



Arbitrations CAS 2007/A/1370 FIFA v. Superior Tribunal de Justiça Desportiva do Futebol (STJD) & Confederação Brasileira de Futebol (CBF) & Mr Ricardo Lucas Dodô & CAS 2007/A/1376 WADA v. Superior Tribunal de Justiça Desportiva do Futebol (STJD) & Confederação Brasileira de Futebol (CBF) & Mr Ricardo Lucas Dodô, award of 11 September 2008

Panel: Prof. Massimo Coccia (Italy), President; Mr Peter Leaver QC (United Kingdom); Mr José Juan Pintó (Spain)

Football

Doping (Fenproporex)

CAS Jurisdiction

Applicable law

No fault or negligence

No significant fault or negligence

Burden of proof

Duty of care of the athlete

Commencement of the suspension period

1. The “stand-alone test” is the decisive test to reveal whether a given sports justice body pertains in some way to the structure of a given sports organization or not. If it appears that, would the sports organization not exist, the sports justice body would not exist and would not perform any function, then the sports justice body has no autonomous legal personality and may not be considered as a Respondent on its own in a CAS appeal arbitration concerning one of its rulings. Consequently, the procedural position of the sports justice body before the CAS must be encompassed within that of the sports organization.
2. If a national legislation itself expressly states that official sports practice in the country is governed by national and *international* rules, then international sports rules are directly applicable in this country. Accordingly, any athlete registered with a national federation is directly bound by the international rules accepted by that federation, including any provision therein giving jurisdiction to the CAS.
3. The right of appeal to CAS against national decisions – granted to FIFA and WADA – confirms that national football associations have expressed the clear wish to pursue uniform interpretation and application of anti-doping rules and sanctions vis-à-vis athletes of international status throughout the football world. Such uniform interpretation and application would be imperilled or impeded if the CAS – absent any mandatory rule or public policy principle imposing such legal course – had to accord precedence to domestic anti-doping rules over a FIFA disciplinary system contractually accepted, on a basis of reciprocity, by all national football associations

and their affiliated clubs and registered individuals.

4. In order to establish that he bears *no fault or negligence*, the athlete must prove (1) how the prohibited substance came to be present in his/her body and, thus, in his/her urine samples, and (2) that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had used or been administered the prohibited substance.
5. In order to establish that he/she bears *no significant fault or negligence*, in addition to the proof of how the prohibited substance came to be present in his/her body, the athlete must prove that his/her fault or negligence, when viewed in the totality of the circumstances and taking into account the requirement of utmost caution, was not significant in relationship to the anti-doping rule violation.
6. The athlete must establish the facts that he/she alleges to have occurred by a *“balance of probability”*. According to CAS jurisprudence, the balance of probability standard means that the indicted athlete bears the burden of persuading the judging body that the occurrence of the circumstances on which he/she relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence.
7. The WADA Code provides that the athlete is personally responsible for the conduct of people around him/her from whom he/she receives food, drinks, supplements or medications, and cannot simply say that he/she trusts them and follows their instructions.
8. When delays in the judging process are not or only partially attributable to the athlete, it is fair to apply *ex officio* the principle set forth by Article 10.8 of the WADA Code and, thus, to start the period of suspension at an earlier date than the day of notification of the award.

The Fédération Internationale de Football Association (FIFA) is the world governing body for the sport of football having its headquarters in Zurich, Switzerland.

The World Anti-Doping Agency (WADA) is an independent international anti-doping agency, constituted as a foundation under Swiss Law and having its headquarters in Montreal, Canada, whose aim is to promote, coordinate and monitor, at the international level, the fight against doping in sports in all its forms.

The Confederação Brasileira de Futebol (CBF) is the Brazilian football association, governing the sport of football in Brazil.

The Superior Tribunal de Justiça Desportiva do Futebol (STJD) is the highest sports court in Brazilian football.

Mr Ricardo Lucas, better known as Dodô (the “Player” or “Mr Lucas” or “Dodô”), is a Brazilian football player born on 2 May 1974 in São Paulo. He is a forward who has played most of his career in Brazil and a couple of seasons abroad. He has been registered in the last couple of seasons with the CBF, having played in 2007 for the club Botafogo de Futebol e Regatas (“Botafogo” or the “Club”) and in 2008 for the club Fluminense. He has experienced on various occasions the international club competition “Copa Libertadores de América” and he has been international five times with the Brazilian national team, scoring two goals.

On 14 June 2007, Dodô was selected for an in-competition anti-doping control on the occasion of the Brazilian championship match between Botafogo and Vasco da Gama. The test was performed by the WADA-accredited LADETEC laboratory of Rio de Janeiro. The urine sample provided by the Player revealed the presence of “Fenproporex”, a prohibited substance appearing on the 2007 Prohibited List under category S6, stimulants. Fenproporex is a strong stimulant, precursor to amphetamine.

The Player had already undergone in-competition doping tests on 6 and 16 May 2007, and was tested again on 30 June 2007, always with negative results.

After the Player was notified that his “A” Sample of 14 June 2007 had tested positive, he requested the analysis of the “B” Sample. The test on the B Sample confirmed the adverse analytical finding.

On 9 July 2007, the STJD provisionally suspended the Player for 30 days.

On 11 July 2007, on the advice of Dr Alexandre Pagnani (President of the Brazilian Association of Studies and Fight on Doping, ABECD), Botafogo sent several nutritional supplements regularly used by the team to the University of São Paulo Laboratory for Toxicological Analyses (the “USP Laboratory”) to be tested in order to ascertain the possible presence of Fenproporex.

The USP Laboratory’s report, dated 13 July 2007 and consisting of a single page signed by the laboratory director and by the person in charge of the analysis, stated that the analysis had found the presence of Fenproporex in some caffeine capsules produced by “Farmácia de Manipulação Pharmacy”. The analysed capsules were taken from three containers, two sealed (lots no. 348877 and 348873) and one unsealed and partially used (lot no. 3419560), which had been sent to the USP Laboratory by Botafogo. The USP Laboratory’s report did not specify which, nor how many, caffeine capsules were found to be contaminated, but did state that the USP Laboratory “does not assume liability for the origin of the material delivered for analysis” (“Observações: O Laboratório de Análises Toxicológicas – USP não se responsabiliza pela procedência do material encaminhado para análise”).

In the disciplinary proceedings brought by the Brazilian Sports Prosecutor (*“Procuradoria da Justiça Desportiva”*) against the Player before the 2nd Disciplinary Commission (the “Disciplinary Commission”), the Player relied on the USP Laboratory’s report to argue that the prohibited stimulant had entered his body without his knowledge and will through the contaminated caffeine capsules manufactured by the local producer Pharmacy 65 Manipulação Ltda. (*“Pharmacy 65 Manipulação”*) that the Botafogo medical staff had given him to ingest before the match. The Player has declared throughout the Brazilian and CAS proceedings that he trusted the team doctors and essentially took whatever was given to him, as he had no reason to make particular inquiries or to have doubts about the various products that were regularly administered to him.

On 24 July 2007, the Disciplinary Commission imposed a 120-day suspension to the Player, stating that the explanation given by the Player was implausible, especially in light of the fact that no other Botafogo player had tested positive in that or in other matches.

The Player lodged an appeal with the STJD. On 2 August 2007, the STJD decided by majority vote – with three dissenting judges out of eight – to set aside the Disciplinary Commission’s decision and to acquit the Player (the “Appealed Decision”). The STJD accepted the Player’s argument that he had been an innocent victim of contamination and that he had not been negligent. As a consequence of the acquittal decision, the Player’s provisional suspension was terminated.

