

CAS 2006/A/1153 WADA v/ Portuguese Football Federation & Nuno Assis Lopes de Almeida

ARBITRAL AWARD

Delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Mr Hans **Nater**, Attorney-at-law, Zurich, Switzerland

Arbitrators: Mr Peter **Leaver**, Barrister, London, England
Mr Jean-Jacques **Bertrand**, Attorney-at-law, Paris, France

Ad hoc Clerk: Mr Patrick **Grandjean**, Attorney-at-law, Lausanne, Switzerland

in the arbitration between

World Anti-Doping Agency, Montreal, Canada

Represented by Messrs François **Kaiser** and Claude **Ramoni**, Attorney-at-law, Lausanne, Switzerland, Ms Joana **Gouveia**, Attorney-at-law, Lisbon, Portugal and by Mr Olivier **Niggli**, legal director of WADA

the Appellant

and

Portuguese Football Federation, Lisbon, Portugal

Represented by Mr Luis Paulo **Relógio**, Attorney-at-law, Lisbon, Portugal

Mr Nuno Assis Lopes de Almeida, Lisbon, Portugal

Represented by Mr José **Andrade e Sousa**, Attorney-at-law, Lisbon, Portugal

the Respondents

* * * * *

I. PARTIES

1. The World Anti-Doping Agency (hereinafter referred to as “WADA” or the “Appellant”) is a Swiss private law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms.
2. The Portuguese Football Federation (Federação Portuguesa de Futebol - hereinafter also referred to as “FPF”) is the governing body of the game of football in Portugal, where it is responsible for all regulatory aspects of the said sport. It has been affiliated to the Fédération Internationale de Football Association (“FIFA”) since 1923.
3. Mr Nuno Assis Lopes de Almeida, born on 25 November 1977, is a professional football player. He currently plays with the football club Sport Lisboa e Benfica – Futebol SAD and is a registered member of the FPF.

II. BACKGROUND FACTS

II.1 THE SAMPLE COLLECTING PROCEDURE AND THE FINDINGS IN ANTI-DOPING TESTS

4. On 3 December 2005, after a domestic league match between Club Sport Marítimo and Club Sport Lisboa e Benfica, Mr Nuno Assis Lopes de Almeida underwent a doping control, the result of which was the following:
 - The time of arrival at the doping control station was 23:05 p.m. and the time of urine sampling was 00:55 a.m.
 - The urine provided by the player was dispatched in two bottles. Their code number was A 321589 and B 321589. The control code was “Braguel.”
 - No comment was made on the sample collection procedure.
 - The player signed the following statement: *"I declare that all the sample collection procedures were respected"*.
5. The "Laboratório de Análises e Dopagem" (hereinafter referred to as "LAD") in Lisbon, Portugal, is a WADA accredited laboratory for doping analysis. On 7 December 2005, it received the collected samples, which were marked with the code number “Braguel 321589A” and “Braguel 321589B”.

6. The analysis of the A-sample was carried out between the 7 December 2005 and the 18 January 2006. Mr Nuno Assis Lopes de Almeida's A-sample was found to contain 19-norandrosterone at a concentration of 4.5 ng/ml with a reported uncertainty of 1.1 ng/ml. In its analytical report, the LAD confirmed that "*The A-portion of the urine sample with the code 321589 (...) showed the presence of 19-norandrosterone at a concentration higher than 2 ng/mL. The detection of these compounds is compatible with the administration of nandrolone, norandrosteredione or norandrosterediol.*"
7. A confirmatory analysis was requested and took place at the LAD on 1 February 2006. The B-sample was opened in the presence of Mr Nuno Assis Lopes de Almeida, his representative Mr João Paulo da Piedade Pereira de Almeida and his expert Mr Jorge Manuel da Silva Barbosa. The FPF was represented by Mr José Manuel Lopes Martins.
8. The analysis of the B-sample was conducted between the 1 and the 2 February 2006. The player's B-sample was found to contain 19-norandrosterone at a concentration of 4 ng/ml with a reported uncertainty of 1 ng/ml. On 3 February 2006, the LAD delivered its analytical report of the B-sample which confirmed "*the previous result observed in the A portion sample.*"

II.2 THE PROVISIONAL SUSPENSION OF MR NUNO ASSIS LOPES DE ALMEIDA

9. On 28 February 2006, the Chairman of the FIFA Disciplinary Committee issued a decision, which reads as follows where relevant:

"1. On 03 February 2006, the player Nuno Assis Lopes Almeida was preventively suspended by the Football Federation of Portugal (...). The case was presented to Disciplinary proceedings and is still pending.

2. On 10 February 2006, the secretary to the FIFA Disciplinary Committee opened a disciplinary procedure and asked the FPF to send the complete decision in order to extend it to have worldwide effects.

