



Arbitration CAS 2012/A/2986 World Anti-Doping Agency (WADA) v. Riley Salmon & Fédération Internationale de Volleyball (FIVB), award of 30 May 2013

Panel: Mr Olivier Carrard (Switzerland), President; Prof. Martin Schimke (Germany); Mr Clifford Hendel (USA)

Volleyball

Doping (methylhexanamine (dimethylpentylamine))

CAS jurisdiction (notion of appealable decision)

Condition to benefit from a reduced sanction for the presence of a Specified Substance

Sanction for a second anti-doping rule violation

Absence of reduction of the sanction in case of retirement of an athlete

1. CAS has jurisdiction to hear an appeal against a doping-related decision where the rules of a federation clearly provide for the jurisdiction of the CAS against decisions rendered by a federation with regards to anti-doping issues. In this regard, a document called “Acceptance of Sanction”, although not signed by the federation but prepared according to the provisions of the federation’s medical regulations which can be considered to contain a unilateral ruling tending to affect the legal situation of an athlete therefore constitutes a “reasoned decision” appealable before the CAS.
2. Based on the applicable regulations, an athlete failing to give any explanation on how a prohibited substance came to be present in his body and to prove that his level of negligence was not significant will not be able to benefit from a reduced sanction.
3. Based on the applicable regulations, a second anti-doping rule violation committed by an athlete shall be sanctioned by a period of ineligibility between 4 to 6 years.
4. The purpose and intention of WADA is, *inter alia*, to make the fight against doping more effective by harmonising the legal framework and to provide uniform sanctions to be applied in all sports. These rules, for instance, do not distinguish between amateur or professional athletes, old or young athletes or individual sport or team sport. Considering the scope of the applicable rules, being active or retired should not allow an athlete to claim a different treatment and therefore justify a reduction of a sanction.

I. FACTS

A. The Parties

2. The World Anti-doping Agency (“WADA” or “the Appellant”) is an independent foundation, set up to promote, coordinate and monitor the fight against drugs in sport. WADA is responsible for the World Anti-Doping Code, adopted by more than 600 sports organizations, including international sports federations, national anti-doping organizations, the IOC, and the International Paralympic Committee. Its headquarters are located in Montreal, Quebec, Canada.
3. Mr Riley Salmon (“the First Respondent” or “Mr. Salmon”) is an international-level volleyball player born July 2, 1976, who competes for the United States of America.
4. The International Federation of Volleyball (“FIVB” or “the Second Respondent”) is the international governing body for the sport of indoor, beach and grass volleyball. Its headquarters are located in Lausanne, Switzerland.

B. Facts of the case and origin of the dispute

5. Mr. Salmon was sanctioned with a four-month suspension by the FIVB for violating anti-doping policy rules in 2009. Mr. Salmon was taking Avapro, a medication approved by the FIVB for hypertension, however the drug’s replacement Avalide contained a banned substance, hydrochlorothiazide. The suspension period began on May 27, 2009.
6. On May 8, 2012, Mr. Salmon took part in the Continental Men’s Olympic Qualification Tournament in Long Beach, United States.
7. After the competition, Mr. Salmon was selected for an anti-doping control and provided the urine sample no 2615834 in this respect.
8. The sample was sent to the WADA-accredited Laboratory in Los Angeles, United States (hereinafter also “the Laboratory”) on the same day and was received on May 10, 2012.
9. The analysis of Mr. Salmon’s A sample revealed the presence of methylhexanamine (dimethylpentylamine), classified as a prohibited substance (S.6) under the WADA 2012 Prohibited List.
10. The Laboratory notified the FIVB of the Adverse Analytical Finding (hereinafter also “AAF”) in sample 2615834.
11. After an initial Review which determined that no applicable Therapeutic Use Exemption had been granted and there was no apparent departure from the relevant International Standards that caused the Adverse Analytical Finding, the FIVB notified Mr. Salmon of the AAF by

letter of August 16, 2012. He was informed that should he not accept the results of the A Sample analysis, he had the right to request the analysis of the B sample. In addition, the FIVB drew Mr. Salmon's attention on the fact that should the AAF lead to an Anti-doping Rule Violation, this would be the second violation.