The CBF notified the Appealed Decision to FIFA on 20 August 2007.

WADA was informed of the Appealed Decision by a fax sent by the Brazilian football club Vasco da Gama on 22 August 2007.

On 6 and 11 September 2007, respectively, FIFA and WADA filed with the CAS their statements of appeal against the decision of the STJD. The timeliness of the appeals filed by FIFA and WADA is undisputed.

In its Statement of Appeal FIFA submitted an application for provisional measures, requesting that the CAS suspend immediately the Player from all the football activities on a provisional basis, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”).

By letters respectively dated 13 and 17 September 2007, CBF and STJD informed the CAS, FIFA and WADA that they did not want to be involved in the CAS proceedings.

By letter dated 21 September 2007, FIFA informed that it intended to maintain CBF and STJD as Respondents in the proceedings.

By letter dated 24 September 2007, the Player objected to the CAS’s jurisdiction and asked the CAS to decide on this issue on a preliminary basis. The Player also opposed FIFA’s application for provisional measures against him.

On 11 October 2007, the CAS informed the parties that the two appeals had been consolidated and that the two cases were to be conducted jointly.

On 17 October 2007, FIFA and WADA filed their appeal briefs together with the relevant exhibits.

On 24 October 2007, the Panel granted the parties the opportunity to submit additional briefs on the preliminary issue of jurisdiction and informed the parties that it would deal with FIFA's application for provisional measures only if and when it decided to retain jurisdiction over the case.

On 6 December 2007, the Panel determined that the CAS had jurisdiction to rule over the case, informing the parties that the reasons for such decision would be set forth in the final award (see *infra*). The Panel also determined, pursuant to Article R57 of the CAS Code, that a hearing was necessary and indicated 15 January 2008 as the selected date on which to hold the hearing.

On 10 December 2007, the Panel issued an *Order on Application for Provisional Measures* which dismissed the request for provisional measures filed by FIFA. The Panel held that it was not satisfied that FIFA had discharged the burden on it of demonstrating that a provisional suspension of the Player was necessary to protect its position or that the harm or inconvenience that it would have suffered from the refusal of the provisional suspension would have been greater than the harm or inconvenience that the Player would have suffered if such measure had been ordered.

On 18 December 2007, the Panel issued directions with respect to evidentiary matters. Due to parties' need to be granted sufficient time to comply with such order and produce the requested documents, the Panel decided to cancel the previously indicated hearing date of 15 January 2008 and look for a new suitable date.

On 10 January 2008, the Panel issued directions with respect to the hearing to be held on 1 and 2 April 2008. Subsequently, upon the agreement of FIFA and the Player to postpone the hearing and the absence of objections by the other parties, the Panel fixed the hearing for 19 and 20 May 2008 in Lausanne.

By letter of 11 February 2008, the CBF informed the CAS that it declined to take part in the proceedings.

By letter dated 26 March 2008, the Player objected to the request of WADA to hear as witness a representative of Pharmacy 65 Manipulação since (i) Dodô had filed a claim against such company with a Brazilian court and (ii) this evidentiary request of WADA was not mentioned in its appeal brief.

On 31 March 2008, the President of the Panel, in accordance with Article R56 of the CAS Code and after consulting the other arbitrators, dismissed the Player's objections and decided to accept the request to hear as witness a representative of the pharmaceutical company Pharmacy 65

Manipulação, provided that WADA submitted to the CAS the details of the person to be heard as well as a written witness statement of such representative. On 29 April 2008, WADA sent to the CAS the written witness statement of Mr Milton Luis Santana Soares, owner and chief executive officer of Pharmacy 65 Manipulação.

By letter of 13 May 2008, the CBF reaffirmed its intention to take no part in the proceedings and requested the Panel to issue a decision excluding it from the case.

By letter dated 19 May 2008, the STJD confirmed its position that CAS had no jurisdiction *rationae personae* over itself, whilst accepting that it did have jurisdiction *rationae materiae* over the case.

The hearing took place in Lausanne on 19 and 20 May 2008. After the parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties. Neither during nor after the hearing did the parties raise with the Panel any objection in respect of their right to be heard and to be treated equally in the present arbitration proceedings.

LAW

Jurisdiction

1. As seen above, the three Respondents have taken different positions on the preliminary issue of jurisdiction:
 - the CBF denies its standing to be sued and thus disputes the CAS's jurisdiction *rationae personae* over itself, while it does not take a position on the CAS's jurisdiction *ratione materiae*;
 - the STJD denies the CAS's jurisdiction *rationae personae* over itself but explicitly recognizes the CAS's jurisdiction *ratione materiae* with respect to its Appealed Decision;
 - the Player denies the jurisdiction of the CAS altogether.

A. *Jurisdiction over the CBF and the STJD*

2. First of all, the Panel observes that the CBF is a member of FIFA and, as such, is contractually bound to respect the Statutes of FIFA to which it has voluntarily adhered.
3. This is confirmed by Article 1, para. 2, and Article 5, para. V, of the CBF Statutes, which respectively read as follows:

“All members, bodies and components of CBF, as well as clubs, athletes, referees, trainers, physicians, and other officers belonging to clubs or leagues of the affiliated federations must comply and enforce the compliance, in Brazil, with the Statutes, regulations, guidelines, decisions and the Code of Ethics of the Fédération Internationale de Football Association – FIFA and the Confederación Sudamericana de Fútbol – CONMEBOL” (“Todos os membros, órgãos e integrantes da CBF, assim como clubes, atletas, árbitros, treinadores, médicos e outros dirigentes pertencentes a clubes ou ligas das federações filiadas devem observar e fazer cumprir no Brasil os Estatutos, regulamentos, diretrizes, decisões e o Código de Ética da Fédération Internationale de Football Association – FIFA e da Confederación Sudamericana de Fútbol – CONMEBOL”);

“The CBF has the following basic purposes: [...] V – respect, comply with and enforce compliance with the statutes, regulations, guidelines, decisions and other acts issued by the FIFA, CONMEBOL and other international entities to which CBF is affiliated” (“A CBF tem por fins básicos: [...] V – repetir, cumprir e fazer cumprir os estatutos, regulamentos, diretrizes, decisões e demais atos originários da FIFA, da CONMEBOL e das demais entidades internacionais a que esteja filiada”).

4. Article 61 of the applicable 2007 version of the FIFA Statutes (see *supra*) provides that, once all internal remedies have been exhausted, FIFA and WADA are both entitled to appeal to the CAS against doping-related decisions adopted by FIFA members such as the CBF. Hence, the CBF is legally bound to yield to an appeal to the CAS brought by FIFA and/or WADA against one of its final doping-related decision.
5. However, the CBF argues that Article 61 of the FIFA Statutes is of no relevance here because the Appealed Decision was not adopted by the CBF but rather by the STJD, that is a wholly independent judicial body.
6. Nevertheless, having reviewed Brazilian law and Brazilian sports rules, as well as the documents on file, the Panel has formed the view that the STJD is a justice body which, although independent in its adjudicating activity, must be considered part of the organisational structure of the CBF.
7. With regard to Brazilian law, first of all the Panel observes that Article 217, paras. 1 and 2, of the Constitution of the Federal Republic of Brazil mentions “sports justice bodies” (“*justiça desportiva*”) for the purposes of providing that Brazilian ordinary courts have jurisdiction over sporting matters only when sports proceedings have been exhausted and that sports justice bodies must exhaust such proceedings within sixty days. It is worth mentioning that, contrary to what the Player alleges, Article 217 of the Brazilian Constitution does not specify how sports justice bodies must be structured and whether they are to be independent and set up inside or outside the organisational structure of sports federations. Article 217 leaves the regulation of those details to ordinary laws (“§ 1º O Poder Judiciário só admitirá ações relativas à disciplina e às competições desportivas após esgotarem-se as instâncias da justiça desportiva, regulada em lei. § 2º A justiça desportiva terá o prazo máximo de sessenta dias, contados da instauração do processo, para proferir decisão final”).

