



Arbitration CAS 2008/A/1557 World Anti-Doping Agency (WADA) v. Comitato Olimpico Nazionale Italiano (CONI), Federazione Italiana Giuoco Calcio (FIGC), Daniele Mannini & Davide Possanzini, award of 29 January 2009

Panel: Mr Dirk-Reiner Martens (Germany), President; Mr Quentin Byrne-Sutton (Switzerland); Mr Ercus Stewart (Ireland)

Football

Refusal or failure to submit to sample collection

Decision subject to appeal to CAS

Right to be heard and CAS power to review

Burden of proof and balance of probability

Interpretation of the word “failing” to submit to sample collection

No compelling justification for athletes’ delay to proceed to a doping control

1. The CAS jurisdiction is granted so long as the rules governing the International Federation or the national Anti-Doping authority so provide, and so long as the appellant exhausted the legal remedies available to it. Decisions subject to appeal include decisions “that an anti-doping rule violation was committed” and decisions “that no anti-doping rule violation was committed”. It is sufficient for the CAS that the appealed decision decided either that an anti-doping violation was committed or that none was committed.
2. The players have not been deprived of the right to defend themselves so long as they have been offered the possibility of fully arguing their case again in front of CAS, including the right to submit additional arguments and evidence and to be heard once again at a hearing together with witnesses of their choice. It is precisely one of the roles of CAS, as an appellate tribunal in anti-doping matters, to determine whether it considers the lower instances have correctly applied the law and the rules.
3. While WADA has the burden of proving a failure or refusal to submit a sample, the burden of proving a possible “compelling justification” is on the athletes. In case of delay to proceed to a doping control, the athletes have to establish by a balance of probability that they were told by any of the members of their entourage (the coach, the team manager, the President or any other person) that they did not need to proceed immediately to the doping-control station but could wait until after the team meeting because permission had been obtained from the doping-control officers.
4. Any behaviour whereby an athlete expressly refuses, or *de facto* fails to report to the control station without delay and remains without chaperone during such delay, must be deemed a refusal or a failure to submit a sample. In other words, the refusal or failure is constituted by any delay in providing the sample after having been notified to do so,

where the delay is not authorized by the control personnel and during which the athlete is not chaperoned, irrespective of whether the athlete submits a sample at some subsequent point in time. Thus, in cases where an athlete ends up submitting a sample, what is relevant in finding a violation is not so much the exact period of time which lapses between the notification and the submission of the sample, as the fact of not submitting the sample forthwith upon being officially notified to do so, i.e. the fact of submitting the sample late, and simultaneously not being within sight of the DCO/Chaperone. Any other interpretation of the meaning of the word “failing” to submit to sample collection would prevent achieving the purpose of the anti-doping rules with regard to In-Competition sample collection, which is to avoid giving athletes who want to cheat an opportunity to do so between the point in time of the notification and their arrival at the doping-control station. Accordingly, it is also irrelevant whether or not it can be established that the athlete actually attempted to manipulate his or her sample in order to mask the use of a prohibited substance during an unauthorized delay. The fact alone that the athlete fails to report to the control station without delay and remains outside visual control during such delay, is the event which is sanctioned.

5. The athletes’ failure to proceed to sample collection without delay following the instructions of their coach is not considered to be a “compelling justification”, because even if they had acted against the instructions of their coach and President, from a legal perspective they would not have risked any repercussions with respect to their employment relationship, as they would have been conforming with binding rules (binding also on the coach and the President) forming a mandatory part of their engagement as professional players. As such, the athletes’ delay to arrive at the doping-control station for a period of at least 25 minutes during which they were not chaperoned, must be deemed to have violated the anti-doping rules.

The Appellant WADA is a foundation formed by the Olympic Movement and Public Authorities whose aim is to promote and coordinate the fight against doping in sport.

Comitato Olimpico Nazionale Italiano (CONI, First Respondent) is the Italian National Olympic Committee which represents all national sport associations including FIGC.

Federazione Italiana Giuoco Calcio (FIGC, Second Respondent) is the Italian Professional Football Association which groups Italian football clubs.

Daniele Mannini and Davide Possanzini are professional football players who were registered with Brescia Calcio S.p.A. (“Brescia”) at the point in time relevant in these proceedings.

On the occasion of a regular season game of Serie B of FIGC on 1 December 2007 between Brescia and A.C. Chievo Verona (“the Game”) the Players were drawn to undergo a doping control.

