**CAS 2024/A/10891 Leandro Visotto Neves v. Fédération Internationale de Volleyball (FIVB)**

# ARBITRAL AWARD

rendered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr Jacques **Radoux**, Référendaire, Court of Justice of the European Union, Luxembourg

Arbitrators: Mr Jeffrey G. **Benz**, Attorney-at-Law and Barrister, London, United Kingdom

Mr Ken E. **Lalo**, Attorney-at-Law, Gan-Yoshiyya, Israel

in the arbitration between

**Leandro Visotto Neves**, Brazil

Represented by Mr Marcelo Franklin, Attorney-at-Law, Franklin Advogados Associados, Rio de Janeiro, Brazil

**- Appellant -**

**And**

**Fédération Internationale de Volleyball (FIVB)**, Lausanne, Switzerland

Represented by Mr David Menz and Mr Vishakh Ranjit, Attorneys-at-Law, Martens Rechtsanwälte, Munich, Germany

**- Respondent** –

## I. PARTIES

1. Mr Leandro Visotto Neves (the "Athlete" or the "Appellant"), born on 30 April 1983, is a former professional volleyball player of Brazilian nationality. The Athlete was an active volleyball player at the time of collection of his sample, the analysis of which provides the basis of these proceedings.

2. The Fédération Internationale de Volleyball (the "FIVB" or the "Respondent") is the international federation governing the sport of volleyball worldwide. It has its registered seat in Lausanne, Switzerland, and is a signatory of the World Anti-Doping Code (the "WADC"), in compliance with which it has, *inter alia*, adopted a set of rules, namely the FIVB Medical & Anti-Doping Regulations (the "MADR").

3. The Appellant and the Respondent are collectively referred to as the "Parties".

## II. FACTUAL BACKGROUND AND FIRST INSTANCE PROCEEDINGS

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 9 December 2022, during the FIVB Volleyball Men's Club World Championship 2022, the Athlete was subject to an in-competition doping control.

6. The Athlete's sample (the "Sample") was analyzed by the World Anti-Doping Agency ("WADA") accredited laboratory in Cologne, Germany (the "Laboratory"). The analysis revealed the presence of Clomifene. Clomifene was, and still is, listed as a Prohibited Substance under the WADA Prohibited List (S4.2 – Anti-Estrogenic Substances [Anti-Estrogens and Selective Estrogen Receptor Modulators (SERMS)]) and is considered as Specified Substance.

7. On 24 January 2023, the FIVB notified (the "Notification Letter") the Athlete of the fact that his Sample had revealed an Adverse Analytical Finding ("AAF") for Clomifene, informed him that he could request the B-Sample opening and analysis according to Article 5.1.2.1 lit. c) and d) of the MADR, and invited him to provide his explanations within fourteen (14) days of the receipt of the Notification Letter.

8. On 3 February 2023, the Athlete requested an extension of the deadlines, *inter alia*, to request the opening of the B-Sample and production of the laboratory documentation package and to provide an explanation for the AAF. The Athlete also requested to be informed of the estimated concentration of Clomifene found in the A-Sample and whether metabolites of Clomifene were detected.

9. On 6 February 2023, the FIVB informed the Athlete that the Laboratory "*confirmed a roughly estimated concentration of comiphene of 1.8 ng/ml. Additionally, hydroxy-*

*comiphene (metabolite) was also detected but not confirmed*", refused to grant an extension of the deadline to request the opening and analysis of the B-Sample, and agreed to grant an extension of seven (7) days of the deadline for the Athlete to submit his explanations.

10. On 7 February 2023, the Athlete requested the opening of the B-Sample and the communication of the documentation package of the A-Sample.

11. On 14 February 2023, the Athlete provided FIVB with his preliminary explanations to the Notification Letter (the "Preliminary Explanations") in which, *inter alia*, he explained that his AAF was probably caused by a contamination from medication used by his wife. Further, in case the B-Sample would confirm the AAF of the A-Sample, he requested a fair hearing.

12. On 20 February 2023, after several email exchanges between the Athlete and the FIVB, the date for the opening of the B-Sample was set to 25 April 2023.

13. On 24 February 2023, the Athlete informed the FIVB that he would not be able to attend the opening of the B-Sample personally and that he would not be represented either.

14. On 27 February 2023, in the response to the Preliminary Explanations provide by the Athlete, the FIVB requested some further clarifications and invited the Athlete to provide any proof of the information he would give in his answer.

15. On 13 March 2023, the Athlete provided the requested clarifications (the "Additional Explanations 1") to the FIVB.

16. On 31 March 2023, the FIVB asked the Athlete to provide some more clarification regarding supplements that he declared having taken at the time of his anti-doping control.

17. On 13 April 2023, the Athlete provided the clarifications requested by the FIVB (the "Additional Explanations 2").

18. On 25 April 2023, the B-Sample was opened by the Laboratory. The analysis of the B-Sample confirmed the results of the A-Sample analysis.

19. On 4 May 2023, the FIVB informed the Athlete of the results of the B-Sample analysis.

20. Between 5 May 2023 and 26 July 2023, the Parties discussed a potential amicable settlement of the present matter by acceptance of sanctions.

21. On 26 July 2023, the Athlete informed the FIVB that he was not willing to agree to the proposed sanction and asked for the procedure to continue.

22. On 19 September 2023, the FIVB issued a Letter of Charge (the "Letter of Charge") reproaching the Athlete to have committed an Anti-Doping Rule Violation ("ADRV") to Articles 2.1 and 2.2. of the MADR.

23. On 3 October 2023, the Athlete submitted his response to the Letter of Charge.

24. On 23 November 2023, the case was referred to the FIVB Disciplinary Panel (the "FIVB DP").

25. On 19 December 2023, the Parties were notified of the composition of the FIVB DP and the Athlete was invited to submit his answer by 15 January 2024 and was asked to provide an English translation of a decision he was making reference to in his submissions; any written prescription or recommendation which suggested Aspirin intake after a heart surgery; the medical record regarding his arrhythmia and surgery, and a medical explanation regarding the prescription of Aspirin after that surgery.

