second Respondent had not included his name in her Answer as a witness. The Appellant also questioned M.'s role at the hearing, given the fact that he was a "*prosecutor of São Paulo*". Finally, given the fact that the Second Respondent had failed to adduce certified English translations of any document in her Answer she intended to rely on at the hearing, the Appellant requested the Sole Arbitrator to assume that the Athlete did not intend to rely on any document in her Answer which was in Portuguese language.
64. On 15 October 2012, the Second Respondent agreed with the timetable proposed by the Appellant. The Athlete also sent a statement explaining the expected testimony of M.
65. On 15 October 2012, the CAS Court Office informed the Parties that the timetable for the hearing had already been fixed as stated in the signed Order of Procedure, and the hearing would be conducted pursuant to Articles R57 and 44.2 of the CAS Code. The Parties were

informed that the Sole Arbitrator would rule on the admission or rejection of M.'s testimony at the beginning of the hearing.

66. On 16 October 2012, the hearing was held at the CAS headquarters in Lausanne, Switzerland. The Sole Arbitrator was assisted at the hearing by Ms. Andrea Zimmermann, Counsel to the CAS. During the hearing, the Appellant was represented by Mr. Huw Roberts. The First Respondent was represented by Mr. Thomas Sousa Lima Mattos while the Second Respondent was represented by Mr. Marcelo Muoio and Mr. Solange Correia.
  67. The following witnesses testified:
    - Prof Christiane Ayotte – Professor and Director INRS – Institut Armand-Frappier
    - A. – ANAD Doping Control Officer who testified by videoconference
    - C. – ANAD / CBAAt Doping Control Officer who testified by video conference
    - R. – ANAD Doping Control Chaperone who testified by video conference
- The Athlete also provided an oral statement.
68. The Appellant maintained its objection to M. testifying, citing Articles R56 and R51 of the CAS Code. The Appellant also objected to the admission of any documents adduced in Portuguese by the Second Respondent on behalf of M. The First Respondent concurred with the Appellant.
  69. The Sole Arbitrator rejected the admission of M.'s testimony, on grounds that his request to testify was filed out of time contrary to Articles R51 and R56 of the CAS Code, and that his witness statement had been filed in Portuguese. The Sole Arbitrator also said that it would be difficult for the Appellant to cross examine M., given that his witness statement had been filed in Portuguese and also because his relevance as a witness had not been proven since he had no personal relationship with the facts. In view of this, the Second Respondent requested that M. act as an Interpreter during the hearing. This request was granted and accepted by the Appellant and the First Respondent.
  70. The Second Respondent's lawyer requested the proceedings to be conducted in Portuguese, so that the Athlete would follow the matter. The Sole Arbitrator dismissed this request on grounds of Article R29 of the CAS Code.
  71. At the conclusion of the hearing, Sole Arbitrator issued the following directions:
    - (a) The Second Respondent was requested to adduce a certified English translation of the Coach's witness statement by 26 October 2012;
    - (b) That a copy of the audio of the hearing be sent to the Parties; and
    - (c) That the Parties file their closing submissions by 13 November 2012.

72. The Parties confirmed that they had no objection in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.
73. On 25 October 2012, the Second Respondent informed the CAS Court Office that the Athlete would not be adducing certified English translations of the documents she had adduced in Portuguese, citing high costs.
74. On 29 October 2012, the CAS Court Office informed the Parties that since the proceedings would be conducted in English pursuant to Article R29 of the CAS Code, the documents filed by the Second Respondent in Portuguese would not be considered.
75. On 13 November 2012, the Parties filed their closing submissions. Whereas the Appellant reserved its right to file further submissions on the issue of costs, the Second Respondent's submissions were adduced in Portuguese.
76. On 23 November 2012, the CAS Court Office granted the Parties five days to file submissions on the issue of costs. Given the fact that the Sole Arbitrator was a native Portuguese speaker, and in consideration of the Second Respondent's right to be heard and the fact that the Appellant and the First Respondent were not allowed to reply to the Second Respondent's closing submissions, the Appellant was requested to state within five days whether it would, on the referred exceptional circumstances, consent to the admission of the Second Respondent's closing submissions filed in Portuguese.
77. On 27 November 2012, the Appellant consented to the admission of the Second Respondent's closing submissions, on condition that they were limited to the arguments adduced in English during the hearing and contained no new arguments.
78. On 28 November 2012, the Appellant filed its submissions on costs together with a breakdown. It stated that it would send the final breakdown of the costs related to the video conference as soon as such became known. The Second Respondent simply reiterated that the appeal be dismissed and that all evidence and the New Documents adduced in this case be rejected. The First Respondent did not file any submissions on costs.
79. On 4 December 2012, the CAS Court Office granted the Appellant five days to adduce any document proving the breakdown of costs contained in its submissions dated 28 November 2012 and the final costs of the video conferencing.
80. On 7 December 2012, the Appellant adduced documents substantiating the breakdown of costs contained in its submissions dated 28 November 2012. It however informed the CAS Court office that it was yet to get a final confirmation in relation to the costs of the video conferencing, and that the same would be provided as soon as it is known.

#### IV. THE PARTIES' POSITIONS

##### IV.1. The Appellant's position

###### *a. Law applicable*

81. Pursuant to IAAF Rules 42.25, “[i]n all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations”.
82. IAAF Rules 42.26 states that “[i]n all CAS appeals involving the IAAF, the governing law shall be Monegasque law (...)”.
83. Both the Disciplinary Committee and the STJD applied the IAAF Rules in issuing the Appeal Decision. The matter must hence be decided in accordance with the IAAF Rules and regulations, with Monegasque law applying in subsidiary.

###### *b. The testing standards and procedures*

84. The Athlete committed a clear and very serious second anti-doping offence.
85. Pursuant to IAAF Rules 33.3, WADA accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the ISL.
86. The aforementioned presumption can only be rebutted if an athlete can establish that a departure from the ISL occurred, and that such departure could reasonably have led to the adverse analytical finding. The Athlete has not established this.
87. Departures from International Standard for Testing (hereinafter referred to as the “IST”), such as those of the IAAF Anti-Doping regulations edition 2011 (hereinafter referred to as the “IAAF Anti-Doping Regulations”), which do not cause the adverse analytical finding do not invalidate test results. In any case, the departure from the IST did not cause the positive doping results retrieved from the Athlete’s samples because according to a report dated 17 February 2012 issued by the Laboratoire de Contrôle:
  - a) Reference to sample bottle code number 2612448 is clearly a typographical mistake made by the analyst in his handwritten summary. Although not excusable, the said mistake is comprehensible because the laboratory follows its laboratory code and not the bottle code when analysing the sample;
  - b) The mistake is evident as there is only one sample with laboratory code 11-11436, and that was Sample Bottle code number 2612468;
  - c) Sample B with Sample Bottle code number 2612468 was on 5 October 2011 taken from storage and shown to the independent observer for verification. The independent observer confirmed the correspondence of codes and the integrity of the sealing; and

- d) In 2011, the Laboratoire de Contrôle did not receive any sample with the Sample Bottle code number 2612448. The aforementioned sample code does not exist.
88. CAS jurisprudence is clear that errors and handwriting mistakes in identifying the code numbers of samples:
- “(...) do not cast doubt on the reliability of adverse analytical findings which are clear from the other portions of the same Laboratory Documentation Package (...)”* (CAS 2008/A/1608); and
- “(...) are merely typographical [and there existed no] other errors which contributed to the overall reliability of the results”* (CAS 2009/A/1931).
89. Sample A and B of the Sample Bottle are both linked to the same laboratory code number, 11-11436, which corresponds to Sample Bottle code number 2612468 belonging to the Athlete. Proving this is the title heading of the correct number of Sample Bottle code number 2612448, which reads *“Isoforms of rhEPO in Urine Samples 2612468A and B (CBAAt / Athletics)”*.

