CAS 2024/A/10473 Gabriel Barbosa Almeida v. União & ABCD

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Prof. Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-Law in Los Angeles, USA and Barrister in London, United Kingdom

Prof. Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany

in the arbitration between

Gabriel Barbosa Almeida, Rio de Janeiro, Brazil

Represented by Mr Bichara Abidão Neto, Ms Juliana Avezum and Mr Rodrigo Morais, Attorneys-at-Law, Bichara e Motta Advogados, São Paulo, Brazil

- Appellant -

and

União Federal do Brasil, Brasília, Brazil

Represented by the Advocacia Geral da União – Nùcleo Especializado em Arbitragem, Brasilia, Brazil

- First Respondent -

and

Autoridade Brasileira de Controle de Dopagem (ABCD), Brasília, Brazil

Represented by Ms Luciana Corrêa de Oliveira, Attorney-at-Law and Results Management General Coordinator, Brasília, Brazil

- Second Respondent -

I. THE PARTIES

1. Mr Gabriel Barbosa Almeida (the "Appellant" or the "Athlete") is a Brazilian international football player born on 30 August 1996. At the time of the events, as described below, the Athlete was playing for Clube de Regatas do Flamengo (the "Club"), a football club affiliated to the Brazilian Football Confederation ("CBF"), which participates in the Campeonato Brasileiro Série A, the first division of the Brazilian national championship.

2. The União Federal do Brasil (the "First Respondent" or "União") is a legal entity governed by public law, with responsibility for the Ministry of Sports, which, in turn, is responsible for the National Sports Council.

3. The Autoridade Brasileira de Controle de Dopagem (ABCD) (the "Second Respondent" or "ABCD") is the Brazilian National Anti-Doping Organisation. It has adopted the Brazilian Anti-Doping Code (in Portuguese, the "Código Brasileiro Antidopagem" or "CBA"), which corresponds to the World Anti-Doping Code ("WADC") issued by the World Anti-Doping Agency ("WADA").

4. The First and Second Respondents are jointly referred to as the "Respondents". The Appellant and the Respondents are collectively referred to as the "Parties".

II. BACKGROUND FACTS

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence so far adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. The Panel has considered all matters put forward by the Parties, but reference is made in this Award only to those matters necessary to explain the Panel's reasoning and its decision. The Panel notes that the original version of most of the documents considered in this Award is in the Portuguese language. However, reference will be made by this CAS Panel to their uncontested English translations provided by the Parties.

6. On 8 April 2023, the Athlete took part in out-of-competition anti-doping testing conducted by the Second Respondent on various members of the Club at the Club's training facility (the "TC") in Rio de Janeiro (the "Test"). The Athlete was selected for antidoping control purposes and had to provide blood and urine samples. The doping control form for the Test (the "DCF") signed by the Athlete shows that the blood collection and the urine collection vessels were sealed respectively at 13:17 and 14:14, with the entire process ending at 14:18. The DCF contained the following handwritten declarations of the Athlete: "*es ultimo que eu faço*" and "*porque sempre sou escolhido*" (corresponding to "*it is the last one that I do*", and "*why I am always chosen*").

7. The samples provided by the Athlete were analysed and returned negative results for prohibited substances.

8. On 8 April 2023, the doping control officer ("DCO") Mr Danilo Machado ("Mr Machado"), who was responsible for conducting the Test, signed a supplementary report (the "Supplementary Report") to the DCF as follows:

"*Dear Sirs, I'm here to report the athlete Gabriel Barbosa's conduct (samples No. 6498029/ No. 216231). The athlete didn't come to us when he found out about the control before training. He went training, so we had to wait 2 hours after the end of the training to collect. Even after the 2 hours waiting the athlete ignored us and went to have lunch. After he had lunch, he went for the blood test. Always treating the team with disrespect, asking why he was always on the list. He passed on dubious data, such as the phone number and his signature. It doesn't look like his usual signature. Furthermore, he does not follow the procedures informed by the DCO. On the first try, he got annoyed with the DCO going along with him in the bathroom and ended up not urinating at all. He came back saying that everyone was going to 'fuck off' because he would go to bed and it would take a long time to do it. About 90 minutes later he returns, takes the collection vessel and goes to the bathroom without informing anyone. The DCO had to run to follow him. He returns from the bathroom with the collecting vessel opened, leaves it on the table and returns to the bathroom to finish urinating. The DCO tries to call him to alert about the collecting vessel and he ignores it. He ends the procedure and states that it will be his last control. Considering the difficulty of following the rules to carry out a standard control, I ask the Institution to take the necessary measures.*"

9. On 8 April 2023, Mr Raphael Carvalho ("Mr Carvalho"), another DCO participating in the Test procedure, submitted his observations following a request for information by the ABCD, as follows:

"*Considering that on 8 April 2023 the Brazilian Doping Control Authority - ABCD determined an out-of-competition test, Mission Order nº. 2279407253, in order to carry out doping control on selected athletes of the Flamengo team, at the training center, and as reported by Control Officer Danilo Machado, and ratified by the Leader and Custodian Raphael Carvalho, in the e-mail and in the Supplementary Report Form, the athlete Gabriel Barbosa Almeida tried to complicate the entire control process.*

This General Coordination of Results would like some clarifications in order to ascertain the facts.

1 - Do you confirm that you participated in the mission detailed above?

Yes, I confirm my participation

2 - Do you confirm the facts stated in Supplementary Report nº 5501?

Yes, I confirm

3 - If upon arriving at the mission location and identifying yourselves, did you had any kind of difficulty entering the establishment. If so, report the event with all the details indicating the name(s) of the person(s) involved?

There were no difficulties

4 - Did you talk to any other club representatives about the doping control mission? If so, indicate full name and role.

The club's doctor, Dr. Tanure (sic!), and subsequently the nurse, Leandro, were told about the mission.

5 - Was athlete Gabriel Barbosa Almeida notified by the DCO?

No

5 - Do you confirm that the athlete complicated the collection before training by not showing up at the right place?

Yes, I confirm

6 - The DCO, after notification, was able to talk to the athlete and other team members about the Collection?

Not with the athlete. The person who was the intermediary between the athlete Gabriel Barbosa and us was the nurse Leandro

7 - Do you confirm that the athlete made it difficult for the DCO to approach him so that doping control could be carried out, preventing the chaperone Danilo from approaching and chaperoning him?

Yes, I confirm

8 - Do you confirm that the athlete took the collecting vessel ignoring the instructions that should be followed?

Yes, I confirm

9- In the bathroom did the athlete have his back to the Officer preventing him from having the full view of the urine being injected into the vessel?

I can't confirm because I wasn't in the bathroom with the athlete

10 - Was the urine vessel handed over to the Officer in accordance with the Sample Collection Standards?

No

11 - Did the athlete prevent the Officer from chaperoning him to the collection site?

Yes

12 - Was the collection dully carried out?

Yes, on the second try

13 - Did the athlete fill in the Doping Control Form?

14 - Did the other members of the club witnessed the athlete's resistance in providing the samples. If so, indicate your full name and role if possible.

Yes, his resistance was witnessed by the club nurse, Leandro and the players who took the test that day

For a better understanding of the timeline of the facts, we ask you to inform:

a) Arrival time at Flamengo's TC: 8:15 AM

b) Approximate time of notification of athletes: I deduce that the athletes were informed shortly after our arrival

c) Training start time: 10:00 AM

d) Approximate time when the training ended: 11:30 AM

e) Approximate time at which the athlete provided blood: 1:45 PM

f) Approximate time at which the athlete provided urine: 2:15 PM"

10. On 24 April 2023, further clarifications were sent by e-mail to ABCD by Mr Machado, stating that:

"*The team's arrival at the club took place around 8:40 am, and by 9:00 am we were already with*

the station ready and starting the controls, all the athletes (except Gabriel Barbosa) agreed and were solicitous to advance the collections before training, which would be 10:00 am mainly due to the biological passport specific analysis, which requires a rest of 2 hours after physical activity.

