



**Arbitration CAS 2017/A/5142 Fédération Internationale de Football Association (FIFA) v. Fédération Algérienne de Football (FAF) & Walid Abdelli, award of 6 October 2017**

Panel: Mr Alexander McLin (Switzerland), President; Prof. Luigi Fumagalli (Italy); Mr Alain Zahlan de Cayetti (France)

*Football*

*Doping (tampering with doping control)*

*Anti-doping rule violation by dilution of an anti-doping test-related urine sample*

**It is straightforward and obvious that doping control procedures are reliant on the integrity of bodily samples provided by one athlete being tested. It is equally straightforward and obvious that (a) a deliberate introduction of any foreign substance to a urine sample is likely to undermine the effectiveness of doping control tests conducted on a sample and that (b) a deliberate introduction of any foreign substance is therefore prohibited in order to protect the integrity and effectiveness of a doping control process. In such context, an athlete who deliberately diluted his urine sample with water must have known that by doing so, he was committing an anti-doping violation.**

## **I. PARTIES**

1. The Fédération Internationale de Football Association (“**FIFA**”) is an international association of national and international football associations/federations and is the worldwide governing body of the sport of football. FIFA has its seat in Zurich, Switzerland and maintains legal personality under Swiss law.
2. The Fédération Algérienne de Football (“**FAF**”) is the national organisation responsible for administering the sport of football in Algeria. The FAF is a member association of FIFA.
3. Mr Walid Abdelli (the “**Player**”) is a professional footballer of Algerian nationality. At the time of the events which are the subject of these appeal proceedings, the Player played for Mouloudia Club Saida (the “**Club**”), a professional club in the second division of the Algerian football league.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and the evidence adduced at the CAS hearing on 21 September 2017. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted

by the parties in the present proceedings, the Panel refers in the Award only to the submissions and evidence it considers necessary to explain the reasoning for the Panel's decision.

**A. The Player's doping control test**

5. On 22 January 2016, the Player was one of several players who were selected to undergo a doping control test at a match between the Club and Union Sportive Musulmane de Marengo Hadjout.
6. The doping control test was overseen by the Doping Control Officer, Dr Mourad Slimi. Approximately 15 minutes before the end of the match, Dr Slimi informed the Club's manager which of the Club's players would be required to undergo a doping control test immediately after the match. After notifying the manager, Dr Slimi returned to the doping control room to await the arrival of the selected players.
7. The Player was on the substitutes bench throughout the match and was the first player to arrive at the doping control room after the end of the match. Dr Slimi was present when the Player filled a sample collection vessel, although due to his position in the room he did not actually see any liquid leave the Player's body. The liquid provided by the Player was divided into two glass bottles (the "**Berlinger bottles**") that bore the unique number 2905687 (the "**First Sample**").
8. On 24 January 2016, the First Sample was sent to the Swiss Laboratory for Doping Analysis in Lausanne, Switzerland (the "**Lausanne Laboratory**"). The Lausanne Laboratory received the sample three days later on 27 January 2016.
9. On 15 February 2016, the Director of the Lausanne Laboratory, Dr Martial Saugy, sent an email to WADA which explained that analysis of the First Sample indicated that it "*was much closer to water than urine*". The email added that, "*the endogenous values for steroid profile are all under the limit of detection*" and that the Lausanne Laboratory was also "*not able to quantify the creatinine and Total Protein for this sample*".
10. Following an exchange of emails between the Lausanne Laboratory and WADA, it was decided that the FAF should be requested to obtain a further urine sample from the Player. Accordingly, on 23 August 2016, the Player was required to provide a further urine sample (the "**Second Sample**"). The Second Sample was sent to the Lausanne Laboratory together with documents that revealed the name of the Player. As a result of the inadvertent disclosure of the identity of the Player, the Lausanne Laboratory was unable to analyse the Second Sample. Further advice was therefore sought from WADA, which advised that the identifying information should be removed and the First and Second Samples should be sent to the WADA-accredited laboratory in Cologne (the "**Cologne Laboratory**") for analysis and comparison.
11. On 8 December 2016, the First Sample and the Second Sample were sent to the Cologne Laboratory, which received the samples the following day.

## **B. The Adverse Analytical Finding**

12. After analysing the samples, on 10 January 2017 the Cologne Laboratory issued an Adverse Analytical Finding for a prohibited method, namely "*Urine substitution*" involving "*Chemical and physical manipulation*" in respect of the First Sample. In issuing this finding, the Cologne Laboratory stated that the First Sample "*is not a urine sample*".
13. The Player was subsequently notified of the result of the analysis of the A-Sample of the First Sample. On 24 January 2017, the Player decided not to request analysis of the B-Sample.

## **C. Decision of the FAF Disciplinary Commission**

14. On 6 February 2017, the *Commission de Discipline Ligue de Football Professionnel* (the "**Disciplinary Commission**") held a hearing in respect of the Player's alleged violation of the FIFA Anti-Doping Regulations. The Player attended the hearing, which took place at the headquarters of the Algerian Professional Football League.
15. On 20 February 2017, the Disciplinary Commission communicated its decision to the Player. The Disciplinary Commission's subsequent written decision, dated 12 April 2017, stated that the doping control process had been conducted in accordance with the applicable procedures and requirements. The Player did not dispute that the analysis established that the First Sample had been diluted with water. He did, however, deny any involvement in the dilution of the sample. According to the Disciplinary Commission, the Player stated that he was the Club's third-choice goalkeeper and had yet to make a single appearance for the Club. In those circumstances, he had no reason to falsify the First Sample as he had not taken any substance for doping reasons.
16. The Disciplinary Commission concluded that the Player had committed an anti-doping violation, but that he had done so "*without having had the intention of doping*" (The written decision did not identify the basis for the Disciplinary Commission's conclusion that the violation was unintentional). Accordingly, the Disciplinary Commission held that the Player would be banned from participating in any football-related activity for a period of two years, one year of which would be suspended. The Disciplinary Commission stated that the period of suspension would run from 6 February 2017 until 5 February 2018.