**c. The mistaken sample code reference**

90. Neither the Disciplinary Committee nor the Appeal Decision identifies any ISL provision which was departed from. In view of this absence, the Athlete’s defence must fall at the first hurdle.
91. A handwriting mistake made on a single page of a 93-paged laboratory documentation cannot afford the Athlete any form of defence, especially in circumstances where there is no evidence of a mix up involving her sample. A mere one-off typographical error cannot be advanced as evidence of a mix up of samples.
92. The chain of custody of the Athlete’s sample is intact. The same sample the Athlete provided on 3 August 2011 is the same sample which was analysed and found to contain recombinant EPO. In particular, the Athlete:
- a) Checked the sample bottle code numbers and signed off on her Doping Control Form for Sample Bottle code reference 2612468 without comment;
  - b) The 15 samples collected at the Troféu Brasil on 3 August 2011, including Sample Bottle code number 2612468 were all received intact at the Laboratoire de Contrôle on 11 August 2011;
  - c) None of the samples from the Troféu Brasil had sample bottle code reference number 2612448;
  - d) Upon receipt at the Laboratoire de Contrôle, Sample Bottle code reference number 2612468 was given internal lab code number 11-11436;
  - e) The security seal on Sample Bottle code number 2612468 was inspected and found to be intact;

- f) The documents recording the analytical results of the Laboratoire de Contrôle refer to a sample with internal code number 11-11436, including the worksheets, confirming the presence of EPO in sample 11-11436; and
  - g) The official analytical result issued for the A and B sample analyses refers in each case to both the Sample Bottle code number 2612468 and internal code number 11-11436.
93. This chain of custody is corroborated by Prof. Christiane Ayotte, whose power point presentation explains that there did not exist a sample bottle with code number 2612448 in the Laboratoire de Contrôle's database software.
94. As testified by Prof. Christiane Ayotte, in line with the ISL, the laboratory thrice went back to Sample Bottle code number 2612468 for purposes of (i) screening sample A, (ii) confirming sample A and (iii) confirming sample B. On each occasion, the sample with the laboratory code number 11-11346 revealed the presence of recombinant EPO, whose A and B sample results were double checked by experienced recombinant EPO experts at the WADA accredited laboratory in Vienna.

**d. *The Athlete was chaperoned***

95. Pursuant to Rule 4.11 of the IAAF Anti-Doping Regulations:
- "4.11. The DCO/Chaperone may at their discretion consider any reasonable third party requirement or any request by the Athlete for permission to delay reporting to the Doping Control station following acknowledgment and acceptance of notification and/or to leave the Doping Control station temporarily after arrival and may grant such permission if the Athlete can be continuously chaperoned and kept under direct observation during the delay and if the request relates to the following activities:*
- (a) (...);
  - (b) *Fulfilment of pressing media commitments;*
  - (...)"
96. The Athlete was accompanied by three chaperones for the Interview. This is corroborated by the testimonies of R. and C. It is hence clear that there was no breach of the regulations.
97. The Athlete and her representative signed the Doping Control Form without comment, confirming their satisfaction with the collection procedure. Consequently, and pursuant to CAS 2003/A/493, even if there was a breach of the IAAF regulations, the Athlete had waived her right to question the process.

**e. *The applicable sanction***

98. This is the Athlete's second anti-doping rule violation. Pursuant to IAAF Rules 40.7(a), the applicable range of sanction for multiple violations is four to six years.

99. Article 10.7 of the WADA Code 2009 is a replica of IAAF Rules 40.7. Both regulations state that the athlete's degree of fault must be considered as the criteria for assessing the period of ineligibility.
100. The Athlete's degree of fault is at its highest because:
- a) It is her second doping anti-doping rule violation within two years;
  - b) Blood doping is one of the mysterious forms of doping used by long distance runners to improve their oxygen carrying capacity and hence performance;
  - c) Instead of admitting to the anti-doping rule violation, the Athlete kept denying. The Athlete has caused the CBAAt and the IAAF considerable time and resource to prove the case against her;
  - d) The Athlete's arguments are speculative and false; and
  - e) In view of the above, the Athlete must be sanctioned pursuant to IAAF Rules 40.7(a), i.e. a six year ineligibility period.

***f. Costs***

101. The First Respondent informed the CAS Court office that it should be held liable for the costs.
102. Following the Athlete's request for a hearing, the IAAF: (i) flew Prof. Christiane Ayotte from Montreal to Lausanne (ii) convened three other witnesses who testified from São Paulo by video conference and (iii) retained an interpreter to translate their testimonies from Portuguese to English.
103. The Athlete rejected the IAAF's proposal to reach a settlement, obliging the IAAF to file closing submissions, which required the Appellant to transcribe the evidence adduced during the hearing.
104. The IAAF does not claim any legal costs. It however incurred the following costs in relation to the appeal:
- (a) CAS Costs: CHF [...];
  - (b) Hearing costs - accommodation, travel, witnesses, interpreter, video conference, flights: CHF [...]; and
  - (c) Post hearing costs (transcription): CHF [...]
- Total: CHF [...].



*g. The Closing Submissions*

105. Further to the submissions in the Appeal Brief and pleadings during the hearing, the IAAF reiterates that the issues for determination are: (i) whether the analytical results of Sample Bottle code number 2612468 reveal the presence of a prohibited substance, (ii) whether there were departures either in the sample collection or in the analysis that could reasonably have caused the adverse finding, and (iii) what is the applicable sanction, bearing in mind that it is the Athlete's second offence.
106. Pursuant to IAAF Rules 33.3(a), WADA accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the ISL. By reason of such presumption, the IAAF is not required to give evidence of the application of relevant rules concerning the conduct of the analysis and custodial procedures in order to establish a doping violation.
107. The fact that Sample Bottle code number 2612468 revealed the presence of a prohibited substance is confirmed by the Athlete, who stated at the hearing that she checked the code numbers of her sample, and she also signed the Doping Control Form without comment.
108. Samples A and B of Sample Bottle code number 2612468 were analysed by WADA accredited laboratories and reported to contain recombinant EPO.
109. A presumption of credibility ought to be applied in favour of the doping control personnel (CAS 2010/A/2220), and the evidence of an experienced Doping Control Officer and two chaperones should be preferred over the Athlete's uncorroborated evidence.
110. The mere fact that the Videos do not show the presence of any chaperone standing next to the Athlete is not plausible because the interviewer and the cameraman were understandably interested in interviewing and focusing all the attention on the Athlete. The chaperones were always in sight of the Athlete.
111. The Athlete's evidence that: (i) she placed the Sample Bottle on the floor during the Interview; (ii) she could not see the Sample Bottle during the Interview (iii) she found the Sample Bottle in a different place upon returning to it after the Interview and (iv) the Sample Bottle was placed in an area open to the public has not been corroborated by any third party. In fact, the Athlete's evidence was contradicted at the hearing by A. and R., who confirm she was chaperoned and that she gave the Sample Bottle to the Coach.
112. Even if there was a breach of the anti-doping regulations, the Athlete has not established that the Sample Bottle was ever in the hands of any other person other than herself and the Coach, or that it was interfered with.
113. Prof. Christiane Ayotte has proven that even if the sample had been spiked with recombinant EPO, it would have been strikingly obvious at the time of the analysis because the analytical image would have been overloaded with recombinant EPO.