In the meantime between 9:00 am and 10:00 am we tried several times to contact the athletes and employees close to the athlete Gabriel Barbosa, so that they could convince him to at least carry out the blood collection before training, as our contact with him was simply impossible due to the athlete's indisposition towards the anti-doping team, and some athletes even refused to 'help us' ue [sic] *to the fact that this was Gabriel Barbosa and because his attitudes were already known to everyone, it is worth mentioning that (I Danilo) heard directly from the club's doctor on another occasion that "you know he is like that" in a refusal to try to 'help us' to take the athlete to the collection session.*

With all this lack of success in bringing the athlete to carry out the control, he started training. After training, the 2-hour countdown began for the blood collection procedure, the athlete left for lunch, very stressed, and at several of these moments without a close escort because it was simply impossible to be close to the athlete without generating a major conflict.

After lunch, even before the end of the 2-hour countdown, we managed to direct the athlete to the to the [sic] *place where the sample would be processed, he took a collecting vessel on his own, ignoring the official's instructions, and headed to the bathroom. In the bathroom, the athlete opened the packaging of the collecting vessel, turned on his back and after no more than 5 seconds said the following phrase 'Fuck, do you want to see my dick?', threw the collecting vessel aside without providing any sample, left the bathroom, returned to the sample processing area, mentioned that he was going to his room and that we would be waiting for him until 7 pm, and left the place, being partially accompanied by the leader Raphael Carvalho. The 90-minute waiting period mentioned in the supplementary report takes place after the end of the training session, where the athlete was not immediately available to take the control. This time is added to the sample provision times.*

After all this stress, under a lot of criticism and complaint we were able to continue with the collection, which was carried out in a way that did not comply (by the athlete) with national and international collection standards as also reported in a supplementary report in which the athlete leaves the bathroom with the collecting vessel, leaves it opened on the table and returns to the bathroom to finish urinating in the toilet ignoring my warnings as an official. At this moment, as DCO, I kept away from the collecting vessel with a clear view of it and remained in front of the bathroom so that the athlete could minimally visualize that I was away from his samples at all times during the procedure.

After this, the procedure was completed and I was asked to write on the form that this would be the last control carried out by the athlete."

11. On 22 May 2023, the ABCD sent a request for information to Mr Machado, as follows:

"*Considering that on 8 April 2023 the Brazilian Doping Control Authority - ABCD determined an out-of-competition test, Mission Order nº. 2279407253, in order to carry out doping control on selected athletes of the Flamengo team, at the training center, and as reported by Control Officer Danilo Machado, and ratified by the Leader and Custodian Raphael Carvalho, in the e-mail and in the Supplementary Report Form, the athlete Gabriel Barbosa Almeida tried to complicate the entire control process.*

This General Coordination of Results would like some clarifications in order to ascertain the facts.

1 - Do you confirm that you participated in the mission detailed above?

2 - Do you confirm the facts stated in Supplementary Report nº 5501?

3 - If upon arriving at the mission location and identifying yourselves, did you had any kind of difficulty entering the establishment. If so, report the event with all the details indicating the name(s) of the person(s) involved.

4 - Did you talk to any other club representatives about the doping control mission? If so, indicate full name and role.

5 - Was athlete Gabriel Barbosa Almeida notified by the DCO?

5 (sic!) - Do you confirm that the athlete complicated the collection before training by not showing up at the right place.

6 - The DCO, after notification, was able to talk to the athlete and other team members about the Collection.

7 - Do you confirm that the athlete made it difficult for the DCO to approach him so that doping control could be carried out, preventing the chaperone Danilo from approaching and chaperoning him?

8 - Do you confirm that the athlete took the collecting vessel ignoring the instructions that should be followed?

9 - In the bathroom did the athlete have his back to the Officer preventing him from having the full view of the urine being injected into the vessel?

