



Arbitration CAS 2011/A/2594 Ricardo Jorge Cecilia Batista v. Portuguese Football Federation (PFF), award of 11 April 2012

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

Football

Doping (prednisolone)

CAS jurisdiction

Regularity of the disciplinary procedure (de novo hearing)

Burden of proof regarding a reduction of a sanction for doping

1. As a team member of a national football club, a player is registered at the national federation and therefore obliged to abide by the federation's statutes and consequently the federation's Anti-Doping Regulations (ADR) and the applicable law according to which appeals against decisions rendered by the sports judicial bodies are referred to the Court of Arbitration for Sport. A player's registration at the national federation also subjects him to the FIFA Statutes. In the context of the relationship between clubs, national federations and international federations, the organization lower in the hierarchy joins the higher one as member and thereby accepts the latter's "offer" to arbitrate". As a FIFA member and a body subordinated to FIFA, a national football federation has subjected any final and binding decisions issued by its bodies to appeals pursuant to the FIFA Statutes. Therefore, it cannot be appealed to any higher sports body within the country and an appeal may be filed before the CAS.
2. Art. R57 of the CAS Code grants a CAS panel full power to review the facts and the law. Therefore, any prejudice which a player suffered as a result of a delayed decision rendered by a disciplinary body is cured by virtue of the appeal to the CAS, which grants the player the right to file fresh arguments, facts and laws. In any case, any prejudice suffered or right infringed at the first instance body level is cured by virtue of the CAS hearing *de novo*.
3. According to the applicable regulations regarding specified substances, once it is not in dispute that a banned substance was found in a player's body, the burden of proof shifts to the player to adduce evidence which would support the reduction of the sanctions imposed by the regulations. In order to benefit from such reduction, the player shall prove (i) how the banned substance entered his body or came to his possession to the comfortable satisfaction of the hearing panel; (ii) that he had no intention of enhancing his performance; and (iii) that he had no intention of masking the use of a performance enhancing substance. Those requirements are cumulative.

Ricardo Jorge Cecília Batista (the “Appellant” or the “Player”) is a Portuguese professional football goalkeeper currently playing for Portuguese club Sporting Clube Olhanense (the “Club”). The latter is a member of the Portuguese Football Federation.

The Portuguese Football Federation (the “Respondent” or the “PFF”) is the body in charge of running football in the Republic of Portugal and is a member of the Fédération Internationale de Football Association (the “FIFA”).

This appeal was filed by the Player against the decision rendered by the Council of Justice of the Portuguese Football Federation (the “Council of Justice”) passed on 8 September 2011 (the “Decision”). The grounds of the Decision were notified to the Parties on 12 September 2011.

A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the Parties’ submissions and the evidence adduced. Additional factual background may also be mentioned in the legal considerations of the present award. The Sole Arbitrator notes that no new evidence has been adduced by the Parties in addition to the evidence adduced in the previous instances. This award therefore considers all the factual allegations and legal arguments and documents submitted by the Parties in the present proceedings. In this award, the Sole Arbitrator only refers to the submissions and evidence he considers necessary to explain his reasoning.

The doping controls and samples taken from the Player

On 15 January 2011, the Appellant played for the Club in the Liga Zon Sagres’ match against Vitória Futebol Clube.

Immediately after the match, the Player experienced some back ache and in order to relieve the pain, he went to see a doctor. The Player claims to have been examined by doctor Manuel Veloso Gomes, who he claims advised and prescribed an anti-inflammatory drug called Nimed to be taken by him.

It is not known whether the Player took the drug Nimed or ingested another substance. It was not proven before the Council of Justice whether the Club’s therapist Carlos Marques, who is in charge of administering medicine to the players, gave the Player Nimed or another drug. The Player claims that Carlos Marques informed him that the drug he was taking was an anti-inflammatory.

On 15 January 2011, the Player underwent a routine anti-doping test by the Portuguese Anti Doping Authority (the “ADoP”) whose results tested negative.

On 19 January 2011, the Player was again fielded in the Liga Zon Sagres match against Sport Lisboa e Benfica because the Club’s reserve goalkeeper, Bruno Veríssimo was injured. The Appellant played through the back pain and immediately after the match, he claims to have taken the same drug administered to him by the Club’s therapist.

On 22 January 2011, the Appellant played for the Club in the Liga Zon Sagres match against Associação Académica de Coimbra and immediately after the match, the ADoP collected 125ml of

the Player's urine sample for routine laboratory testing. During the collection of his urine, the Player did not inform the ADoP authorities that he was under prescribed medication.