114. There was no violation of the IST because even if the Doping Control Officer did not fill in an additional report related to the fact that the Athlete had left the Doping Control Station, A. explained that there was no need to fill this form because she did not consider it necessary in the circumstances especially because the Athlete had not raised any objection in relation to the sample collection procedure.
115. There is no doubt that the sample collected from the Athlete at the Race is the one which was analysed. This was substantiated at the hearing through:
  - a) The Athlete's confirmation that she checked the Sample Bottle code numbers when providing her urine, and these numbers were 2612468;
  - b) The Athlete's testimony that she was taking Maltodextrina, Nimesulid and Micovlar at the time of the test. These substances were listed in the Doping Control Form, which she signed; and
  - c) Prof. Christiane Ayotte's evidence.
116. The analytical results for the sample coded 11-11436 of both sample A and B were double checked by experienced EPO experts at the WADA accredited laboratory in Vienna, which confirmed a clear adverse finding for EPO in sample 11-11436.
117. The error on page 89 of the laboratory documentation package was a one-off handwriting mistake by the laboratory, which transcribed the number 2612448 instead of 2612468.
118. Pursuant to the commentary to Article 10.7 of the WADA Code, the Athlete's degree of fault should be considered the criterion in assessing the period of ineligibility within the applicable range. Eight months following the end of her suspension for the first anti-doping violation, the Athlete was again found doping. In view of this, the Athlete should be banned for six years.

#### ***h. The Requests***

119. The Appellant requests the CAS to issue the following relief:
  - i. The IAAF appeal is admissible;*
  - ii. The decision of the CBAAt High Court of Sports Justice of 27 February 2012 to exonerate Ms Da Silva of an anti-doping rule violation under IAAF Rule 32.2(a) be set aside;*
  - iii. Ms Da Silva be found guilty of a second anti-doping rule violation under IAAF Rule 32.2(a);*
  - iv. The applicable period of Ineligibility in Ms Da Silva's case be 6 years in accordance with Rule 40.7(a), such 6-year period to start on the date of the CAS decision, with any period of provisional suspension previously served by her to be credited against the total period of Ineligibility to be imposed;*
  - v. All competitive results obtained by Ms Da Silva from the date of commencement of the anti-doping rule violation through to the commencement of her provisional suspension be disqualified, with all resulting consequences in accordance with IAAF Rule 40.8; and*

vi. *The IAAF be awarded its full costs in the appeal (including CAS costs), such costs to be confirmed”.*

## **IV.2. The First Respondent’s position**

### **a. *Preliminary remarks***

120. The CBAAt is autonomous and independent from the Brazilian sports tribunal, such as the Disciplinary Committee and the STJD. This autonomy and independence is evident in Article 52 of the CBJD Statutes.
121. Even though it disagrees with the decisions issued by the Disciplinary Committee and the STJD, the aforementioned independence and autonomy left the CBAAt with no choice but to accept the said decisions. The best the CBAAt could do within its powers was to appeal the Disciplinary Committee decision.
122. The CBAAt continues to fight against doping and to strictly apply the IAAF anti-doping rules.
123. Pursuant to IAAF Rules 60, the CBAAt is a party in these proceedings not as a respondent but as a third party interested in fighting doping both in Brazil and internationally. The CBAAt shall therefore accept whichever decision issued by the CAS.

### **b. *The substance of the appeal***

124. The CBAAt approves the Appellant’s arguments and submissions, reiterating that the Athlete committed an anti-doping rule violation, contrary to IAAF Rules 32.2 (a).
125. The Appeal Decision erred in law. It breached chapter III of the IAAF book of rules and Articles 100-A and 244-A of the CBJD Statute.
126. This is the Athlete’s second anti-doping rule violation. She must be suspended for a period of six years.

### **c. *The closing submissions***

127. The IAAF’s submissions are fully grounded. As evidenced by the ANAD witnesses, and Prof. Christiane Ayotte, there was no interference with the sample or any departure from the sample collection procedures.
128. In any case, the Athlete has not discharged her burden of establishing that any eventual departure caused the adverse analytical findings.

129. This is the Athlete's second doping offence. The Athlete must be sanctioned for a period of six years.

**d. Requests**

130. The CBAAt concludes its submissions by stating as follows:

*"The CBAAt repudiates any kind of doping and struggles with its users, as the orientations issued by IAAF and WADA.*

*For this reason, the CBAAt, as a Brazilian sporting administration organ and based on the legal international principles of law and sports, requests, respectfully, taking to account the issues outlined herein and presented by IAAF in this arbitration procedure leading to the conclusion that the decision reached by the Brazilian Athletics Superior Tribunal was incorrect, considering so the existence of doping offence and aggravating circumstances attributed to the 2<sup>nd</sup> Respondent. Consequently, the Appeal Brief presented by the Appellant, should be upheld. In addition, any costs should be imposed to the CBAAt".*

**IV.3. The Second Respondent's position**

**a. The Athlete's Innocence**

131. The Athlete denies having used the banned substance. The Athlete grounds her defence on the fact that the samples were contaminated at the time of collection, arguing that she cannot be found guilty when her B sample was wrongly marked.

**b. The numbering errors**

132. It was evident to the Disciplinary Committee that there were errors made in the sample collection process, thereby casting doubt on the anti-doping test results.
133. The laboratory exam was characterised by numerous errors, completely invalidating the anti-doping results because the numbers did not precisely identify the Athlete.
134. The laboratory code number on sample B is different from the laboratory code number on sample A, meaning the athletes were different. The Athlete's Sample Bottle number for her A sample was 2612468. This is the laboratory code number which ought to have been tested in sample B, and not 2612448.
135. Pursuant to IAAF Rules 32.2 (a) (ii) "[s]ufficient proof of an anti-doping rule violation under Rule 32.2(a) is established (...) where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample".

136. Given the mistakes committed in relation to the erroneous numbering of the Athlete's B sample, the Athlete cannot be found guilty. These mistakes point towards a possible change of the samples.

***c. The Interview and the sample collection process***

137. The Athlete attended the Interview unaccompanied by a chaperone. This was contrary to the IST. The CBAAt was hence negligent and failed to ensure that the right sample collection and storage process was followed as provided under Rule 4.11 of the IAAF Anti-Doping Regulations.
138. After giving a portion of her urine, the Athlete left the Doping Control Station to attend the Interview holding the Sample Bottle containing the urine. The Athlete placed the Sample Bottle on the floor during the Interview, approximately 20 metres from a bench next to which many people were walking. These facts were proven and acknowledged by:
- a) the Disciplinary Committee and the STJD, corroborated by the Video Interview; and
  - b) the Coach.
139. The sampling collection process contravened Resolution No. 2 of 5 May 2004 and in particular Articles 13 to 30 of the said resolution, which basically require:
- a) The Athlete to remain under the permanent care and supervision of the chaperone up to the end of the sampling collection process;
  - b) The Athlete to return to the doping control room and stay there under the care and supervision of the chaperone in case she only gives half her urine sample at the first attempt;
  - c) The Athlete to urinate in the presence and supervision of the chaperone;
  - d) The Athlete to give minimum urine of 75 ml;
  - e) The Athlete to close the sample bottle after she finishes urinating;
  - f) Verification of the code numbers allocated to the sample upon arrival at the laboratory;
  - g) That after urinating, the Athlete must choose two bottles into which her urine will be put. She must verify the seals of both bottles and the code numbers. The Athlete must then open the bottles and pour 2/3 of her urine into the first bottle (sample A), and 1/3 into the second bottle, sample B. The Athlete may be assisted by the doping control authorities or by the chaperone;
  - h) The Athlete to seal the sample bottles, to confirm that they are not empty and to place them in their respective chests;
  - i) The laboratory to confirm that the sample numbers are correct upon receiving the samples, and in case of an anomaly, the competent authority may invalidate the samples;