3. On 17 February 2006, the ad hoc Chairman of the Control and Disciplinary Body of UEFA took a decision concerning the player. (...) he decided to suspend the player Nuno Assis Lopes Almeida provisionally and to request FIFA to extend the measure insofar as to give it a worldwide effect as long as the Disciplinary Body has not reached a final decision. This decision was taken in order to protect an UEFA competition because the player could be scheduled to play on 21 February 2006.

4. On 27 February 2006, the chairman ad-hoc of the Control and Disciplinary Body of UEFA requested from FIFA the extension of the above-mentioned provisional decision.

(...)

III. DECISION

1. The player Nuno Assis Lopes Almeida is provisionally suspended worldwide for the duration of the provisional suspension imposed by the confederation, but not longer than 30 days as from notification of this decision. This provisional suspension covers all types of matches, including domestic, international, friendly and official fixtures.”

10. On 27 and 28 March 2006, the competent bodies of the UEFA and of the FIFA respectively extended the provisional suspension of the player.

II.3 THE DECISIONS TAKEN BY THE DISCIPLINARY BODIES OF THE FPF

11. On 9 June 2006, the Disciplinary Committee of the FPF found Mr Nuno Assis Lopes de Almeida guilty of a doping offence as defined by the Portuguese Decree-law No 183/97 of 26 July 1997. It imposed a 6-month suspension upon the player.
12. Mr Nuno Assis Lopes de Almeida filed an appeal with the Judicial Board of the FPF challenging the decision dated 9 June 2006.
13. On 14 July 2006, the Judicial Board of the FPF issued the following decision which reads in relevant part as follows (as translated into English by WADA):

“Article 180 (1) of the LPFP Disciplinary Regulations provides that a charge must clearly detail the facts that constitute the disciplinary contravention, as well as the time, manner and place in which it occurred and must also state whether there were any aggravating or extenuating circumstances...”

The first charge was defective in that it omitted one of the constituent elements of the contravention with which the defendant was accused, namely the charge did not accuse the defendant of any act but rather only the result of the anti-doping test. This is contrary to the provisions of Article 2 (1) of the LPFP Disciplinary Regulations that define a disciplinary contravention as a voluntary act or omission by the respective party that contravenes the provisions of laws or regulations.

The anti-doping test results alone are not enough to punish the defendant! The accuser must allege and prove that the defendant voluntarily administered, or in some other way introduced the substance that was found in his body.(...)

Without alleging this fact, the defendant cannot be charged with any contravention!

Accordingly, the charge was invalid, as it did not contain all the necessary elements for the contravention with which the defendant (...) was accused. (...)

Once a charge is ruled as invalid the proceedings cannot be reopened to reformulate the charge (...)

Ruling

In view of all the above, the appeal as filed is deemed well founded and the original proceedings against the defendant are accordingly dismissed."

14. On 14 July 2006, the decision of the Judicial Board of the FPF was notified to the National Anti-Doping Council (Conselho Nacional Antidopagem – hereinafter referred to as the "CNAD").
15. On 1 or 2 August 2006, the CNAD forwarded the decision of the Judicial Board of the FPF to WADA, which received it on 4 August 2006.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

III.1 THE APPEAL

16. On 25 August 2006, WADA filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as "CAS").
17. On 4 September 2006, WADA submitted its appeal brief, which contains a statement of the facts and legal arguments accompanied by supporting documents. It challenged the decision of the Judicial Board of the FPF, requesting the following:

"WADA hereby respectfully requests that the CAS rules that:

- 1. The Appeal of WADA is admissible.*
- 2. The decision of the FPF Judicial Board of July 14, 2006, in the matter of Mr Nuno Assis is set aside;*
- 3. Mr Nuno Assis is sanctioned under article 62 of the FIFA Disciplinary Code with a period of ineligibility of 2 years.*
- 4. WADA is granted an award of costs."*

18. The Appellant's submission, in essence, may be summarized as follows:
 - The appeal of WADA is admissible and was filed in a timely manner.
 - It has been scientifically established that Mr Nuno Assis Lopes de Almeida has committed an anti-doping rule violation.
 - If there had been a procedural irregularity in the handling of the case before the Disciplinary Committee of the FPF, it would be remedied by the arbitration proceeding before the CAS.

- Given the particular circumstances of the case and considering the fact that Mr Nuno Assis Lopes de Almeida has never given any plausible or valid explanation as to a possible cause for the positive findings, the relevant judicial bodies of the FPF failed to impose the correct sanction.