26. On 22 January 2024, after having obtained an extension of the deadline to submit his answer, the Athlete filed his answer together with additional evidence.

27. On 11 March 2024, a hearing was held before the FIVB DP.

28. On 5 September 2024, the FIVB DP rendered its decision (the "Appealed Decision"), the operative part of which reads as follows:

> "*1. The athlete Leandro Vissotto Neves (Brazil) has committed an anti-doping rule violation according to Articles 2.1 of the FIVB MADR 2022 due to the presence in his sample of Clomifene, a prohibited substance listed under the category of S.4.2 of the 2022 WADA Prohibited List.*
>
> *2. A period of ineligibility of two (2) years is imposed on the athlete Leandro Vissotto Neves, according to Article 10.2.2 of the FIVB MADR 2022.*
>
> *3. The period of ineligibility is effective as from the day of notification of this decision.*
>
> *4. All individual competitive results achieved by the athlete Leandro Vissotto Neves on 9 December 2022 are disqualified as per Article 10.10 of the FIVB MADR 2022.*
>
> *5. This decision may be appealed in accordance with the attached Notice of Appeals.*
>
> *6. This decision shall be published in accordance with Article 14.3 of the FIVB MADR 2022.*"

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

29. On 25 September 2024, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (the "CAS"), in Lausanne, Switzerland, in accordance with Article 13.2.1 of the MADR and Articles R47 *et seq*. of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision. In his Statement of Appeal, the Appellant nominated Mr Jeffrey G. Benz, Attorney-at-Law and Barrister in London, United Kingdom, as arbitrator.

30. On 30 September 2024, the CAS Court Office initiated the present appeals arbitration procedure, and, *inter alia*, invited the Respondent to nominate an arbitrator and to state whether it objected to English being the language of the procedure.

31. On 2 October 2024, the Respondent informed the CAS Court Office that it had no objection that the proceedings would be conducted in English.

32. On 10 October 2024, the Respondent informed the CAS Court Office that it nominated Mr Ken E. Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel, as arbitrator in these proceedings.

33. On 23 October 2024, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code. On the same day, the CAS Court Office invited the Respondent to submit its Answer within the deadline set out in Article R55 of the CAS Code, highlighting that if it failed to do so, the Panel may nevertheless proceed with the arbitration and deliver an award.

34. On 3 December 2024, the Respondent filed its Answer.

35. On 4 December 2024, the CAS Court Office acknowledged receipt of the Respondent's Answer and informed the Parties that, unless they agree or the President of the Panel orders otherwise on the basis of exceptional circumstances, Article R56 para.1 of the CAS Code provides that the Parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the Appeal Brief and of the Answer. The Parties were also invited to state, by 9 December 2024, whether they preferred a hearing to be held in the present matter and whether they requested a case management conference ("CMC") with the Panel.

36. On 5 December 2024, the Appellant informed the CAS Court Office that he requested an in-person hearing in the present matter and that a CMC was not necessary.

37. On 9 December 2024, the Respondent informed the CAS Court Office that it also preferred a hearing to be held in the present proceedings. However, for several reasons, it considered that a video-hearing would be preferable and that a CMC was not required.

38. On 11 December 2024, the CAS Court Office asked the Parties whether they would be available for a hearing on 14 or 15 January 2025.

39. On 13 December 2024, the Appellant informed the CAS Court Office of its unavailability on those dates and suggested several other dates for the hearing.

40. On 16 December 2024, the CAS Court Office asked the Parties whether they were available for an in-person/remote hearing on 26 February 2025, which was one of the dates suggested by the Appellant.

41. On the same day, the Respondent confirmed its availability for a hearing on 26 February 2025 and reiterated its preference for a remote hearing.

42. On 18 December 2024, the CAS informed the Parties that the Panel appointed to resolve this dispute was constituted as follows: Mr Jacques Radoux, Référendaire, Court of Justice of the European Union, Luxembourg (President), Mr Jeffrey G. Benz, Attorney-at-Law and Barrister, London, United Kingdom, and Mr Ken E. Lalo, Attorney-at-Law, Gan-Yoshiyya, Israel.

43. On 20 December 2024, the CAS Court Office informed the Parties that the Panel had decided to hold an in-person hearing in the present matter on 26 February 2025.

44. On 3 January 2025, the CAS Court Office notified an Order of Procedure to the Parties. On 10 January 2025, the Appellant, as well as the Respondent, signed and returned the order of procedure.

45. On 6 February 2025, the Appellant informed the CAS that, due to the expected high travel costs, neither himself nor any of his counsels would participate in person at the hearing but that they would attend the hearing via video conference. In view of this position, the Panel has changed the format of the hearing to take place online rather than in-person.

46. On 26 February 2025, a hearing took place via videoconference. The Panel was assisted by Mr Björn Hessert, counsel to the CAS, and joined by the following participants:

**For the Appellant:**

Mr Leandro Visotto Neves, Appellant;

Ms Nathalia Tonelli Rohlfs, wife of the Appellant, witness;

Prof. Aloa Machado de Souza, expert;

Mr Marcelo Franklin, counsel;

Mr Swastik Pattanayak, counsel;

Mr Joshua Buxton, counsel.

**For the Respondent:**

Mr David Menz, counsel;

Mr Vishakh Ranjit, counsel;

Ms Alessandra Deliberato, FIVB Senior Legal Counsel.

47. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel.

48. During the hearing, the Panel heard evidence from the Appellant. Following that, the Panel heard the evidence of Mrs Nathalia Tonelli Rohlfs (witness) and Prof. Aloa

Machado de Souza (expert), both named by the Appellant. Before taking their evidence, the President of the Panel informed the witness and the expert of their duty to tell the truth subject to sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine them. Each of them confirmed their written statement or expert opinion. Finally, the Athlete also made a statement.

49. The Parties were given full opportunity to present their case, submit their arguments and answer the questions from the Panel. At the end of the hearing, the Parties confirmed that their right to be heard and their right to a fair trial had been fully respected during the hearing and that they had no objections as to the manner in which the proceedings had been conducted.