8. Then, the Panel notes that pursuant to Article 23, para. I, of Lei Pelé, the statutes of Brazilian sports federations (“*entidades de administração do desporto*”) must provide for the institution of sports justice bodies in accordance with the requirements of Lei Pelé (“*Os estatutos das entidades de administração do desporto, elaborados de conformidade com esta Lei, deverão obrigatoriamente regulamentar, no mínimo: I – instituição do Tribunal de Justiça Desportiva, nos termos desta Lei*”).
9. In compliance with Lei Pelé, the STJD and the Disciplinary Commissions have been instituted as independent and autonomous sports justice bodies by Articles 69-71 of the CBF Statutes and have been given authority to judge whether disciplinary violations have been committed by anyone – associations, clubs, players, coaches, etc. – directly or indirectly affiliated to or registered with the CBF (see Article 69 of the CBF Statutes and Article 1 of the Brazilian Code of Sports Justice). In other words, the CBF has wholly entrusted its vested disciplinary power to the STJD and the Disciplinary Commissions.
10. In independently exercising such disciplinary power on behalf of the CBF, the STJD is obliged “to comply with the Statutes, regulations, circulars and decisions and Code of Ethics of FIFA”, as well as “to respect the principles and rules of the FIFA Disciplinary Code, of universal application, and the Brazilian Code of Sports Justice (CBJD), of national application” (Article 70, para. 3, of the CBF Statutes: “*A autonomia e independência de que gozam referidas unidades da Justiça Desportiva não as dispensa da obrigação de cumprir os Estatutos, regulamentos, circulares e decisões e Código de Ética da FIFA, nem as exime do dever de respeitar os princípios e normas do Código Disciplinar da FIFA, de aplicação universal, e do Código Brasileiro de Justiça Desportiva (CBJD), de aplicação nacional*”).
11. The Panel also notes that under Article 50, para. 4, of Lei Pelé, sports federations must finance the functioning of the sports justice bodies that operate with them (“*Compete às entidades de administração do desporto promover o custeio do funcionamento dos órgãos da Justiça Desportiva que funcionem junto a si*”).
12. Then, the Panel notes that Article 70, para. 1, of the CBF Statutes confers on the President of the CBF the formal power to appoint the nine judges of the STJD. Pursuant to Article 55 of Lei Pelé, such appointment is done upon indication by the CBF (two judges), by the clubs participating in the top professional championship (two judges), by the Brazilian Bar (two judges), by the referees (one judge) and by the players (two judges). Therefore, seven judges out of nine are designated by the CBF itself or by bodies or individuals operating within the CBF, being affiliated thereto (the clubs) or registered therewith (the referees and the players).
13. Moreover, according to Article 41, para. XXIII, of the CBF Statutes, the President of the CBF must enforce the rulings of the sports justice bodies.
14. The Panel also notes that Article 22, para. 3-VII, of the CBF Statutes provides that the General Assembly of the CBF has the power to decide on appeals against the final rulings of

the sports justice bodies concerning the loss of affiliation or exclusion of affiliated entities (such as clubs). So, there is at least one topic in which the STJD's judgment yields to that of the main body of the CBF.

15. In addition, the Panel notes that the STJD's President Mr Rubens Approbato Machado, in his letter dated 13 September 2007 to the CBF's Secretary General Mr Marco Antonio Texeira (exhibit II to the STJD's brief dated 17 September 2007), has clearly stated that

“the Superior Tribunal de Justiça Desportiva do Futebol, thus, has no own legal personality. It is just one of the bodies of the CBF, as well as the Board of Directors (with executive powers) and the General Meeting (with internal legislative powers). As one of the bodies of CBF, the STJD does not constitute a governmental body. Despite that, Article 52 of Law 9615 of 1998 attributes organizational autonomy and decision-making independence from CBF to STJD” (emphasis added).
16. In the light of the foregoing, the Panel is of the opinion that the STJD is a justice body which is an integral part of the organisational structure of the CBF, with no legal personality of its own. The fact that in Lei Pelé, in the CBF Statutes and in the Brazilian Code of Sports Justice there are rules protecting the autonomy and independence of the STJD vis-à-vis the executive and legislative powers of the CBF does not alter the fact that the STJD has been instituted by (and thus owes its legal birth and existence to) the CBF Statutes and is financially and administratively dependent on the CBF (*“dependência físico-financeira”* as characterized by Dr Paulo Marcos SCHMITT in his article *Organização e competência da justiça desportiva*, published in *Código Brasileiro de Justiça Desportiva – Comentários e Legislação: Ministério do Esporte*, ass. Comunicação Social, Brasília/DF, 2004, pp. 23-44).
17. In the Panel's view, it is a commendable feature of the Brazilian sports system that sports federations are organised in accordance with the principle of separation of powers. This means that the Presidency, the Secretariat and the Board the executive branch of the CBF – of Directors – is not permitted to encroach on the domain of the judicial branch – the STJD, the Disciplinary Commissions and the Arbitration Court – and vice-versa. This happens also in other football associations (e.g. in the recently reformed statutes of the Italian football association, FIGC, there are rules protecting the independence of the sports justice bodies vis-à-vis the executive bodies). However, the praiseworthy independence and autonomy of the STJD in adjudicating the disputes brought before it does not entail that the STJD is a body which could legally stand alone if the CBF did not exist.
18. Indeed, in the Panel's opinion, the “stand-alone test” is the decisive test to reveal whether a given sports justice body pertains in some way to the structure of a given sports organization or not. If the CBF did not exist, the STJD would not exist and would not perform any function. In this respect, the similarity that the STJD suggested between itself and the CAS – *“Just as the CAS is independent of the IOC and the other sports institutions that finance the CAS or nominate its members, the STJD is independent of the CBF”* (STJD's brief dated 17 September 2007, para. 2) – is wholly misplaced. Apart from the fact that CAS arbitrators are appointed by a private Swiss foundation, the International Council of Arbitration for Sport, which is also

responsible for the financing of the CAS, the CAS would legally stand alone and exist as an arbitration institution even if the IOC or any of the international federations suddenly disappeared (or simply withdrew their choice of the CAS as arbitration forum). In contrast, the STJD would not legally stand alone if the CBF did not exist.