The results of the ADoP analysis showed the presence of Prednisolone and 20B-Dihidropredisolene in the Player's body. Prednisolone contains Glucocorticoids, and Glucocorticoids have been listed as a prohibited substance under Art. S9 of ADoP's list of prohibited substances and methods if administered either orally, through the rectum, or by injection.

On 26 March 2011, the ADoP reported the results of the analysis to the PFF. On the same day, the Player underwent another anti-doping test, whose results tested negative.

On 28 March 2011, the PFF requested the Player to state whether he wished to have his B sample tested, and the Player indicated his wish to do so.

On 5 April 2011, the Player's B sample was collected and just like sample A, the results confirmed the presence of Prednisolone and 20B-Dihidropredisolene. ADoP forwarded these results to the PFF on 6 April 2011.

The Disciplinary Committee proceedings

On 7 April 2011, the PFF took action and temporarily suspended the Player from all football activities pursuant to art. 45 of the PFF Anti-Doping Regulations (the "Anti-Doping Regulations") pending the issuance by the Portuguese Professional Football Disciplinary Committee (the "Disciplinary Committee") of a decision in relation to the results of the doping tests.

On 24 May 2011, the instructor of the disciplinary proceedings compiled a final report (the "Instructor's Report"), which the Player claims recommended the imposition of a 3-month ban.

During the Disciplinary Committee proceedings, the Player requested the ADoP to issue its opinion on the relevant sanction. The ADoP prepared its opinion (the "ADoP Opinion") recommending that the Player be banned for a period of 2 years. However, the ADoP Opinion was only forwarded to the Disciplinary Committee and not to the Player.

On 25 July 2011, the Disciplinary Committee found the Player guilty of having ingested a prohibited substance and suspended him from competitive football for a period of 2 years pursuant to Art. 52.1 a) of the Anti-Doping Regulations.

The Player was dissatisfied with the Disciplinary Committee decision and appealed to the Council of Justice. The Player also averred that in arriving at its decision, the Disciplinary Committee had made an error in relation to the facts of the case.

The Council of Justice Proceedings

On 8 September 2011, the Council of Justice reviewed the facts and rendered the Decision, upholding the 2 year banned imposed by the Disciplinary Committee. The Decision was grounded on the following:

- a) The Player was aware of his duty to declare before the ADoP authorities that he was on medication but he did not inform the said authorities that he had ingested a drug containing the banned substance.
- b) The Player knew of his duty not to ingest any substance on his own, or substances given to him by persons other than competent medical officials of the Club.
- c) The Player neglected his duty to confirm the drug he was taking.
- d) There was no medical reason that would have caused the Player to ingest the substance.
- e) The Player did not meet all the requirements set out under Art. 53 paragraph 1 a) of the Anti-Doping Regulations. In particular, he had failed to prove:
 - how the banned substance entered his body; and
 - that the said substance neither enhanced the Player's performance nor had a masking effect.
- f) There was hence no need to review or set aside the 2 year sanction imposed by the Disciplinary Committee, because this was the minimum sanction imposable.

The arbitral proceedings before the CAS

On 3 October 2011, the Appellant filed his Statement of Appeal at the Court of Arbitration for Sport (the "CAS").

On 13 October 2011, the Appellant filed his Appeal Brief and nominated Mr. Michele Bernasconi, attorney-at-law in Zurich, Switzerland, as arbitrator. The Respondent was granted 20 days with effect from 20 October 2011 within which to file its Answer.

On 21 October 2011, the Appellant informed the CAS Court Office of his wish to have the matter decided by a Sole Arbitrator.

On 26 October 2011, the Respondent consented to the Appellant's proposal to have the matter decided by a Sole Arbitrator.

On 10 November 2011, the Respondent filed its Answer and objected the CAS jurisdiction. On the same date, the Parties were requested to inform the CAS Court Office whether they wanted the matter to be heard or decided on the basis of written submissions.

On 22 and 28 November 2011, the Appellant and the Respondent respectively informed the CAS Court Office of their wish to have the matter decided on the basis of written submissions.

On 19 December 2011, the Parties were informed that the Panel appointed to decide the above-referenced case was constituted as follows:

- Sole Arbitrator: Mr. Rui Botica-Santos, attorney-at-law in Lisbon, Portugal

On 10 January 2012, the CAS Court Office invited the Appellant to file brief submissions on the issue of jurisdiction before 25 January 2012.

On 25 January 2012, the Appellant reverted to the CAS Court Office with his submissions on jurisdiction.