In keeping with the practice in Italy for doping controls during football games, the official notification of the Players' selection for Sample collection was made to the Players' team representative in the technical area.

In this case the team representative who received the notification in the technical area on behalf of the Players was the Brescia team doctor Diego Giuliani, who had the responsibility of informing the Players thereof at the end of the game.

Thus, at the end of the Game at approximately 17.45 hrs the Players were advised by the Brescia team doctor Diego Giuliani that they had to report immediately to the doping-control station. This occurred as the Players left the pitch and were on the steps leading to the corridor where the dressing room was situated.

The foregoing notification was confirmed in the Players' written submissions in following terms: "*At the conclusion of the match, as the Player was coming off the pitch, he was advised by the team doctor, Dott. Diego Giuliani, that he had been selected to submit to an anti-doping control and that he should report to the anti-doping station*" (written submission of Davide Possanzini); "*Mr Mannini, at the end of the home match, lost by the club, was informed by the deputy assistant of Brescia, Mr. Diego Giuliani, that he was selected, jointly with Davide Possanzini, to undergo to the anti-doping control; ... the two players duly proceeded towards the anti-doping room ...*" (written submission of Daniele Mannini). Mr. Davide Possanzini had already described this sequence of events during his examination by the Doping Prosecution Office on 19 December 2007, when he declared: "*... at the end of the game, as soon as I left the field, I was informed by Brescia team's doctor, Dr. Diego Giuliani, that I had been selected for the doping control and that I had to go to the doping testing room immediately*".

The FIGC Anti-Doping Representatives, Mr Vincenzo De Vita and Mr Riccardo Miadore were waiting with doctor Diego Giuliani and then followed the Players into the corridor in order to keep them in sight. In that relation, the Player Davide Possanzini declared at the hearing that he remembered seeing an official on the steps whose function he recognized because of the person's badge. In the official report signed on 1 December 2007 by the two foregoing representatives, it is stated that: "*At 5:45 PM, the Brescia official representative was duly notified, in his own technical area, that the players selected for the anti-doping operations were Messrs. Mannini and Possanzini. The two players were followed in their locker room by the anti-doping officials ...*". Both Players' declarations in front of the Doping Prosecution Office on 19 December 2007 confirm in substance that they were in sight of the Anti-Doping representatives when reaching the dressing room, since both of them declare having seen an inspector being invited into the dressing room.

As the Players were walking towards the doping-control station they were intercepted by the team coach and the President of Brescia and were instructed to immediately proceed to the Brescia dressing room instead of the doping-control station because an important team meeting had been scheduled in view of Brescia's third consecutive defeat. The Players did as they were told and entered the dressing room for a meeting which lasted somewhere between 10 and 25 minutes.

Mr De Vita was invited to join the Players in the dressing room, but when he tried to enter he found the door blocked from the inside so that he had to wait outside until after the meeting. During that time the Players were not under visual control of doping-control officials.

At the end of the team meeting, approximately 35 minutes after the end of the Game, the Players proceeded to the doping control station and gave blood and urine samples. The analysis of the samples did not reveal the presence of any prohibited substance.

The Players' case was initially examined by the Ufficio di Procura Antidoping "UPA", which concluded that the Players had no intention to avoid the doping control and that thus the Players' behaviour would not fall under Article 2.3 of the WADC. However, according to the UPA, the Players were guilty of non-cooperation with the anti-doping officials and were thus subject to sanctions according to Articles 6.2 and 6.6 of the "Istruzioni Operative della Commissione Antidoping" and Article 4.2 of the "Procedimento disciplinare e Istruzioni operative relative all'attività dell' Ufficio di Procura Antidoping" of CONI ("the Istruzioni").

On 29 January 2008, the Court of First Instance of the FIGC acquitted the Players upon considering that there was no sanction provided for in the Istruzioni for the Players' behaviour. In particular, the Court found that the wording of Article 4.2 of the Operating Instructions of UPO did not provide a basis for sanctioning a violation of Articles 6.2 and 6.6 of the Procedural Guidelines of the Anti-Doping Control Committee.