10 - Was the urine vessel handed over to the Officer in accordance with the Sample Collection Standards?

11 - Did the athlete prevent the Officer from chaperoning him to the collection site?

12 - Was the collection dully carried out?

13 - Did the athlete fill in the Doping Control Form?

14 - Did the other members of the club witnessed the athlete's resistance in providing the samples. If so, indicate your full name and role if possible.

For a better understanding of the timeline of the facts, we ask you to inform:

a) Arrival time at Flamengo's TC:

b) Approximate time of notification of athletes:

c) Training start time:

d) Approximate time when the training ended:

e) Approximate time at which the athlete provided blood:

f) Approximate time at which the athlete provided urine."

12. On 22 May 2023, Mr Machado gave the clarifications requested in the following terms:

"1. Yes, I participated in the mission detailed in the PDF

2. Yes, I confirm the facts stated in the supplementary report, which was even complemented via e-mail later with some more facts.

3. We had no difficulty accessing the facilities, our entry was normal, we were well received and promptly allocated in a place with adequate structure for a collection session.

4. We talked to the concierge and generally dealt with everything directly with the nurse Leandro

Martins who is also DCO of the ABCD, who by the way tried several times to help us so that the athlete would come to carry out the control briefly, but all this part was carried out by the leading officer and I was only present for a few moments.

5. No, the leading officer Raphael was in charge of this part while we organized the collection session, but because it is a wide and dispersed environment, the presence of the athlete Gabriel Barbosa Almeida was requested several times, which didn't happen.

6. Not with the athlete, but at various times we tried to contact the other members such as Leandro Martins and also the other athletes selected for the control, asking them to take the athlete Gabriel to the station, without success.

7. I confirm. The athlete sometimes made it difficult for us to contact him and also to conduct the control. For example: moments after training the athlete passed twice by where we were installed and in one of the times I approached him asking to advance the form and the collection being promptly rejected by the athlete who said the words "I will not do it now" and continued on his way with a tone of great stress where I judged that the insistence or an attempt to chaperone the athlete would be rejected generating a much more conflict tension than it already had.

8. I confirm. Without much to add, no commands were heard or followed at this sensitive time of sample collection.

9. Yes.

10. Not by the athlete, as it was reported that the athlete after leaving the bathroom with the collecting vessel, he placed it on the processing table, then returned to the bathroom again without following my instructions as an official (this moment was witnessed by the other members of the team who were close), at this moment I chaperoned him and everyone kept away from the collecting vessel, but with visual contact from our team to minimally ensure the integrity of the sample at that time.

11. I was not prevented, but as reported in the supplement and previously via email I chaperoned the athlete who at this moment said some words that violated the respect to a professional in his duties.

12. Yes.

13. Yes.

14. I am not totally sure, but most likely yes, all employees and other athletes already know this conduct of the athlete in question.

a) 8:40 am

b) 8:45 am Because as soon as we arrive at the gate, everyone is notified that our team has arrived

c) 10:15 am (or a little after that, as it had a slight delay)

d) 11:00 AM

e) 1:00 pm Start of the blood procedure

f) 2:10 pm Start of urine procedure"

13. On 23 May 2023, Mr Anthony Ruy Cunha Moreira, the coordinator of operations of the ABCD, formulated a technical note in order to "*inform the General Coordination of Results Management (CGGR) of this Brazilian Doping Control Authority (ABCD) about a potential Anti-Doping Rule Violation*" by the Athlete, stating that:

i. on 8 April 2023, the ABCD ordered an out-of-competition test for the Club's players, including the Athlete;

ii. reports from officials indicate that the Athlete actively resisted the process, refusing to cooperate before training and behaving aggressively;

iii. despite multiple attempts to persuade him, he proceeded with training, delayed providing samples, and used disrespectful language towards officials;

iv. after training, the Athlete reluctantly provided a blood sample and finally a urine sample, although not following protocol;

v. the Athlete's behaviour led to suspicions of intentional interference, possibly breaching Articles 2.3 (failure to submit) and 2.5 (tampering) of the WADC, corresponding respectively to Article 120 and to Article 122 of the CBA.