## **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

### **A. The appeal**

17. On 12 March 2017, the FAF informed FIFA about the decision of the Disciplinary Commission. Following an exchange of correspondence between FIFA and the FAF concerning the provision of relevant documents concerning the Player's case, on 27 April 2017 the FAF sent FIFA the complete case file in respect of the proceedings before the Disciplinary Commission.

18. On 17 May 2017, FIFA filed its Statement of Appeal at the CAS Court Office. In its Statement of Appeal, FIFA nominated Prof. Luigi Fumagalli as arbitrator in this matter and requested a five-day extension of the deadline for filing its Appeal Brief.
19. On 22 May 2017, the CAS Court Office notified FIFA that its request for a five-day extension of time had been granted. The letter also requested the Respondents to jointly nominate an arbitrator within ten days of receipt of the letter.
20. On 1 June 2017, FIFA filed its Appeal Brief.
21. On 14 June 2017, the Secretary General of the FAF wrote to the CAS acknowledging receipt of FIFA's appeal and requesting the CAS to direct FIFA to provide the FAF with a French translation of its Appeal Brief, in order to enable the FAF to prepare its response as soon as possible.
22. On 16 June 2017, the CAS wrote to the parties noting that the Respondents had failed to nominate an arbitrator within the deadline prescribed in the letter from the CAS Court Office dated 22 May 2017. Accordingly, the letter explained that pursuant to Article R53 of the CAS Code, the President of the CAS Appeals Arbitration Division would proceed to appoint an arbitrator.
23. On 27 June 2017, the FAF notified the CAS that it did not intend to file an Answer Brief and did not intend to contradict FIFA's position in the field of anti-doping. The letter emphasised that the FAF was determined to pursue a resolute battle against doping, as evidenced by its recent involvement in CAS 2016/A/4557 and CAS 2017/A/4992 and other anti-doping procedures. It added that a representative of the FAF would attend a hearing "*if the Panel would decide to hold one*". The letter stated that this would enable the FAF to explain its position to the Panel and to discuss "*hypotheses*" concerning the Player's case that "*were not likely to have their place in a defence brief*".
24. The Player failed to file any Answer Brief pursuant to Article R55 of the CAS Code.
25. On 12 July 2017, the CAS wrote to the parties informing them that the Panel appointed to decide the present case would comprise:
  - President: Mr Alexander McLin, Attorney-at-law in Geneva, Switzerland; and
  - Arbitrators: Prof. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy and Mr Alain Zahlan de Cayetti, Attorney-at-law (Bar of Paris) in Dubai, United Arab Emirates.
26. On 24 July 2017, the CAS wrote to the parties inviting them to state by 31 July 2017 whether they preferred the Panel to hold a hearing or to issue an award based solely on the parties' written submissions.

27. On 25 July 2017, FIFA wrote to the CAS stating that it was of the view that a hearing should be held in the present case.
28. The Respondents did not reply to the letter from the CAS dated 24 July 2017 by the deadline specified in that letter. Accordingly, on 7 August 2017 the CAS wrote to the parties stating that, in view of the absence of any correspondence from the FAF or the Player regarding the merits of the case, FIFA would be granted until 9 August 2017 to state whether it maintained its request for a hearing to be held.
29. The following day, on 8 August 2017, FIFA wrote to the CAS stating that a hearing would be unnecessary “[i]f the Panel deems the written statements made by the witnesses and experts admissible and credible without the appearance of those witnesses and experts at a hearing”.
30. On 11 August 2017, the CAS wrote to the parties informing them that, pursuant to Article R57 of the CAS Code, the Panel considered itself sufficiently well-informed to determine the case based solely on the written submissions without the need to hold a hearing.
31. On 14 August 2017, the CAS wrote to the parties enclosing a copy of the Order of Procedure, which the parties were requested to sign and return by 21 August 2017.
32. On 17 August 2017, the FAF wrote to the CAS in response to that letter. The FAF requested an opportunity to address aspects of the case which it said could not be addressed in written submissions. It therefore requested the CAS to hold a hearing in order to ensure that the Panel was able to determine the appeal on the basis of a full knowledge of the facts.
33. On 22 August 2017, FIFA signed and returned the Order of Procedure in this case. The FAF did not sign the Order of Procedure although, as explained below, it did not dispute the jurisdiction of the CAS with respect to FIFA’s appeal.
34. On 25 August 2017, the CAS wrote to the parties stating that in accordance with Article R57 of the CAS Code, and in light of the FAF’s request for a hearing, the Panel had decided that it would hold a hearing in this matter.
35. On 21 September 2017, an oral hearing took place before the CAS in Lausanne, Switzerland.
36. The Panel was assisted at the hearing by Mr William Sternheimer (Deputy Secretary General of the CAS) and Mr Edward Craven (*Ad hoc* clerk).
37. The following witnesses gave evidence at the hearing:
  - Dr Norbert Baume (in person)
  - Dr Mourad Slimi (by telephone)
  - Mr Djamal-Eddine Damerdij (by telephone)

38. In addition, the following persons attended the hearing:
- Mr Volker Hesse (Counsel for FIFA)
  - Mr Alexis Weber (FIFA Head of Medical & Anti-Doping)
  - Mr Hammouda Youcef
  - Mr Haddaj Hamid
39. The Player did not attend the hearing and did not send any documents or communications to the CAS at any time during the appeal proceedings.