19. Accordingly, the Panel is of the view that (at least) for international purposes the decisions of the STJD, although independently reached, must be considered to be the decisions of the CBF. In other words, the CBF is to be considered responsible vis-à-vis FIFA (or other international sports bodies) for the decisions adopted by the STJD. This is exactly the same legal situation as we have in public international law, where States are internationally liable for judgments rendered by their courts, even if under their constitutional law the judiciary is wholly independent of the executive branch.
20. In conclusion, the Panel finds that the STJD has no autonomous legal personality and may not be considered as a Respondent on its own in a CAS appeal arbitration concerning one of its rulings; consequently, the procedural position of the STJD before the CAS must be encompassed within that of the CBF. Therefore, the Panel holds that the Appealed Decision must be considered as a doping-related decision adopted by a national federation and thus, pursuant to Article 61 of the FIFA Statutes, the CAS has jurisdiction to hear WADA's and FIFA's appeals against the CBF.
21. In agreement with the STJD's submission, the Panel holds that the CAS has jurisdiction *ratione materiae* over the Appealed Decision but does not have jurisdiction *ratione personae* against the STJD. In other words, while the CBF has been properly made a Respondent in this case by the Appellants, the STJD cannot not be treated as an autonomous party to this arbitration.

B. *Jurisdiction over the Player*

22. The Panel notes that the Player is registered as a professional athlete with the CBF and that, by his deliberate act of registering, he has contractually agreed to abide by the statutes and regulations of the CBF.
23. The Panel also notes that in the third clause of the employment contract which the Player signed with Botafogo on 16 January 2007, the Player has explicitly declared to be cognisant of and to pledge to respect, besides his contract, the rules of the CBF (“*declara ter ciência e se obriga a cumprir [...] direitos e obrigações constantes no seu contrato de trabalho registrado na Confederação Brasileira de Futebol e seus aditamentos, bem como respeitar o regulamento dessa entidade*”).
24. Article 1, para. 2, of the CBF Statutes provides *inter alia* that all athletes must comply with the rules of FIFA (“*atletas [...] devem observar [...] os Estatutos, regulamentos, diretrizes, decisões e o Código de Ética da Fédération Internationale de Football Association - FIFA*”). Article 61 of the FIFA Statutes entitles FIFA and WADA to appeal to the CAS against doping-related decisions

adopted by national federations. In the Panel's view, while the Player's argument based on the fact that Article 136 of the Brazilian Code of Sports Justice provides that the STJD's decisions are not subject to appeal may be relevant at national level, it is irrelevant for international purposes, because Article 61, para. 7, of the FIFA Statutes specifies that appeals to the CAS are in fact directed against "internally final and binding doping-related decision".

25. In connection with the above quoted provision of the CBF Statutes (*supra* at para. 24) requiring all CBF players to comply with FIFA rules, the Panel remarks that it is the Brazilian legislation itself which strengthens the status of international sports rules within the Brazilian sports system. Indeed, Article 1, para. 1, of Lei Pelé expressly states that official sports practice in Brazil is governed by national and *international* rules and by sporting practice rules of each type of sport, accepted by the respective national federations ("*A prática desportiva formal é regulada por normas nacionais e internacionais e pelas regras de prática desportiva de cada modalidade, aceitas pelas respectivas entidades nacionais de administração do desporto*"). The Panel also observes that Article 3, para. III, of Lei Pelé specifically imposes on athletes practising professional sport the duty to abide by international sports rules, besides Lei Pelé and national sports rules ("*desporto de rendimento, praticado segundo normas gerais desta Lei e regras de prática desportiva, nacionais e internacionais, [...]*").
26. The Panel finds these provisions of Lei Pelé particularly wise, insofar as international disciplinary rules are concerned. Indeed, strengthening by law the application of international rules tends to remove "*the temptation to assist national competitors by over-indulgence. The objective is to subject all athletes to a regime of equal treatment, which means that national federations must be overruled if they look the other way when their athletes breach international rules*" (CAS 2006/A/1149 & 2007/A/1211, para. 27).
27. In the Panel's view, as a result of the above quoted express legislative provisions, international sports rules are directly applicable to Brazilian sport; accordingly, any athlete registered with a Brazilian federation is directly bound by the international rules accepted by that federation, including any provision therein giving jurisdiction to the CAS, as is the case here with doping-related decisions under Article 61 of the FIFA Statutes. In this respect, the Panel observes that a player who has been exposed to an international experience, having played international matches with both his clubs and his national team, must be particularly aware of the existence of international rules directly applicable to him.
28. Accordingly, the Panel does no more than to observe that the Player has accepted to be bound by the rules of the CBF and by the rules of FIFA.
29. In light of the foregoing, in accordance with Article R47 of the CAS Code, the CAS has jurisdiction to hear WADA's and FIFA's appeals against the two Respondents CBF and Mr Ricardo Lucas Dodô.

30. The Panel wishes to point out, by analogy to what another CAS Panel stated in the above quoted CAS 2006/A/1149 & 2007/A/1211 case (at para. 33), that it would be a mistake to consider this conclusion to be contrary to Brazilian interests. First, the prosecution of anti-doping violations is in the interest of all Brazilian clubs and players who respect the anti-doping rules. Secondly, all Brazilian federations, clubs and players obviously benefit from the coherent and effective anti-doping regime which FIFA has sought to establish whenever Brazilian clubs or selections are engaged – as often happens, due to the world-renowned excellence of Brazilian football – in international matches and tournaments.

Applicable law

31. Article R58 of the CAS Code reads as follows:

“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”.

32. The Panel has noted above that Brazilian law explicitly imposes on Brazilian federations and athletes the observance of international sports rules (see *supra*, para. 25). It is worth adding that, with specific reference to doping and anti-doping controls, the Brazilian Code of Sports Justice confirms and reinforces the status of international anti-doping rules within the Brazilian sports system, providing for the obligation to comply also with international rules (Article 101: “[...], observadas as normas nacionais e internacionais”; Article 248: “[...] cumprir, no que se refere à dopagem, na forma ou nos prazos estabelecidos, as determinações deste Código, legislação federal, normas nacionais e internacionais [...]”). In line with such provisions of the Brazilian Code of Sports Justice, Article 65 of the CBF Statutes provides that the prevention, fight, repression and control of doping in Brazilian football must be done complying also with international rules (“*observadas as normas nacionais e internacionais*”).
33. The Panel has already noted that the CBF itself dictates its own compliance, as well as that of its clubs, athletes etc., with FIFA rules (see Articles 1, para. 2, and 5, para. V, of the CBF Statutes; *supra*, para. 3). Moreover, the CBF imposes the application of the “*principles and rules of the FIFA Disciplinary Code*” in any disciplinary proceedings concerning its clubs, athletes, etc., considering those principles and rules “*of universal application*” and the Brazilian Code of Sports Justice “*of national application*” (see Article 70, para. 3, of the CBF Statutes; *supra*, para. 10). In the Panel’s view, this CBF statutory provision, acknowledging the legal primacy of FIFA disciplinary principles and rules, although drafted as a rule concerning the law that must be applied by the STJD, implies the obvious consequence of its applicability in any international proceedings reviewing a decision issued by the STJD.