- j) Sample A be immediately analysed while sample B shall be stored in a freezer by the laboratory for later analysis if need be;
- k) The doping results be sent to the president of the doping commission or the sporting federation with the respective code number of the samples;
- l) The president of the doping commission to name the athlete whose results have been released and forward the results to the president of the competitions' organiser;
- m) The immediate communication of an adverse analytical finding by the president of the body which manages the sport to the president of the sport practiced by the athlete. Receipt of the said communication is an implication that the athlete is already aware of the doping results;
- n) The first positive anti-doping result to imply the athlete's immediate suspension;
- o) The athlete to be allowed to request the analysis of his B sample within 20 days. Should the athlete fail to request the analysis of his B sample within this period, the results of the A sample shall prevail;
- p) The president of the body which runs the sport or competition to inform the interested party of the date and time when sample B shall be analysed;
- q) Sample B to be analysed in the same laboratory and if possible, by a different technologist and in the presence of the athlete or his representative. The absence of the athlete's representative shall neither stop the technologist from proceeding with the analysis nor invalidate the results;
- r) The compilation of a summary of the B sample results, to be signed by the interested parties if present and sent to the president of the respective sport practiced by the athlete; and
- s) The president of the respective sport practiced by the athlete to close the case in case sample B tests negative.

***d. No previous doping offence***

140. The Athlete denies having previously been banned for a doping offence. According to the Athlete, this is the first time she is being accused of an anti-doping rule violation before any tribunal. The Athlete avers that the three month sanction allegedly imposed on her on 22 September 2010 was an administrative sanction rather than a sanction imposed by an international tribunal. It therefore cannot be considered as having had legal effects.

***e. The substance and the Athlete's track record***

141. Recombinant EPO is a substance taken by injection. It is very expensive and in order to ingest the said substance, the Athlete ought to have been assisted by someone else and spent a lot of money. Given her financial status, the Athlete could not have afforded this.

142. Recombinant EPO spends eight to fifteen hours inside the body, meaning the Athlete ought to have ingested it hours before the Race. The Athlete definitely wouldn't have ingested the substance, since she knew there were anti-doping tests during the Race.
143. The Athlete's track record is from her 12<sup>th</sup> birthday to date is imperious. In particular:
  - (a) Prior to the Race, the Athlete had already qualified for the world athletics championships and was on course to taking part in the Pan American Championships;
  - (b) The Athlete stood a great chance of winning the 5,000 and 10,000 metres races in both tournaments; and
  - (c) Four days after the Race, the Athlete took part in another competition called the Dez Milhas Garoto Espirito Santo, which she won and tested negative for anti-doping.
144. Apart from the Second Respondent, all the athletes underwent out of competition tests prior to the Race.
145. The Athlete's performance has gradually improved over the last two years. The Athlete improved her training methods and lived next to the training ground where she was able to train twice a day, seven days a week. The Athlete ate a balanced diet and rested twice a day and always clocked herself during the training sessions, with a view to improving her time.
146. The Athlete has on previous occasions undergone anti-doping tests and never tested positive for recombinant EPO.
147. The Athlete almost recorded a similar time as the one she recorded in the Race, in an event held just one month earlier in Argentina in cold weather of -3° (minus three degrees) centigrade.
148. In summary, it is the Athlete's position that the errors committed in the identification of her B sample, which was contaminated, ought to have led to her acquittal by both the Disciplinary Committee and the STJD.

***f. The Closing Submissions***

149. The CBAAt is playing a passive role in this matter. It ought to be held responsible for overseeing a flawed sample collection process. Its sole objective alongside the IAAF is to ensure the Athlete's condemnation.
150. The Athlete denies ingesting recombinant EPO. The Athlete reiterates that it is possible that the samples were contaminated as a result of an erroneous sample collection process and also due to lack of credibility in the documents which accompanied the laboratory tests.
151. As evidenced in the Videos and through the conflicting witnesses summoned by the IAAF, the Athlete's sample collection process was cut short through the Interview. In addition to this, the

Athlete was neither chaperoned nor was she in possession of the Sample Bottle during the Interview.

152. The IAAF together with the CBAAt tried to prove false facts through A. and R. by alleging that she was chaperoned. All the allegations raised by the IAAF only prove the contrary, that there were procedural errors.
153. A. violated Articles 4.13, 4.14 and 4.23 of the IAAF Anti-Doping Regulations by failing to fill in an additional report related to the fact that the Athlete had left the Doping Control Station.
154. It was evident during the hearing and through Prof. Christiane Ayotte's testimony that there were irregularities in the sample collection process, which violated the national and international laws enshrined by the IAAF and the WADA.
155. Further irregularities are evident in the following documents adduced by the IAAF:
  - (a) Annex 8 sheet number 6 of the Appeal Brief, which is a New Document adduced by the IAAF to rectify the irregularities made during the sample collection process. The original document in the Athlete's possession proves that there was an exchange of samples, and that the original document contained the sample code number 2613368, which did not belong to the Athlete.
  - (b) Annex 8 sheet number 54 of the Appeal Brief. This document shows a procedural error, hence casting doubt on the result of sample A.
  - (c) Annex 8 sheet number 89, which contains an identification number different from the Athlete's, hence casts doubt on the results of sample B.
156. These negligent and imprudent irregularities compromised the sample. In such a situation, and given the fact that the Athlete's career is at stake, the end result would be to invalidate the anti-doping test results.
157. The Sole Arbitrator should consider the Athlete's sporting efforts and the fact that she can hardly read and write. The Athlete's sporting career started at humble beginnings, from an amateur to a semi-professional. Throughout, she had good coaches, had a balanced diet, and lived next to her training base. All these in the span of two years, after which she went on to break the South American 10,000 metres record.
158. There are numerous doctrines stating that the best test to conduct in order to detect recombinant EPO is a blood test. However, it was only the Athlete's urine which was tested. Why wasn't her blood sample tested?
159. The matter should be equated to a criminal proceeding. The Athlete should not be sentenced to a death penalty when there clearly exists doubt and evidence contradicting the case.
160. In conclusion, the Athlete upholds all the assertions contained in her Answer, and reiterates that the entire appeal and the evidence adduced fall short. There was a material error in the



sample collection process, which means there exists no proof warranting her condemnation. The Athlete should be absolved from all the allegations.

## **V. LEGAL ANALYSIS**

### **V.1 Jurisdiction of the CAS**

161. The jurisdiction of the CAS, which is not disputed, derives from IAAF Rules 42.4, 42.6, 42.7 (a) and Article R47 of the CAS Code.
162. Moreover, the Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.
163. It follows that the CAS has jurisdiction to decide this dispute.