**B. The issues**

40. The issues that arise for determination by the CAS Panel in this appeal may be summarised as follows:
- (a) What is the appropriate sanction in respect of the Player's anti-doping violation?
  - (b) When should the Player's period of ineligibility commence?

**C. The relevant regulations**

41. Before summarising the parties' submissions, the Panel sets out the relevant provisions from the WADA and FIFA anti-doping testing rules and regulations.

**a. FIFA Anti-Doping Regulations**

42. Article 7 of the FIFA Anti-Doping Regulations (the "**FIFA ADR**") states:

*"Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method*

- 1. It is each Player's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
- 2. The success or failure of the Use or attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or attempted to be Used for an anti-doping rule violation to be committed".*

43. Article 10 of the FIFA ADR states:

*“Tampering or attempted tampering with any part of Doping Control*

*Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organisation or intimidating or attempting to intimidate a potential witness”.*

44. Article 66 of the FIFA ADR addresses the applicable burden and standard of proof in cases concerning alleged anti-doping violations:

*“Burdens and standards of proof*

1. *FIFA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIFA has established an anti-doping rule violation to the comfortable satisfaction of the FIFA Disciplinary Committee, bearing in mind the seriousness of the allegation which is made. In all cases, this standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*
2. *Where these regulations place the burden of proof upon the Player or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability”.*

45. Article 67 of the FIFA ADR contains further provisions concerning the rules of proof and presumptions applicable in anti-doping cases:

*“Methods of establishing facts and presumptions*

1. *Facts related to anti-doping rule violations may be established by any reliable means, including admissions.*
2. *The following rules of proof shall be applicable in doping cases:*

*(...)*

- b) *WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Player or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Player or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, FIFA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*
- c) *Departures from any other International Standard or other anti-doping rule or policy set forth in the WADA Code or these Regulations which did not cause an Adverse Analytical Finding or other*

*anti-doping rule violation shall not invalidate such evidence or results. If the Player or other Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation, FIFA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.*

(...)

*(e) The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the Player or other Person who is asserted to have committed an anti-doping rule violation based on the Player's or other Person's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or FIFA".*

46. Article 19 of the FIFA ADR governs the period of ineligibility that must be imposed where a Player is found to have used a prohibited method:

*"The period of ineligibility for a violation of arts 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample), 7 (Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method) or 11 (Possession of a Prohibited Substance or a Prohibited Method) shall be as follows, subject to potential elimination, reduction or suspension pursuant to arts 21 (Elimination of the Period of Ineligibility where there is No Fault or Negligence), 22 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) or 23 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault):*

*1. The period of ineligibility shall be four years where:*

- a) The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional;*
- b) The anti-doping rule violation involves a Specified Substance and FIFA can establish that the anti-doping rule violation was intentional.*

*2. If art 19 par. 1 does not apply, the period of Ineligibility shall be two years.*

*3. As used in arts 19 (Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method) and 20 (Ineligibility for Other Anti-Doping Rule Violations), the term "intentional" is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk".*

47. Article 20(1) of the FIFA ADR contains further provisions concerning the period of ineligibility for other anti-doping violations:



*“Ineligibility for other anti-doping violations*

*The period of Ineligibility for anti-doping rule violations other than as provided in art. 19 (Ineligibility or presence, Use or attempted Use, or Possession of a Prohibited Substance or Prohibited Method) shall be as follows, unless arts 22 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) or 23 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault) are applicable:*

- 1. For violations of art. 8 (Evading, refusing or failing to submit to Sample collection) or art. 10 (Tampering or attempted Tampering with any part of Doping Control), the period of Ineligibility shall be four years unless, in the case of failing to submit to Sample collection, the Player can establish that the commission of the anti-doping rule violation was not intentional (as defined in art. 19 par. 3), in which case the period of Ineligibility shall be two years”.*

48. Article 28 of the FIFA ADR governs the commencement of any period of ineligibility that is imposed for an anti-doping violation. Article 28(1)-(3(a)) states:

*“Commencement of period of ineligibility*

*Except as provided below, the period of Ineligibility shall start as soon as the decision providing for Ineligibility is communicated to the Player or other Person concerned.*

*Delays not attributable to the Player or other Person*

- 1. Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, the FIFA Disciplinary Committee may decide that the period of Ineligibility shall start at an earlier date, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified.*

*Timely admission*

- 2. Where the Player promptly (which, in all events, for a player means before the Player competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by FIFA, the period of Ineligibility may start as early as the date of sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this article is applied, the player shall serve at least one half of the period of Ineligibility going forward from the date the player accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This shall not apply where the period of Ineligibility has already been reduced under art. 23 par. 3 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault)”.*

*Credit for Provisional Suspension or period of Ineligibility served*

*(a) If a Provisional Suspension is imposed and respected by the Player or other Person, the Player or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, the Player or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.*

49. Annex D of the FIFA ADR contains specific provisions concerning doping control testing procedures. Article 7 of Annex D establishes the procedure for the collection of urine samples. Sub-paragraph (6) provides:

*“The FIFA Doping Control Officer or his assistant shall proceed to an area of privacy to collect the Sample. The Player shall then urinate into the beaker under the direct supervision of the Doping Control Officer or his assistant, who shall be of the same gender as the Player. The FIFA Doping Control Officer or his assistant shall ensure an unobstructed view of the Sample leaving the Player’s body”.*