12. The B Sample analysis performed by the Laboratory on August 29, 2012 confirmed the presence of methylhexanamine.
13. By a letter dated August 31, 2012, the FIVB informed Mr. Salmon of the result and granted him a deadline to provide it with his official statement and explanations by September 24, 2012.
14. On August 31, 2012, Mr. Salmon sent an email to the FIVB, acknowledging receipt of the letter and the result of the analysis and simply mentioning: *"Ok. Thx I'm retired and obviously took a banned substance I suppose. So what's next? Thx Riley Salmon"*.
15. Mr. Salmon signed a retirement form from FIVB on September 27, 2012 and on the same day¹ accepted, by signing a document provided by FIVB (although not apparently signed by it) and captioned "Acceptance of Sanction" a proposed sanction of a one-year period of ineligibility for his second anti-doping rule violation.
16. WADA was informed of the "Acceptance of Sanction" on October 10, 2012. It then requested to be provided with the full file case on October 19, 2012, which was sent by the FIVB on October 24, 2012 and delivered to the WADA on October 26, 2012.

C. Proceedings before the Court of Arbitration for Sport

17. The Appellant filed its Appeal Brief on November 16, 2012 before the Court of Arbitration for Sport ("the CAS").
18. On November 20, 2012, the CAS Court Office acknowledged receipt of the Appeal Brief of the WADA and, among other issues, informed the Parties that an ordinary appeals procedure had been entertained. The CAS Court Office invited the Respondents to submit their answers within twenty days of receipt, containing a statement of defence, any defence of lack of jurisdiction and related exhibits, as well as any name of witnesses or experts whom they intend to call. In addition, the Respondents were granted a deadline of ten days to nominate a common arbitrator.
19. The FIVB answered, on December 3, 2012, that it would agree to the appointment of any CAS arbitrator chosen by Mr. Salmon. In the event that Mr. Salmon would not select any arbitrator, the FIVB asked for an extension of the deadline until December 7, 2012 to submit the name of its appointee.

¹ The document is undated, but the Parties do not question that it was signed on September 27, 2012.

20. By letter dated December 4, 2012 and given that Mr. Salmon did not provide the CAS with a choice of arbitrator, the CAS Court Office informed the Parties that, unless instructed otherwise by the Appellant, the request of the FIVB for an extension of its time limit to nominate an arbitrator until December 7, 2012 was granted.
21. On December 7, 2012, the FIVB appointed its arbitrator.
22. By an email dated December 12, 2012, which was forwarded by the FIVB to the CAS Court Office, Mr. Salmon requested an extension of the time limit to file his Answer.
23. On the same day, the CAS Court Office informed the Parties that Mr. Salmon was invited to communicate within 2 days the number of days requested for the extension and suspended in the meanwhile the deadline to file the Answer.
24. In the absence of answer from Mr. Salmon within the granted time limit, the CAS Court Office informed the Parties on December 18, 2012 that Mr. Clifford Hendel was considered as the arbitrator nominated by the Respondents.
25. On December 20, 2012, the CAS Court Office asked the Parties whether they had an objection to the nomination of Dr. Martin Schimke, who accepted his nomination but wished to disclose some information. The CAS Court Office specified that should this be the case, the Parties had a deadline of seven days to challenge his nomination.
26. The FIVB replied by letter dated December 21, 2012 that it had no objection to the nomination of Dr. Schimke as arbitrator.
27. By letter dated January 3, 2013, the CAS Court Office considered that, given Mr. Salmon did not reply within the granted time limit the length of extension he requested in order to file his Answer, the first given deadline was valid as from receipt of the letter.
28. Mr. Salmon didn't file any Answer before the CAS. The FIVB provided the CAS Court Office with its statement of defence on December 10, 2012.
29. The FIVB and WADA informed the CAS Court Office on January 28, 2013 that they did not consider the organisation of a hearing necessary in the case at hand. In addition, the FIVB requested the Panel to hold Mr. Salmon solely responsible for the Appellant's fees should the Appeal be upheld.
30. By a letter of the CAS Court Office dated January 30, 2012, Mr. Salmon was granted a deadline to take position on this question by February 4, 2013. He did not reply.
31. On February 11, 2013, the Parties were informed by the CAS Court Office that, pursuant to Article R54 of the Code of Sports-related Arbitration ("Code"), the case was file was transmitted to the Panel established to decide the case, which was composed of:

President: Mr Olivier Carrard, attorney-at-law in Geneva, Switzerland
Arbitrators: Dr Martin Schimke, attorney-at-law in Dusseldorf, Germany
Mr Clifford Hendel, attorney-at-law in Madrid, Spain

32. Upon review of the file by the Panel, and on its behalf, the CAS Court Office invited the Parties by a letter dated March 27, 2013 to provide it before April 5, 2013 with any complementary information with respect i) to the date of notification of the challenged decision and, ii) to any document attesting the exact date of the Appellant's request of the complete file in accordance with article 13.6 of the FIVB Medical Regulations.
33. The WADA replied by a letter dated April 2, 2013 that it was notified by the FIVB with the Acceptance of Sanction on October 10, 2012 and requested on October 19, 2012 the FIVB to provide it with the full case file, which was delivered on October 26, 2012.

D. The Appellant's submissions

34. In its Appeal Brief, the Appellant requests the following relief:
- "1) The Appeal of WADA is admissible.*
- 2) The decision rendered by FIVB in the matter of Riley Salmon is set aside.*
- 3) Mr. Riley Salmon is sanctioned with a four-year period of ineligibility, starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by Mr Riley Salmon before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*
- 4) WADA is granted an award for costs".*
35. In summary, the Appellant's submissions in support of its appeal are as follows:
- Mr. Salmon was tested positive for methylhexanamine;
 - Methylhexanamine is defined as a specified and prohibited substance under S.6 on the 2012 WADA Prohibited List;
 - Mr. Salmon did not provide with any information as to how the substance entered into his body;
 - Mr. Salmon has tested positive for the second time in his career;
 - Therefore, Mr. Salmon cannot profit from an elimination or reduction of the period of ineligibility based on Art. 10.4. of the FIVB Medical Regulations ("MR") and the FIVB should have sanctioned Mr. Salmon with a minimum of four-year period of ineligibility according to Art. 10.7.1 of the FIVB MR, which applies in cases of second Anti-doping Rule violation.

E. The Respondent's submissions

36. Mr. Salmon did not file a written response. Pursuant to R44.5 of the Code, the Panel is nevertheless entitled to proceed with arbitration and deliver an award.
37. As for it, the FIVB filed its statement of defence on December 10, 2012.
38. To sum up, the FIVB argues that, given that Mr. Salmon was retiring from volleyball and beach volleyball by signing the "Athlete Retirement Form", did not request the analysis of the B sample, and accepted the anti-doping rule violation, the FIVB was entitled to propose a sanction based on Art. 8.1.6 of the FIVB MR, which is identical to Art. 8.1.5 of the WADA Model Rules for IF's. FIVB also mentions that at the relevant time its dispute resolution system was being reorganized and that any other manner of proceeding would have caused delays in the process.
39. The FIVB mentions that the use of methylhexanamine, a specified substance, could lead to a reduced sanction. It also submits that in the cases where an Athlete accepts to retire from sport the anti-doping organization should have further flexibility in proposing a sanction, and asserts that WADA's appeal should be rejected because FIVB had not issued a formal decision in its opinion.
40. In addition, the FIVB contends that the proposed sanction falls within the range of sanctions provided in Art. 10.7 of the FIVB MR and therefore did not violate the legal provisions.
41. For these reasons, the FIVB concludes that the CAS Panel should reject the appeal of WADA.

II. LEGAL DISCUSSION

A. Jurisdiction of the CAS

42. As the CAS is an international arbitral tribunal, has its seat in Switzerland and as one of the parties does not have his/her domicile or habitual residency in Switzerland, pursuant to Article 176 of the Swiss Private International Law Act (PIL), chapter 12 of this act (articles 176 to 194 PIL) is applicable to this arbitration (cf. CAS 2005/A/983 & 984 marg. no. 61 & CAS 2006/A/1180 marg. no. 7.1).
43. According to article 186 of the PIL, the arbitral tribunal shall rule on its own jurisdiction. Therefore, CAS is competent to rule on its own jurisdiction.
44. The FIVB initially confirms admissibility of the case and the jurisdiction of the CAS, but later asserts that the relief requested by WADA must be rejected since FIVB did not issue a "decision".