On 30 January 2012 the CAS Court Office requested the Parties to re-confirm whether they wanted the matter to be decided on the basis of written submissions or to have a hearing. In case they wanted the matter decided on the basis of their written submission, the Parties were requested to confirm that their right to be heard had been respected.

On 1 and 3 February 2012 respectively, the Parties re-confirmed their satisfaction with having the matter decided on the basis of written submissions.

On 3 February 2012 the Order of Procedure was sent to the Parties, who both signed the same.

The Player centres his defence on four key arguments:

- a) That the disciplinary procedures were violated and hence invalid;
- b) That the adversary system was violated;
- c) That the Council of Justice erred in determining the proven facts and consequently applied the wrong law; and
- d) That the Council of Justice failed to apply the principle of proportionality.

The Appellant requests the CAS to issue the following reliefs:

- “The annulment of the Decision;*
- The issuance of a new decision”.*

The PFF defends itself both in relation to the jurisdiction and the merits of the case.

- a) Lack of CAS jurisdiction; and
- b) The merits of the Respondent’s defence.

The PFF concludes by requesting the CAS to render a decision:

- “Considering that it has no jurisdiction this case, thus dismissing it without appreciation;*
- In the case that the court considers to have jurisdiction on this matter, then a decision should be issued;*
- Refusing to grant the appeal;*

Confirm the appealed decision of the Conselho de Justiça of PFF, which made a correct evaluation of the evidence and decided accordingly within the legal framework applicable to this case”.

The Player states that the CAS has jurisdiction and requests that the Sole Arbitrator “(...) considers himself competent to the present Appeal accordingly decide on the merits”.

LAW

Jurisdiction of the CAS

1. As highlighted in the earlier parts of this award, the Sole Arbitrator notes that the Parties disagree on the CAS jurisdiction. Whereas the Player is of the view that the CAS has jurisdiction, the PFF disagrees.
2. It is the Player’s position that the CAS jurisdiction is derived from Art. 63.1 and 63.2 of the FIFA Statutes. He further avers that since the ADoP has delegated its disciplinary powers to the PFF under Art. 57.1 of Law No. 27 of 2009, the CAS has jurisdiction to hear appeals against PFF judicial bodies pursuant to Art. 57.5 of Law No. 27 of 2009 which states that the ADoP decisions can be appealed to the CAS.
3. On its part, the PFF states that an appeal can only be filed at the CAS in relation to decisions rendered by the ADoP. It further alleges that the present appeal relates to a decision issued by the PFF Council of Justice and is therefore not appealable to the CAS. It may be appealed before the ordinary courts.
4. The PFF adds that pursuant to the FIFA and PFF Statutes, the CAS can only have jurisdiction in relation to disputes involving Parties from different countries or jurisdictions. It states that both Parties in this matter are Portuguese and therefore the CAS has no jurisdiction.
5. It is not in dispute that the PFF is a FIFA member and therefore bound by the FIFA regulations and that the Council of Justice is a judicial body established under the PFF.
6. It is not in dispute that the PFF is a FIFA member and therefore bound by the FIFA regulations, and that the Council of Justice is a judicial body established under the PFF.
7. The Sole Arbitrator also notes that as a team member of Olhanense, the Player was registered at the PFF and by the act of registering the Player, the PFF obliged him to abide by the PFF Statutes and consequently the PFF Anti-Doping Regulations and Law No. 27 of 2009. The Player’s registration at the PFF also means that he was subject to the FIFA Statutes. Corroborating this is Art. 13 of the FIFA Statutes which states that the PFF is obliged “(...) to

ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies” (CAS 2009/A/1817, CAS 2009/A/1844).

8. The Sole Arbitrator makes further reference to the Panel’s finding in the case CAS 2009/A/1910, where it was held that “(...) *in the context of the relationship between clubs, national federations and international federations the organization lower in the hierarchy joins the higher one as member and thereby accepts the latter’s “offer” to arbitrate*”. As a FIFA member and a body subordinated to FIFA, the PFF has subjected any final and binding decisions issued by its bodies to appeals pursuant to the FIFA Statutes.
9. Under Art. 63.1 of the FIFA Statutes 2011 edition, “[a]ppeals 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”. Since the Decision is final and binding at national level, it cannot be appealed to any higher sports body within Portugal and an appeal may be filed before the CAS under Art. 63.1 of the FIFA Statutes.
10. It is also a fact that although it has authoritative power to discipline and sanction doping matters in Portugal, the ADoP has delegated this power to the Portuguese sports federations and vested them with authority to conduct disciplinary proceedings. This is evidenced under Art. 57.1 of Law No. 27 of 2009 which states that “[t]he application of the disciplinary sanctions provided for in this law is the responsibility of ADoP and is delegated to sport federations with public sporting interest status, who are also responsible for conducting the disciplinary proceedings”.
11. This consequently refers the Sole Arbitrator to Art. R47 of the CAS Code pursuant to which appeals may be filed at the CAS “(...) *insofar as the statutes or regulations of the said body so provide (...)*”.
12. The statutes or regulations of the body in question are Art.57.5 of Law No. 27 of 2009 which states that “[a]ppeals against decisions rendered by ADoP are referred to the Court of Arbitration for Sport in Lausanne”.
13. In view of the foregoing, the Sole Arbitrator finds that the CAS has jurisdiction to decide the present appeal.