**b. WADA Prohibited List**

50. The WADA Prohibited List states at paragraph 1 of M2:

*“The following are prohibited:*

- 1. Tampering, or Attempting to Tamper, to alter the integrity and validity of Samples collected during Doping Control.*

*Including, but not limited to:*

*Urine substitution and/or adulteration, e.g. proteases”.*

**D. Submissions of the Parties**

51. The parties’ submissions, in essence, may be summarized as follows.

**a. Submissions of FIFA**

52. FIFA’s Statement of Appeal dated 16 May 2017 requests the CAS to determine that:

- 1. The appeal of FIFA is admissible.*
- 2. The decision rendered by the “Commission de Discipline Ligue de Football Professionnel” is set aside.*
- 3. Mr Walid Abdelli is sanctioned with a four-year period of ineligibility starting the date on which the CAS award enters into force. Any period of ineligibility already served by the Player shall be credited against the total period of ineligibility imposed.*

4. *The costs of the proceedings shall be borne by the Respondents.*
5. *FIFA shall be granted a contribution to its legal fees.*

*Issue 1: What is the appropriate sanction in respect of the Player's anti-doping rule violation?*

53. FIFA submits that the evidence clearly establishes that the Player violated Articles 6, 7 and/or 10 of the FFA ADR. FIFA further submits that in the present case there is no basis for a reduction of the four-year period of ineligibility applicable to that anti-doping rule violation under Articles 19 and 20 of the FIFA ADR. The Disciplinary Commission was therefore wrong to impose a lesser two-year period of ineligibility on the Player.
54. FIFA submits that, in accordance with Article 67(2) of the FIFA ADR, it is presumed that the Cologne Laboratory conducted the sample analysis and custodial procedures in accordance with the International Standard for Laboratories (“ISL”). In this regard, FIFA emphasises that during the proceedings before the Disciplinary Commission the Player did not contest the procedure undertaken by the Cologne Laboratory and did not suggest that there had been any violation of the ISL. Accordingly, FIFA submits that the existence of an anti-doping rule violation by the Player is clearly established.
55. FIFA states that there is a clear and complete chain of custody in respect of the First Sample and the Second Sample. In particular, FIFA points out that:
  - (a) When the samples arrived at the Lausanne Laboratory there were no signs of any external manipulation of the Berlinger bottles.
  - (b) Similarly, when the samples arrived at the Cologne Laboratory later that year they were in a good condition with no signs of interference.
  - (c) Accordingly, it can be concluded that the liquid provided by the Player at the doping control test on 22 January 2016 is the same liquid that was subsequently received and analysed by the Lausanne Laboratory and the Cologne Laboratory.
56. FIFA refers to the decisions of the CAS Panels in CAS 98/211, CAS 2008/A/1718-1724 and CAS 2004/A/607 in support of the proposition that a person may be found to have committed an anti-doping violation for tampering even in the absence of direct evidence of tampering. FIFA submits that, in the circumstances of the present case, it is established to the necessary standard of proof that the Player did not provide his own urine in the First Sample, but instead poured a different liquid (most likely water) into the sample collection vessel.
57. FIFA submits, moreover, that since the Player had been notified about the doping control test 15 minutes before the end of the match while he was sitting on the bench as a substitute, he had ample opportunity to prepare a vessel filled with water that he could conceal in his underwear. The Doping Control Officer was positioned behind the Player while the First

Sample was provided and he was therefore unable to see how the liquid entered the sample collection vessel. FIFA submits that it was therefore possible for the Player to pour water from a pre-prepared vessel into the sample collection vessel without the Doping Control Officer witnessing this.

58. In support of its case, FIFA relies on witness evidence from Dr Norbert Baume, the Deputy Director of the Lausanne Laboratory. In a letter to FIFA dated 17 May 2017, Dr Baume explained that, upon receipt of the First Sample on 27 January 2016, “no non-conformities were made regarding the integrity of Berlinger bottles”. The analysis that was subsequently carried out on the First Sample at the Lausanne Laboratory led to the conclusion that, “the consistence [sic] of [the First Sample] was suspicious and referred to manipulation”. According to Dr Baume, the observations that supported this conclusion included the low specific gravity (1.003); the concentrations of endogenous steroids below detection limits; and the concentrations of creatinine and total protein below detection limits.
59. In addition to the letter summarised above, Dr Baume also gave evidence in person before the CAS. Dr Baume explained that the First Sample was subjected to an initial inspection to verify the integrity of the sample. Having confirmed the integrity of the First Sample, the laboratory then tested the pH and specific gravity of the sample, before measuring the levels of six endogenous steroids. According to Dr Baume, the levels of all six endogenous steroids were below the minimum detection level, which was extremely rare.
60. Dr Baume was asked whether microbial activity within the First Sample could have accounted for the very low levels of endogenous steroids recorded by the laboratory. Dr Baume stated this was not possible. Dr Baume was then asked for his assessment of the scale of the dilution of the First Sample. He stated that the level of dilution was probably more than “100 times” (which he explained meant that the ratio of urine to water in the First Sample was greater than 1 to 99). Dr Baume stated that no physical pathology could have explained this result. Dr Baume was asked whether the low specific gravity of the First Sample could have been caused by the First Sample being stored in a hot car for a period of time after it was collected. Dr Baume replied that, if anything, being left in such conditions would have *increased* the specific gravity of the urine sample; it could not have lowered it.
61. In addition to Dr Baume’s evidence, FIFA also relies on witness evidence from Dr Hans Geyer, the Deputy Head of the Cologne Laboratory and the Managing Director of the Centre for Preventive Doping Research at the German Sport University in Cologne.
62. In his written statement dated 18 May 2017, Dr Geyer explained that the First Sample arrived at the Cologne Laboratory “frozen and correctly sealed” and with “[n]o indications of tampering”. Dr Geyer went on to explain that, at the request of WADA (and with the authorisation of the FAF), the First Sample and the Second Sample were subjected to sensory analysis and were analysed for urea, uric acid, creatinine and glucose by the Cologne Laboratory. No prohibited substance was detected in either the First Sample or the Second Sample. The First Sample, however, “showed no typical urine-like colour but exhibited a rather water-like appearance with no sediments”.