14. On 30 May 2023, the Second Respondent sent to the Athlete a "*Notification of potential attempted fraud in the doping control process*" (the "Notice of Charge"), by which the Athlete was notified of a potential antidoping rule violation for having tampered with the doping control process in violation of Article 122 of the CBA (the "ADRV"), which corresponds to Article 2.5 of the WADC. More specifically, the Second Respondent maintained that the Appellant "*tried to hinder the entire control process*" in the following way: (a) he did not go to the DCOs before training; (b) after training he ignored the presence of the DCOs and went to lunch; (c) he treated the testing team with disrespect; (d) he "*passed on dubious data such as the phone number and his signature*"; (e) he did not follow the testing procedures as asked by the DCO; (f) he "*got irritated*" with the DCO; (g) he "*spoke to the DCO in a rude language*"; (h) he handed back the sample collection vessel opened, ignoring the DCO guidelines.

15. On 6 June 2023, the Club responded to the Notice of Charge on the Athlete's behalf, providing clarification and denying the ADRV:

i. the Test was conducted 3 days after an away match played in Ecuador, at a high altitude, and on the eve of the second final match of the Carioca Football Championship, which would be played the following day between the Club and the Fluminense Football Club, *i.e*. in a situation of anxiety, nervousness and tension for the players;

ii. on 8 April 2024, the Athlete arrived at the TC before the DCOs and was already preparing for his activities;

iii. the arrival of the DCOs at the TC took place at 8:40 and, since it was a "surprise test", it was reasonable that the DCOs had to wait the end of the sports activities;

iv. considering the definition of tampering given by the CBA, among all the Athlete's conducts described by the DCOs none can be characterized as tampering, since it did not have the power to alter the result of clinical analyses of the urine test and/or the blood test;

v. the Athlete had to wait at least 2 hours after physical exercises to provide a blood sample pursuant to the WADA International Standard for Testing and

Investigations ("ISTI"), so that the biological rates were not affected by the effort made. For these reasons, the Athlete would have gone to lunch and made the DCOs wait, not as a disrespectful act, but only as a matter of obedience to a physiological interval provided for by the regulations themselves;

vi. it was exclusively up to the DCOs to take all the precautions about the collection material, either before or after the Test, ensuring that it would not be exposed to any external contamination;

vii. if the delivery of the collection vessel was considered in disagreement with the technical and safety standards, it was for the DCOs to refuse the delivery and demand a new collection.

16. On 16 August 2023, the Second Respondent sent to the Athlete its "*Notification on Determination of Potential Anti-Doping Rule Violation*", in which the Second Respondent confirmed its view that the Athlete had committed the ADRV. The Athlete was offered a proposal with respect to sanction, should he accept the charge, in the following terms:

"*2.1. From the above report it is understood that there was an unquestionable intentional negligence on the part of the athlete in hindering the entire testing process. It is stated in the DCO report that the athlete Gabriel made it difficult to control and conduct the control, being resistant all the time. It is also said that the nurse, Leandro Martins, tried several times to help the athlete to perform the control.*

2.2. Nevertheless, the attempts to hinder the control process and the complete disregard of the test standards and the officials' guidelines by the athlete, highlight his intentional and subversive conduct to try to evade control, as well as to impair the quality of the sample provided, to the point of trying to make the validity of the sample obtained questionable. It remains to report the threat registered when he made it clear that "this would be the last test he would take", which he made a point of making appear on his Doping Control Form

2.3. Not only that, but his disrespect for the professionals of the doping control team demonstrates his lack of commitment to his obligations as a professional athlete and the complete disregard for fair play. […]

2.7. According to the Brazilian Anti-Doping Code, the commission of violation, tampering or attempted tampering of any part of the doping control process, by an athlete or other person, may result in a 4-year suspension, except:

a) if the athlete or other person can prove exceptional circumstances that justify a reduction of the period of suspension, in which case the period will be from two to four years, depending on the degree of fault of the athlete or another person;

b) case involving a protected person or a recreational level athlete, the period of suspension shall be a maximum of two years and a minimum of one warning, with no period of suspension, according to the degree of fault.