Admissibility

14. The appeal was filed within the 21 day deadline provided under Art. 63.1 of the FIFA Statutes 2011 edition. In addition, neither Law No. 27 of 2009 nor the Anti-Doping Regulations stipulate the deadline within which an appeal must be filed at the CAS. Reference must hence be made to Art. R49 of the CAS Code, which states that “[i]n the absence of a time limit set out in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

15. It follows that the appeal is admissible. Furthermore, no objection to the contrary has been raised by the Respondent.

Scope of the Sole Arbitrator's review

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

Law applicable to the merits

17. Art. R58 of the CAS Code provides the following:
"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".
18. In the present case there is no law chosen by the Parties and the matter at stake relates to an appeal against a decision issued by the Council of Justice, which is a judicial body established by the PFF.
19. As an association registered under Portuguese law, the PFF has set out one of its objectives under Art. 2.3 of the PFF Statutes as being to "(...) draw up regulations and provisions and ensure their enforcement".
20. One of the regulations enacted by the PFF to ensure the achievement and enforcement of its objectives is the PFF Anti-Doping Regulations. It therefore follows that the PFF Anti-Doping Regulations shall be primarily applied.
21. Furthermore, reference shall also be made to Portuguese Law No. 27 of 2009 which was specifically enacted by the Portuguese Government with the aim of establishing a regime for the fight against doping in sport.
22. Art. 12 .1 c) of Law No. 27 of 2009 provides that "[t]he sports federations are obliged to adopt the laws and regulations of the World Anti-Doping Agency into their anti-doping control regulations".
23. In addition, Portugal has ratified the United Nations International Convention Against Doping in Sport (the "UNESCO Convention") wherein it has committed itself to adopt the World Anti-Doping Code (the "WADA Code"). In view of the foregoing, it follows that the WADA Code edition 2009 shall also be applied in subsidiary and in supplementation of the Anti-Doping Regulations and Law No. 27 of 2009.

Merits

24. It is not in dispute that the Player committed an anti-doping offence after the ADoP analysis showed the presence of Prednisolone in his body. Indeed, the Player's appeal is purely based on the rightful sanction which ought to be imposed and on the alleged invalidity of the Decision due to procedural irregularities committed at the Disciplinary Committee and Council of Justice level.
25. The issues for determination in this matter are therefore whether various errors and illegalities were committed, and in particular whether (i) the Disciplinary Committee violated the 60 day time limit for issuing a decision; (ii) both the Disciplinary Committee and the Council of Justice violated the adversary system by failing to notify the Appellant of the ADoP Opinion and the Instructor's Report; and (iii) the Council of Justice made errors of fact and law.
26. In case of an affirmative answer to the above, the Sole Arbitrator shall decide the consequences the said errors and illegalities have in relation to this appeal. Depending on the findings in relation to the aforementioned issues, the Sole Arbitrator shall be called to decide on the relevant sanction which ought to be imposed on the Player for the anti-doping offence in question.
27. The merits section of this award shall hence be divided into two sections, the findings in relation to the alleged procedural violations, and the findings in relation to the rightful sanction which ought to be imposed on the Player.
 - A. *The alleged invalidity of the disciplinary procedure*
 - (a) Violation of the 60 day time limit for the Disciplinary Committee to render a decision
28. The Player avers that since the Disciplinary Committee failed to render a decision within 60 days as required under Law No. 27 of 2009 and Art. 50.8 of the Anti-Doping Regulations. The Disciplinary Committee proceedings should be deemed invalid because the Disciplinary Committee had no power to sanction the Player after this period.
29. The PFF does not dispute that the Disciplinary Committee issued its decision after 60 days had elapsed. It however argues that none of the laws invoked by the Player state the legal consequences of failing to render a decision within the stipulated period, and that the 60 days are only meant to ensure speed in the implementation of doping cases.
30. It is not disputed that Law No. 27 of 2009 and Art. 50.8 of the Anti-Doping Regulations stipulate that a decision should be issued within 60 days following the results of the doping test.
31. The doping results of sample B were issued on 5 April 2011 and the Disciplinary Committee decision issued on 25 July 2011, after the 60 days had lapsed.