Further, it contained concentrations of endogenous steroids that were “*below the limit of detection*”. In contrast, “*normal steroid concentrations were observed*” in the Second Sample.

63. Dr Geyer explained that while a normal urine sample contains endogenous steroids, urea, uric acid and creatinine and has a yellowish colour and a urine odour, the First Sample “*did not contain the above-mentioned constituents, had no urine odour and had a colourless appearance. From these facts, it can be concluded that [the First Sample] is not a urine sample*”. In contrast, the Second Sample “*contain[ed] all above-mentioned typical ingredients of a urine sample, has a urine odour and a typical yellowish appearance. From these data it can be concluded that the [Player] does not suffer from an abnormality concerning excretion of endogenous steroids, urea, uric acid etc.*”. Accordingly, on the basis of this information, the Cologne Laboratory reported an Adverse Analytical Finding for the prohibited method of urine substitution. Dr Geyer added that, “*Due to the water-like appearance, the lack of odour, and the lack of natural components (urea, creatinine, uric acid and endogenous steroid), I suppose that [the First Sample] is a water sample*”.
64. At the outset of the hearing, both parties indicated that they did not have any questions that they wished to put to Dr Geyer. Consequently, Dr Geyer did not give oral evidence at the hearing.
65. In addition to that evidence, FIFA relies on a witness statement from Dr Slimi, the Doping Control Officer who oversaw the Player’s doping control test on 22 January 2016. In his statement, Dr Slimi described how the managers of both clubs were informed of the doping control tests 15 minutes before the end of the match. The Player then presented himself at the doping control room at the end of the match. Dr Slimi accompanied the Player to the toilet and stood behind the Player as he filled the sample collection vessel. According to Dr Slimi, because of where he was positioned while the sample vessel was being filled he did not see urine coming out of the Player’s body.
66. Dr Slimi stated that after filling the collection vessel the Player handed the urine sample to Dr Slimi for registration. At the request of the Player, Dr Slimi filled the A and B vials and sealed them. Dr Slimi measured the specific gravity of the sample at 1.015 and recorded this information in the doping control form. The Player provided signed confirmation that the code on the two Berlinger bottles corresponded to the sample he had provided. Following the conclusion of the doping control test, Dr Slimi then kept the samples in his locked car in the garage of his house. On Sunday 24 January 2016, Dr Slimi then delivered the samples to the secretariat of the anti-doping commission.
67. Dr Slimi gave evidence by telephone at the hearing. At the outset of his oral testimony, Dr Slimi confirmed the account of events set out in his written statement. He described how approximately 15 minutes before the end of the match, he had notified the Club’s manager of the four players who would be required to undergo a doping control test at the end of the match. After speaking to the manager, Dr Slimi returned to the doping control room to prepare for the players’ arrival. Dr Slimi confirmed that he did not supervise any of the players during the period between notifying the Club’s manager and the arrival of the Player in the doping control room shortly after the end of the match.

68. Dr Slimi was asked to describe the exact circumstances in which the Player provided the First Sample. Dr Slimi confirmed that he had been stood approximately one metre behind the Player while the Player filled the sample collection vessel. Because of the small size of the room, Dr Slimi had to stand in a position where he could not observe any urine leaving the Player's body. Although Dr Slimi was not actually able to see the sample collection vessel while it was being filled, he stated that the Player's behaviour throughout the doping control test was entirely normal.
69. Dr Slimi went on to explain that immediately after the conclusion of the doping control tests he had transported the samples to his car. The samples remained locked in his car, which was parked in a secure area at his home, over the weekend. During that time no one except for members of Dr Slimi's family had access to the area of his home where the samples were stored inside the locked vehicle. On the morning of Sunday 24 January 2016 (which was the first business day after the First Sample was collected) Dr Slimi transported the First Sample to the offices of the FAF.
70. During his oral evidence Dr Slimi was asked whether he had noticed anything unusual about the First Sample. Dr Slimi stated that he had noticed that the First Sample appeared very diluted; however, when he measured the specific gravity of the sample he concluded that it was within the appropriate limits and therefore he did not feel that he had the right to request the Player to provide another sample.
71. Dr Slimi was also asked to explain how it was possible that he had recorded a specific gravity of 1.015, whereas the Lausanne Laboratory's analysis of the same sample concluded that the specific gravity was just 1.003. In response, Dr Slimi explained that he had confirmed the effectiveness of the testing sticks that he had used to test the specific gravity of the First Sample by using one of the sticks in the testing pack to test his own urine, which also had a specific gravity of 1.015. As a result, Dr Slimi had therefore been satisfied that the equipment that he used to test the specific gravity of the First Sample was operating effectively.
72. Accordingly, on the basis of the evidence summarised above, FIFA submits that the evidence clearly establishes that the Player committed an anti-doping violation in circumstances that do not afford any basis for departing from a four-year period of ineligibility. FIFA submits that the CAS should therefore quash the two-year period of ineligibility imposed by the Disciplinary Commission and replace it with a four-year period of ineligibility.