34. The Panel has also already observed that the Player, in addition to the duty imposed on him by Lei Pelé to respect international sports rules (see *supra*, para. 25), has contractually agreed, by his deliberate act of registering as a professional athlete with the CBF, to comply with CBF rules and, thus, with FIFA rules too (see *supra*, para. 22 *et seq.*).
35. The Panel also remarks that Article 60, para. 2, of the FIFA Statutes – contractually accepted by the CBF and the Player, as already explained – provides that in CAS proceedings “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
36. In light of the foregoing, the Panel is of the opinion that the “*applicable regulations*” under Article R58 of the CAS Code are primarily the rules of FIFA – accepted by all parties – and, subsidiarily, the rules of the CBF. In other words, in case of inconsistency between a CBF provision and a FIFA provision, the FIFA provision must prevail. Otherwise, the deference to international sports rules proclaimed in Brazilian legislation and the obligation assumed by CBF in its own Statutes (and accepted by its clubs, players, etc.) to comply with FIFA rules would become mere lip service. The compliance with and enforcement of FIFA rules is even indicated in Article 5, para. V, of the CBF Statutes as one of the CBF’s basic purposes (“*finals básicos*”, see *supra*, para. 3).
37. In particular, considering that this is a disciplinary case involving an athlete of international status, the Panel is of the view that the FIFA Disciplinary Code – incorporating by express reference (at Article 63, para. 1) the FIFA Doping Control Regulations – must prevail, in case of conflicting provisions, over the Brazilian Code of Sports Justice and the CBF Doping Control Regulation because, as expressly acknowledged by the CBF Statutes, the FIFA disciplinary rules are of “*universal application*” whereas the corresponding CBF rules are merely of “*national application*” (Article 70, para. 3, of the CBF Statutes; *supra*, paras. 10 and 33).
38. In addition, the right of appeal to CAS against national decisions – granted to FIFA and WADA under Article 61, paras. 5 and 6, of the FIFA Statutes – confirms that national football associations (which, as members of FIFA, have the collective legislative power to enact and modify the FIFA Statutes) have expressed the clear wish to pursue uniform interpretation and application of anti-doping rules and sanctions vis-à-vis athletes of international status throughout the football world. Such uniform interpretation and application would be imperilled or impeded if the CAS – absent any mandatory rule or public policy principle imposing such legal course – had to accord precedence to domestic anti-doping rules over a FIFA disciplinary system contractually accepted, on a basis of reciprocity, by all national football associations and their affiliated clubs and registered individuals.
39. Furthermore, the Panel notes that the Player, in his appeal to the STJD (lodged on 26 July 2007) against the Disciplinary Commission’s decision, expressly invoked in his favour (in addition to some national rules) the application of the WADA Code, in particular of Article 10.5 (“Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances”), motioning for his acquittal “or *eventualiter* for the application of a sanction in

accordance with the provisions of the WADA Code” (“*ou eventualmente lhe aplicar a pena em consonância com os artigos do Código Mundial Antidoping*”). During the CAS proceedings, the Player has slightly modified his position, arguing at the hearing that the WADA Code is applicable only on a subsidiary basis. In any event, it seems to the Panel that, by explicitly invoking the rules of the WADA Code, the Player has accepted the application of those rules in his favour as well as to his detriment.

40. The applicability of the WADA Code is confirmed by the fact that the STJD did apply the WADA Code (in addition to Brazilian rules, FIFA rules and general principles of law) in performing its disciplinary function on behalf of the CBF. Indeed, as the President of the STJD himself explained in his letter to the CAS dated 24 September 2007, the STJD’s decision to acquit the Player “*was based on general principles of law, the provisions of the CBJD and the rules of international sports law, particularly articles 2.1 and 10.5.1 of the World Anti-Doping Code [...], which inspired article 65 of the FIFA Disciplinary Code (FDC)*”.
41. Therefore, considering that (i) FIFA and WADA have also invoked during these proceedings the application of the WADA Code; (ii) various Brazilian rules impose deference to *normas internacionais*, i.e. international rules (see Articles 1, para. 1, and 3, para. III, of Lei Pelé, Articles 101 and 248 of the Brazilian Code of Sports Justice and Article 65 of the CBF Statutes; *supra*, paras. 25 and 32); and (iii) the WADA Code inspired the anti-doping rules of FIFA, the Panel finds that the rules of the WADA Code can also be complementarily applied in this arbitration as regulations whose application has been invoked, and thus accepted, by all parties.
42. In the Panel’s view, Brazilian law may be applied on a subsidiary basis as the law of the country in which the body which has issued the challenged decision is domiciled. Taking into account Article 60, para. 2, of the FIFA Statutes, Swiss law may also be additionally applied, particularly in reference to the interpretation and application of FIFA rules, which are rules issued by a private association incorporated in Switzerland.
43. In conclusion, the Panel holds that the present case must be adjudicated on its merits applying primarily FIFA rules, complementarily the WADA Code and, subsidiarily, CBF rules and Brazilian law. Additionally, Swiss law might also be applied in connection with the interpretation and application of FIFA rules.
44. The Panel deems also worth clarifying that, as to the applicable rules setting out the list of prohibited substances and methods (the “Prohibited List”), the 2007 Prohibited List of CBF and FIFA is perfectly consistent with that of WADA. Indeed, the CBF Doping Control Regulation provides that any modification to the list determined by WADA and accepted by FIFA prevails over the CBF list (“*Caso haja qualquer alteração determinada pela Agência Mundial Antidoping, acatada pela FIFA, a mesma prevalecerá sobre esta lista*”), and the FIFA Doping Control Regulations expressly state that the FIFA 2007 list is “*taken from the 2007 [WADA] Prohibited*

List, International Standard” and “is adapted according to the revised versions in the World Anti-Doping Code”.

Merits

45. Pursuant to Article R57 of the CAS Code, the Panel has “*full power to review the facts and the law*”. As repeatedly stated in CAS jurisprudence, this means that the CAS appellate arbitration procedure entails a *de novo* review that it is not confined to deciding whether the body that issued the appealed ruling was correct or not. Accordingly, as rightly pointed out by the STJD in its brief dated 17 September 2007, it is the mission of this Panel to make its independent determination of whether the parties’ (and in particular the Player’s) contentions are correct on the merits rather than to assess the correctness of the STJD’s decision (see CAS 2007/A/1394, para. 21).
- A. Evidence of the anti-doping rule violation*
46. It is undisputed that the analysis of both urine samples A and B delivered by the Player on 14 June 2007, on the occasion of the match between Botafogo and Vasco da Gama, showed evidence of an adverse analytical finding of Fenproporex, that is a stimulant included in section S6 of the 2007 Prohibited List.
47. The Player does not contest the scientific accuracy of the analysis carried out by the WADA-accredited LADETEC laboratory of Rio de Janeiro. The Player signed his doping control form without objections, as did the team doctor that accompanied him. The Player did not declare on the doping control form that he had recently used any medication, nor did the team doctor make such a declaration on the medications list form filled out for the whole team. The samples were duly preserved, transported, received and analysed by the LADETEC laboratory in accordance with procedures which have not been challenged by the Player. Nor does the Player challenge the scientific conclusion as to the identification of Fenproporex and its metabolites in his urine samples.
48. Article 1 of Chapter II of the FIFA Doping Control Regulations, referred to by Article 63 of the FIFA Disciplinary Code, provides that the “*presence of a prohibited substance or its metabolites or markers in a player’s bodily sample*” constitutes an “*anti-doping rule violation*”. Article 1.1 of Chapter II further specifies that it “*is each player’s personal duty to ensure that no prohibited substance enters his body. Players are responsible for any prohibited substance or its metabolites or markers found to be present in their bodily samples. Accordingly, it is not necessary that intent, fault, negligence or conscious use on the player’s part be demonstrated in order to establish an anti-doping violation under part II article 1*”.
49. As a result, the Panel finds that the objective presence of Fenproporex in the Player’s urine samples, regardless of the athlete’s subjective attitude (i.e. his possible intent, knowledge, fault

or negligence), constitutes an anti-doping rule violation proven to the Panel's comfortable satisfaction, bearing in mind the seriousness of the allegation.