III.2 THE ANSWERS

Mr Nuno Assis Lopes de Almeida

19. On 27 September 2006, Mr Nuno Assis Lopes de Almeida filed an answer, with the following request for relief:

"UNDER SUCH TERMS AND CONDITIONS

- *This appeal should not be admitted, as the appealed decision is final;*
- *This appeal should not be admitted, because it has been intempestively lodged.*
- *In case it is admitted, against what is the understanding of the Defendant, the same shall be considered as not grounded and, if such is not the case, the minimum punishment of suspension of six months should be applied and the Defendant should benefit from the provisory suspension already suffered."*

20. The submissions of the player may be summarized as follows:

- The appeal of WADA was not filed in a timely manner.
- WADA is entitled to appeal to the CAS only in cases of doping decisions. *In casu*, the appealed decision has nothing to do with a doping case, since the Judicial Board of the FPF dismissed all the charges held against the player exclusively on procedural grounds.
- Mr Nuno Assis Lopes de Almeida presented as his own the reasoning of the Judicial Board of FPF.
- The tests carried out by the LAD were not flawless and must therefore be disregarded, in particular for the following reasons:
 - The samples were delivered to the LAD 82 hours after the sampling collection. This seriously infringes the applicable regulations.
 - According to the documentation of the A and B-samples, someone named "Antonio" carried out operations. This person is not a listed member of the personnel involved in the analyses of the samples.

- There are several mistakes in the LAD analytical reports, which lead to the conclusion that *“the presence of 19-NA cannot be confirmed, in accordance with the indicated criteria”*.
- Statistically speaking, the results of the B-sample analysis are not reliable.
- Considering the suspicious attitude of the NADC, Mr Nuno Assis Lopes de Almeida suggests that he is the victim of a conspiracy.
- The presence of 19-norandrosterone at a concentration higher than 2 ng/mL in the player’s urine can be caused by a normal endogenous production, by the *“storage [...] over a long time under adverse conditions of temperature”* or by the use of contaminated food supplements.
- Given the fact that Mr Nuno Assis Lopes de Almeida has never intentionally taken any doping substance, that under certain circumstances the human body can produce 19-norandrosterone at a concentration higher than 2 ng/ml and considering the doubts arising from the analyses carried out by the LAD, the player should be given the benefit of the doubt.
- In any case, the suspension should not be longer than 6 months.

The FPF

21. On 27 September 2006, the FPF filed an answer, with the following request for relief:

“According to the allegations above, FPF (...) requests that the CAS rules that:

- a) The Appeal of WADA is inadmissible;*
- b) The law applicable is the national criminal law of the Portuguese Republic, which supersedes over the sports and anti-doping regulations;*
- c) The decision of the CAS should be ruled under the same laws that were taken in consideration for the appealed ruling;*
- d) That the player be, therefore acquitted or, should the CAS not consider this possibility,*
- e) The sanction applicable to the player last no longer than six months, including the time already served under provisional suspension”*

22. The FPF made basically the same allegations as the player, with the exception that it does not contest the results of the analyses carried out by the LAD.

III.3 THE ORDER OF PROCEDURE AND THE HEARING

23. On 7 November 2006, the CAS Court Office issued, on behalf of the Chairman of the Panel, an order of procedure, which mentioned, amongst other matters, that according to the Appellant, CAS' jurisdiction to rule on this matter was based on Art. 60 of the FIFA Statutes, while the Respondent challenged such jurisdiction, and that the applicable law would be determined in accordance with Art. R58 of the Code of Sports-related Arbitration (the "Code"). The parties signed and returned such order of procedure to the CAS Court Office.
24. A hearing was held on 11 December 2006 at the CAS headquarters in Lausanne. All the members of the Panel were present. At the outset of the hearing, the parties declared that they had no objection with regard to the composition of the Panel.
25. At the hearing, the Appellant was represented by its legal director, Mr Olivier Niggli, assisted by the attorneys Mr François Kaiser, Mr Claude Ramoni and Ms Joana Gouveia. Mr Nuno Assis Lopes de Almeida was not present at the hearing but was represented by his counsel, Mr José Andrade e Sousa, who was assisted by Ms Regina Andrade, interpreter. The FPF was represented by its counsel, Mr Luis Paulo Relógio.
26. The Panel heard evidence from:
 - Mr Luis Horta, representative of the CNAD and general director of the LAD;
 - Mr Jorge Manuel Da Silva Barbosa, Head of the Department of Public Hygiene of the National Veterinary Investigation Laboratory;
 - Mr João Paulo Pereira de Almeida, Head of the Medical Department of the football club Sport Lisboa e Benfica;
 - Mr Humberto Ferreira, lecturer at the Faculty of Pharmacy of the Lisbon University.
27. Each witness was invited by the President of the Panel to tell the truth subject to the consequences provided by the law; each witness was examined and cross-examined by the parties and questioned by the Panel.
28. After the parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course.

29. At the end of the hearing, the parties confirmed that they had been given a fair chance to present their case and that they did not wish to submit any further evidence.
30. Upon closure, the parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

IV. DISCUSSION

IV.1 CAS JURISDICTION

31. Article 60 of the FPF Statutes provides the following:

1.- It is forbidden to ordinary members of the Portuguese Football Federation and to all persons involved in the sport to submit to ordinary courts decisions and deliberations of the social organs and other commissions organized within the Portuguese Football Federation concerning strictly sport issues, or linked to violations of provisions of technical or disciplinary nature.