*Issue 2: When should the Player's period of ineligibility be deemed to commence?*

73. On the basis of Article 28 of the FIFA ADR, FIFA submits that the Player's period of ineligibility should in principle commence with the communication of the CAS Award in this case. FIFA submits that there is no basis for suspending any part of the period of ineligibility. Accordingly, in order to ensure that the sanction achieves the necessary preventive and punitive effect, the period of suspension should therefore begin when the Panel's Award is communicated to the parties.

**b. Submissions of the FAF**

*Issue 1: What is the appropriate sanction in respect of the Player's anti-doping rule violation?*

74. At the outset of the hearing, the FAF explained that it did not dispute that there had been a violation of the FIFA ADR. The FAF admitted that it could not definitively explain how the First Sample had come to be diluted with water. The FAF did, however, contest the suggestion that the violation was intentional. In this regard, the FAF explained that the Player had consistently denied manipulating the sample.
75. During the course of the hearing before the CAS, the FAF's representative postulated that the Player may have experienced difficulty producing the necessary quantity of urine, and may therefore have topped up the sample with water in order to meet the minimum volume requirement. He pointed out that the Player and the rest of his team faced a 700 kilometre journey home following the match. He therefore suggested that the Player may simply have felt pressured to provide the necessary quantity of urine as soon as possible in order to avoid delaying the start of the lengthy return journey. When he was unable to do so, the FAF suggested, he may have diluted the sample with water in order to avoid a lengthy delay.
76. The FAF went on to explain the rationale for the two-year sanction that had been imposed on the Player. The Disciplinary Commission had concluded that the Player did not have any intention to cheat; he was simply unaware that diluting his sample with water could involve the commission of an anti-doping violation. From the FAF's perspective, the Player's actions were the result of ignorance and stupidity, rather than any direct intention to cheat.
77. In support of its case, the FAF relied on oral evidence from Mr Djamel-Eddine Damerdij. Mr Damerdij has been the President of the FAF Anti-Doping Commission since 2011. During his evidence before the Panel, Mr Damerdij explained that the Anti-Doping Commission operated an anti-doping testing regime that was in full compliance with the FIFA ADR. Mr Damerdij explained that he had never had any cause for concern about Dr Slimi's work as a doping control officer. However when asked how he would react if he learned that a doping control officer overseeing the provision of a urine sample had not directly witnessed the passage of urine from a player's body, Mr Damerdij replied that he would regard that as a procedural error.
78. During its opening and closing submissions the FAF stressed that it takes the issue of doping control extremely seriously and has gone to great lengths to establish a rigorous and effective anti-doping framework in Algeria. The FAF explained that there is a strong institutional desire to detect and punish doping, and the FAF had taken extensive steps to play a leading role in the fight against doping in North Africa. The FAF emphasised that of more than 100 doping control tests carried out on 22 January 2016, the Player's sample was the only one that yielded an abnormal result.
79. The FAF was also at pains to emphasise that the Disciplinary Commission has no hesitation in imposing lengthy periods of ineligibility whenever it considers this appropriate. In support of this, the FAF referred to another recent case in which a high profile player received a four-year ban after testing positive for cocaine use. The FAF said it was never reluctant to impose a four-

year sanction when this was deserved; however the FAF did not believe that a penalty of this magnitude was warranted in the present case. In the circumstances, therefore, the FAF submitted that the Panel should uphold the two-year period ineligibility imposed by the Disciplinary Commission.

*Issue 2: When should the Player's period of ineligibility be deemed to commence?*

80. The FAF submitted that the Player's period of ineligibility should be deemed to have commenced on the date on which he was suspended, namely 30 January 2017. In support of this position, the FAF produced a copy of an official FAF document dated 30 January 2017 which confirmed that the Player had been suspended on that date (which was one week before the hearing before the Disciplinary Commission).

**c. Submissions of the Player**

81. As explained above, the Player did not file any written submissions in response to FIFA's appeal; did not respond to any communications from the CAS; and did not seek to adduce any evidence at any point during the proceedings before the CAS.