### **V.2 Admissibility**

164. In accordance with IAAF Rule 42.13, “[w]here the IAAF is the prospective appellant, the appellant shall have forty-five (45) days in which to file his statement of appeal with CAS starting from the date of communication of the written reasons of the decision to be appealed (...). Within fifteen (15) days of the deadline for filing the statement of appeal, the appellant shall file his appeal brief with CAS (...)”.
165. The grounds of the Appeal Decision were notified on 9 March 2012, the Statement of Appeal filed on 18 April 2012, and the Appeal Brief on 10 May 2012. This was within the required 45 days for the Statement of Appeal, and the ensuing 15 days for the Appeal Brief.
166. It follows that the appeal is admissible. Furthermore, no objection has been raised by the Respondents.

### **V.3 Scope of the Panel’s review**

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

### **V.4 Law applicable to the merits**

168. Article R58 of the CAS Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

169. An unofficial English translation of Article 76 (a) of the CBAAt Statutes states that “[i]n the elaboration of their status and regimes, all affiliate entities must freely conduct themselves and observe the norms issued by the CBAAt (...) and the IAAF”.
170. As a member of the IAAF, the CBAAt follows and applies all the laws and regulations of the IAAF. And by virtue of her registered status as a professional athlete under the CBAAt, the Athlete in turn agreed to abide by the CBAAt regulations, and consequently agreed to comply with, and bind herself to the IAAF rules and regulations (CAS 2007/A/1370 & 1376 para. 103).
171. Paragraph 101 of CAS 2007/A/1370 & 1376, which states that “(...) Brazilian law explicitly imposes on Brazilian federations and athletes the observance of international sports rules (...)” further confirms and reinforces the status of the international anti-doping regulations within the Brazilian sports system, and obliges Brazilian sports bodies to comply with the international sports regulations.
172. It therefore follows that the Parties had chosen the law applicable, and the matter shall be decided in accordance with the international anti-doping regulations, in particular the IAAF Rules, the ISL edition 2009, the IST regulations such as the IAAF Anti-Doping Regulations and where applicable, the WADA Code.
173. IAAF Rules 42.26 states that “[i]n all CAS appeals involving the IAAF, the governing law shall be Monegasque law (...)”. Since the IAAF is an association domiciled in Monaco, reference may also be made to Monegasque law in subsidiary.

## **V.5 Procedural issues**

174. Before moving to the merits, the Sole Arbitrator must address the Athlete’s assertions that the IAAF concealed procedural irregularities in the sample collection process by:
  - a) Adducing Annex 8 sheet number 6 of the Appeal Brief, which is a New Document. The Athlete claims that the original document in her possession proves that there was an exchange of samples, and that the original document contained the sample code number 2613368, which did not belong to the Athlete.
  - b) Adducing Annex 8 sheet number 54 of the Appeal Brief. This document shows a procedural error, hence casting doubt on the result of sample A.
  - c) Adducing Annex 8 sheet number 89, which contains an identification number different from the Athlete’s, hence casting doubt on the results of sample B.
175. In relation to the above issues, the Sole Arbitrator refers the Parties to the provisions of Article R57 of the CAS Code, pursuant to which the panel has power to review the facts and the law. In addition to this, Article R51 of the CAS Code allows the Appellant to file all exhibits and specification of other evidence it intends to rely on together with the Appeal Brief.

176. These provisions therefore entitle any party to file evidence which was not filed in the proceedings leading to the appeal decision. Consequently, any objections raised by the Athlete in relation to the New Documents are dismissed.
177. Notwithstanding the above, the Athlete did not adduce the original document containing sample code 2613368 although she claims to possess the same and to have filed them during the Brazilian court proceedings. The Athlete has also failed to rebut Prof. Christiane Ayotte's expert testimony that there existed no sample bearing the code number 2613368 or 2612448 in the Laboratoire de Contrôle's database software.

## V.6 The Merits of the Appeal

178. From the Parties' submissions and testimonies, in order to resolve the dispute as a whole, the Sole Arbitrator will have to decide the following issues:
  - i. Whether the Athlete committed an anti-doping rule violation
  - ii. Were there errors and violations committed in the collection of the Athlete's sample? In case of the affirmative, could these errors and violations reasonably have led to the adverse analytical findings?
  - iii. Does the handwriting error committed by the Laboratoire de Contrôle cast doubt on the identification of the Athlete *vis-a-vis* the results of the samples?
  - iv. Depending on the findings on the above mentioned issues, should the Athlete be sanctioned? In case of the affirmative, what is the relevant sanction?

### V.6.I *Whether the Athlete committed an anti-doping rule violation*

179. IAAF Rules 32.2(a) (ii) states that *"(...) sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample (...) or, where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample"*.
180. From the facts and evidence it is apparent that:
  - a) On 3 August 2010, the ANAD collected a urine sample from the Athlete which was stored in a Sample Bottle affixed with code number 2612468;
  - b) The Sample Bottle code number 2612468 collected by the ANAD was sent for analysis to the Laboratoire de Contrôle, where it was allocated laboratory code number 11-11436.
  - c) On 29 August 2011, the Laboratoire de Contrôle reported that its analysis of the A sample of the Sample Bottle code number 2612468 and laboratory code number 11-11436 revealed the presence of recombinant EPO;

- d) On 11 October 2011, the Laboratoire de Contrôle handwrote that it had analysed a urine sample containing the sample bottle code number 2612448 and laboratory code number 11-11436B, whose results revealed the presence of recombinant EPO. This was clearly a handwriting mistake which does not change the fact that the results related to Sample Bottle code number 2612468 and that sample code number 2612448 did not exist.
  - e) On 13 October 2011, the Laboratoire de Contrôle released the Anti-Doping Results of the Athlete's B sample. The results revealed the presence of recombinant EPO in the Sample Bottle code number 2612468; and
  - f) The Athlete filled in the Doping Control form, confirming her satisfaction with the manner in which her sample had been collected.
181. IAAF Rules 33.1 states that “[t]he IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel (...). This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt”.
182. In view of the above facts and findings made by the Laboratoire de Contrôle in relation to both sample A and B of code number 2612468, it follows that the IAAF has discharged its burden of proving the presence of a prohibited substance, recombinant EPO in the Athlete's body to the Sole Arbitrator's comfortable satisfaction.
183. Under IAAF Rules 32.2, the level of proof required from the Athlete in order to rebut the above facts and findings as established by the IAAF is that of a balance of probability.
184. In attempting to rebut these presumptions the Athlete states that:
- a) There were errors committed by the ANAD and the Laboratoire de Contrôle in respectively collecting and identifying the correct sample. These errors should lead to a finding that the Athlete be declared innocent of any doping offence.
  - b) EPO is a substance taken by injection. It is very expensive and in order to ingest it, the Athlete ought to have been assisted by someone else and spent a lot of money. Given her financial status, the Athlete could not have afforded this.
  - c) EPO spends eight to fifteen hours inside the body, meaning the Athlete ought to have ingested it hours before the Race. The Athlete definitely wouldn't have ingested the substance, since she knew there were anti-doping tests during the Race.
  - d) Doctrines have it that the best test to conduct in order to detect recombinant EPO is a blood test. However, it was only the Athlete's urine which was tested and not her blood sample.
  - e) Prior to the Race, the Athlete had already qualified for the World Athletics Championships and was on course to taking part in the Pan American Championships.
  - f) The Athlete stood a great chance of winning the 5,000 and 10,000 metres races in both tournaments.