On 20 March 2008, upon appeal by the UPA, the Judges of Final Jurisdiction on Doping Issues of CONI (GUI) set aside the first-instance ruling and imposed a sanction of 15 days of ineligibility on the Players for a violation of several anti-doping rules contained in the Istruzioni. More specifically, it found that Articles 6.2 and 6.6 of the "Istruzioni Operative della Commissione Antidoping" and Article 4.2 of the "Procedimento disciplinare e Istruzioni operative relative all'attività dell' Ufficio di Procura Antidoping" of CONI had been violated. The GUI decision does not provide express reasons for not applying Article 2.3 of the World Anti-Doping Code ("Article 2.3"), but in its discussion refers to the Players' brief filed with GUI on 12 March 2008 in which they argue that "...*lacking facts that could constitute violations as per Article 2 of WADC, that is aimed at evading sample collection, the conditions to initiate disciplinary proceedings were not met*" and request in the alternative "... *subordinately this Panel to apply article 10.5.2 of WADC, imposing fifteen days' ineligibility on the athletes barring them from every match*".

It is the foregoing decision of GUI that is under appeal by WADA who argue that the Players should have been sanctioned for a violation of Article 2.3.

What exactly happened between the time when the Players left the pitch at 17.35 hrs and the moment when they presented themselves for doping control about 35 minutes later remains unclear even after the hearing of several witnesses.

The Appellant invokes the facts outlined above and argues that the mere fact of the Players not presenting themselves at the doping-control station immediately after they had been instructed to do so, is sufficient to establish an anti-doping rule violation according to Article 2.3. According to the Appellant's 9 June 2008 Appeal Brief, the Players "*unduly refused to submit to urine sample collection on December 1, 2007*" and must thus be sanctioned according to Article 2.3.

With regard to the process in front of GUI, the Players argue that GUI should have declared the appeal by UPA against the decision of the Court of First Instance of the FIGC inadmissible, because in violation of Article 2.1 of GUI's Operating Instructions a copy of the appeal was not notified to WADA and to the appropriate International Federation. The Players conclude that as a result of GUI having in such manner wrongly deemed the appeal admissible, the appeal brought by WADA against the GUI's decision must be deemed inadmissible and be dismissed.

With respect to the matter of the alleged anti-doping violation, the Players argue that after the end of the Game they found themselves in the dilemma of being instructed by Mr Giuliani to immediately report to the doping-control station on the one hand, and on the other hand being ordered by the team coach and the Brescia President to participate in a team meeting immediately after the Game. According to the Players they decided to proceed to the dressing room not only because they did not want to disobey the orders of their superiors but also because they were assured by their coach and Mr Giuliani *"that they had already explained to the Anti-Doping officials that [they] had to go to the changing room for the meeting and that afterwards [they] would go to the doping control station"*. The Players further argue that both Mr Giuliani and the team coach *"advised the official of the prevailing circumstances on the Athlete's behalf and confirmed that the Players would present to the control after the meeting. No objection was raised by the official"*.

In essence, therefore, the Players argue that they did not refuse or fail to submit a sample in the meaning of Article 2.3 and that even if their attitude amounted to a "refusal" pursuant to Article 2.3, such a refusal was justified because the doping-control official had agreed with the delay in the Players' reporting to the doping-control station and had not objected to the Players being without observation during the team meeting. At a minimum, according to the Players they were led to believe that they were allowed to first participate in the team meeting before proceeding to the doping-control station.

The Second Respondent (FIGC) made brief submissions on 21 July 2008 requesting that the appeal be rejected.

The First Respondent (CONI) made no written submissions of its own.

The regulatory framework

All parties involved agree that the "Norme Sportive Anti-doping" of CONI (the "CONI Rules") are applicable to this case. Since the corresponding parts of the CONI Rules are a literal translation of the WADC, which has been incorporated into the CONI Rules, any references hereinafter to provisions of the WADC therefore simultaneously constitute a reference to the corresponding provisions in the CONI Rules, and vice versa. The CONI Rules include, *inter alia*,

- in the "Libro Primo" an Italian translation of the World Anti-Doping Code ("WADC") as implemented by CONI;
- in the "Libro Secondo" the "Istruzioni operative de la Commissione Anti-doping – Comitato per Controlli Anti-doping (CCA)" ("Procedural Guidelines of the Anti-doping Control Committee") of which Article 6.2 provides as follows (translation provided by the Appellant):

“2. The Athletes ... are required to provide the utmost cooperation for the smooth execution of the doping testing procedures.

Without prejudice to the provision set out by WADA the Athlete:

- ...
- *must appear as soon as possible in the anti-doping test station and in any case by the deadline specified in the notification;*
- *must be in constant sight of, and directly observed by the personnel assigned to the collections session, from the moment of notification until the specimen is produced;*

...