#### **IV. JURISDICTION**

82. Article R47 of the CAS Code provides:

*"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

83. Article 57(1) of the FIFA Statutes states:

*"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents".*

84. Article 58(5) of the FIFA Statutes states:

*"FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations".*

85. Article 75(1)-(2) of the FIFA ADR states:



- “1. In cases arising from participation in an International Competition or in cases involving International-Level Players, a final decision within FIFA’s, the Confederation’s or the Association’s process may be appealed exclusively to CAS.*
- 2. In cases where art. 75 par 1. (Appeals involving International-Level Players or International Competitions) is not applicable, the decision may be appealed to a national-level appeal body, being an independent and impartial body established in accordance with rules adopted by the National Anti-Doping Organisation having jurisdiction over the Player or other Person. The rules for such appeal shall respect the following principles: a timely hearing; a fair and impartial hearing panel; the right to be represented by counsel at the Player’s or other Person’s own expenses; and a timely, written, reasoned decision. If the National Anti-Doping Organisation has not established such a body, the decision may be appealed to CAS in accordance with the provisions applicable before such court”.*
86. Article 14(1) of the FIFA Statutes states that members associations of FIFA have an obligation *“to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS) passed on appeal on the basis of art. 57 par. 1 of the FIFA Statutes”.*
87. Article 15(f) of the FIFA Statutes states that, *“all relevant stakeholders must recognise the jurisdiction and authority of CAS and give priority to arbitration as a means of dispute resolution”.*
88. The FAF’s Statutes contain several provisions that require compliance with the FIFA Statutes and FIFA regulations. For example, Article 2(u) of the FAF Statutes provides:
- “La Fédération Algérienne de Football a pour buts:*
- (...)*
- u) respecter les règlements, les directives et les décisions de la FIFA, de la CAF ainsi que des Lois du jeu afin d’en prévenir toute violation et d’assurer que ces derniers sont également respectés par ses membres”.*
89. Article 4(2) of the FAF Statutes provides:
- “Toutes les personnes physiques ou morales ou structures directement impliquées dans le football sont tenues de respecter les statuts et les règlements de la FIFA, de la CAF, de la FAF et d’observer les règles du fair-play ainsi que les principes de loyauté et d’intégrité”.*
90. Article 6(1) of the FAF Statutes provides:
- “Les organes et les officiels de la FAF respectent les statuts, les règlements, les directives, les décisions et le code de l’éthique de la FIFA, de la CAF et de la FAF dans l’exercice de leurs activités”.*
91. Accordingly, FIFA submits that the FAF accepted the jurisdiction of the CAS pursuant to the terms of its own statutes. Furthermore, the Disciplinary Commission’s decision expressly states that it may be appealed in accordance with the FIFA ADR (which, as set out above, confer

jurisdiction on CAS to hear appeals against doping related decisions). In addition, the FAF's Anti-Doping Regulations, which are published on the FAF's official website, are identical to the FIFA ADR. For these reasons, FIFA contends that it is clear that CAS has jurisdiction with respect to the present matter.

92. Although the FAF declined to sign the Order of Procedure, it did not contest the CAS' jurisdiction in this matter and participated fully in the hearing. The Player did not participate in the appeal and therefore did not advance any submissions (either for or against) regarding the CAS' jurisdiction with respect to this matter.
93. In the circumstances, the Panel is satisfied that CAS has jurisdiction in respect of FIFA's appeal under both the FIFA Statutes and FIFA ADR and under the FAF Statutes.

## V. ADMISSIBILITY

94. Article R49 of the CAS Code states:

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

95. Article 80.1.1 of the FIFA ADR states:

*"The time to file an appeal to CAS shall be 21 days from the date of receipt of the motivated decision in an official FIFA language by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*

- a) *Within 15 days from notice of the decision, such party/ies shall have the right to request a copy of the case file translated in an official FIFA language from the body that issued the decision;*
- b) *If such a request is made within the 15-day period, the party making such request shall have 21 days from receipt of the file to file an appeal to CAS".*

96. On 12 March 2017, the FAF informed FIFA about the decision of the Disciplinary Commission. On 22 March 2017, FIFA requested the case file. On 19 April 2017, FAF sent the "décision motivée" to FIFA. On 25 April 2017, FIFA informed the FAF that it had received the motivated decision but had not received the case file. Accordingly, FIFA requested the full case file to be provided. On 27 April 2017, the FAF provided FIFA with a copy of the complete case file.
97. FIFA submitted its Statement of Appeal on 17 May 2017. It subsequently submitted its Appeal Brief on 1 June 2017, within the deadline specified in the letter from the CAS Court Office dated 22 May 2017. FIFA therefore submits that the appeal is admissible.

98. Although they did not sign the Order of Procedure, neither of the Respondents advanced any submissions disputing the admissibility of FIFA's appeal.
99. The Panel notes that FIFA lodged its Statement of Appeal within 21 days of the date when it received the full case file from the FAF. In accordance with Article R47 of the CAS Code and Article 80.1.1 of the FIFA ADR, the Panel therefore concludes that FIFA's appeal is admissible.

## VI. APPLICABLE LAW

100. Article R58 of the CAS Code states:

*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

101. Article 57(2) of the FIFA Statutes states:

*"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally Swiss law".*

102. Article 80(3) of the FIFA Anti-Doping Regulations provides:

*"Where FIFA appeals against a decision of in particular an Association, Anti-Doping Organisation or Confederation to CAS under this chapter, the applicable law for the proceeding shall be the FIFA regulations, in particular the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code".*

103. FIFA reiterates that the FAF published an identical set of anti-doping regulations to the FIFA Anti-Doping Regulations on the FAF's website.
104. The FAF did not expressly address the issue of applicable law. The FAF's submissions were, however, premised on the applicability of the FIFA ADR, which the FAF was keen to emphasise it had fully complied with.
105. Having regard to Article R58 of the CAS Code and the provisions of the FIFA Statutes and the FIFA ADR set out above, the Panel concludes that the law applicable to these appeal proceedings is the FIFA regulations (most pertinently, the FIFA Statutes and the FIFA ADR).