## IV. THE PARTIES SUBMISSIONS

50. The aim of this section of the Award is to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. However, the Panel confirms that in deciding upon the Parties' claims it has carefully considered all of the submissions made and evidence adduced by the Parties, even if not expressly mentioned in this section of the Award or in the discussion of the claims below.

### A. The Appellant's Submissions and Requests for Relief

51. In his Statement of Appeal, the Appellant observes, as a preliminary point, that the CAS is competent to hear the present appeal on basis of Article 13.1. of the MADR and Article R47 of the CAS Code. Further, the Appeal would be admissible as it was filed within the deadline prescribed in Article R47 of the CAS Code.

52. In his Appeal Brief, the Appellant holds that the present matter is governed by the MADR and that, in case of lacuna, Swiss law shall also apply according to Article R45 of the CAS Code.

53. As regards the standard of review and the scope of the Appeal, the Appellant recalls that although, pursuant to Article R57 of the CAS Code, an appeal before the CAS has a *de novo* nature, in the sense that a panel can make a full review of the facts and the law, a CAS panel cannot, according to the CAS jurisprudence, decide issues that were part of the appealed decision but have not been appealed against (CAS 2016/A/4371, paras. 76 and 77). Hence, in the present matter, it would be improper for the CAS to decide whether the Appellant has proven the source of the Clomifene that caused the AAF since that specific issue has not been formally appealed by any of the Parties. The only issues before the CAS would thus be the length of the sanction to be imposed and the date of commencement of the sanction.

54. Concerning the ADRV, which the Appellant does not contest, he argues that is has been established and accepted by the FIVB DP that the most likely source of the Clomifene found in his system was the accidental intake of just one pill of Clomifene belonging to his wife. According to the Appellant, he mistook this pill for an Aspirin pill that he had been recommended to take after he had a heart surgery to correct an arrhythmia. As would be clear from his blood and urine markers, there was no extended use of Clomifene by him. Further, given that he had a successful career, the end of which was

already planned at the moment of the accidental intake of the Clomifene pill, as is evidenced by the fact that he had followed coaches' courses to prepare for the next step in his career, an intentional intake of Clomifene could be excluded. The accidental intake of that pill would moreover be confirmed by the expert report from Prof. Aloa Machado de Souza.

55. In support of his affirmations (i) that he had undergone a heart surgery to correct an arrhythmia, (ii) that he was taking Aspirin for over a decade following his heart surgery, that the use of Aspirin could prevent cardiovascular and cerebrovascular events in patients that have already experienced such an event or were at risk to of such an event, (iii) that he has a vision impairment and (iv) that, unbeknown to him, his wife was prescribed Clomifene in a fertility process, the Appellant filed some medical reports, articles and prescriptions.

56. As regards his degree of fault when committing the ADRV, which is the essential element in the determination of the appropriate sanction, the Appellant maintains that, pursuant to Article 10.2.2 of the 2021 WADC, the regular sanction for an ADRV which was not intentional shall be two years and that, pursuant to the provision of that WADC, with respect to a specified substance such as Clomifene, a reduction can only be considered if an athlete can establish that he or she bore no significant fault or negligence. According to the jurisprudence of the CAS, there are only two (2) categories of fault that come into play: (i) a normal degree of fault, leading to 12 – 24 months sanction with a standard normal degree leading to an 18-month period of ineligibility, and (ii) a light degree of fault, leading to a 0-12 months sanction with a standard light degree leading to a 6-month period of ineligibility.

57. Concerning his objective degree of fault, the Appellant argues that, ever since he was prescribed Aspirin and up until the accidental intake of the Clomifene pill of his wife, he diligently complied with all the necessary steps to make sure that the medication was safe. In contrast to the situation at issue in the case CAS 2017/A/5301 & 5302 (the "Errani case"), the Appellant attempted to control his home environment by storing his medication in a manner that minimised the risk of contamination of food products and ensured it remained out of reach of his three children. However, given that he was unaware of the fact that his wife was taking Clomifene, he was not able to control the environment against the risk arising from this medication. Furthermore, he had been administering his medication from this same box for a decade without ever registering an AAF. Moreover, contrary to the situation at issue in the Errani case, the Appellant had not conferred the responsibility of collecting his medication onto another person and he was exclusively responsible for administering his medication, which had been a successful approach for a decade.

58. Regarding his subjective degree of fault, the Appellant claims that, in light of the CAS jurisprudence, in particular CAS 2012/A/2756, CAS 2006/A/1025, CAS 2011/A/2515 and CAS 2005/A/830, the Panel should take into consideration that the Appellant:

(i) was not aware of the fact that his wife was using Clomifene;

(ii) is not a medical professional and never requested a Therapeutic Use Exemption ("TUE");

(iii) had never committed an ADRV before the present one;

(iv) faced significant stress as the end of his active volleyball career approached;

(v) could feel safe in his home environment and committed "*a careless but understandable mistake*" because the pill he mistook for Aspirin has the same thickness and weight as well a similar colour as Aspirin;

(vi) had no grounds for suspecting the pill he took to be anything other than his Aspirin;

(vii) had not used his prescription glasses to verify the authenticity of the pill due to his perception of a safe environment following a career of negative anti-doping tests;

(viii) had been taking Aspirin for many years without incident which led him to not apply the objective standard of care required when taking a medication for the first time;

(ix) while being responsible for his entourage's behaviour and faults, should benefit from the fact that his wife, in contrast to the mother of the athlete in the Errani case, is not a pharmacist and does not have specialist knowledge allowing her to know that the medication she was taking contained Prohibited Substances, entailing that the level of fault to be imputed on the Appellant for his wife's fault (omission to inform him about the medication she was taking) cannot be equivalent on the level of fault imputed on the athlete in the Errani case;

(x) has not undertaken any affirmative action or assumption of risk upon which one could attribute any negligence and never intentionally ingested any Prohibited Substance to gain an unfair advantage by enhancing his performance, as corroborated by the expert reports of both parties;

(xi) was less cautious because he had already announced his retirement and had already set a date for his career to end.