- g) Four days after the Race, the Athlete took part in another competition called the Dez Milhas Garoto Espirito Santo, which she won and tested negative for anti-doping.
  - h) The Athlete's performance has gradually improved over the last two years. The Athlete improved her training methods and lived next to the training ground where she was able to train twice a day, seven days a week. The Athlete ate a balanced diet and rested twice a day and always clocked herself during the training sessions, with a view to improving her time.
  - i) The Athlete has on previous occasions undergone anti-doping tests and never tested positive for recombinant EPO.
  - j) The Athlete almost recorded a similar time as the one she recorded in the Race, in an event held just 1 month earlier in Argentina in cold weather of - 3 degrees centigrade.
185. In relation to the above, the Sole Arbitrator notes the principle of strict liability contained in IAAF Rules 32.2(a)(i), which states that “[i]t is each Athlete's personal duty to ensure that no Prohibited Substance enters his body (...) 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 rule violation” and Article 2.1.1 of the WADA Code, which states that “[u]nder the strict liability principle, an Athlete is responsible, and an anti-doping rule violation occurs, whenever a Prohibited Substance is found in an Athlete's Sample. The violation occurs whether or not the Athlete intentionally or unintentionally used a Prohibited Substance”.
186. Accordingly, the mere assertion that errors were committed collecting and identifying the correct number of her sample are not material errors sufficient to protect the Athlete from the principle of strict liability.
187. Similarly, the Athlete's assertions related to blood test as the best form of detecting recombinant EPO, her excellent track record, balanced diet, improved training and poor financial status cannot be considered in rebutting the findings made by the Laboratoire de Contrôle.
188. Doping issues require expert medical evidence to rebut any findings made by WADA accredited laboratories. The Athlete has not summoned or adduced any expert medical evidence to rebut the findings made by the Laboratoire de Contrôle. As summarized in section V.6.II (b) below, the Athlete has also failed to adduce expert evidence proving that any departure from the IST, ISL or Anti-Doping Regulations during the sample collection process led, or would reasonably have led to the adverse analytical finding.
189. Furthermore, the Athlete neither summoned any expert to corroborate her assertions on how recombinant EPO entered her body or how long it spends in the body, nor has she adduced the anti-doping results of the tests conducted at the Dez Milhas Garoto Espirito Santo race.
190. It hence follows that the Athlete committed an anti-doping rule violation contrary to IAAF Rules 32.2.

**V.6.II      *Were there errors and violations committed in the collection of the Athlete's sample? In case of the affirmative, could these errors and violations reasonably have led to the adverse analytical findings?***

*V.6.II(a)      The alleged errors and violations in sample collection process*

191. The Athlete claims that the ANAD committed the following violations of the IST and/or ISL when collecting her sample:
  - a) It breached Resolution No. 2 of 5 May 2004 and in particular Articles 13 to 30 of the said resolution
  - b) It allowed her to attend the Interview un-chaperoned.
  - c) It allowed the Sample Bottle to be placed on the floor and to remain unsealed during the Interview. During the hearing, the Athlete stated that the Sample Bottle was only covered with a white cloth.
  - d) It allowed the Doping Control Officer to fail to document the reasons for the Athlete leaving the Doping Control Station after reporting for testing.
192. According to the Athlete, these are serious violations and departures from the IST and/or ISL whose consequences caused or would reasonably have led to the presence of recombinant EPO in the Athlete's sample.
193. The IAAF claims that the Athlete was chaperoned by at least three ANAD officials.
194. The IAAF argues that there was no need for the Doping Control Officer to document the reasons for the Athlete leaving the Doping Control Station after reporting for testing because the said officer did not consider it necessary in the circumstances especially because the Athlete had not raised any contest in relation to the sample collection procedure.
195. In relation to the Athlete's allegations of violation of Resolution No. 2 of 5 May 2009, the Sole Arbitrator underlines that the laws applicable to this appeal is are the international anti-doping regulations, in particular the IAAF Rules, the ISL edition 2009, the IST regulations such as the IAAF Anti-Doping Regulations edition 2011 and where applicable, the WADA Code.
196. Resolution No. 2 of 5 May 2009 is a national law which governs the testing standards within the Republic of Brazil and is not an IST. It is therefore not applicable and cannot be invoked by the Athlete.
197. In relation to the allegations of the Athlete being left un-chaperoned, the Sole Arbitrator notes that under Article 4.11 (b) of the IAAF Anti-Doping Regulations, "[t]he DCO/Chaperone may at their discretion consider any reasonable third party requirement or any request by the Athlete for permission (...) leave the Doping Control Station temporarily after arrival and may grant such permission if the Athlete can be continuously chaperoned and kept under direct observation during the delay and if the request relates to the following activities (...) fulfillment of pressing media commitments(...)".

198. Note is further taken that under Annex D section D.4.5 of the ISL “[i]he Athlete shall retain control of the collection vessel and any Sample provided until the Sample is sealed”. A similar provision is contained in Article 4.25 of the IAAF Anti-Doping regulations.
199. Annex D section D.4.16 of the ISL adds that “[i]he Athlete shall seal the bottles as directed by the DCO. The DCO shall check, in full view of the Athlete, that the bottles have been properly sealed”.
200. It is apparent from these provisions that:
  - a) If the Doping Control Officer allows an athlete to leave the Doping Control Station, the said athlete must be chaperoned;
  - b) If allowed to temporarily leave the Doping Controls Station, the athlete should retain control of the sample bottle and any sample provided until the sample is sealed;
  - c) After giving the full urine, the athlete must then seal the bottles as directed by the Doping Control Officer;
  - d) Article 4.11 (b) of the IAAF Anti-Doping Regulations does not specify the consequences, or the effects of an athlete who is allowed to leave the Doping Control Station unchaperoned; and
  - e) There is no IST or ISL provision which specifies the consequences of failure to follow any of the above procedures.
201. Relating the above provisions with the facts and evidence adduced, the Sole Arbitrator recalls the Athlete’s submissions that she left the Doping Control Station to attend the Interview holding the Sample Bottle and placed it on the floor unsealed. There was hence no departure from the IST or the ISL because Annex D section D.4.5 of the ISL as read together with Annex D section D.4.16 thereof allowed the Athlete to carry the Sample Bottle and to only seal it when directed by the Doping Control Officer.
202. If indeed the Athlete felt there was a departure from the IST or the ISL by being allowed to leave the Sample Bottle on the floor unsealed, she ought to have made such comments in the Doping Control Form or insisted on having the Sample Bottle sealed prior to the Interview. In any case, there is no provision prohibiting the Athlete from placing the Sample Bottle on the floor, which remained within the Athlete’s sight at all material times during the Interview as confirmed by the Athlete during the hearing.
203. Whether or not the Athlete was chaperoned is not clear from the Videos. Although the Athlete claims not to have been chaperoned in her Answer, she contradicted herself during the hearing by:
  - a) Stating that she was followed by a chaperone, A., 20 minutes after leaving the Doping Control Station for the Interview; and
  - b) Stating that A. was not with her during the Interview.