## VII. MERITS

### Issue 1: What is the appropriate sanction in respect of the Player's anti-doping rule violation?

106. The Panel notes at the outset that there was no dispute between FIFA and the FAF about the existence of an anti-doping violation under Articles 6 and/or 7 and/or 10 of the FIFA ADR. Nor was there any dispute that the Player was responsible for the occurrence of that violation. In the circumstances, the Panel is comfortably satisfied that:
- (a) The First Sample was deliberately diluted with water.
  - (b) There is no evidence that anyone other than the Player was responsible for that dilution.
107. During the hearing the FAF explained why, in its view, the Player should not be subjected to a four-year ban for that anti-doping violation. In particular, the FAF submitted that the Player's actions were likely to be the product of ignorance, rather than any deliberate intention to cheat.
108. The Panel is unable to accept these submissions. First, the Panel notes that the FAF's submissions regarding the circumstances in which the Player diluted the First Sample were based on conjecture. There was no evidence before the Panel to support the FAF's assumption that the Player had been unable to produce sufficient urine and had therefore diluted the sample for the sole purpose of avoiding any delay to the team's journey home. In the Panel's view, no weight can be afforded to an unsubstantiated and speculative theory regarding the Player's subjective motivation for adulterating the First Sample.
109. Secondly (and in any event) the Panel notes that, for the purposes of Article 19 of the FIFA ADR, the term "*intentional*" requires that "*the Player (...) engaged in conduct which he knew constituted an anti-doping violation or knew that there was a significant risk that the conduct might constitute or result in anti-doping rule violation and manifestly disregarded that risk*". In CAS 2016/A/4512 the Arbitrator held that Article 19(3) of the FIFA ADR "*leaves little doubt that the drafters intended for the requirement of 'intent' to be satisfied by a situation in which 'there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and [the Player] manifestly disregarded that risk'*" (para. 55).
110. The same is true of Article 20(1) of the FIFA ADR, which expressly imports the definition of "*intentional*" in Article 19(3) and applies that definition to determine the appropriate penalty for violations of Article 10 (tampering or attempted tampering with any part of doping control).
111. Accordingly, it is unnecessary for FIFA to establish that the Player intended to achieve an illicit performance-enhancing benefit as a result of the anti-doping rule violation. Instead, it is sufficient to establish that the Player knew that the act of diluting the First Sample constituted an anti-doping violation or realised there was a significant risk of such a violation and disregarded that risk.
112. In the circumstances, the Panel concludes that the Player must have appreciated that deliberately diluting his urine sample with water constituted a breach of the FIFA ADR. It is straightforward and obvious that doping control procedures are reliant on the integrity of bodily samples

provided by the person being tested. It is equally straightforward and obvious that (a) the deliberate introduction of any foreign substance to a urine sample is likely to undermine the effectiveness of doping control tests conducted on that sample; and (b) the deliberate introduction of any foreign substance is therefore prohibited in order to protect the integrity and effectiveness of the doping control process.

113. Accordingly, the Panel does not accept that a professional football sportsperson in the position of the Player could have held an honest belief that deliberately diluting a tiny quantity of urine with a large quantity of water during an anti-doping test would not entail a violation of anti-doping rules. Whatever the Player's motivation for diluting the First Sample, the Panel is comfortably satisfied that the Player must have known that by doing so he was committing an anti-doping violation.
114. As a result, Article 19(3) and/or Article 20(1) of the FIFA ADR require the imposition of a four-year period of ineligibility on the Player. It follows that the Disciplinary Commission was wrong to impose a two-year period of ineligibility. The Disciplinary Commission's decision is therefore set aside and replaced with a four-year period of ineligibility.
115. In reaching this conclusion, the Panel stresses that the decision to set aside the sanction imposed by the Disciplinary Commission does not reflect any finding of bad faith against the FAF, nor is it a finding about the adequacy of the overall anti-doping framework for the sport of football in Algeria. The Panel acknowledges the FAF's sincerely expressed commitment to the fight against doping.
116. The Panel is, however, concerned that the doping control officer who oversaw the collection of the First Sample did not comply with the requirement in Annex D of the FIFA ADR to "*ensure an unobstructed view of the Sample leaving the Player's body*". While the Panel is comfortably satisfied that the failure to ensure an unobstructed view of the sample leaving the Player's body does not in any way call into question the finding that the Player committed an anti-doping violation, the Panel is concerned that the Player was apparently able to dilute a urine sample in the presence of the doping control officer without the doping control officer realising this had occurred.
117. The procedures set out in Annex D to the FIFA ADR are intended (amongst other things) to minimise the scope for interference and tampering during the sample collection process. In the Panel's view, it is clear that proper adherence to the procedures set out in Annex D could have led to the immediate detection of the Player's anti-doping violation before he had left the doping control room, or would have deterred the Player from embarking on that course in the first place. The Panel therefore expresses the hope that, consistently with the FAF's professed commitment to pursuing an effective fight against the scourge of doping, the FAF will take appropriate steps to ensure that all mandatory testing procedures are fully complied with during all future doping control tests.

**Issue 2: If the Player did commit an anti-doping rule violation, when should the period of ineligibility be deemed to commence?**

118. In its statement of Appeal of 16 May 2017 FIFA requested this Panel to impose a sanction *“starting the date on which the CAS award enters into force”*. At the same time, FIFA requested the Panel to credit *“against the total period of ineligibility imposed (...) any period of ineligibility already served by the Player”*.
119. Article 28 of the FIFA ADR states that, subject to the exceptions provided for in that Article, a period of ineligibility shall commence as soon as the decision providing for the ineligibility is communicated to the Player. The exceptions provided for in the Article – namely delays which are not attributable to the Player or a timely admission of an anti-doping violation – have no application in the present case.
120. During the course of the hearing before the CAS, the FAF produced a copy of a document which recorded that the Player’s suspension had commenced on 30 January 2017. In the circumstances, the Panel therefore concludes that the four-year period of ineligibility should be deemed to have commenced on 30 January 2017, after application of the credit for the Provisional Suspension period under Article 28(3)(a) of the FIFA ADR.

**ON THESE GROUNDS**

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

1. The appeal filed by the Fédération Internationale de Football Association on 17 May 2017 is upheld.
2. The decision of the Commission de Discipline Ligue de Football Professionnel dated 19 April 2017 that Mr Walid Abdelli is subject to a two-year period of ineligibility (with one year suspended) is set aside.
3. Mr Walid Abdelli is sanctioned with a four year-period of ineligibility starting from 30 January 2017.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.