59. As regards the starting point of the period of ineligibility, the Appellant argues that, pursuant to Article 10.13.1 of the MADR, it should be backdated to the date of Sample collection, *i.e.* 9 December 2022. In support of this argument, he claims that the procedure between the notification of the ADRV and the notification of the Appealed Decision took one (1) year, seven (7) months and twelve (12) days and thus took thirteen (13) months longer than prescribed by WADA's International Standards for Results Management ("ISRM"). This delay should be considerable and could not be attributable to the Appellant. The Appellant has spent one (1) year, one (1) month, and thirteen (13) days purely waiting for the processes to be completed by the FIVB and other organisations. Therefore, any period of ineligibility should be backdated to the date of the Sample collection or the duration of one (1) year, one (1) month, and thirteen (13) days should be subtracted from any period of ineligibility that might be imposed on the Appellant.

60. Finally, the Appellant contends that, when assessing the period of ineligibility to apply, the Panel should consider the principle of proportionality, which plays, according *inter alia* to the Swiss Law and the CAS jurisprudence (CAS 2005/C/976 & 986; CAS 2005/A/830), a key role when determining sanctions in doping matters. According to this principle, sanctions under the WADC could be reduced (TAS 2007/A/1252; CAS 2010/A/2268; CAS 2006/A/1025). Sanction should not be automatic and should be adjusted depending on the circumstances. Hence, the Panel would be under the obligation to consider the principle of individualisation or personalisation for any sanction it decides to impose. In this regard, the Appellant considers that, in the present matter, a proportional sanction would be the time served from 9 December 2022 – the date of the Sample collection – to 30 April 2023 – the Appellant's last official match. Such a sanction would also be in line with other decisions involving Clomifene and in which the athletes were found to have a significant higher degree of fault and were sanctioned respectively with an eight (8) and a ten (10) months ineligibility periods (Brazilian Anti-Doping Sports Justice Court, ruling n°1/2023 and International Cricket Council, decision of 27 June 2022). In the present matter, the appropriate sanction would be five to eight months based upon the various factors proving that the Appellant acted with a "light" degree of fault. Accordingly, the sanction would be the time already served, and the Appellant would have been eligible to return to competition as of July 2024.

61. In light of the above arguments, the Appellant asks the CAS to rule that:

"*(i) That the appeal of Leandro Vissotto is admissible;*

*(ii) That the decision of the FIVB Disciplinary Panel be set aside;*

*(iii) Appellant Leandro Vissotto's sanction should be eliminated or, alternatively, reduced to 5-8 months;*

*(iv) The provisional suspension served by the Appellant Leandro Vissotto should be subtracted from any period of ineligibility imposed;*

*(v) Due to delays of the case not attributable to the athlete, in contradiction with the ISRM, the date of ineligibility be backdated to the date of the sample collection;*

*(vi) The Respondent shall bear all costs of the proceedings, including a contribution towards the Appellant's Legal costs.*"

## B. The Respondent's Submissions and Requests for Relief

62. The Respondent observes, as preliminary points, (i) that it agrees that the CAS has jurisdiction to hear the present appeal in accordance with Article 13 of the MADR; (ii) that the applicable law in the present matter are the MADR and that Swiss law shall apply subsidiarily as the FIVB has its seat in Switzerland, and (iii) that it does not contest the admissibility of the Statement of Appeal and the Appeal Brief.

63. As regards the merits of the case, the Respondent notes that the Appellant accepts that his Sample tested positive for Clomifene and that he committed an ADRV under Article 2.1 of the MADR.

64. Concerning the length of the period of ineligibility to be imposed, the Respondent argues that, according to Article 10.2.2 of the MADR, that length is two years and that for the Appellant to obtain a reduction of this period of ineligibility in application of Article 10.6.1.1 of the MADR 2022 for "No Significant Fault or Negligence" for the ADRV, he would have to establish first, on a balance of probabilities, how Clomifene entered his system. Although it contests, per se, the Appellant's argument according to which it would be "improper" for CAS to decide whether he proved or not the source of the Clomifene since this issue has not been "formally appealed", and considers that, as it had already claimed before the FIVB DP, that there are some inconsistencies in the Appellant's argumentation regarding the source of the Clomifene, the Respondent highlights that it abides by the findings in the Appealed Decision and submits to the discretion of the Panel with regard to that issue.

65. Concerning the Appellant's degree of fault, the Respondent recalls that when assessing an athlete's degree of fault, it is necessary to analyse, *inter alia*, the degree of risk that should have been perceived by that athlete and the level of care and investigation exercised by the latter in relation to that level of risk. The Respondent further submits that, according to well established CAS jurisprudence, a reduction of a period of ineligibility based on "No Significant Fault or Negligence" can only be applied in cases "*where the circumstances justifying a deviation from the duty of exercising the 'utmost caution' are truly exceptional, and not in the vast majority of cases*" (CAS 2021/A/8056) and that in order to analyse the degree of fault of an athlete, "objective" and "subjective" elements have to be taken into consideration (CAS 2013/A/3327 & 3335).

66. In the present matter, the objective and subjective elements would show that there can be no doubt that the Appellant's degree of fault is of the highest level. The Appellant had an undeniable duty and responsibility to ensure that no prohibited substances entered his body and he completely failed in fulfilling this duty, given that his actions and omissions indicate recklessness and negligence which corresponds to fault of the highest level. Indeed, given the Appellant's age, experience and anti-doping education, he should have been fully aware of his duties and responsibilities, especially when taking medication such as Aspirin. According to CAS jurisprudence, the responsibilities of an athlete would include that he or she is responsible for the behaviour of members of his or her family living in the same house. That would be especially so if, like in the case at hand, the entire family keeps its medication in a single container. Athletes would thus have an obligation to control their environment, *i.e.* a responsibility to establish basic controls to ensure a safe and clean environment at their homes and must exercise the same level of care at home in a family environment as at outside places like restaurants. Further, contrary to what the Athlete claims, the fact that he was about to end his career did not justify "*a reduction in his level of risk perception*". As long as the Appellant was a professional athlete, he was bound by the MADR and the strict liability provided therein. Finally, the fact that the Appellant had, up to the ADRV at hand, a "clean career" would not entitle him to any particular benefit given that the scheme of sanction provided in the relevant provisions already takes into account whether the ADRV of the concerned athlete was the first violation, as confirmed by CAS jurisprudence (CAS 2011/A/2615 & 2618).