- *6. Athletes who have received notification for testing must go promptly to the designated collection station and they are kept in sight at all times by the DCO or by another individual designated by the DCO.*

...”.

- in the “Libro Secondo” the “Procedimento disciplinare e Istruzioni operative relative all’attività dell’Ufficio di Procura Antidoping” (hereafter the “Operating Instructions of UPA”).

Article 4.2: Any carded athlete who, without cause, fails to cooperate or does not appear before the UPA to provide information or to respond to the charge, may be suspended for one to six months. Said sanction may be proposed by the UPA to the competent judicial body and is in addition to any sanctions that may be imposed upon completion of the disciplinary proceedings.

- in the “Libro Secondo” the “Istruzioni operative di Ultima Istanza in materia di doping (GUI)” (“Operating Instructions of GUI”) of which Article 2.26 provides as follows (translation by the Panel):

“All decisions of GUI can be appealed by interested parties to the CAS, in conformity with its procedure, within 30 days from the communication of the motivated decision”.

LAW

CAS Jurisdiction

1. The Players deny that CAS has jurisdiction to deal with this case and contest the admissibility of the appeal. They do so on two counts.
2. As mentioned above, one argument the Players make is that GUI should have declared the appeal to it by UPA against the decision of the Court of First Instance of the FIGC inadmissible, because in violation of Article 2.1 of GUI’s Operating Instructions a copy of the appeal was not notified “to WADA and to the appropriate International Federation”. The Players conclude that as a result of GUI having in such manner wrongly deemed the appeal admissible, the appeal brought by WADA against the GUI’s decision must be deemed inadmissible and be dismissed.

3. The Panel finds that the foregoing argument is unfounded because Article 2.1 of GUI's Operating Instructions simply indicates that the parties and their counsel ("*alle parti interessate ed al difensore o al difensore*") should be notified by the President of GUI of the date and place of the hearing, whereas it is not alleged and there is no evidence on record that either WADA or any international federation had been included as a party in the appeal by UPA against the decision of the Court of First Instance. Consequently, GUI had no reason to notify such organizations and the Players have no valid grounds for arguing that the appeal to GUI and the subsequent appeal to CAS are inadmissible due to a violation by GUI of Article 2.1 of its Operating Instructions.
4. As a second ground for contesting the admissibility of the appeal and CAS jurisdiction, the Players argue that whereas WADA's right of appeal according to Article 13.2 WADC requires "*a decision that an Anti-Doping Rule Violation was committed, [or] a decision that no Anti-Doping Rule Violation was committed ...*", "*at no stage during the proceedings at national level was it suggested that the Player[s] had committed a violation of Article 2.3*".
5. As shall now be examined, the Panel considers that the Players' foregoing position is ill-founded.
6. According to Article R47 of the Code of Sports related Arbitration (the "Code"):
"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide ... and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".
7. As per the foregoing provision, the CAS has jurisdiction provided two conditions are fulfilled, i.e. if the rules governing CONI and FIGC so provide and if WADA, as Appellant, exhausted the legal remedies available to it.
8. Both conditions are met. As indicated above, the WADC was incorporated into the CONI Rules and according to Articles 13.2.1 and 13.2.3 thereof decisions regarding anti-doping violations "*may be appealed exclusively to the Court of Arbitration for Sport*" and WADA is expressly listed among the organizations entitled to appeal. Furthermore, WADA used the only legal remedy it had available to it under the applicable rules, which was to appeal to CAS.
9. In addition, since according to Article 13.2 of the CONI Rules, decisions subject to appeal include decisions "*that an anti-doping rule violation was committed*" and decisions "*that no anti-doping rule violation was committed*", it is irrelevant which of the anti-doping provisions of the CONI Rules the GUI applied for the CAS to have jurisdiction. It is sufficient that the appealed decision was taken by the GUI and that it decided either that an anti-doping violation was committed or that none was committed. In this case, the GUI found that none of the anti-doping violations provided in the "Libro Primo" had been committed but that several anti-doping violations provided in the "Libro Secondo" had been committed, thus the conditions of Article 13.2 are fulfilled.