45. The question must therefore be asked whether the “Acceptance of Sanction” constitutes or can be deemed to constitute a “reasoned decision” for purposes of the last sentence of FIVB MR 8.1.6, which can be appealed before the CAS.
46. Article R47 of the Code states that *“an appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”*.
47. Entitled *“decisions subject to appeal”*, Art. 13.1 of the FIVB MR reads as follow:
“Decisions made under these Anti-Doping Rules may be appealed as set forth below in Articles 13.2 through 13.4 or as otherwise provided in these Anti-Doping Rules. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, any post decision review authorized in these rules must be exhausted (except as provided in Article 13.1.1)”.
48. In the FIVB’s regulations, CAS jurisdiction for cases arising from competition in an international event or involving international-level athletes is addressed at Art. 13.2.1 of the FIVB.
49. Article 13.2.3 of the FIVB MR notably provides that *“In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the FIVB and any other Anti-Doping Organization under whose rules a sanction could have been imposed; (d) the International Olympic Committee or International Paralympics Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympics Games, including decisions affecting eligibility for the Olympic Games or Paralympics Games; and (e) WADA (...)”*.
50. In addition, Art. 8.1.6 of the FIVB MR is of interest for the case at hand and specifies that *“An Athlete or other Person may forego a hearing by acknowledging the Anti-Doping Rule violation and accepting Consequences consistent with Articles 10 and 11 as proposed by the FIVB. The right to a hearing may be waived either expressly or by the Athlete’s or other Person’s failure to challenge FIVB’s assertion that an anti-doping rule violation has occurred within three weeks. Where no hearing occurs, FIVB shall submit to the persons described in Article 12.2.3 a reasoned decision explaining the action taken”*.
51. Furthermore, pursuant to Art. 8.1.7, *“Decisions of the FIVB Doping Hearing Panel may be appealed to Decisions of the FIVB Doping Hearing Panel may be appealed to the Court of Arbitration for Sport (“CAS”) as provided in Article 12”*.
52. Those provisions clearly provide for the jurisdiction of the CAS against decisions rendered by the FIVB with regards to Anti-Doping issues.

53. In addition, the argument of the FIVB that the document called “Acceptance of Sanction” shall not be considered as a decision cannot be followed. Indeed, CAS case law specified the notion of “appealable decision” (CAS 2008/A/1633):
“The existence of a decision does not depend on the form in which it is issued and thus a communication made in the form of a letter may also constitute a decision subject to appeal before CAS. A communication intending to be considered a decision shall contain a unilateral ruling sent to one or more recipients and tending to affect the legal situation of its addressee or other parties”.
54. Legal authors also consider that *“an appealable decision of a sport association is normally a communication of the association directed to a party and based on an “animus decidendi”, i.e. an intention of a body of the association to decide on a matter, being also only the mere decision on its competence (or non-competence). A simple information, which does not contain any “ruling”, cannot be considered as a decision”².*
55. Moreover, the Panel notes that the document called “Acceptance of Sanction” signed by Mr. Salmon on September 27, 2012 specifically mentions that *“(…) I understand that WADA is not bound by this acceptance and may appeal it as provided in the FIVB MR. In the event of an appeal, CAS has the authority to impose any sanction it decides in accordance with the applicable rules (…)”*.
56. The attention of Mr. Salmon was therefore directly drawn to the fact that WADA was entitled to lodge an appeal against the sanction.
57. For all the above reasons, and even though the Acceptance of Sanction itself is not signed by the FIVB, the Panel is satisfied that the document called “Acceptance of Sanction” was prepared by the FIVB according to the FIVB MR provisions, specifically Art. 8.1.6, and can be considered to contain a unilateral ruling tending to affect the legal situation of Mr. Salmon; accordingly, it constitutes a “reasoned decision”, which could be appealed before the CAS. Any other finding would ignore the terms of the Acceptance of Sanction and circumvent the spirit of the FIVB MR.
58. Finally, the Panel points out that WADA lodged its appeal within the time limit granted by Art. 13.6 of the FIVB MR, as it requested to be provided with the full file case on October 19, 2012, i.e. within the ten-days deadline provided at Art. 13.6 § 1 (a) of the FIVB MR, and then sent its Appeal brief on November 16, 2012, i.e. within the twenty-one-days deadline provided at Art. 13.6 § 2 (b) of the FIVB MR.
59. Furthermore, pursuant to art. R57 of the Code, the Panel has full power to review the facts and the law and may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

² BERNASCONI M., *When is a « decision » an appealable decision*: in RIGOZZI/BERNASCONI (ed.), *The Proceedings before the Court of Arbitration for Sport*, Berne 2007, p. 273.