67. Regarding the possible actions and measures that the Appellant could have taken to avoid the ADRV and the question whether he eventually did or did not take such actions or measures, the Respondent argues, *inter alia*, that (i) the Appellant and his wife should have discussed the fertility issue and that a professional athlete should inquire what medicines his or her partner uses, for example as part of a fertility treatment. By not doing so, the Appellant failed to fulfil his duties as a professional athlete; (ii) the Appellant should have taken steps to gather further information about the medication his wife was taking; (iii) the Appellant should have been aware of the risk of accidental consumption and should have taken adequate steps to avoid such accidental consumption; (iv) the Appellant, by accepting that all the medications of his family were stored in the same box, did not take the appropriate action to avoid accidental consumption and acted in a highly negligent manner/recklessly; (v) the Appellant was highly negligent when not switching the light on and wearing his prescribed glasses when taking what he thought was an Aspirin pill although he knew he had an impaired vision; (vi) the Appellant admitted that he did not check the blister of the Aspirin before taking the pill, which amounts to a highly negligent behaviour according to the CAS jurisprudence (CAS 2005/A/830); (vii) the admitted use of the same pill crusher as his wife, is another example of the careless approach of the Athlete towards his anti-doping obligations; (viii) the Appellant's retirement from professional volleyball cannot, in the present case, have had a significant impact on the Appellant's behaviour given that it was a voluntary retirement and that he had already made plans for his post-professional career. By no means could the Appellant's alleged level of stress have been of such a high degree as to affect his ability to fulfil his duties and responsibilities.

68. The Respondent considers that, in light of the above arguments, the ineligibility period imposed in the Appealed Decision, *i.e.* two (2) years, is appropriate and that the Appellant's claim, according to which this sanction is the maximum sanction for athletes who have committed an ADRV with intent, must be rejected.

69. The same would apply to the Appellant's argument according to which the imposed period of ineligibility should be reduced on basis of the principle of proportionality. Indeed, as is clear from constant CAS jurisprudence, the 2021 WADC, and thus also the MADR, has the principle of proportionality built into it within the sanctioning regime and as such, the panel should not provide any further benefit to the Appellant on this basis. The jurisprudence cited by the Appellant in support of his position would be outdated as it is from a period prior to the adoption of the 2015 WADC.

70. Finally, the two (2) decisions cited by the Appellant and involving Clomifene would not justify a reduction of the period of ineligibility imposed in the Appealed Decision as the first of these decisions, *i.e.* from the Brazilian Anti-Doping Sports Justice Court, was a simple ratification of a Case Resolution Agreement entered into between the parties and the second decision, *i.e.* from the International Cricket Council, involved very different factual elements from the present matter and should, therefore, not be compared to the case at hand.

71. The Respondent thus concludes that the sanction imposed by the FIVB DP in the Appealed Decision is appropriate and that no reduction should be applied on that sanction on the basis of the principle of proportionality or in parity with the cases cited by the Athlete.

72. The Appellant's request to have the starting date of the imposed period of ineligibility backdated to the date of the Sample collection in accordance with Article 10.13.1 of the MADR should be rejected. However, the Respondent acknowledges that some delay, not attributable to the Appellant, did occur in the results management proceedings in the present case, and that, while exercising its discretion in this regard, the Panel should take into account several factual circumstances and especially, consider the factors outside the control of the FIVB, including but not limited to, the requirement of the FIVB to rely on the availability and convenience of independent third parties such as the Laboratory and the FIVB DP, the relevant non-business days and holiday periods during the results management process and the time provided to the Athlete to submit responses and explanations (including extensions requested by the Athlete and granted by the FIVB). As mentioned by the panel in CAS 2020/A/7526 & 7559, any justification advanced by the anti-doping organisation as to the delay being "*explicable and reasonable*" may be taken into account by a CAS panel while deciding on exercising its discretion in this regard. All in all, the Respondent, given the acknowledged delay in the present case and the potential prejudice caused to the Appellant, accepts a backdating of the start of the period of ineligibility amounting to six months from the date of the final hearing.

73. In light of all the above considerations, the Respondent, in its request for relief, requests the CAS to:

> "*I. Dismiss the Appeal filed by Mr. Leandro Visotto Neves with the exception that the commencement date of the period of ineligibility imposed by the FIVB Disciplinary Panel is backdated by six months; and*
>
> *II. Order Mr. Leandro Visotto Neves to pay the FIVB a contribution towards its legal and other costs incurred with this proceeding in an amount to be determined at a later stage of the proceeding.*"

## V. THE HEARING

74. At the hearing, the Panel heard evidence by the Appellant, by Mrs Nathalia Tonelli Rohlfs (witness) and by Prof. Aloa Machado de Souza (expert).

75. The evidence can, in its relevant points, be summarized as follows:

- The Appellant confirmed his written witness statement and stated that he was taking Aspirin since a heart surgery in 2012. He further stated that he had a prescription for glasses, as his vision was impaired, but that, at the moment of the accidental intake of the Clomifene pill, he was not wearing these glasses. He also stated that, although being aware that his wife had started a fertility treatment, she had not told him and he had not asked what kind of medication this treatment would involve. He said that he had no knowledge of Clomifene and that the substance had not been mentioned in the Anti-Doping courses he had attended. He stated that before his AAF, he had well planned his retirement from active volleyball by following FIVB coaching courses (Level I and II) and had moved to the USA in 2022 with his family in anticipation of coaching there. This relocation was a very stressful moment for his entire family. He stated that he and his family are just ordinary people and that,

like every other family, they keep all their medications stored at the same place. He added that he did not know whether any Anti-Doping courses advise athletes to keep their medication at a different place from the medications of their families. He further stated that the family threw the carton box in which medications come and just kept the (aluminium/plastic) blister packages. The different medications were kept in a box or on a shelve in a cabinet that is in the laundry area next to the kitchen. He affirmed that he was usually taking his Aspirin before going to bed.