2.- The Portuguese Football Federation, its members and all persons involved in the sport recognize and expressly accept the provisions of the UEFA and FIFA Statutes regarding sport jurisdiction and arbitration”.

32. Under Art. 60 para. 1 of the FIFA Statutes (Edition June 2006, hereinafter, the "FIFA Statutes):

FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.

33. Under Art. 61 of the FIFA Statutes:

¹ Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

[...]

⁵ The World Anti-Doping Agency (WADA) is entitled to appeal against doping-related decisions which are deemed to be final under the terms of par. 1 above.

34. In the present case, it is not disputed that the challenged decision is final and that there is no internal remedy to put it into question. Therefore, given that FPF Statutes provide that itself, its members and all persons involved in the sport recognize and expressly accept the provisions of the FIFA Statutes regarding sport jurisdiction and arbitration and given that FIFA Statutes provide that WADA is entitled to appeal against final

doping-related decisions passed by FIFA members, CAS has jurisdiction to rule on this appeal.

35. In any event, at the hearing, the Respondents expressly accepted the jurisdiction of the CAS.

IV.2 APPLICABLE LAW

36. Article R58 of the 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.

37. In the present matter, it results from their respective submissions that the parties have not agreed on the application of any particular law other than the rules and regulations of the FPF – among which are the Doping Control Regulations of the FPF -, the Decree-law N° 183/97 of 26 July 1997 and the Administrative Order N° 816/97 of 5 September 1997. These are the rules which shall be applicable to this dispute, in addition to the provisions of the FIFA Statutes regarding sport jurisdiction and arbitration.

IV.3 ADMISSIBILITY

38. The main issues to be resolved by the Panel in deciding the question of admissibility are the following:

- a) Was the appeal filed in a timely manner?
- b) Can the CAS deal with appeals against an acquittal delivered by the Judicial Board of the FPF?
- c) Is WADA entitled to appeal?

a) Was the appeal filed in a timely manner?

39. The Respondents submit that the appeal was lodged outside the 21-day deadline provided at article 61 para. 1 of the FIFA Statutes, which is applicable pursuant to Art 60 of the FPF Statutes. The appealed decision was notified on 14 July 2006 to the CNAD, which is an official and public entity involved in the fight against doping. As

such and according to the Respondents, it was the duty of the CNAD to forward immediately the appealed decision to WADA. Otherwise, it would leave to the discretion of the CNAD to choose when to pass on the decision, if it was not minded itself to appeal, and so manipulate the date upon which the time limit to appeal would begin. The CNAD could artificially extend the said time limit indefinitely, which would lead to great insecurity for the player. WADA filed its appeal on 25 August 2006, that is over 40 days after the notification of the appealed decision to the CNAD.

40. As a basic rule, a decision or other legally relevant statement is considered as being notified to the relevant person whenever that person has the opportunity to obtain knowledge of its content irrespective of whether that person has actually obtained knowledge. Thus, the relevant point in time is when a person receives the decision and not when it obtains actual knowledge of its content (CAS 2004/A/574 Associação Portuguesa de Desportos v. Club Valencia C. F. S.A.D).
41. The decision of the Judicial Board of the FPF was issued and communicated to the CNAD on 14 July 2006. It is not clear whether the decision was forwarded to WADA on 1 or 2 August 2006. In any case, WADA received it on 4 August 2006, as it is established by the DHL delivery report. WADA filed its appeal on 25 August 2006, that is within the 21-day time limit provided at Article 60 of the FIFA Statutes.
42. The fact that the CNAD waited 16 days to pass on to WADA the decision of the Judicial Board of the FPF is regrettable. Nevertheless such a delay cannot be held against WADA, unless it is established that the CNAD should be treated as WADA's agent (which was not argued by the Respondents) or that WADA had the opportunity to obtain knowledge of the content of the decision of 14 July 2006 before 4 August 2006. The Respondents did not substantiate either of these points with evidence.
43. Accordingly, the appeal of the WADA was filed in due time.
44. Nevertheless, the Panel understands the Respondents' concerns that an entity such as the CNAD should deal diligently and without undue delay. It is the responsibility and duty of all international as well as national sports bodies to conduct themselves in a fashion which is beyond reproach and is scrupulously in accordance with the interests of all the parties. However, in the case at hand, the Panel considers that the delay is acceptable

and cannot be regarded as arbitrary or resulting in a breach of any procedural rights of Mr Nuno Assis Lopes de Almeida. The matter might be different if the delay was more significant than in the present case.

b) Can the CAS deal with appeals against an acquittal delivered by the Judicial Board of the FPF?