B. Applicable law

60. According to Art. R58 of the Code, *“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 [...] which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. [...]”*.
61. In the case under scrutiny, the applicable regulations are those of the FIVB and the WADA Code. The parties did not choose any other rules of law to govern their relationship. The FIVB being domiciled in Switzerland, Swiss law will be applicable where the FIVB regulations are silent.
62. The relevant provisions of the FIVB anti-doping regulations are the ones of the FIVB Medical Regulations. Some of the most relevant provisions for the present case will be summarized below.

“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Athletes and other Persons shall be responsible for knowing what constitutes an antidoping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample.

2.1.1 It is each Athlete’s personal duty to ensure that no Prohibited

Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article

2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete’s B Sample is analyzed 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.

2.1.3 Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers”.

“4.2.2 Specified Substances

For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances”.

“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods

The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years’ Ineligibility”.

“10.7 Multiple Violations

10.7.1 Second Anti-Doping Rule Violation

For an Athlete’s or other Person’s first anti-doping rule violation, the period of Ineligibility is set forth in Articles 10.2 and 10.3 (subject to elimination, reduction or suspension under Articles 10.4 or 10.5, or to an increase under Article 10.6). For a second anti-doping rule violation the period of Ineligibility shall be within the range set forth in the table below.

<i>Second Violation</i>	<i>RS</i>	<i>FFMT</i>	<i>NSF</i>	<i>St</i>	<i>AS</i>	<i>TRA</i>
<i>First Violation</i>						
<i>RS</i>	<i>1-4</i>	<i>2-4</i>	<i>2-4</i>	<i>4-6</i>	<i>8-10</i>	<i>10-life</i>
<i>FFMT</i>	<i>1-4</i>	<i>4-8</i>	<i>4-8</i>	<i>6-8</i>	<i>10-life</i>	<i>life</i>
<i>NSF</i>	<i>1-4</i>	<i>4-8</i>	<i>4-8</i>	<i>6-8</i>	<i>10-life</i>	<i>life</i>
<i>St</i>	<i>2-4</i>	<i>6-8</i>	<i>6-8</i>	<i>8-life</i>	<i>life</i>	<i>life</i>
<i>AS</i>	<i>4-5</i>	<i>10-life</i>	<i>10-life</i>	<i>life</i>	<i>life</i>	<i>life</i>
<i>TRA</i>	<i>8-life</i>	<i>Life</i>	<i>life</i>	<i>life</i>	<i>life</i>	<i>life</i>

Definitions for purposes of the second anti-doping rule violation table:

RS (Reduced sanction for Specified Substance under Article 10.4): The anti-doping rule violation was or should be sanctioned by a reduced sanction under Article 10.4 because it involved a Specified Substance and the other conditions under Article 10.4 were met.

FFMT (Filing Failures and/or Missed Tests): The anti-doping rule violation was or should be sanctioned under Article 10.3.3 (Filing Failures and/or Missed Tests).

NSF (Reduced sanction for No Significant Fault or Negligence): The anti-doping rule violation was or should be sanctioned by a reduced sanction under Article 10.5.2 because No Significant Fault or Negligence under Article 10.5.2 was proved by the Athlete.

St (Standard sanction under Articles 10.2 or 10.3.1): The anti-doping rule violation was or should be sanctioned by the standard sanction of two years under Article 10.2 or 10.3.1.

AS (Aggravated sanction): The anti-doping rule violation was or should be sanctioned by an aggravated sanction under Article 10.6 because the Anti-Doping Organization established the conditions set forth under Article 10.6”.

63. For the rest, the WADA Rules and Guidelines, as well as any relevant other provisions are applicable to the case at hand.