32. As stated by the Respondent, it is also the Sole Arbitrator's understanding that the requirement to issue a decision within 60 days is only aimed at ensuring speed and efficiency in the resolution of disputes.
33. Law No. 27 of 2009 and Art. 50.8 of the Anti-Doping Regulations bear the nature of internal administrative laws. In other words, they are laws which are aimed at guiding the Portuguese sports judicial bodies in relation to the manner and pace in which the judges must handle and render decisions. These laws did not intend to extend to, or grant any litigating party the right to compel the Portuguese sports judicial bodies to render a decision within the stipulated 60 days. This is corroborated by the absence of any provision in these regulations stipulating the consequences of failing to render a decision within 60 days.
34. The Sole Arbitrator also concurs with the Council of Justice that the 60 days are *"(...) a mere procedural term pointed to the decision maker / judge that is commonly understood in all branches of the procedural law as merely indicative – possibly with disciplinary consequences to whom exceeded it – whose failure does not affect subsequent proceedings and the necessary final decision, namely on the merits of the case.*
- To establish a clearly small term of 60 days, perhaps impossible to fulfil in many cases, even in light of the careful evaluation of evidence and technical hashing that disciplinary procedure concerning doping are subject due to severity of the penalties established, which was the legislator sought to give them character of urgency and not exempt from punishment one who has violated an anti-doping rule, offense that all costs must be punished for it either reaches the fundamentals of sports and its ethical or up, and not least, the physical health of athletes.*
- (...) it is obvious that the period of 60 days is not established for the benefit of any offenders and has no consequences in the proceedings beyond the impact on the temporary suspension of the accused – as indeed is also traditionally in the entire procedural law – any other law to realizing or interpreting this effect.*
- (...)"*.
35. In addition to this, the Sole Arbitrator remarks that the decisions of various sports bodies and federations have been delivered outside the time limits usually stipulated in their procedural regulations and the said proceedings have not been invalidated upon appeal to the CAS.
36. In any case, Art. R57 of the CAS Code grants the Sole Arbitrator full power to review the facts and the law. Therefore, any prejudice which the Player suffered as a result of the delayed decision rendered by the Disciplinary Committee has been cured by virtue of the appeal to the Council of Justice or to CAS, which grants the Player the right to file fresh arguments, facts and laws.
37. In view of this, it follows that the Player's arguments in relation to the invalidity of the Disciplinary Committee decision for violating Law No. 27 of 2009 and Art. 50.8 of the Anti-Doping Regulations are dismissed.

b) Violation of the adversary system

38. It is the Player's case that the disciplinary proceedings violated the adversary system by failing to inform him of the contents of the Instructor's Report and the ADoP Opinion, which he claims was essential to his defence because the Instructor's Report recommended that the the ADoP ban him for 3 months.
39. The Player has neither identified nor laid forth any specific law which obliged the disciplinary proceedings to inform him of the Instructor's Report or the ADoP Opinion. Notwithstanding this, there exists no legal provision which obliged the Disciplinary Committee to follow the Instructor's Report or to notify the Player of both the said report and the ADoP Opinion.
40. The Sole Arbitrator concurs with the Council of Justice's findings that "*[t]he principal of defence and the adversary system were assured, such as law and the PFA RA predicts, with the notification of the prosecution where, namely, was shown to be sufficiently charged to have committed the disciplinary offense provided by articles 5 and 6 and punished by art. 52.1 a) of FPF anti-doping regulation with a 2 to 8 years suspension penalty, which was actually applied.*
- The disciplinary procedure instructor's final report and ADOP opinion are only views whose proposals or doctrine may or may not be adopted in the decision, so one does not see that the defendant should be notified of them in order to perpetuate a process with opinions and counter opinions, that the law, as we have seen, want to be decided swiftly*".
41. In addition to this, the Sole Arbitrator notes that pursuant to Art. R57 of the CAS Code, the Player has been granted a new opportunity to present his case and file new arguments before the CAS. However, the Player has neither adduced new facts nor laws but has rather retained the same arguments before the disciplinary proceedings. In any case, any prejudice suffered or right infringed at the Council of Justice level has been cured by virtue of the CAS hearing *de novo*.
42. The Player's arguments in relation to the violation of the adversary system are therefore dismissed.

c) Error of fact

43. The Player avers that the Council of Justice committed various errors of fact. He claims to have established for a fact that:
- He acknowledged having taken an anti-inflammatory drug given to him by the Club's therapist;
 - The failure to identify the drug as Prednislonone cannot be blamed directly on him because the Club's therapist and the doctor as stakeholders in the process and this identification could incriminate the Clubs' therapist and the doctor; and
 - Prednislonone was introduced into his body on the indication of the Club's medical staff.