2.8. In this way, we offer you a proposal for acceptance of consequences for the resolution of the case in the initial phase of results management, in the following terms:

I - compliance with a suspension period of three (3) years, in accordance with article 236 of the CBA;

II - commencement of compliance as of the date of the facts".

17. On or before 29 August 2023, the Athlete rejected the proposal and denied the charge. As a result, on 29 August 2023, the matter was referred to the Brazilian Anti-Doping Tribunal

("*Tribunal de Justiça Desportiva Antidopagem*": the "BADT").

18. On 30 August 2023, the President of the BADT issued directions with respect to the Athlete's case, including the transmission of the file to the Anti-Doping Prosecutor General's Office.

19. On 21 December 2023, the Anti-Doping Prosecutor ("*Procurador da Justiça Desportiva Antidopagem*": the "Prosecutor") submitted his claim to the BADT, requesting "*the conviction of the accused Athlete for violation of article 122 of the CBA*".

20. On 26 January 2024, the Athlete presented his defence, concluding that no ADRV had been committed, because:

    i. he never ignored the presence of the DCOs and never refused to provide his blood and urine samples, which were duly given and returned negative for any prohibited substances;

    ii. on 8 April 2023, he arrived at the TC about one hour before the DCOs and started the preparation for the training session that would occur later;

    iii. the DCOs never personally notified him about the Test: he was notified by the Club's doctor, Dr Márcio Tannure ("Dr Tannure");

    iv. considering that the ISTI requires that an athlete must wait at least 2 hours after physical exercises to provide a blood sample, when notified of the Test by Dr Tannure, he had to wait to provide his blood sample, as he had already initiated his physical preparation for the day. Thus, Dr Tannure suggested that he submitted to the Test after training, which would start within the next hour;

    v. after training he had lunch, but never prevented any DCOs or chaperones from accompanying him;

    vi. as soon as the 2 hour time frame had elapsed, he provided his blood sample;

    vii. despite being surprised with the proximity of the DCO, while he was trying to provide his urine sample, the Athlete did not prevent the DCO from entering the bathroom;

    viii. since he was unable to provide his urine sample in a first attempt, the Athlete went to his room to hydrate himself and returned fifty minutes later in order to provide his urine sample, as demonstrated by the security cameras of the Club;

    ix. on his second attempt to provide the urine sample, he made his way to the doping control station. The DCOs, who were at the station, calmly accompanied him to the bathroom without "running" after him, as demonstrated by the footage of the security cameras;

    x. after filling out the vessel with the indicated amount of urine, the Athlete placed the vessel on a table located just outside the bathroom, in the doping control station. The DCOs who were present at that moment never gave him any other instruction. Therefore, there were no specific instructions given by the DCOs that were ignored by the Athlete;

xi. the data provided in the DCF was entirely consistent with the Athlete's personal data;

xii. the Athlete never evaded or refused to provide the samples and was merely upset about the fact that he was submitted to constant testing, a lot more frequently than his colleagues;

xiii. his blood and urine samples returned negative for any prohibited substances;

21. On 18 and 25 March 2024, a hearing was held before the BADT, during which the Athlete and several witnesses provided statements on the facts occurred on the occasion of the Test.

22. On 28 March 2024, the BADT issued a decision dated 25 March 2024 (the "Appealed Decision), in which the BADT (by a majority of 5 to 4) held the following:

"*The members of the Supreme Court of Sports Anti-Doping Court agree, by majority of votes, to apply the sanction to the ATHLETE GABRIEL BARBOSA ALMEIDA in 24 (twenty-four) months of suspension, based on Art. 122, combined with Art. 163, 2°, all of the Brazilian Anti-Doping Code for attempted tampering during an out of competition anti-doping control, and such penalty should start from the date of collection of samples, i.e. 8 April2023, with all the consequences resulting from it, including confiscation and/or cancellation of any medals, points and awards from the said date and, if applicable, the suspension of receipt of values from Government programs of incentive to the athlete, in all spheres, in accordance with the relevant legislation*.