- Mrs Tonelli-Rohlfs confirmed her written witness statement and confirmed that the family was keeping their medications in the laundry area next to the kitchen, on a shelve in a cabinet. She further stated that she had not told her husband what medication she was taking as he had so much on his mind. He never asked her whether she was taking medication for her fertility treatment. She also stated that she did not remember having seen him taking the pill on the day he supposedly took her Clomifene pill. Finally, she reiterated that the Aspirin and the Clomifene pills look the same.

- Prof. Aloa Machado de Souza is a pharmacist and holds a PhD in Human Physiology. She confirmed her expert report from 30 September 2023 and stated that the Athlete's blood parameters and urine patterns (*i.e.* absence of long-term Clomifene metabolites) were not compatible with a use of Clomifene for doping purposes given that it would require a long-term use. In light of the above, she believes that the AAF was the result of an intake of one Clomifene pill. The expert further stated that she had not been physically presented the Aspirin pills and the Clomifene pills that the Athlete refers to and had only been presented photographs of said pills, but on these photographs the pills had a similarity. In general, these pills would have a similarity. She however acknowledged that she was not acquainted with all forms and shapes under which Aspirin and Clomifene were commercialized. On the photos she had been presented, the two products had a faintly different colour, Aspirin being white and Clomifene being slightly yellow, making it difficult to distinguish them in a bad or yellow light.

76. At the end of the hearing, the Appellant made a statement in which, in substance, he thanked the Panel for having taken the time to listen to his arguments and emphasized that the goal of his appeal would not be to play active volleyball again but to clear his name and allow him to find a job post-retirement. He would not like his name to be linked to any form of intentional doping or cheating. He reiterated that all the results achieved in his volleyball career were achieved in a fair way and not by cheating.

## VI. JURISDICTION

77. Article R47 of the CAS Code provides as follows:

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

78. Pursuant to Article 13.2 of the MADR:

"*A decision that an anti-doping rule violation was committed, a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed [...] may be appealed exclusively as provided in this Article 13.2*."

79. Article 13.2.1 of the MADR provides as follows:

"*In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.*"

80. In the present matter, it is uncontested that the Appellant was an International-Level Athlete at the time of Sample collection within the meaning of the MADR and none of the Parties objected to the CAS jurisdiction.

81. Moreover, all Parties confirmed such jurisdiction by signing the Order of Procedure.

82. In view of the above, the Panel confirms that the CAS has jurisdiction to decide on the present appeal.

## VII. ADMISSIBILITY

83. Article R49 of the CAS Code provides as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.*"

84. Pursuant to Article 13.6.1 of the MADR, the "*time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. [...]*"

85. In the present matter, it is uncontested that the Appealed Decision has been notified to the Athlete on 5 September 2024.

86. By filing his Statement of Appeal on 25 September 2024, the Appellant respected the twenty-one (21) day deadline set out in the MADR.

87. Thus, the present appeal was filed within the prescribed deadline and is admissible.

## VIII. APPLICABLE LAW

88. Article R58 of the CAS Code provides as follows:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

89. The Appealed Decision was rendered by the FIVB DP under the MADR and there is no dispute as to the applicability of these MADR in the present matter. Further, as the FIVB has its registered seat in Switzerland, Swiss law shall apply subsidiarily.

## IX. MERITS

90. In the present matter, it is common ground between the Parties that the Athlete committed an ADRV pursuant to Article 2.1 of the MADR for the presence of a prohibited substance, *i.e.* Clomifene. The Parties are also in agreement that Clomifene is a Specified Substance and that, accordingly, in absence of proof by the FIVB that the Athlete committed the ADRV intentionally, pursuant to Article 10.2.2 of the MADR, the applicable period of ineligibility is two (2) years. This is exactly the period of ineligibility imposed by the FIVB DP in the Appealed Decision.

91. The Appellant challenges the Appealed Decision arguing that the FIVB DP considered that, contrary to the requirements in Article 10.6.1.1 of the MADR, he had not established that he had acted with No Significant Fault or Negligence.

92. Article 10.6.1.1 of the MADR provides:

"*Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault*."

93. The definitions of "Fault", "No Fault or Negligence" and "No Significant Fault or Negligence" are set out in Appendix 1 of the MADR.

94. According to this Appendix, Fault is defined as "*any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's [...] degree of Fault include, for example, the Athlete's [...] experience, whether the Athlete [...] is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's [...] degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's [...] departure from the expected standard of behavior. Thus, for example, the fact that an*

*Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2*".

95. No Fault or Negligence is defined as follows:

"*No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.*"

96. The definition of No Significant Fault or Negligence reads as follows:

"*No Significant Fault or Negligence: The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.*"

97. In the Appealed Decision, the FIVB DP found that the Athlete had established, according to the applicable standard of proof, *i.e.* on the balance of probabilities, that the Clomifene had entered his system through the accidental ingestion of a pill prescribed to his wife.

98. The Appellant argues that given that neither the FIVB nor himself have appealed this finding of the FIVB DP, it has become final and is not subject to a *de novo* review by the Panel. The Respondent, for its part, observes that it had no valid legal interest to appeal this finding of the FIVB DP, as the sanction imposed in the Appealed Decision was in line with the FIVB's requests.

99. In this regard, the Panel notes that the Respondent states, in its written submissions, that it "*abides by the findings of the FIVB in the Appealed Decision*" on how the Clomifene entered the Appellant's system and submits to the discretion of the Panel regarding this issue. At the hearing, the Respondent noted that although it still had its doubts about the source and, in particular, about the fact that the Appellant used Aspirin on a daily basis, it was willing to accept that the consumption of a single Clomifene pill was the source of the AAF.

100. Given that the Panel considers, as will be clear from what follows, that the Appellant has not established to not have acted with No Significant Fault or Negligence, the question whether or not the Appellant has established, according to the relevant standard of proof, how the substance entered his body can be left unanswered.

***Assessment of the level of fault or negligence***

101. In view of the above, the Panel starts its assessment on the premise that the ADRV was unintentional and that the period of ineligibly to be imposed is two years, subject to a potential reduction in accordance with article 10.6.1.1 of the MADR, *i.e.* based on No Significant Fault or Negligence. In case the Panel finds that such reduction is to be applied, it will still have to decide to what kind of reduction the Appellant should be entitled.