204. The Athlete did not adduce any further evidence and/or summon any witness, such as the Coach or her physiotherapist to corroborate her assertions. This casts doubt on the consistency of her evidence and version of events.
205. The Sole Arbitrator also questions the consistency and precision of the testimonies of A., R. and C. that the Athlete was chaperoned because the same witnesses also stated that the Athlete held the Sample Bottle in her hands during the Interview. The Sole Arbitrator has established these testimonies to be untrue after looking at the Videos, which show that the Athlete's hands are free and were not holding anything during the Interview.
206. In the Sole Arbitrator's opinion, the evidence adduced by the Parties cannot sufficiently enable him to find to his comfortable satisfaction that the Athlete was chaperoned.
207. In any case, the Sole Arbitrator is of the opinion that chaperoning is equated to "policing", i.e. an act merely aimed at ensuring the athlete does not "run away" or tamper with the sample. It is at the entire discretion of the police, or chaperone in this case to decide whether or not to accompany an athlete. Therefore, an un-chaperoned athlete actually has an advantage in the sense that he or she can interfere with the sample to his or her benefit.
208. The Sole Arbitrator further refers to the holding in CAS 2009/A/1931, which held that the main purpose of the ISL is "(...) *to ensure laboratory production of valid test results and evidentiary data. It is also intended to ensure that the accredited laboratories achieve uniform and harmonized results and reporting thereon. The ISL, including all Annexes and Technical Documents, is mandatory for all Signatories to the WADAC. The ISL is therefore not directly applicable to athletes but rather to the signatories to the WADAC*".
209. The Athlete cannot therefore invoke any alleged departures from the IST, ISL or the IAAF Anti-Doping Regulations with a view to having them applied in her favour because these regulations are purely aimed at easing the work of the national anti-doping organizations and the WADA accredited laboratories for effective testing. It was within the ANAD's discretion to decide whether or not to follow the IST, the ISL and/or IAAF Anti-Doping Regulations when collecting the Athlete's sample because these regulations do not specify the consequences of failing to follow the laid down procedures.

*V.6.II (b) Could these errors and violations reasonably have led to the adverse analytical findings?*

210. The Sole Arbitrator remarks that even if there were departures from the IST or ISL, it is doubtful whether such departure led or would reasonably have led to the adverse analytical findings because:
  - a) The Athlete was always in control of the Sample Bottle during the Interview. This is evident in the Athlete's testimony that she: (i) did not see anyone interfere with the Sample Bottle during the Interview, (ii) sealed the Sample Bottle after the Interview.



- b) After giving the full sample, the Athlete signed the Doping Control Form, confirming her satisfaction with the manner in which the sample had been collected and did not raise any concerns or comments regarding the procedure;
  - c) The Athlete did not summon any expert to rebut Prof. Christiane Ayotte's expert evidence which explained that even if the sample had been spiked with recombinant EPO, it would have been strikingly obvious at the time of the analysis because the analytical image would have been overloaded with recombinant EPO; and
  - d) The Athlete has not summoned or adduced expert evidence proving that the unsealed Sample Bottle could still have been contaminated despite the fact that it was covered with a white cloth.
211. It therefore follows that the Athlete's arguments in relation to the violations of the IST, ISL and/or IAAF Anti-Doping Regulations are dismissed and any such departure did not lead to the adverse analytical findings.

***V.6.III Does the handwriting error committed by the Laboratoire de Contrôle cast doubt on the identification of the Athlete vis-a-vis the results of the samples?***

212. The Athlete also avers that the handwriting error committed by the Laboratoire de Contrôle on 11 October 2011, which handwrote that it had analysed the B sample of a sample bottle coded 2612448 completely invalidate the anti-doping results because this number did not precisely identify or belong to the Athlete.
213. The IAAF reiterates that the handwriting error committed by the Laboratoire de Contrôle is a mere hindsight which did not cause the adverse analytical finding or invalidate test results as proven by Prof. Christiane Ayotte. It reiterates that there existed no sample bottle coded 2612448.
214. Looking at the facts and evidence adduced, it is apparent that:
- a) Upon receiving Sample Bottle code 2612468, the Laboratoire de Contrôle allocated it laboratory code number 11-11436;
  - b) On 1 September 2011, the results of the Laboratoire de Contrôle revealed the presence of recombinant EPO in Sample Bottle code 2612468 bearing laboratory number 11-11436;
  - c) On 11 October 2011, the Laboratoire de Contrôle results revealed the presence of recombinant EPO in a sample bottle having the code 2612448 and bearing laboratory number 11-11436B; and
  - d) From the Laboratoire de Contrôle's database software of 2011, the Laboratoire de Contrôle only received a sample bearing the code number 2612468. There does not exist any sample bearing the code number 2612448. This is evidenced in the Laboratoire de Contrôle's data base software, which reads "[a]ucune correspondance avec l'indice 2612448 pour

*les échantillons de 2011*". An unofficial English translation of this reads "*there exists no correspondence from the 2011 database indicating 2612448*".

215. Other than challenging the handwriting errors, the Athlete did little to cast doubt on the above facts, chain of events and the weight of the testimony adduced by Prof. Christiane Ayotte. The Athlete could have done this by either summoning a software expert to rebut Prof Christiane Ayotte's evidence or adducing evidence establishing a systematic chain linking sample code 2612448 and laboratory code number 11-11436B to another athlete.
216. Prof Christiane Ayotte has furnished the Sole Arbitrator with the necessary scientific criteria for assessing the accuracy of the conclusions to be made from the errors committed by the Laboratoire de Contrôle.
217. The Sole Arbitrator's opinion and conclusion from the errors made by the Laboratoire de Contrôle is that they were merely writing slip-ups. They neither cast any doubt nor contributed to the overall unreliability of the adverse analytical findings linking the sample to the Athlete. Corroborating this is a similar opinion held by the panel in CAS 2008/A/1608 & CAS 2009/A/1931.
218. Notwithstanding the above, the said errors cannot be invoked by the Athlete is defending herself. This is because the administrative procedures to be followed by WADA accredited laboratories are purely aimed to assist them achieve uniform and harmonised results. They are "(...) *not directly applicable to athletes but rather to the signatories to the WADAC*" (cf. paragraph 208 above).
219. Moreover, the Sole Arbitrator adopts the findings of CAS 2010/A/2296, which stated that "[n]o rule obliges an accredited Lab to deliver the Laboratory's standard operating procedures (SOPs). In fact, pursuant to the WADA Technical Document TD2003LDOC, the Laboratory is not required to support an Adverse Analytical Finding by producing SOPs, general quality management documents (e.g., ISO compliance documents) or any other documents not specifically required (...)".
220. In view of the foregoing, the Sole Arbitrator finds that the Athlete has failed to prove that the handwriting errors committed by the Laboratoire de Contrôle cast doubt on her identification *vis-a-vis* the results of the samples. The Sole Arbitrator is convinced and reasonably satisfied that the results of Sample B of Sample Bottle 2612468 are linked to the Athlete, notwithstanding the handwriting error.

#### **V.6.IV      *Should the Athlete be sanctioned?***

221. Having found the that the Athlete committed an anti-doping rule violation contrary to IAAF Rules 32.2 (a), reference must be made to IAAF Rules 40.2, which states as follows:

*"The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers) (...) unless the conditions for eliminating or reducing the period of Ineligibility as*

*provided in Rules 40.4 and 40.5 (...) are met, shall be as follows (...) First Violation: Two (2) years' Ineligibility(...)"*.