45. The Respondents contend that as Article 61 para. 3 lit. b) of the FIFA Statutes provides that “CAS, however, does not deal with appeals arising from suspensions of up to four matches or up to three months”, and as an acquittal is a lesser sanction than a three-month suspension, the case falls therefore outside the scope of the CAS jurisdiction.

46. The Panel disagrees with the Respondents for the following reasons:

- Article 61 para. 3 lit. b) of the FIFA Statutes is the general rule, which applies to disciplinary decisions
- Art. 61 para. 5 of the FIFA Statutes is clearly the *lex specialis* for doping cases. It does not contain any limitation as to the duration of the suspension imposed on the player or as to a decision acquitting a player.

47. It follows that Art. 61 para 3 of the FIFA Statute is not applicable in doping cases, as the one at hand and that, as a consequence, an acquittal decision is subject to appeal to CAS.

c) Is WADA entitled to appeal?

48. According to Article 61 para. 5 of the FIFA Statutes, “*The World Anti-Doping Agency (WADA) is entitled to appeal against doping-related decisions which are deemed to be final under the terms of par. 1 above.*”. The Respondents contend that the appealed decision only dealt with procedural issues and not with material doping issues, and that, therefore, the appeal of WADA is not admissible.

49. On 9 June 2006, the Disciplinary Commission of the FPF imposed upon Mr Nuno Assis Lopes de Almeida a 6-month suspension for the doping offence. This is indisputably a doping decision as set forth under Article 61 of the FIFA Statutes. The fact that the higher judicial body of the FPF acquitted him exclusively on procedural grounds rather than entering into the substance does not change the nature or the cause of the

proceedings initially opened, which remains the doping offence. At first, Mr Nuno Assis Lopes de Almeida was found guilty of a doping offence then he was acquitted of a doping offence. How the Judicial Board of the FPF achieved this last result does not change the fact that its decision is a doping decision, the result of which is that the charge on the player was lifted. This amounts to rendering a decision that the player was sentenced for the offence in question, that is a "doping-related decision" in the sense of Art 61 para. 5 of the FIFA Statutes.

50. In view of the above, this appeal is admissible, as it was lodged timely, against a doping-related decision by WADA, which was entitled to appeal.

IV.4 MERITS

51. The main issues to be resolved by the Panel are:

- a) Was the player's right of proper defence respected?
- b) Should the analysis report of the A and B-samples be disregarded because of the inconsistencies of the doping test procedure?
- c) Has a doping offence been committed?
- d) What is the sanction and how should it be calculated?

a) Was the player's right of proper defence respected?

52. According to the Respondents, in the applicable Portuguese regulations, the principle of *nulla poena sine culpa* is one of the foundations of criminal law. Sports disciplinary bodies are not entitled to suspend athletes who violate anti-doping rules without finding fault. The burden of proof is placed upon the accusing side to establish that the athlete used a prohibited substance by deliberate intent or gross negligence. Such evidence was not provided in the matter at hand, at least not at the first stage of the disciplinary proceedings before the Disciplinary Committee. It is only when Mr Nuno Assis Lopes de Almeida submitted that proceedings against him were to be dismissed because the charges were not correctly supported, that the first Judicial Body of the FPF supplemented the said charges to be held against the player. According to the Respondents, once a "charge sheet" has been drafted and the statement of defence has been submitted, it is not legally possible to supplement the "charge sheet".

53. As seen before, the CAS has jurisdiction over this dispute on the basis of Article 60 of the FPF Statutes. Art. R57 of the Code provides that "*the Panel shall have the power to review the facts and the law*". Under this provision, the Panel's scope of review is basically unrestricted. It has the full power to review the facts and the law. The Panel may even request the production of further evidence. In other words the Panel has the power to establish not only whether the decision of a disciplinary body being challenged was lawful or not, but also to issue an independent decision based on the rules of the FPF. According to a rule that exists in most legal systems, a complete investigation by an appeal authority, which has the power to hear the case, remedies, in principle, most flaws in the procedure at first instance. Hence, if there had been procedural irregularities in the proceedings before the disciplinary bodies of the FPF, it would be cured by the present arbitration proceedings (CAS 2004/A/607 Galabin Boevski v/IWF; CAS 2004/A/633 IAAF v/ FFA & Mr Chouki; CAS 2005/A/1001 Fulham FC (1987) Limited v/ FIFA).
54. In the present case, Mr Nuno Assis Lopes de Almeida has been given all opportunities to exercise his right to be heard, both in writing and orally. At the end of the hearing held on 11 December 2006, his representative acknowledged that the player's right to be heard had been respected. Any potential breaches with respect to principle of natural justice have therefore been remedied.
55. This notwithstanding, the Panel considers that the Respondents' allegations regarding the violations of Mr Nuno Assis Lopes de Almeida's procedural rights are also groundless for the applicable regulations make absolutely clear that a doping offence occurs when a prohibited substance is found in the players' bodily specimens regardless of intent, fault, negligence or knowing use. There is a presumption of fault on the part of the player. Mr Nuno Assis Lopes de Almeida cannot derive any right from the fact that the prosecuting party omitted to allege and to prove that he intentionally or negligently used a prohibited substance.
56. The fact that the applicable rules and regulations provide for a strictly objective definition of doping results notably from the following provisions:
- The Decree-law 183/97:

- Article 2 para 1 *“Definitions: For the purposes of this statute: a) “Doping” means the administering to sports practitioners or the use by them of those pharmacological classes of substances or methods which appear on the lists approved by the competent national and international sporting organisations;”*
 - Article 13: *“The consequences of the discovery of doping: Any positive result given by a laboratory exam carried out within the ambit of an anti-doping control shall obligatorily give rise to disciplinary consequences, and in those cases in which they are provided for, to sporting consequences”.*
 - Article 15: *“The disciplinary penalties applicable to practitioners:*
 1. *As far as sports practitioners are concerned, the disciplinary consequences of a positive result given by a laboratory exam carried out within the ambit of an anti-doping control shall be as follows: (...)*
 2. *The penalties referred to in the previous paragraph may exceptionally be attenuated if, once the opinion of the National Anti-Doping Council has been heard, such Council issues a written and justified report recommending such attenuation.*
 3. *The exceptional attenuation referred to in the previous paragraph may consist either in the application of a lower level of penalty or in the application of a penalty which is less than the limit referred to in subparagraph a) of paragraph no. 1 above.*
 4. *The exceptional attenuation referred to in this article shall be based on the nature of the substance that is detected and shall only be proposed in those cases in which the guidelines issued by the International Olympic Committee in relation to such a case recommend the application of penalties which are less than those provided for in paragraph no. 1 above.”*
- FPF Doping Control Regulations (as translated into English by WADA):

Article 10: “The players deemed responsible by the positive analysis in the doping control test to which they were subject under the terms of these Regulations will be sanctioned as follows: (...)

The sanctions referred to in the preceding paragraph may be mitigated in extraordinary circumstances within the terms of the antidoping law”

57. Under those circumstances, the Panel finds no reasons to depart from the position expressed by the Judicial Board of the FPF in Case n° 481/CJ Management board of FPF v/ Rui Miguel Magalhães Lopes, 21 August 2002 (as translated into English by WADA):

“This case essentially falls under the provisions of Decree-Law no. 183/97 of 26 July,(...)

Article 2 (a) states that “doping means the administration to or use by sportsmen and/or women of the pharmacological classes of substances or methods included in the lists approved by the competent national and international sporting organisations”.

From a careful analysis of the aforementioned provision, it is easy to conclude that our legislature opted for a strictly objective definition of doping. The same can be said of the fact that the mere use of a substance or method included in the lists approved by the competent organisations suffices for the legal condition to be met.

As has already been stated, the case in question – doping – is the object of special and specific legislation, as is moreover evident from the preamble to the aforementioned Decree-Law (no. 183/97), the International Olympic Charter against Doping in Sport and the European Convention against Doping.

In establishing an objective definition within the aforementioned framework, the legislature from the outset excluded the general rules – in which the perpetrator must foresee the result of his actions – from doping cases.

This therefore means that a sportsman or woman who uses substances or methods included in the tables approved by national or international sporting organisations – i.e. use that is deemed proved by the respective result of expert testing that has been carried out – commits an offence”.

58. In the view of the above, the Respondents cannot succeed with an argument that there were irregularities in the proceedings before the Disciplinary Committee of the FPF.

b) Should the analysis report of the A and B samples be disregarded because of the inconsistencies of the doping test procedure?

59. In his submissions, Mr Nuno Assis Lopes de Almeida presented what he considered as indications of wrongdoing in the testing process. At the hearing before the CAS, Mr Luis Horta was put at the disposal of the player’s experts and answered all their questions. He also addressed each of the alleged inconsistencies. The Panel found Mr Luis Horta’s testimony both credible and compelling.

60. The Panel reviewed thoroughly all the allegations of the experts. The player's criticisms against the testing process of the LAD can be briefly examined hereafter:

- Mr Nuno Assis Lopes de Almeida alleges that there is a breach of Article 21 of the Administrative Order N° 816/97 of 5 September 1997 according to which “*The sending of the samples, by means of a safe transport, must occur as rapidly as possible after the conclusion of the control.*” The samples were delivered to the LAD 82 hours after the sampling collection. With such a delay, the player contends that it

is plausible that the urines developed 19-norandrosterone.

Mr Luis Horta explained that, in the said provision, the emphasis must be on “*the safe transport*”. In order to comply with WADA requirement, the CNAD conveys samples with a certified transport company, which does not work on Sunday. The samples could not be sent any earlier or faster. Furthermore, and as an additional guarantee for the player, a stability test was performed on the latter’s sample. According to the LAD, the urine was stable and no degradation of the sample could be observed.