102. As is clear from the definition recalled above, No Significant Fault or Negligence has to be established in light of the criteria for No Fault or Negligence. The starting point of an assessment of No Significant Fault or Negligence is whether an athlete did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had used the prohibited substance at stake. The Panel has thus to examine if the Appellant departed from the expected standard of behaviour, which is utmost caution, and if in the affirmative how far he departed from that standard, knowing that if the departure was significant then the criteria for No Significant Fault or Negligence would not be met whilst if the departure was not significant then the Athlete could benefit from a reduction for No Significant Fault or Negligence (CAS 2017/A/5301 & 5302, CAS 2021/A/8449 and CAS 2022/A/9141). The Panel keeps however in mind that, according to constant CAS jurisprudence, No Significant Fault or Negligence "*is (by definition) consistent with the existence of some degree of fault and cannot be excluded simply because the athlete left some 'stones unturned'*" (CAS 2016/A/4643 and CAS 2021/A/8449).

103. According to the existing CAS jurisprudence, in particular CAS 2013/A/3327 & 3335 and CAS 2017/A/5301 & 5302, when assessing an athlete's degree of fault for the application of a provision like Article 10.6.1.1 of the MADR, which is equivalent to Article 10.6.1.1 of the WADC, a panel has to assess the level of fault based on objective and subjective elements. The objective element describes "*what standard of care could have been expected from a reasonable person in the athlete's situation*", and the subjective element describes "*what could have been expected from that particular athlete, in light of his personal capacities*" (CAS 2013/A/3327 & 3335). Further, as indicated in CAS 2013/A/3327 & 3335, the subjective elements for the determination of fault may, in exceptional cases, move an athlete from one category to the other.

104. In the present matter, the Panel notes that it follows from the Appellant's description of the facts that several elements led to the accidental intake of the Clomifene pill by the Appellant. First and foremost, the Appellant did not check the content of the blister he opened. Second, the Appellant, although aware that he had a vision impairment and needed glasses to read, did not wear his prescription glasses when he took the pill that he believed to be Aspirin. Third, he took the pill in a room that was poorly lit and did not bother turning on the light in that room (pantry) or taking the pill into a space where there was enough light for him to see what medication he was taking. Fourth, the Appellant's medication was kept in the same cabinet, on the same shelf and/or in the same box as the medications of the other family members. The Panel considers that, when compared to the duty of care that could be expected from a reasonable person in the Appellant's situation, each of the above elements, taken on its own, amounts to a negligence of a certain significance in relation to the committed ADRV. Indeed, had the Appellant just taken the most elementary steps in relation to these four elements, *i.e.* (i) had he checked the content of the blister/read the name of the medication on the blister;

(ii) worn his prescription glasses; (iii) turned on the light or taken the medication into a room with sufficient light, or (iv) kept his medication clearly separated from those of the other family members, the ADRV would not have occurred. In the Panels view, the fact that the Appellant did not check what medication he was taking and did not take any of the above precautions is even more striking as, according to the Appellant himself and according to his wife, he was very worried about an eventual heart issue. Certainly, taken together, these four elements show that the Appellant's negligence was significant and that he considerably failed in his duty of care to prevent the ingestion of a prohibited substance.

105. This finding is not called into question by the fact that the Appellant had never experienced any anti-doping related issues over all the years that the family's medications were stored together in the same cabinet, on the same shelf and/or in the same box. Indeed, such argument proves, at best, that the Appellant was fortunate that his negligence did not cause an AAF at an earlier stage in his career.

106. Further, the argument that he had not been warned about Clomifene in the Anti-Doping courses he had followed, is of no avail to the Appellant either. Indeed, given that, according to his and his wife's testimony, he was not aware that his wife was taking Clomifene or that Clomifene was in the household, it is unreasonable to believe that he would have adopted another behaviour than he did on the evening he accidently took the Clomifene pill if he had received a warning about Clomifene in the Anti-Doping courses.

107. As regards the stress that the Appellant was allegedly experiencing due to his upcoming retirement from professional volleyball, the Panel finds that this argument is not compelling. Indeed, the Appellant had taken the decision to retire as a professional athlete on his own terms and quite some time before he accidently took the Clomifene pill and had prepared for his after-career by accomplishing the FIVB Level I and II Coaches Courses. In these conditions, and even if the relocation of the Appellant and his family to the another country may have required some adjustments and created some kind of hassle, the Panel does not see how these events could have created a level of stress of such magnitude that a professional athlete of the calibre and experience of the Appellant would have been affected in what should have been his perception of risk.

108. Finally, in view of the Athlete's age and experience, *i.e.* long-time professional athlete having competed at the highest international level, it cannot convincingly be argued that he was not aware that he should keep his medication separated from that of his family or that he should pay utmost caution and verify what medication he ingests, whether at home or not. The comparison the Appellant tries to draw between his situation and the situation at stake in the Errani case is, in the Panel's view, misplaced. Athletes do not only have to take the necessary steps to make sure no medication contaminates their food or drinks but also have to take all elementary and necessary steps to ensure that they do not ingest a medication which is not theirs or which they do not intend to ingest. Had the Appellant been diligent enough to just take one of the steps already mentioned above, he would most likely not have accidently ingested the Clomifene pill of his wife.

109. Hence, the Panel considers that, on basis of the above elements, the objective level of the Appellant's negligence is significant.

110. Subjective elements of the level of fault identified in the CAS jurisprudence (CAS 2013/A/3327 & 3335 and the Errani case) may include, among others: (i) the athlete's youth and/or experience; (ii) language or environmental problems encountered by the athlete; (iii) the extent of anti-doping education received by the athlete; (iv) other "*personal impairments*", such as having taken a product over a long period of time without incident, previously having checked the product's ingredients, suffering from a high degree of stress, or the awareness of an athlete being reduced by a careless but understandable mistake.