44. The PFF states that despite the fact that the Council of Justice reviewed certain proven facts established by the Disciplinary Committee, this does not change the findings and conclusions made by these two disciplinary bodies.

45. Looking at the Decision, the Sole Arbitrator observes that its factual findings specifically stated that:

“Fundamentally, the Appellant seeks to not be proved that he had taken the drug Nimed and that he knows it.

In this area, does not suffer, contestation that the Appellant knew he was taking a drug, presumably anti-inflammatory, as he himself acknowledges.

As the drug was Nimed, testifies to this effect the club’s massage therapist Mr. Carlos Marques (pages 166-168) stating that he gave it to the Applicant by indication of the Doctor Manuel José Machado Veloso Gomes that confirms (pgs 179-181 of disciplinary proceedings) that information of had given instructions to Mr. Carlos Marques to administer Nimed to the applicant.

In any case, considering that Mr. Carlos Marques and Dr. Manuel Veloso Gomes are also interested in the fact that this concerns, for if they had, by mere chance of reasoning, given to the Appellant Prednisolone, they had an interest in denying it to not self incriminate, accepting, therefore, that is not proven that the substance that has been administered was Nimed, and may even conjecture in the abstract as well as hypothetical reasoning that Dr. Veloso Gomes indicated Nimed and Mr. Carlos Marques has given another product that contained Prednisolone, because the Applicant states that were given capsules to take and there is only Nimed in powder or tablets.

Anyway, now advances to be understood also not have been proven that the drug in question contained Nimed or Prednisolone, or that the Applicant had not taken any drugs on his own initiative.

Between the Applicant and Mr. Carlos testimonies is an impossible contradiction to resolve given the lack of supporting evidence to support them.

(...)”

46. In view of the above, and as pointed out in the Decision, it is not proven how the prohibited substance entered the Player’s body or that the substance found in his body was given by the Club’s therapist and prescribed by the doctor. The Player’s allegation that the substance entered his body as a result of the administration of Nimed is not convincing considering his statement that the anti-inflammatory was taken in capsules and Nimed only exists in the form of tablets or powder. There is a contradiction between the Player’s and the Club masseur’s version of facts. The Player had the opportunity to resolve this contradiction by adducing evidence in the current proceedings but he has failed to do so.

d) What is the relevant law applicable to the facts?

47. Having established and confirmed the proven facts, the Sole Arbitrator shall now assess the law *vis-a-vis* the said facts in determining whether an error of law was made in the Decision.

48. It is the Player's contention that the Council of Justice erred in banning him for 2 years. The Player claims to have met the requirements set out under Art.53.1 a) of the Anti-Doping Regulations, pursuant to which the rightful sanction ought to have either been a warning or a maximum suspension of 1 year.
49. The PFF states that the Player was rightfully sanctioned under Art.52.1 a) of the Anti-Doping Regulations and that he did not meet the provisions set out under Art.53.1 a) of the Anti-Doping Regulations, which required him to establish how the prohibited substance entered his organism and to prove that the said substance neither enhanced his performance nor had a masking effect. In view of this, it states that the issue of proportionality does not arise.
50. It is not in dispute that the ADoP discharged its burden of proving that a banned substance was found in the Player's body. The burden of proof now shifts to the Player to adduce evidence which would support the reduction of the sanctions imposed by the regulations.
51. The unofficial English translation of Art.53.1 a) of the Anti-Doping Regulations as invoked by the Player states as follows:
- "Where an athlete (...) can establish how a Specified Substance entered his or her body or came into his or her possession, and that such Specified Substance was not intended to enhance the Athlete's performance or mask the use of a performance-enhancing substance, the period of ineligibility established in the previous article shall be replaced with the following:*
- First violation: at a minimum, a warning, and at a maximum, a suspension of 1 year"*.
52. In order to benefit from the aforesaid provision, it is vital for the Player to prove:
- How the banned substance entered his body or came to his possession;
 - That he had no intention of enhancing his performance; and
 - That he had no intention of masking the use of a performance enhancing substance.
- The aforementioned requirements are cumulative and this provision is only applicable in case the Player succeeds in proving all the 3 requirements.
- da) Has the Player established how the banned substance entered his body or came to his possession?
53. The Player asserts that he took the drug Nimed prescribed to him by doctor Manuel José Machado Veloso Gomes and administered by the Club's therapist. However, upon undergoing a doping test, Prednisolone was found in his body.
54. Art. 10.4 of the WADA Code states that in order for an athlete to benefit from any reduction or elimination of a possible sanction for an anti-doping offence, he or she "(...) *must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel*" how the banned substance entered his or her body.