10. Finally, it is noteworthy that according to Article 3 of the Operating Instructions of GUI, its decisions must be notified not only to the parties but also to WADA. That duty of GUI to notify WADA ties in with and thus confirms the purpose of Article 13.2.3 of the CONI rules implementing the WADC, which is to provide WADA with the right to appeal against final decisions relating to anti-doping violations.
11. For the foregoing reasons, the Panel considers that WADA's appeal is admissible and CAS has jurisdiction.
12. The Panel will have to determine whether the Players committed an anti-doping rule violation and, if so, on what basis.
13. In light of the fact that the lower instances did not rely on Article 2.3 when determining the existence of an anti-doping violation and its possible sanction, the Players argue that WADA:
"... in the present proceeding, has essentially introduced entirely new elements which seek to extend the essence of the dispute and in so doing have entirely distorted the nature of the proceedings at national level and deprived the player of his clear and inviolable right to defend himself".
14. The Panel disagrees for a number of reasons with the foregoing reproach made by the Players.
15. First, the present proceedings are not based on entirely new factual elements. On the contrary, the circumstances with regard to which a possible anti-doping violation by the Players have been examined in this proceeding are basically the same as those which were examined successively by the UPA, by the Court of First Instance of the FIGC and by GUI.
16. Second, the Players have not been deprived of the right to defend themselves since they have been offered the possibility of fully arguing their case again in front of CAS, including the right to submit additional arguments and evidence and to be heard once again at a hearing together with witnesses of their choice.
17. Third, the lower instances did not ignore the possibility that an anti-doping violation based on Article 2.3 could have occurred but decided that it was not applicable based on their reading of the rules. Thus, UPA expressly excluded the applicability of Article 2.3 by stating *"... it can therefore be concluded that, in the case in question, in the opinion of this Office, there was no violation of Sections 2.3 and 2.5 of the WADA Code by the athletes Mannini and Possanzini..."*, while the Court of First Instance of FIGC determined there was a lacuna in the rules and GUI agreed with UPA as to the rules they deemed had been violated, i.e. Articles 6.2 and 6.6 of the Procedural Guidelines of the Anti-doping Control Committee. With respect to the determination of a sanction, the Players themselves even invoked as an alternative argument in front of GUI that Article 10.5.2 of the WADC should be applied, which is a provision that implements Article 2 of the WADC. Consequently, by invoking Article 2.3 in its appeal to CAS, WADA has not taken a completely new and unforeseeable tack but is simply contending that the lower instances misapplied the rules when deciding not to apply Article 2.3 and the related sanctions of the CONI Rules/WADC.

18. In such context, WADA cannot be blamed for the lower instances determinations as to the applicable rules, and it is noteworthy in that relation that, in accordance with Article 2.22 of its Operating Instructions, GUI had the power to review the facts and the law.
19. Furthermore, it is precisely one of the roles of CAS, as an appellate tribunal in anti-doping matters, to determine whether it considers the lower instances have correctly applied the law and the rules.
20. This is expressly laid out in Article R57 of the Code, which stipulates in the following manner that proceedings before CAS are “*de novo*”: “*The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*”.
21. Thus, on appeal it is for CAS to determine whether or not it agrees with the appealed decision; the Players having full rights to defend themselves in front of CAS.
22. For all of the above motives, the Panel finds that WADA has not sought unfairly to bring a new case upon appeal but is merely arguing that GUI misapplied the applicable rules.
23. Consequently and in light of WADA’s arguments and prayers for relief, the main issues the Panel has to address are whether it deems GUI’s decision to be correct in law, i.e. as to the rules applied, and in that connection whether or not a violation of Article 2.3 occurred and, if so, with what consequences.
24. The Panel does not disagree with GUI’s opinion that the Players acted in violation of the doping-test procedures defined in Articles 6.2 and 6.6 of the Procedural Guidelines of the Anti-doping Control Committee. However, for the reasons examined below, the Panel finds that such behaviour of the Players also amounted to the violation of a substantive anti-doping rule, i.e. of Article 2.3, and that by ignoring this fact GUI misapplied the rules. In addition, and as shall be discussed in the next section of this award, the Panel considers GUI to have applied the wrong sanction.
25. According to Article 2.3 the following constitutes an anti-doping rule violation:
“refusing, or failing without compelling justification, to submit to sample collection after notification as authorised in applicable anti-doping rules or otherwise evading Sample collection”.
26. It has been established in these proceedings and remains undisputed that the Players arrived at the doping control station with a considerable delay, i.e. a delay of at least 25 minutes, after the point in time in which they were notified that they were drawn to submit to doping control; and that they were without visual supervision of doping control personnel during the major part of that period of time. It has also been established that the Players were fully conscious of the fact that they had to report to the doping control without delay and deliberately (even though perhaps reluctantly) decided to attend a team meeting to which they were called by their coach and President.