111. In the present matter, it is uncontested that the Appellant, at the moment of the ADRV, was 39 years old and had a considerable experience in anti-doping matters. Further, he had received anti-doping education and, although he acknowledged at the first instance hearing that he was not always focused during those courses, he had attended anti-doping courses and could have easily paid more attention. Moreover, the Appellant did not allege any language problems. As regards a potential "environmental" problem that could have arisen through the fact that the cabinet in which the pill was stored was standing in a dimly lit room, this problem could, as mentioned above, have easily been solved. The fact that the Appellant had taken Aspirin over a long period of time without incident is, in the Panel's view, of no avail to the Appellant in the present matter as the AAF was not caused by a "contaminated" Aspirin pill but by the fact that he took another medication without checking the blister. Finally, as regards the Appellant's argument that he just committed "*a careless but understandable mistake*", the Panel considers it sufficient to recall that, as held above, the Appellant was negligent on at least four different aspects. The omission of all four steps of precaution he could have easily taken amounts to a "significant mistake. The Panel however accepts that the Appellant's intake of the Clomifene pill was accidental and unintentional.

112. The Panel adds that the comparison the Appellant tries to draw with other cases, in particular CAS 2006/A/1025, the Errani case and CAS 2019/A/6482, is ill-founded as the facts of those cases are, in the Panel's view, not comparable to the facts at hand.

113. The Panel thus considers that, in the present matter, the subjective elements of fault have no impact on the category of the Appellant's fault or negligence.

114. The Panel, having determined that the Appellant has shown significant negligence, sees no room for a reduction of the period of ineligibility below twenty-four (24) months.

115. Further, and contrary to the Appellant's argument in relation to the proportionality of this sanction, the Panel considers this sanction to be proportionate to the significant negligence shown by the Appellant. Further, it shares the view expressed by other CAS panels according to which "*[…] the elements of [the principle of proportionality have] already been duly considered by the Panel and are a part of the 2021 WADC. When applying these regulations, only the most extreme and rare cases, where sanctions are clearly disproportionate and unfair, allow for an autonomous consideration of the principle of proportionality* ») (CAS 2021/A/7983). In the Panel's view, none of the elements brought forward by the Appellant are of such nature as to turn the present matter into one of those "*most extreme and rare cases*".

116. The Appealed Decision is thus confirmed insofar as it has imposed a period of ineligibility of two (2) years.

***Starting date of the period of ineligibility***

117. Regarding the starting date of that period of ineligibility, the Appellant refers to Article 10.13.1 of the MADR and requests that that date should be backdated to the date of the Sample collection, *i.e.* 9 December 2022, because of delays not attributable to him. In support of his position, he argues that there were unjustified delays in the B-sample analysis, in the preparation of the Letter of Charge, in the organisation of the hearing and the rendering of the Appealed Decision by the FIVB DP.

118. According to Article 10.13.1 of the MADR: "*[w]here there have been substantial delays in the hearing process or other aspects of Doping Control, and the Athlete or other Person can establish that such delays are not attributable to the Athlete or other Person, the FIVB or the FIVB Disciplinary Panel, if applicable, may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved by the Athlete alone during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified*".

119. The Respondent agrees that there were some delays in the present matter not attributable to the Athlete and accepts that the starting date of the ineligibility period be backdated by six months.

120. The Panel has carefully examined the length of the different stages of the procedure in the present matter and finds that the Appellant's arguments are not compelling as many of the alleged delays were partially due to the Appellant's procedural behaviour. Indeed, first, as regards the B-Sample opening date of 25 April 2023, it is uncontested that the FIVB had suggested the date of 22 March 2023 but that the Appellant requested a later date. Second, as regards the issuance of the Letter of Charge, the Panel notes that, in the present matter, the Appellant had brought forward not less than four different explanations for the ADRV and finds that the time taken, in those circumstances, by the FIVB to issue the Letter of Charge does not appear be "*substantially*" too long. Third, also during the written and the oral evidentiary procedure before the FIVB DP, some delays can be attributed to the Appellant himself. The Panel notes moreover that there is no element in the file that would give the impression that the Appellant was eager to have his case handled in the shortest time. Finally, concerning the time taken by the FIVB DP after the hearing to render its decision, *i.e.* five months and 25 days, the Panel accepts that this may appear to be a long period of time but notes that in anti-doping cases, the deliberations and the drafting often take more time than in other sport related cases.

121. However, the question whether there was a substantial delay not attributable to the Appellant in the issuing of the Appealed Decision and, if in the affirmative, how much it amounted to, may, in the present matter, be left unanswered as the Respondent agrees to a backdating of the start of the ineligibility period by six (6) months, which is a longer period than what the Panel would have been willing to consider as any substantial delays throughout these proceedings.

122. Hence, in light of the Parties' positions on this point and pursuant to Article 10.13 of the MADR, the Panel holds that the start of the period of ineligibility shall be backdated to 5 March 2024, which is the start date of the provisional suspension imposed on the

Appellant. The Appeal is, thus, upheld on this point and the Appealed Decision shall be partially set aside.

***Disqualification of results***

123. Article 10.10 of the MADR states:

> "*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes*".

124. In the Appealed Decision, the FIVB DP decided to apply the "fairness test" and disqualified the results obtained by the Appellant just for the match he played on 9 December 2022, the date that the Sample was collected.

125. This part of the Appealed Decision has not been appealed by any of the Parties and the Panel sees no reason to modify such determination. Indeed, in the present matter, it is uncontested that the Clomifene found in the Appellant's sample did not produce a significant effect on the Athlete's performance.

126. Any other and further claims or requests for relief on the merits are dismissed.

## X. COSTS

(…)

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**ON THESE GROUNDS**

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

1. The appeal filed by Leandro Visotto Neves against the Fédération Internationale de Volleyball (FIVB) with respect to the decision rendered by the FIVB Disciplinary Panel on 5 September 2024 is partially upheld.

2. The decision rendered by the FIVB Disciplinary Panel on 5 September 2024 is confirmed, save for its item n. 3 which shall be amended as follows:

   " *3. The period of ineligibility is effective as from 5 March 2024*."

3. (…).

4. (…).

5. All other and further claims or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 27 June 2025

# THE COURT OF ARBITRATION FOR SPORT

Jacques Radoux
President of the Panel

Jeffrey G. Benz
Arbitrator

Ken E. Lalo
Arbitrator