*V.6.IV(a) Is this the Athlete's first anti-doping offence?*

222. The Athlete claims that this is her first anti-doping rule violation, and that the three month suspension issued by the CBAAt on 22 September 2010 was an administrative sanction rather than a sanction imposed by an international tribunal.
223. It is not in doubt that the Athlete was initially banned for three months by the CBAAt on 22 September 2010.
224. The Sole Arbitrator remarks that by virtue of having taken part at the Circuito Fluminense de Corrida event, which was organised by the CBAAt, the Athlete was under the jurisdiction of the CBAAt's judicial bodies for any infringements she made while taking part in national competitions organized or sanctioned by the CBAAt.
225. Since the Circuito Fluminense de Corrida fell under the sphere and auspices of the CBAAt, the CBAAt's judicial bodies had jurisdiction to sanction the Athlete for any anti-doping infringements which took place at this event.
226. Given the fact that the three months suspension was imposed by the judicial bodies of the CBAAt, the Athlete cannot argue that it was administrative or illegal decision. The Sole Arbitrator therefore finds that this was the Athlete's first anti-doping rule violation.
227. This being the Athlete's second offence, reference must further be made to IAAF Rules 40.7 (a), which states that "[f]or a second anti-doping rule violation, the period of Ineligibility shall be within the range set out in the table below (...)".
228. IAAF Rules 40.7 (a) contains a table setting out a series of sanctions to be imposed for a second anti-doping offence, depending on the sanction and/or offence the athlete committed in the first anti-doping rule violation.
229. According to the aforementioned table, if in the first anti-doping rule violation the athlete was sanctioned by a reduced sanction for a specified substance under IAAF Rules 40.4, and the athlete proceeds to commit a second anti-doping rule violation punishable by the imposition of the Standard Sanction under IAAF Rules 40.2, the said athlete should be declared ineligible for a period between four and six years.
230. In this appeal, the Athlete has not raised any arguments requesting that the sanction proposed by the IAAF be lowered. The Athlete has exclusively grounded her defence on the handwriting errors committed by the Laboratoire de Contrôle and the departures from the ISL and/or the IST allegedly caused by the ANAD.

231. In mitigation, the Athlete wants the Sole Arbitrator to consider her sporting efforts and the fact that she can hardly read and write. She states that her sporting career started from humble beginnings, from an amateur to a semi-professional. Throughout, she claims to have had good coaches, a balanced diet, and lived next to her training base. All these in the span of two years, after which she went on to break the South American 10,000 metres record.
232. The Sole Arbitrator refers to IAAF Rules 40.5, which contains provisions under which a sanction otherwise imposable under IAAF Rules 40.7 (a) can be lowered. Under this provision, the Athlete would have lowered her sanction for example by establishing how the prohibited substance entered her body, and then by:
- a) Establishing that that she bore no fault or negligence or that she bore no significant fault or negligence;
  - b) Offering substantial assistance in discovering or establishing the anti-doping rule violation; and
  - c) Admitting the anti-doping rule violation in the absence of other evidence.
233. None of the arguments laid forth by the Athlete in mitigation fall under IAAF Rules 40.5. The same shall therefore not be considered. The Sole Arbitrator shall limit the scope of his assessment of the sanction to the provisions of IAAF Rules 40.7 (a).
234. The IAAF requests the Sole Arbitrator to impose a six year ban on the Athlete, arguing that her degree of fault is at its highest because:
- a) The comment to Article 10.7 of the WADA Code requires the degree of fault to be considered the criterion in assessing the period of ineligibility within the applicable range;
  - b) It is her second doping anti-doping rule violation within two years;
  - c) Blood doping is one of the mysterious forms of doping used by long distance runners to improve their oxygen carrying capacity and hence performance;
  - d) Instead of admitting to the anti-doping rule violation, the Athlete kept denying; and
  - e) The Athlete's arguments are speculative and false.
235. In relation to the above and in his interpretation of IAAF Rules 40.7 (a), the Sole Arbitrator is of the opinion that it grants a deciding body the discretion to choose between imposing a four, five or six year ban.
236. Looking at the facts and the specific circumstances which led to the appeal, it is apparent that the Laboratoire de Contrôle has acknowledged having committed handwriting errors in identifying the Athlete's sample. It is also apparent that several procedures were not followed in the sample collection process.
237. These were mistakes which reasonably justified the Athlete to contest the anti-doping results and to defend herself, particularly in view of the fact that both the Disciplinary Committee and

the STJD had cleared her off any anti-doping offence. The Athlete's arguments are therefore neither false nor speculative; they are simply irrelevant in determining whether or not there was no anti-doping rule violation.

238. In view of the above and given the discretionary nature of the sanction imposable under IAAF Rules 40.7 (a), the Sole Arbitrator finds that a fair and reasonable sanction under these circumstances can only be reached by looking at the aggregate between the four and six year range provided under IAAF Rules 40.7(a). In other words, the Sole Arbitrator deems a five year ban as fair and reasonable in view of the facts and circumstances leading to the appeal.

*V.6.IV(b) Consequences on individual results*

239. The IAAF requests that all competitive results obtained by the Athlete from the date of commencement of the anti-doping rule violation through to the commencement of her provisional suspension be disqualified, with all resulting consequences in accordance with IAAF Rules 40.8.
240. In winning the Race, the Athlete broke the national and South American record and also posted her personal best time in the women's 10,000 metres race. It is not clear whether she was awarded any prize or appearance money or whether she took part in any other events after the date her sample was collected until she was provisionally suspended.
241. IAAF Rules 39 states that “[a]n anti-doping rule violation in connection with an In-Competition test automatically leads to disqualification from the Event in question, with all resulting consequences for the Athlete, including the forfeiture of all titles, awards, medals, points and prize and appearance money”.
242. IAAF Rules 40.8 stipulates adds that “[i]n addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of- Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money”.
243. In view of the above provisions, the Sole Arbitrator rules that all titles, awards, medals, points, prize and appearance money given to the Athlete in connection with the Race are forfeited. In addition, all other competitive results obtained from the date the positive sample was collected (whether In-Competition or Out-of- Competition) or other anti-doping rule violation occurred through to the commencement of any provisional suspension or ineligibility period shall be disqualified including the forfeiture of any titles, awards, medals, points and prize and appearance money.

*V.6.IV(c) Commencement of the sanction*

244. IAAF Rules 40.10 states as follows:

*“(...) the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility (...). Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served”.*

245. The Athlete was provisionally suspended on 14 October 2011. This suspension is still running. Therefore, any period of provisional suspension served by the Athlete from 14 October 2011 until the date inserted in the operative part of this award shall be credited against the five year suspension imposed on the Athlete.

**V.6.V Conclusion**

246. Considering all the facts, evidence and arguments adduced, the appeal is partially upheld. The Athlete is found guilty of an anti-doping rule violation and banned for a period of five years and the IAAF's request for a six year ban is dismissed. The Athlete shall forfeit all titles, awards, medals, points and prize and appearance money given to her in connection with the Race. In addition, all other competitive results obtained from the date the positive sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any provisional suspension or ineligibility period shall be disqualified including the forfeiture of any titles, awards, medals, points and prize and appearance money.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 18 April 2012 by the International Association of Athletics Federation against the decision rendered by the Superior Tribunal de Justiça Desportiva do Atletismo on 27 February 2012 is partially upheld.
2. Simone Alves da Silva is suspended for a period of 5 (five) years from the date of this award. Any provisional suspension served by Simone Alves da Silva from 14 October 2011 is credited against the 5 (five) year suspension.
3. The entire results achieved by Simone Alves da Silva at the Troféu Brasil event held on 3 August 2011 or in any other competition she took part in after 3 August 2011 are disqualified, including forfeiture of any medals, points and prizes.

(...)

7. All other and further claims or prayers for relief are dismissed.