B. *Sanction*

50. Under Article 65, para. 1(a), of the FIFA Disciplinary Code, the sanction for a first offence is a two-year suspension. In light of the above discussion on the law applicable in this appeal arbitration, the Panel cannot take into account the lesser sanction set out by Article 244 of the Brazilian Code of Sports Justice (between 120 and 360 days of suspension) because (i) this sanction is merely of national application whereas the FIFA sanction is of universal application, as acknowledged by the CBF Statutes (*supra*, para. 10); and (ii) the two-year sanction is among the FIFA mandatory rules that must be incorporated without exception in the national disciplinary regulations (Article 152 of the FIFA Disciplinary Code).
51. The Panel remarks that, under the FIFA Disciplinary Code, the two-year sanction may be eliminated or reduced if the Player discharges the burden of proving that "he bears no fault or negligence" (Article 65, para. 3) or, at least, that "he bears no significant fault or negligence" (Article 65, para. 2). According to CAS jurisprudence, the possible application of such twofold exception "is to be assessed on the basis of the particularities of the individual case at hand" (CAS 2004/A/690).
52. Article 106, para. 2, of the FIFA Disciplinary Code provides that in "case of a doping offence, it is incumbent upon the suspect to produce the proof necessary to reduce or cancel a sanction. For sanctions to be reduced, the suspect must also prove how the prohibited substance entered his body".
53. Accordingly, relying on a long line of CAS cases (see e.g. CAS 2006/A/1067, para. 6.8) and on the WADA Code principles related to the athletes' fault or negligence, the Panel observes that the Player, in order to establish that he bears *no fault or negligence*, must prove:
 - (a) how the prohibited substance came to be present in his body and, thus, in his urine samples, and
 - (b) that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the prohibited substance.
54. The proof of both (a) and (b) would eliminate the Player's two-year sanction.
55. In order to establish that he bears *no significant fault or negligence*, in addition to the proof of (a) above, the Player must prove:
 - (c) that his fault or negligence, when viewed in the totality of the circumstances and taking into account the requirement of (b) above, was not significant in relationship to the anti-doping rule violation.

56. The proof of both (a) and (c) would reduce the Player's sanction to a penalty ranging between one year and two years (Article 65, para. 2, of the FIFA Disciplinary Code: "*the sanction may be reduced, but only by up to half of the sanction*").
57. The Panel observes that, in light of the CAS jurisprudence, the burden of proving the above is a very high hurdle for an athlete to overcome (cf. e.g. CAS 2005/A/830; TAS 2007/A/1252). Indeed, the WADA Code's official comment to Article 10.5 unequivocally states that the mitigation of mandatory sanctions is possible "*only in cases where the circumstances are truly exceptional and not in the vast majority of cases*".
58. With regard to the standard of proof required from the indicted athlete, the Panel observes that, in accordance with established CAS case-law and the WADA Code, the Player must establish the facts that he alleges to have occurred by a "*balance of probability*". According to CAS jurisprudence, the balance of probability standard means that the indicted athlete bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence (see CAS 2004/A/602, para. 5.15; TAS 2007/A/1411, para. 59).
- a) Evidence of how the prohibited substance entered the Player's body
59. In these proceedings, exactly as in the STJD proceedings, the Player has argued that the prohibited stimulant came to be present in his system because the caffeine capsules that were administered to him before the match against Vasco da Gama had been contaminated with Fenproporex during the production process at the premises of Pharmacy 65 Manipulação.
60. As evidence of such alleged contamination, the Player relies essentially on the report dated 13 July 2007 issued by the USP Laboratory. However, in light of the balance of probability standard, the Panel finds the evidence provided by such USP Laboratory's report to be inadequate to discharge the burden on the Player.
61. The Panel accepts the evidence given by Dr Pagnani that the USP Laboratory is a reliable laboratory and does not wish to speculate as to why the caffeine capsules were sent to be analysed all the way from Rio de Janeiro to São Paulo (rather than to the local WADA-accredited laboratory). Nor the Panel wishes to cast any doubt on the correctness of the analyses performed by the USP Laboratory and on the accuracy of its report. However, the Panel cannot read in the USP Laboratory's report more than what is expressly stated therein.
62. The USB Lab's report, apart from its letterhead, reads verbatim (in its English translation and in its original Portuguese text) as follows:

“CDD No. 01707

Nature of Analysis: Search for Fenproporex

Interested Party: Botafogo de Futebol e Regatas

Sample:

- Caffeine (2 mg/Kg) – Sealed package – Farmácia de Manipulação Pharmacy – Corporate Taxpayer’s Register of the Ministry of Finance 03628339/0001-25 – Lot 348877;
- Caffeine (2 mg/Kg) – Sealed package – Farmácia de Manipulação Pharmacy – Corporate Taxpayer’s Register of the Ministry of Finance 03628339/0001-25 – Lot 348873;
- Caffeine (2 mg/Kg) – Partially used package – Farmácia de Manipulação Pharmacy – Corporate Taxpayer’s Register of the Ministry of Finance 03628339/0001-25 – Lot 3419560.

Result: Positive

Identification Technique: Chromatography in gas phase / Mass Spectrometry / Liquid chromatography / Mass Spectrometry.

Notes: The Laboratory of Toxicological Analyses – USP does not assume liability for the origin of the material delivered for analysis.

São Paulo, 13 July 2007.

Pharmacist Daniela Mendes L. de Paula, Responsible for the Analysis

Prof. Dr. Maurício Yonamine, Laboratory Director”.

(“CDD No. 01707

Natureza da análise: Pesquisa de Femproporex

Interessado: Botafogo de Futebol e Regatas

Amostra:

- *Cafeína (2mg/kg peso) – embalagem lacrada – Farmácia de Manipulação Pharmacy – CNPJ/MF 03628339/0001-25 – lote 348877;*
- *Cafeína (2mg/kg peso) – embalagem lacrada – Farmácia de Manipulação Pharmacy – CNPJ/MF 03628339/0001-25 – lote 348873;*
- *Cafeína (2mg/kg peso) – embalagem parcialmente utilizada – Farmácia de Manipulação Pharmacy – CNPJ/MF 03628339/0001-25 – lote 3419560.*

Resultado: Positivo

Técnica de identificação: Cromatografia em fase gasosa / Espectrometria de massa / Cromatografia líquida / Espectrometria de massa.

Observações: O Laboratório de Análises Toxicológicas – USP não se responsabiliza pela procedência do material encaminhado para análise.

São Paulo, 13 de julho de 2007

Farm. Daniela Mendes L. de Paula, Responsável pela Análise

Prof. Dr. Maurício Yonamine, Diretor do Laboratório”).