55. The standard of proof hence required from the Player is to the comfortable satisfaction of the Sole Arbitrator.
56. Note is taken of the fact that despite blaming the presence of the substance on the Club's therapist and doctor, the Player has neither summoned nor adduced any witness statements from these individuals corroborating his testimony as to how the substance entered his body.
57. The Player's assertion that the doctor and the Club's therapist are unwilling to testify in these proceedings for fear of incriminating themselves is insufficient because he had an alternative possibility of summoning a medical expert or adducing a medical report or opinion substantiating how the banned substance entered his body.
58. The failure to adduce corroborating evidence also leads to the presumption that the Player could have ingested the banned substance independently and separately from what was allegedly prescribed and administered to him. This is seen in his conduct of neglecting his personal duty to confirm what drug he was taking and also failing to inform the anti-doping control officials that he was on medication.
59. In the absence of such corroboration, the Sole Arbitrator cannot solely rely on the Player's word.
60. In view of the foregoing, the Sole Arbitrator finds that the Player has failed to establish how the substance entered his body.

db) Has the Player established that he had no intention of enhancing his performance?
61. It is not disputed that the ADoP results showed the presence of Prednisolone and 20B-Dihidropredisolene in the Player's body. Prednisolone contains Glucocorticoids, which is listed as a prohibited substance under Art. 9 of ADoP's list of prohibited substances.
62. Its effect as a performance enhancing drug is corroborated by the opinion published by Professor Martine Duclose, who states that Glucocorticoids increases an athlete's performance and concluded his findings by saying that "*[s]cientific evidence has shown that GCs mediate ergogenic effect in animals and humans. Therefore, I consider GCs to be doping agents that should remain on the WADA list of banned substances*".
63. In view of the aforementioned facts and legal provisions, the burden lay on the Player to rebut or cast doubt on the presumption that he intended to enhance his performance. The Sole Arbitrator notes that the Player has not adduced expert medical evidence or summoned witnesses rebutting the findings of Professor Martine Duclos.
64. Moreover, the Player has not disproved the fact that the performance enhancing drug could have entered his body as a result of him ingesting a drug separately and independently from what was allegedly prescribed to him by the doctor and administered by the Club therapist.

65. In attempting to discharge his burden of proof, the Player argues that his position as a goalkeeper requires little or no physical effort in comparison to the outfield players.
66. He also argues that only one of the three doping tests he underwent turned out to be positive and that he cannot be liable for having ingested a substance prescribed to him by the Club's doctors.
67. The Sole Arbitrator remarks that a footballer's position or role in the field is irrelevant in deciding whether he intended to enhance his performance when ingesting a prohibited substance. The fact remains that an athlete commits an anti-doping offence once he takes a prohibited substance which has the potential to enhance his performance.
68. In addition to this, the previous negative anti doping tests which the Player received do not mean that he had no intention of enhancing his performance with the help of prohibited substances. Indeed, the Player's intent to enhance his performance is evidenced in the undisputed presence of a performance enhancing drug found in his body.
69. The Sole Arbitrator also outlines that pursuant to Art. 6.1 of the Anti Doping Regulations "[p]layers are responsible for the presence of any prohibited substance or its metabolites or markers in their organism (...)". Furthermore, under Art. 20.6 of the Anti-Doping Regulations, if a doctor recommends, administers or prescribes medicine which contains a prohibited substance, this does not amount "(...) to an exclusion or exemption of the player from liability".
70. Art. 19.6 of the Anti Doping Regulations also adds that doctors who prescribe banned substances are liable to criminal, civil or disciplinary proceedings. It thus follows that an athlete who is found with a prohibited substance in his body is not exempt from liability even if he took the said substance on a doctor's prescription.
71. In view of all the foregoing, the Sole Arbitrator finds that the Player has failed to establish that he had no intention of enhancing his performance.
 - dc) Has the Player established that he had no intention of masking the use of a performance enhancing substance?
72. No evidence has been adduced substantiating that the Player did not try to mask the use of a performance enhancing drug. The Player has therefore not met this requirement.
- B. *What is the rightful sanction to be imposed on the Player?*
73. Reference is made to Art. 6.1 of the Anti-Doping Regulations under which athletes are responsible for the presence of any prohibited substance or its metabolites or markers in their organism. It is an athlete's personal duty under Art. 8.1 of the Anti-Doping Regulations "(...) to ensure that no prohibited substance enters his organism".