The Panel, based on objective criteria, is not convinced of the occurrence of the alleged effects of time on the player’s urine. The assertions made by Mr Nuno Assis Lopes de Almeida were not substantiated by anything concrete.

- The player submits that someone named “Antonio” carried out operations, and that no such person is listed as a member of the personnel involved in the analyses of the samples.

Mr Luis Horta explained that “Antonio” is actually the designation used to identify a machine in the laboratory. The Panel accepts this explanation and considers that this contention by the player does not affect the credibility of the results of the analysis.

- The player’s experts pointed out inconsistencies which as a result of the way the data were presented in the documentation package related to the analysis procedure of the A and B-samples. Some comments were made with regard to transcription errors.

It appears to the Panel that those inconsistencies were minor and could not vitiate the testing results. In this regard, the Panel observes that Mr Nuno Assis Lopes de Almeida had representatives attend the B-sample analysis. On that occasion, those representatives had access to all the desired information. They were able to assess appropriateness of the methodology used by the LAD and the analyses, interpretations and presentation of data. They could have made positive suggestions concerning the procedure used.

At the hearing, one of the player’s experts, Mr Jorge Manuel Da Silva Barbosa, confirmed that, although not clear, the tests results could be considered as correct and consistent. It appears therefore to the Panel that the witness expert proposed by the

Appellant and one of those proposed by the Respondents concur on the fact that these purported inconsistencies had no effect on the result of the analyses. The Panel accepts this position shared by the experts in question.

- Finally, the player submits that statistically speaking, the results of the B-sample are not reliable. The demonstrations made by the concerned expert, Mr Humberto Ferreira, tend to put into question the International Standard for Laboratories in general. They must be regarded as general and theoretical views, not applicable to the specific case. In this context, the Panel determines that this argument shall be disregarded without further consideration.

61. The Panel came to the clear conclusion that the “inconsistencies” relied upon by Mr Nuno Assis Lopes de Almeida did not cast any doubt on the results of the LAD and did not cause or contribute to a false adverse analytical finding.

c) Has a doping offence been committed?

62. Article 1 of the Doping Control Regulations of FPF (as translated into English by WADA) provides that “*For the purpose of these Regulations, the substances and products considered to be doping products are those included in the list that constitutes APPENDIX I to these Regulations, which may be revised whenever determined by the competent authorities.*”

63. According to the said appendix (“*lista constante do Comunicado n.º 96 da Federação Portuguesa de Futebol e em vigor desde 2004.01.01*”) 19-norandrosterone at a concentration higher than 2 ng/ml is considered as a prohibited substance.

64. In the player's A and B-samples, 19-norandrosterone was detected respectively at a concentration of 4.5 ng/ml and at a concentration of 4 ng/ml.

65. The presence of a prohibited substance in the player's urine was established. Therefore, the burden of adducing exculpatory circumstances is shifted to Mr Nuno Assis Lopes de Almeida. The latter did not begin to make credible or even plausible that, in his case, the high concentration of 19-norandrosterone can be explained by an endogenous production, caused by the absorption of authorized substances. The contentions made by the player were not substantiated by anything concrete. Furthermore, the player has not substantiated that he bears no fault or negligence for the anti-doping rule violation.

66. Mr Nuno Assis Lopes de Almeida also suggests that he is the victim of a conspiracy. Such a statement is not credible absent a basis in fact. He adduced no evidence to ascertain a credible plot hatched against him. In particular, he did not give any plausible reasons on why and how somebody would try to harm his interests. The alleged questionable attitude of the CNAD does not explain the positive findings of his samples.
67. Based on the foregoing and after careful analysis of the facts and evidence submitted to it by the parties, the Panel concludes that Mr Nuno Assis Lopes de Almeida's urine samples contained 19-norandrosterone at a concentration higher than 2 ng/ml. In reaching this conclusion, the Panel has no difficulty in rejecting the player's explanations according to which the high concentration of 19-norandrosterone in his urine samples can be explained by an endogenous production.
68. Based on the totality of the evidence, it has been proven beyond reasonable doubt that Mr Nuno Assis Lopes de Almeida committed a doping offence prohibited by the FPF applicable rules and regulations and must take responsibility for it.

d) What is the sanction and how should it be calculated?