C. Merits of the case

64. In the case at hand, Mr. Salmon’s A and B samples revealed the presence of methylhexanamine.
65. According to the WADA 2012 prohibited List, methylhexanamine is included as a substance prohibited in class S.6 specified stimulant.
66. Pursuant to Art. 2.1. and 2.4. of the FIVB MR and in accordance with the WADA Code, the presence of such substance in an athlete’s body constitutes an anti-doping rule violation sanctioned as per Art. 10 of the FIVB MR.
67. Relying on a long line of CAS cases (see e.g. CAS 2006/A/1067, § 6.8) and on the WADA Code and FIVB MR at Articles 10.4-10.5, principles related to the Athletes’ fault or negligence, it can be observed that the Athlete, in order to establish that he bears no significant fault or negligence, must prove:
- a) how the prohibited substance came to be present in his body and, thus, in his urine samples, and
 - b) that his level of fault or negligence, when viewed in the totality of the circumstances was not significant in relationship to the anti-doping rule violation.
68. In the light of the CAS case-law, the burden of proving the above is a very high hurdle for an Athlete to overcome (cf. e.g. CAS 2005/A/830; TAS 2007/A/1252). Indeed, WADA Code’s official comment to Article 10.5.1 and 10.5.2 unequivocally states that the mitigation of mandatory sanctions is possible “*only in cases where the circumstances are truly exceptional and not in the vast majority of cases*”. The comment shows the intention of WADA to apply the exception in a very restrictive manner. With regard to the standard of proof required from the Athlete, and in accordance with established CAS case-law and the WADA Code, both Articles 10.4 and 10.5 require proof of how the substance came into the body by a “balance of probability”.
69. According to CAS case-law, the balance of probability standard means that the Athlete bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other

possible explanations of the doping offence (see CAS 2004/A/602, § 5.15; TAS 2007/A/1411, § 59). This means also that the evidence considered must be specific and decisive to explain the Athlete's departure from the expected standard of behaviour.

70. Being the presence of a prohibited stimulant in Mr. Salmon's urine undisputed, a breach of the anti-doping rule is established.
71. In addition, Mr. Salmon did not give any explanation on how the prohibited substance came to be present in his body, neither did he prove that his level of negligence was not significant. Indeed, Mr. Salmon simply mentioned that he "*obviously took a banned substance I suppose*".
72. For the reasons described above, the Panel finds therefore that the presence of methylhexaneamine in the Athlete's A and B samples proves that Mr. Salmon violated the FIVB Anti-Doping Regulations, without the Athlete being able to benefit from a reduced sanction based on Art. 10.4-10.5 of the FIVB MR.
73. Pursuant to Art. 10.7.1 of the FIVB Anti-Doping Rules, and as this is the second anti-doping rule violation committed by Mr. Salmon, the period of ineligibility shall be within 4 to 6 years.
74. In addition, the argument of the FIVB that in the cases where an Athlete accepts to retire from sport, this shall lead to the application of a reduction of a sanction, cannot be followed. Indeed, such a case does not fall within the scope of Art. 10.5 of the FIVB MR.
75. Indeed, according to case law (CAS 2009/A/2012, award of 11 June 2010), the purpose and intention of WADA is, *inter alia*, to make the fight against doping more effective by harmonising the legal framework and to provide uniform sanctions to be applied in all sports. These rules, for instance, do not distinguish between amateur or professional Athletes, old or young Athletes or individual sport or team sport. Based on this case law, being active or retired should not allow the Athlete to claim a different treatment.
76. As to the sanction starting date, pursuant to Art. 10.9 of the FIVB MR (which corresponds to Article 10.8 of the WADA Code), the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility, or if the hearing is waived, on the date Ineligibility is accepted.
77. The Panel therefore concludes that a four-year ban shall be imposed on the Athlete and that, as Mr. Salmon accepted his ineligibility on September 27, 2012 by signing the document called "Acceptance of Sanction", the period of ineligibility of four years shall start accordingly on that date.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency against the decision of the International Volleyball Federation dated 27 September 2012 is upheld.
2. The decision rendered on 27 September 2012 by the FIVB is overturned.
3. Riley Salmon is ineligible to compete for a period of four years starting from September 27, 2012. Any period of ineligibility already served by Mr Riley Salmon shall be credited against the total period of ineligibility imposed.
4. (...).
5. All other or further claims are dismissed.