27. In that relation, it is undisputed that before the Players deliberately decided to attend the team meeting instead of going to the doping-control station the team representative, doctor Diego Giuliani, had been formally notified of their duty to submit to Sample collection and he had informed them thereof, following which the Players were kept in sight by the FIGC representatives until the Players entered the dressing room.
28. Thus, and considering this official notification via the team representative was uncontested as the form of notification used during football games in Italy, the Panel considers that the notification requirements of the International Standard for Testing must be deemed to have been met in substance for as long as the FIGC representatives remained in control of the situation.
29. That being said, the Panel will have to decide whether:
 - this set of facts is sufficient to establish a failure or refusal within the meaning of Article 2.3, as WADA argues,
 - and if so, whether the evidence showed any “compelling justification” according to Article 2.3.
30. In their closing submissions on 23 October 2008, WADA left it open whether in their view the Players’ behaviour must rather be deemed a refusal or rather be characterized as a failure to submit to sample collection.
31. It has been established that the Players reported to the doping-control station with a delay of at least 25 minutes, so the question is whether this can be characterized as either a failure or a refusal to submit the sample, despite the fact that the Players did eventually present themselves to the control and delivered the samples.
32. In that relation it is relevant that according to Article 6.2 of the Istruzioni the athlete “*must appear as soon as possible in the anti-doping test station and in any case by the deadline specified in the notification*” and “*must be in constant sight of and directly observed by the personnel*” and that according to WADA’s International Standard for Testing [Section 5.4.1(e)] it is the athlete’s responsibility to “*remain within sight of the DCO/Chaperone until the completion of the Sample Collection procedure*”.
33. The foregoing provisions confirm that under the meaning of Article 2.3 any behaviour whereby an athlete expressly refuses, or *de facto* fails to report to the control station without delay and remains without chaperone during such delay, must be deemed a refusal or a failure to submit a sample, unless there is “a compelling justification”.
34. In other words, the refusal or failure is constituted by any delay in providing the sample after having been notified to do so, where the delay is not authorized by the control personnel and during which the athlete is not chaperoned, irrespective of whether the athlete submits a sample at some subsequent point in time. Thus, in cases where an athlete ends up submitting a sample, what is relevant in finding a violation is not so much the exact period of time which lapses between the notification and the submission of the sample, as the fact of not submitting the

sample forthwith upon being officially notified to do so, i.e. the fact of submitting the sample late, and simultaneously not being within sight of the DCO/Chaperone.

35. Any other interpretation of the meaning of the word “failing” to submit to sample collection under Article 2.3 would prevent achieving the purpose of the anti-doping rules with regard to In-Competition sample collection, which is to avoid giving athletes who want to cheat an opportunity to do so between the point in time of the notification and their arrival at the doping-control station. Indeed, it would be all too simple for cheaters if athletes were afforded the possibility of being absolved of a violation by merely invoking the fact that a sample was ultimately provided, albeit late, and in particular if they were entitled to hide behind the behaviour of their coach or any other person in their entourage as an excuse for submitting a sample late without having remained under visual control of the DCO/Chaperone.
36. Accordingly, it is also irrelevant for Article 2.3 whether or not it can be established that the athlete actually attempted to manipulate his or her sample in order to mask the use of a prohibited substance during an unauthorized delay. The fact alone that the athlete fails to report to the control station without delay and remains outside visual control during such delay, is the event which is sanctioned.
37. For the above reasons, the Panel finds that in this case the Players cannot invoke as a valid defence the mere fact that they ultimately submitted to sample collection, albeit with a delay.
38. As a result, unless the Players can evidence that there was “a compelling justification” for their delay, they must be deemed to have failed to submit to sample collection within the meaning of Article 2.3.
39. As a justification, the Players contend that they cannot be sanctioned under 2.3 because they believed in good faith that the doping-control official had expressly agreed for the Players to first attend the team meeting, and that he would stay outside the dressing room and wait until the meeting was finished. In other words, the Players contend that the delay in their reporting to the doping control station was consented to.
40. The Panel heard seven witnesses who testified primarily on the events which occurred from the point in time when the Players were notified until they actually presented themselves at the doping-control station.
41. However, some of the evidence is contradictory and on a number of points no clear picture emerges from the evidence on record.
42. Mr Possanzini appeared to recall events in detail and declared in particular to have overheard a remark by the Anti-Doping Control Officer, Mr De Vita, that it was acceptable for Mr Possanzini to attend the team meeting while he was waiting outside. On the other hand, upon being examined by the Panel Mr Mannini did not seem to recall anything about the exact circumstances surrounding the delay in proceeding to the control station.