63. Having carefully scrutinized the above quoted USP Laboratory’s report, the Panel has noted the following specific matters:

- In comparison to many detailed laboratory reports that these arbitrators have seen in other doping cases, the USP Laboratory's report is very short and sketchy and gives scant details of the analysis.
 - The disclaimer at the bottom of the report (the USP Laboratory "*does not assume liability for the origin of the material delivered for analysis*") warns about the absence of any custodial procedures prior to the delivery of the caffeine capsules to the USP Laboratory and, thus, raises serious doubts as to what was truly given to be analysed. The Player has argued, relying on the testimony of Dr Pagnani, that this is a standard annotation that bears no relevance. However, the Panel observes that the annotation has been typed and signed by the USP Laboratory Director and by the person responsible for the analysis; given the described reliability of the USP Laboratory, it is an annotation that can by no means be ignored.
 - The report, in describing the containers in which the caffeine capsules were contained, does not indicate the presence of any player's name on the labels although, according to the evidence heard at the hearing, each container was personalised with the player's name written on it due to the different weight of the players and the consequent different quantity of caffeine needed (2 mg for each kg of weight).
 - The USP Laboratory received three containers of caffeine capsules, two of them sealed and one open and partially used. According to the evidence provided by Dr Vilhena, the two sealed containers had been delivered by Pharmacy 65 Manipulação to Botafogo (for the players Dodô and Lúcio Flávio) on 27 June 2007, whereas the open container had been delivered to Botafogo on 20 April 2007 and used by Dodô during May and June 2007. So, given that Dodô's positive testing was on 14 June 2007, the only relevant analysis to provide evidence of how Fenproporex came to be in the Player's body is that of the capsules contained in the container delivered on 20 April 2007; however, the USP Laboratory's report has not indicated how many capsules were in that container nor how many of them were found to contain Fenproporex.
 - Indeed, in the report it is only generically stated that there was a positive result of the presence of Fenproporex. The Panel has heard the evidence of Dr Pagnani testifying that the USP Laboratory found that all capsules in all three containers tested positive for Fenproporex. The Panel does not consider it necessary to express any conclusion as to whether it accepts Dr Pagnani's evidence in this regard, because the Panel finds it quite extraordinary that the USP Laboratory's report does not specify which capsules and from which containers, nor how many, were found to be positive for Fenproporex, nor how much Fenproporex was found, nor whether the positive result came from contaminated caffeine capsules or whether it came from Fenproporex capsules found in the containers given for the analysis.
64. In addition to the above unusual elements, the Panel observes that, strangely, nobody from the USP Laboratory was called by the Player to give direct evidence on the analysis performed. Such evidence could have possibly clarified some of the doubts raised by the disappointingly inadequate content of the USP Laboratory's report.

65. The Panel finds also noteworthy that the Player's urine samples delivered at the anti-doping controls of 6 May, 16 May and 30 June 2007 showed no presence of Fenproporex. Indeed, on the basis of the evidence provided by Dr Vilhena, in that period the Player ingested before matches – except for night matches starting at 21:45 – the caffeine capsules taken from the container delivered by Pharmacy 65 Manipulação to Botafogo on 20 April 2007, and later sent to the USP Laboratory for analysis. Accordingly, the Panel is asked to conclude that inside the container delivered in April only the capsules ingested by the Player on 14 June 2007 and those analysed by the USP Laboratory on 13 July 2007 were contaminated, while the other capsules contained pure caffeine. The Panel finds this possibility quite implausible.
66. With regard to the implausibility of the contamination explanation, it is to be noted that Pharmacy 65 Manipulação, as testified by its owner and CEO, Mr Milton Luís Santana Soares, provided to Botafogo a total of 808 caffeine capsules in 2006 and 2007 with not a single case of adverse analytical finding, except for Dodô's case. It is also interesting to note that Fenproporex is a very costly substance – much more expensive than caffeine – subjected to strict controls by public authorities, in particular by the Brazilian agency of health vigilance, ANVISA. Mr Soares also testified that in his company's premises, as required by the law, the production of caffeine capsules and Fenproporex capsules is done at different times and in different places. In addition, the Panel finds quite remarkable the evidence provided by Mr Soares that the caffeine capsules can be easily opened and closed again and the containers can be unsealed and sealed again, rendering a deliberate contamination possible at any time after the end of the production process.
67. The Panel also notes that on the occasion of the anti-doping controls related to the matches of 1 April 2007 (Botafogo-Vasco da Gama) and 29 April 2007 (Flamengo-Botafogo), the Botafogo's team doctor did declare on both medications list forms that all players had been administered caffeine, while the tested players Luciano Almeida, Túlio (twice) and Luís Mário did declare on their respective doping control forms that they had taken caffeine. However, as already mentioned (*supra*, para. 47), on the occasion of the doping control that yielded Dodô's adverse analytical finding neither the team doctor nor Dodô declared the use of caffeine on the same forms. Therefore, the proof that the Player did ingest a caffeine capsule on the day of his positive testing is left to the Player's own words, given that the Club's nutritionist, Dr Vilhena, acknowledged at the hearing that she did not personally witness the Player's ingestion of caffeine.
68. In the light of all the above elements, the Panel is not willing to share the STJD's conclusion that the explanation offered by the Player is acceptable. In the Panel's view, the evidence submitted by the Player as to both the ingestion of a caffeine capsule prior to the match and the contamination of that caffeine capsule is unsatisfactory.
69. In particular, the Panel would have expected a much more detailed and unambiguous report by the USP Laboratory, thoroughly illustrating its analytical findings. The Panel finds also

quite difficult to believe, considering the high cost of Fenproporex and the public controls to which is subject, that a producer might inadvertently mix Fenproporex with the much cheaper and unrestricted caffeine. Besides, if the production process of Pharmacy 65 Manipulação was so unreliable as to lend itself to such an accidental contamination, it would be a quite unlikely event that only a few caffeine capsules out of many hundreds ended up being contaminated. Given the Botafogo players' intensive ingestion of those caffeine capsules before matches, one would expect some more adverse analytical findings in the many anti-doping controls which they underwent, particularly in the period of May and June 2007.

70. Given the stringent requirement for the Player to offer persuasive evidence of how the positive finding of Fenproporex occurred, the Panel finds that the Player's explanation would have needed more persuasive evidence to pass the balance of probability test. In other terms, the Panel is not persuaded that the occurrence of the alleged ingestion of Fenproporex through a contaminated caffeine capsule is more probable than its non-occurrence. The Panel has no reason to think that the Player is a cheat. However, in view of (i) the fact that Botafogo's staff was accustomed to dispensing to their players before or during matches no less than five nutritional supplements (declaration by Dr Vilhena) including a stimulant such as caffeine – forbidden until 2004 and permitted nowadays, but still subject to the WADA monitoring program – and (ii) the circumstance that the Player, as he explicitly admitted, essentially ingested whatever the Club's staff gave him, the Panel finds the occurrence of contamination less likely than the possible deliberate administration of a Fenproporex capsule to the Player.
71. Accordingly, the Panel holds that, on the balance of probability, the Player has failed to establish how the prohibited substance entered his system.
 - b) Player's caution and degree of fault or negligence
72. With regard to the duty of caution required under the applicable rules, the Panel shares the following opinion expressed by another CAS Panel:

“«No fault» means that the athlete has fully complied with the duty of care. [...] «No significant fault» means that the athlete has not fully complied with his or her duties of care. The sanctioning body has to determine the reasons which prevented the athlete in a particular situation from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the specific and individual circumstances. However, only if the circumstances indicate that the departure of the athlete from the required conduct under the duty of utmost care was not significant, the sanctioning body may [...] depart from the standard sanction” (CAS 2005/C/976 & 986).
73. In the light of such definition of the athlete's duty of care, even if the Player's explanation of how Fenproporex had come into his body was supported by plausible evidence (*quod non*), it seems to the Panel that the Player's behaviour was significantly negligent under the

circumstances. His departure from the required duty of utmost caution was clearly significant. Indeed, the Player did not exercise the slightest caution.