74. Art. 6.3. (b) of the Anti-Doping Regulations adds that “[s]ufficient proof of an anti-doping rule violation is established by when the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample”.
75. It is therefore clear that liability for a doping offence is strict and it is not disputed that a prohibited substance was found in the Player’s body. The Player could have contested the ADoP results by either proving that the ADoP did not analyse his sample in conformity with the international standard for laboratories or that the process of collecting the samples was altered and/or manipulated.
76. The Player however accepted the ADoP results and the only possibility he has of evading the full consequences of such strict liability is if he is able to meet the provisions of Art.53.1 a) of the Anti-Doping Regulations. As found above, the Player has failed to meet the requirements established under this provision.
77. Consequently, the Sole Arbitrator must look into the Anti-Doping Regulations to establish the relevant provision which ought to be applied in determining the appropriate sanction to be imposed on the Player.
78. Art.52.1 of the Anti-Doping Regulations states as follows:
*“With the exception of specified substances, the use of prohibited substances and methods is sanctioned as follows:
a) First violation: the player is sanctioned with a suspension period ranging between 2 and 8 years,
b) Second violation: the player is sanctioned with a suspension period ranging between 15 and 20 years”.*
79. As earlier highlighted, Prednisolone contains Glucocorticoids, and Glucocorticoids have been listed in section 9 of the Anti-Doping Regulations as one of the prohibited substances and methods.
80. This is the Player’s first anti-doping rule violation. It therefore follows that the Player will be sanctioned with a 2 year period of ineligibility pursuant to Art.52.1 a) of the Anti-Doping Regulations.
81. The Player argues that the 2-year ban is disproportional and ought to be reduced under CAS jurisprudence because he had no intention of gaining an advantage.
82. The Sole Arbitrator remarks that Art. 52.1 of the Anti-Doping Regulations is clear that first offences are “(...) sanctioned with a suspension period ranging between 2 and 8 years”. It is therefore apparent that this is the minimum sanction for such offences and a deciding body cannot issue a sanction of less than 2 years. It follows that the 2-year sanction imposed by the Decision is not disproportional and the Player’s arguments in relation to this are dismissed.
83. The Sole Arbitrator hence rejects the Player’s assertion that the Council of Justice made an error of law and remarks that pursuant to Art. 52.1 of the Anti-Doping Regulations, the Player’s 2 year-ban was rightful.

C. *Conclusion and the period of commencement of the sanction*

84. Pursuant to Art. 61.1 of the Anti-Doping Regulations, the status of the Player during this 2-year period of ineligibility is that he shall be unable to “(...) *participate, in any capacity, in any competition or sports event*” and “[*t*]he *ineligibility period starts running with effect from the date when the disciplinary decision is notified at the first instance*” (Art. 60.1 of the Anti-Doping Regulations).
85. The Player began serving his sanction on 7 April 2011, when he was temporarily suspended and “[*a*]ny *period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility imposed*” (Art. 60.2 of the Anti-Doping Regulations).
86. Therefore, the period of suspension already served by the Player with effect from 7 April 2011 until the date of communication of this award shall be credited against the 2-year ineligibility period to be imposed on him and which comes into effect on the day of service of the present arbitral award.
87. In conclusion, the appeal is dismissed.

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport has jurisdiction to decide the appeal filed by Mr. Ricardo Jorge Cecília Batista against the decision dated 8 September 2011 issued by the Council of Justice of the Portuguese Football Federation.
 2. The appeal filed by Mr. Ricardo Jorge Cecília Batista against the decision dated 8 September 2011 issued by the Council of Justice of the Portuguese Football Federation is dismissed.
 3. The Council of Justice of the Portuguese Football Federation decision dated 8 September 2011 is fully upheld.
 4. Mr. Ricardo Jorge Cecília Batista is suspended for a period of two (2) years with effect from the date of this award, deducting the period of suspension already served since 7 April 2011.
- (...)
7. All other and further claims or prayers for relief are dismissed.