43. The team coach, Mr Cosmi, whose contract with Brescia has ended in the meantime, initially claimed that he does not read English at all and did not remember having signed an undated English language declaration which was presented by the Players in these proceedings, according to which he *“immediately informed the F.I.G.C. representative that I wanted to speak with all players for few minutes and Mannini and Possanzini would go to the control station later”*.
44. The Players’ attorneys went through great pains to make Mr Cosmi remember his statement. On the other hand, according to his initial oral testimony, at the time the team entered the dressing room Mr Cosmi did not even know the names of the players who had been drawn for the doping control. He also did not remember – contrary to his written statement - having spoken to the Doping Control Officer.
45. Mr De Vita testified that he did not speak to Mr Cosmi and denies to have consented to the Players being without supervision during the team meeting. He confirmed that he was invited to join the team in the dressing room by Mr Giuliani but declared that it was impossible for him to enter because the door was blocked.
46. While WADA has the burden of proving a failure or refusal to submit a sample, the burden of proving a possible “compelling justification” is on the Players.
47. In light of the contradicting witness statements and having weighed the evidence on record, the Panel is convinced that Mr De Vita did not agree that the Players participate in the team meeting without supervision and that he acted accordingly by – unsuccessfully – attempting to enter the dressing room in order to act as chaperone.
48. Furthermore and whether or not such fact is decisive, the Panel finds that the Players did not establish by a balance of probability (Article 3.1 WADC) that inside the dressing room they were told by any of the members of their entourage (the coach, the team manager, the President or any other person) that they did not need to proceed immediately to the doping-control station but could wait until after the meeting because permission has been obtained from the doping-control officers.
49. As shall be further examined below in relation to the question of the sanction, on the basis of the evidence on record the Panel finds that more probably than not the Players found themselves in the dilemma of either risking an argument with the coach and /or the President if they refused to attend the meeting – since it appears credible that they had been quite forcibly summoned to and requested to stay in the meeting – or complying with those instructions and arriving late at the doping-control station.
50. However, the Panel does not consider this dilemma to be a “compelling justification” to fail to submit to a sample without delay, notably because even if they had acted against the instructions of their coach and President, from a legal perspective they would not have risked any repercussions with respect to their employment relationship, as they would have been conforming with binding rules (binding also on the coach and the President) forming a mandatory part of their engagement as professional players.

51. In that connection, there is no evidence that the Players made any serious efforts to convince their principals of the need to first go to the doping-control station and that they were in effect “sequestered” in the dressing room in the sense of being physically prevented from leaving.
52. Thus, to remain in conformity with their anti-doping duty to submit a sample – which they were well aware of, due to having undergone other In-Competition tests in the past – the Players should have resolved the dilemma by either going directly to the control station before entering the dressing room or by insisting with the coach and or President that they must first go to the control station or by insisting that a chaperone be admitted to the dressing room.
53. For the Panel to decide otherwise and consider a dilemma of such nature to represent a “compelling justification” would be contrary to Article 2.3 and would open the door to all forms of similar “excuses” being invoked as justification, thereby making the rule easy to circumvent despite a strict interpretation being necessary for the rule to meet its purpose. By using the qualification “compelling”, the wording of Article 2.3 underscores the strictness with which the justification needs to be examined.
54. For the above reasons, the Panel concludes that the Athletes had no “compelling justification” to delay their arrival at the doping-control station for a period of at least 25 minutes during which they were not chaperoned, and that as a result they must be deemed to have violated Article 2.3. Accordingly, the Panel also finds that GUI misapplied the CONI Rules by relying on Articles 6.2 and 6.6 of the Procedural Guidelines of the Anti-doping Control Committee as the rules applicable in circumstances where a violation of Article 2.3 occurred, and determines therefore that the GUI’s decision must be set aside.