74. Questioned at the hearing on the caution that he took before ingesting the caffeine capsules and the other nutritional supplements that the Botafogo's staff regularly gave him, the Player candidly answered that he simply trusted his employer and the team doctors and never knew exactly how and where the products were manufactured nor who produced them. Apart from the justification that he relied on the Club's doctors, the Player has not even attempted to demonstrate that he exerted some particular care before ingesting those products. Questioned about his experience with his current club (Fluminense), the Player testified that he was still being administered several products before matches, but was not able to mention their names or what they were.
75. The Panel finds extraordinary this Player's admission that, despite having already had a positive test, he is still passively ingesting a variety of products administered to him by his current club without asking any information or doing any research on his own.
76. As seen above, the Player has the burden to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered a prohibited substance. Although the Panel is satisfied that the Player did not "know or suspect" that the caffeine capsule could be contaminated by a prohibited substance, the Panel cannot accept that the Player "could not reasonably have known or suspected" that this was so.
77. The Panel notes in particular the clear and public warning issued by the CBF to Brazilian football players (and their doctors) as to the risk of contaminated nutritional supplements. Article 8 of the CBF 2007 Doping Control Regulation reads as follows:
- "COMMON MISTAKES BY THE ATHLETE OR PHYSICIAN THAT CAN BRING ABOUT A POSITIVE TEST. [...] DO NOT use medications, nutritional supplements or vitamins of dubious origin. DO NOT trust the composition declared on leaflets and labels of medications, nutritional supplements and pharmaceutical and homeopathic productions. Verify the reliability of the supplier, as there are many cases of omitted mention in labels of stimulants and anabolic agents"* ("FALHAS COMUNS DO ATLETA OU MÉDICO, QUE PODEM LEVAR A CASO POSITIVO. [...] NÃO utilizar medicamentos, suplementos nutricionais ou vitaminas de origem duvidosa. NÃO confiar na composição declarada em rótulos e bulas de medicamentos, suplementos nutricionais e preparações farmacêuticas e homeopáticas. Certificar-se da idoneidade do fornecedor, pois há muitos casos de omissão da citação de estimulantes e anabolisantes nesses rótulos").
78. The Panel also notes that the WADA Code – published even in a Portuguese version in – provides at article 2.1.1 that it the WADA internet site *"is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body"*. This means that the Player is personally responsible for the conduct of people around him from whom he receives food, drinks,

supplements or medications, and cannot simply say that he trusts them and follows their instructions.

79. Then, the WADA Code's official comment to Article 10.5 (provision whose application was expressly invoked by the Player; *supra*, para. 39) reads as follows:

"a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a prohibited substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink)."

80. The circumstances of the present case are quite typical and fall squarely in the warnings set out in the quoted Article 8 of the CBF 2007 Doping Control Regulation (*supra*, para. 77) as well in the WADA Code's comment to Article 10.5 (*supra*, para. 79). Indeed, there have been so many anti-doping cases where the athlete has attempted to justify himself on the basis of a contaminated supplement that practically every sports or anti-doping organization in the world has issued warnings against the use of nutritional supplements.

81. In addition, the Panel notes that, according to the concurrent evidence put forward by Dr Pagnani and Dr Vilhena, there have been in Brazil various publicly known cases of contaminated nutritional supplement that yielded positive anti-doping tests. Such cases, showing the high risk of contamination of nutritional supplements in Brazil, should have rendered the Player acutely aware of the risk and induced him to refuse the caffeine capsules given to him. All the more so, as the Player has declared that he never felt that caffeine contributed any particular benefit to his sporting performance.

82. Notwithstanding the extensive information available that should have alerted him to the risk of a doping offence, the Player chose to do nothing, simply and without question ingesting every product administered to him. Even accepting that the Club has a serious responsibility towards the Player, the Panel finds that the Player's conduct in the circumstances amounted to a significant disregard of his positive duty of caution. Indeed, nothing prevented the Player from complying with such duty and refusing the products given to him or, at least, checking personally how, where and by whom the products were manufactured. The Panel finds that nowadays an athlete of Dodô's stature, age and experience cannot merely rely on his team's staff in using supplements and vitamins. As another CAS Panel has vividly put it, this Player's attitude is

"tantamount to a type of wilful blindness for which he must be held responsible. This "see no evil, hear no evil, speak no evil" attitude in the face of what rightly has been called the scourge of doping in sport – this failure to exercise the slightest caution in the circumstances – is not only unacceptable and to be condemned, it is a far cry

from the attitude and conduct expected of an athlete seeking the mitigation of his sanction for a doping violation” (CAS 2003/A/484).

83. Therefore, the Panel finds that the Player’s degree of “*fault or negligence*”, viewed in the totality of the circumstances, is clearly “*significant*” in relation to the anti-doping rule violation.
84. Notwithstanding the fact that the Panel is finding against the Player, the account given by the Club’s nutritionist prompts the Panel to make clear that the Club’s habit of handing out numerous capsules and supplements to its players as well as the Club’s system of obtaining, keeping, guarding and dispensing those capsules and supplements seem, to say the least, imprudent. Indeed, what this case has highlighted is that it is the players who end up bearing any consequences of such a club’s attitude, in terms of both health and sanctions. In this respect, the Panel wishes to recall the WADA Code warning clause to be found at the very beginning of the Prohibited List and which any athlete or club’s staff or doctor should always bear in mind: “*The use of any drug should be limited to medically justified indications*”.
- c) Period of suspension
85. The Panel has found that, on the balance of probability, the Player did not discharge the burden of proving how the prohibited stimulant entered his body nor was he able to demonstrate that he bore No Significant Fault or Negligence.
86. The Panel thus holds that the Player is liable for the full two-year period of suspension provided under Article 65, para. 1(a), of the FIFA Disciplinary Code.
87. As to the commencement of the suspension period, the Panel wishes to point out that these CAS proceedings lasted longer than usual, but this was determined, in addition to the size and complexity of the file, by the need to address the various procedural issues raised by all parties during the proceedings as well as by the difficulty to find suitable hearing dates accommodating all parties. Due to this delay in the judging process, only partially attributable to the Player, the Panel deems fair to apply *ex officio* the principle set forth by Article 10.8 of the WADA Code and, thus, to start the period of suspension at an earlier date than the day of notification of this award.
88. Accordingly, the Panel holds that, taking into account the totality of the circumstances, the two-year period of suspension must start on 6 December 2007, that is the date when the Panel determined to have jurisdiction on the case and that is also, exactly, three months after the filing of the first statement of appeal, which should be a reasonable span of time to hear a doping case. In accordance with Article 65, para. 5, of the FIFA Disciplinary Code this will not have any effect on the results of the Player’s team during this period (assuming that no other player from the Player’s team has been sanctioned for doping in that period and considering that at the end of 2007 the Player moved to another club).

89. The ineligibility of the Player should end on 5 December 2009. However, the period of provisional suspension already inflicted to the Player must be credited against the two-year suspension. According to an uncontroverted statement submitted by the Player's counsel, the period to be credited amounts to 28 days. Therefore, the Panel orders that the last day of suspension be 7 November 2009.

The Court of Arbitration for Sport rules:

1. The CAS has jurisdiction *ratione materiae* and *ratione personae* to entertain the appeals of the Fédération Internationale de Football Association (FIFA) and the World Anti-Doping Agency (WADA) in respect of the Confederação Brasileira de Futebol (CBF) and Mr Ricardo Lucas Dodô, while it has no jurisdiction *ratione personae* in respect of the Superior Tribunal de Justiça Desportiva do Futebol (STJD).
 2. The appeals of FIFA and WADA against the decision dated 2 August 2007 of the STJD are upheld.
 3. The decision dated 2 August 2007 of the STJD is set aside.
 4. Mr Ricardo Lucas Dodô is suspended from 6 December 2007 to 7 November 2009.
- (...)