69. Article 10 of the FPF Doping Control Regulations provide that *"The player deemed responsible by the positive analysis in the doping control test to which they were subject under the terms of these Regulations will be sanctioned as follows: a) Six months to two years' suspension from the sport, in the case of a first offence."*
70. It is well established that a two-year suspension for a first time doping offence is legally acceptable (Gabrielle Kaufmann-Kohler, Giorgio Malinverni, Legal opinion on the conformity of certain provisions of the draft World Anti-Doping Code with commonly accepted principles of international law, 2003, N°62 et seq., p. 22; CAS 2005/A/922 Danilo Hondo c/Swiss Cycling & Swiss Olympic; CAS 2005/A/926 UCI c/Danilo Hondo & Swiss Olympic).
71. However, in assessing the appropriate sanction the Panel takes the following factors into account. First, Mr Nuno Assis Lopes de Almeida has never previously been found guilty of an anti-doping rule violation. This, of itself, is of comparatively little weight: the same point can be made for any first-time offender. Secondly, however, and more importantly, the Panel has been concerned that the procedures before the judicial bodies

of the FPF were slow and suffered from inconsistencies, with the result that the player was left in a state of uncertainty for a period of 12 months, which is a very long period in sporting matters, and the antithesis of the intention of the anti-doping regime that matters should be dealt with speedily. Thirdly, the player has already been suspended for a certain period of time after which he reintegrated his team. Should he be suspended again, the sanction would be perceived as being a bigger penalty than one continuous suspension. The decision of the Disciplinary Committee of the FPF only imposed a 6-month suspension upon him. In this context, it should be noted that as nobody else appealed, if Mr Nuno Assis Lopes de Almeida had not brought the case before the Judicial Board of the FPF, a 6-month suspension would have been the final sanction.

72. As against those factors, the Panel takes into account that Mr Nuno Assis Lopes de Almeida has never attempted to explain how the prohibited substance came to be in his bodily substances. He has never given evidence. He has made a number of wild, and unsubstantiated allegations, which he has not attempted to support with evidence.
73. The Portuguese regulations do not incorporate the sanction of a 2-year suspension provided for in the World Anti-Doping Code. They permit the tribunal dealing with the matter to exercise its discretion to impose a sanction of between 6 months and two years.
74. If the factors referred to in Paragraph 71 supra had not been present, the Panel would have imposed the sanction of a two-year suspension on Mr Nuno Assis Lopes de Almeida. The failure to proffer any explanation would have meant that the Panel could not have found that there was any mitigation which would lead it to reduce that sanction. To put the matter in the words of the World Anti-Doping Code, Mr Nuno Assis Lopes de Almeida had failed to discharge the burden on him once the adverse analytical finding had been confirmed of establishing “No Fault or Negligence” or “No Significant Fault or Negligence”.
75. However, the Panel has been influenced by the third of the factors identified in Paragraph 71 above. The sanction imposed has to reflect that important aspect of the matter. Based on these considerations, the Panel has concluded that the appropriate sanction to be imposed on Mr Nuno Assis Lopes de Almeida is a 12-month period of suspension. The Panel would simply add that it hopes that a CAS Panel will not, in

future, have to reduce what would otherwise be an appropriate sanction as a result of the failures of the domestic procedures.

V. COSTS

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

R65 Disciplinary cases of an international nature ruled in appeal

R65.1 Subject to Articles R65.2 and R65.4, the proceedings shall be free.

The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS.

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

R65.3 The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

77. As this is a disciplinary case of an international nature, involving a football player of international level and which was brought to CAS by WADA, these proceedings will be free, except for the minimum Court Office fee, already paid by the Appellant, which is retained by the CAS.

78. As a general rule the CAS grants the prevailing party a contribution toward its legal fees and other expenses incurred in connection with the proceedings. In the circumstances of the present appeal, the Panel has concluded that the Player was to be suspended and that it was the FPF's failure to impose the appropriate sanction that led to the appeal. Accordingly, the Panel orders the Player and FPF, remaining jointly and severally liable, to make a contribution to WADA's legal and other costs, in an amount of CHF 5,000.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 25 August 2006 by the World Anti-Doping Agency against the decision issued on 14 July 2006 by the Judicial Board of the Portuguese Football Federation is upheld.
2. The decision issued on 14 July 2006 by the Judicial Board of the Portuguese Football Federation is set aside.
3. Mr Nuno Assis Lopes de Almeida is ineligible to play football for 12 months as from the notification of this award, less 161 days already served under the provisional suspensions.
4. All other motions or prayers for relief are dismissed.
5. This award is pronounced without costs, except for the court office fee of CHF 500 (five hundred Swiss Francs) paid by the World Anti-Doping Agency, which is retained by the CAS.
6. Mr Nuno Assis Lopes de Almeida and the Portuguese Football Federation, remaining jointly and severally liable, are ordered to pay to the World Anti-Doping Agency a contribution towards all its costs incurred in connection with the present arbitration procedure in an amount of CHF 5,000 (five thousand Swiss Francs).

Done in Lausanne, 24 January 2007

Decision served on the parties on 4 January 2007

THE COURT OF ARBITRATION FOR SPORT

President of the Panel
Hans Nater

Peter Leaver
Arbitrator

Jean-Jacques Bertrand
Arbitrator

Patrick Grandjean
Ad hoc Clerk