Sanction

55. Having established that the Players committed an anti-doping rule violation pursuant to Article 2.3, the Panel has to determine the applicable sanction. It is worth noting in this context that contrary to the opinion expressed by the Respondents, the Panel does not deem the violation of anti-doping regulations to be of penal nature.
56. As a preliminary matter, the Panel finds that as a result of GUI ignoring the fact that an anti-doping violation under Article 2.3 occurred, GUI also failed to apply the correct sanction. Indeed, having determined, erroneously in this Panel’s opinion, that only Articles 6.2 and 6.6 of the Procedural Guidelines of the Anti-doping Control Committee had been violated, GUI proceeded to apply Article 4.2 of the Operating Instructions of UPA according to which “*Any licensed athlete who, without cause, fails to co-operate or does not appear before the UPA to provide information or to respond to the charge, may be suspended for one to six months. Said sanction may be proposed by the UPA to the competent judicial body and is in addition to any sanction that may be imposed upon completion of the disciplinary proceedings*”. On such basis, GUI sanctioned the Players with 15 days of suspension.

57. The Panel considers GUI to have erred in two respects in reaching that sanction. First by not applying Article 10 of the WADC/CONI Rules as required when a doping violation is committed (as confirmed by Article 4.1 of the Operating Instructions of UPA, whereby “*Any violation of the provisions of the Anti-Doping Rules for Sport is punishable in accordance with Article 10 of the WADA Code*”). Second because it is clear from the wording of Article 4.2 that the sanction therein contained (1-6 months suspension) is meant as a penalty for disregarding the UPA’s investigatory powers and not to sanction an anti-doping violation as such; and for that reason the suspension is even defined as coming in addition to a possible subsequent anti-doping violation sanction. It is also worth mentioning that a 15-day suspension is not provided for in Article
58. Consequently, the sanction decided by GUI must be replaced by the correct one.
59. According to Articles 10.4.1 and 10.2 WADC the sanction for a first violation of Article 2.3 is two years’ ineligibility. This sanction can be reduced to no less than one-half, i.e. to one year ineligibility, if the athlete bears no significant fault or negligence (Article 10.5.2).
60. In determining whether the Players bore no significant fault when they decided to attend a team meeting called by their coach instead of proceeding to the doping control station, the Panel has based itself on the written evidence and oral testimony on record.
61. Among the relevant circumstances that the Panel find to be established on the balance of probabilities are the following: Brescia had suffered from a series of bad results and the additional defeat in a game at home resulted in the President being particularly agitated and the players feeling under pressure as they left the pitch; this pressure was increased by the players being summoned to an immediate meeting (before showering) and by the presence of the President in the dressing room; there was a heated discussion in the dressing room that could be heard from the outside; although the players were not locked into the changing room, they were obviously not in a position to easily get up and leave, since the doping-control officer found it impossible to enter from the outside, and were under considerable pressure to remain in the meeting.
62. The Panel finds that this combination of circumstances made it much more difficult for the Players to think lucidly and to act in a diligent manner, and may have led them to falsely believe that providing they immediately proceeded to the control station at the end of the meeting – which it is not contested they did – they would not be deemed in breach of their duties.
63. On the basis of these very particular circumstances as evidenced, and without therefore intending to give any direction whatsoever for future cases, the Panel believes that although the Players remain at fault they are entitled to benefit from a finding of “no significant fault” allowing their sanction to be reduced to one-half of the minimum period of 2 years of ineligibility otherwise applicable.
64. For the above reasons, the Panel decides that the Players are sanctioned with a period of ineligibility of one year.

65. Since the Players were incorrectly sanctioned with 15 days of ineligibility by the GUI and have already served that sanction, the Panel considers that the 15-days ineligibility must be credited against the sanction imposed hereunder. In that respect, the Panel shall apply by analogy Article 10.8 WADC, which provides that “*(A)ny period of Provisional Suspension ... shall be credited against the total period of ineligibility to be served*”.
66. Article 10.8 WADC provides that “*the period of ineligibility shall start on the date of the hearing decision providing for ineligibility ...*”. Therefore, the period of ineligibility shall commence on the date of this Award.
67. As the Players have participated in FIGC Competitions after having served their 15-day ineligibility period, the Panel sees no reasons of fairness (Article 10.8 WADC) which would suggest an earlier commencement of the sanction imposed hereunder.

The Court of Arbitration for Sport rules:

1. The Appeal filed by the World Anti-Doping Agency on 16 May 2008 against the decision issued on 20 March 2008 by the Judges of Final Jurisdiction on Doping Issues of CONI is partially upheld.
 2. The decision issued on 20 March 2008 by the Judges of Final Jurisdiction on Doping Issues of CONI is set aside.
 3. A suspension of one year is imposed on Mr Daniele Mannini and Mr Davide Possanzini commencing on the date of this decision, less the period of fifteen days already served.
 4. All other motions or prayers for relief are dismissed.
- (...).