23. As a result of the the Appealed Decision, therefore, the Athlete was suspended until 7 April 2025.

24. In support of the Appealed Decision, the individual members of the BADT observed the following:

- Mr Daniel Chierighini Barbosa, the member who acted as "rapporteur":
  a. indicated that the case was about 3 key aspects of the Athlete's conduct during the Test, *i.e.*:
     i. "*the athlete's specific conduct in the urine sample process*": in a first attempt, the Athlete took the collection vessel himself, turned his back on the official, then discarded the vessel without providing a sample. Given that no urine was provided, this could be seen as a physiological issue. During the second attempt, the Athlete placed the vessel on the table and returned to the bathroom without following the instructions received. Reports from the officials conflict on whether he prevented the escort from accompanying him. Additionally, inconsistencies exist in documentary evidence regarding whether he turned his back during the first or second attempt. These contradictions weaken the case for tampering under Article 122 of the CBA;
     ii. "*the athlete's behavior with the guidance of doping control officers*": the Athletes is obliged to follow the DCOs' instructions to ensure proper sample collection and avoid potential rule violations. While

there were allegations of the Athlete disregarding instructions and making impolite comments, inconsistencies exist between witness testimonies and documentary evidence. In light of these discrepancies and of the uncertainty about whether the commands were issued within proper regulatory conditions, the alleged non-compliance cannot be definitively attributed to the Athlete;

iii. "*the athlete's notification*": the notification process formally establishes an athlete's obligation to comply with the doping control. In this case, the Club was duly notified, requiring the Athlete's immediate presence or a valid justification for any delay. However, instead of reporting to the doping control unit, the Athlete remained engaged in physical activity without informing the DCOs. While security footage confirmed the presence of the Athlete in the gym, this did not exempt him from the duty to communicate with the DCOs. Unlike other athletes who complied promptly, he neither attended voluntarily nor requested a justified delay, as required by the antidoping regulations. Since the rules allow reporting extensions only if requested and assessed in real time, the Athlete's failure to do so constitutes an attempt to tamper under Article 122 of the CBA;

b. noted that:

i. the minimum ineligibility period for a violation under Article 122 of the CBA is of 4 years, but it may be reduced in specific cases. In the case of the Athlete, exceptional circumstances justified a reduction: the Athlete's chaperoning by the DCOs showed inconsistencies, both in supervision lapses and procedural handling at the Club. Witness testimonies suggest that some responsibility may lie with the DCOs and the Club's dynamics, rather than solely with the Athlete. Additionally, despite delays, the Test continued, raising questions about procedural clarity. While officials reported non-compliance from the Athlete, witness statements confirmed that proper supervision of the urine collection was possible. Although failure to provide valid justification constitutes an attempted tampering violation, these mitigating factors warrant a 2-year reduction in the minimum penalty, bringing it down to 2 years;

ii. the "substantial delay" provision of Article 163(2) of the CBA applies with respect to the determination of the start date for the Athlete's ineligibility period;

c. concluded as follows:

"*I vote to impute to the athlete the infraction provided for in article 122 of the CBA, with the reduction of the two-year period of the base penalty due to the existence of exceptional circumstances of article 122, I, of the CBA, counted from the date of the facts, pursuant to article 163, paragraph 2, of the CBA*";

- Mr Alexandre Ferreira stated that:

a. the violation of tampering or attempted tampering, as outlined in Article 122 of the CBA, requires intentional conduct by the athlete;

b. the events occurred during the Test, as reported by the DCOs, are presumed to be accurate. Within the evidentiary context, the Athlete failed to prove a lack of intent, which is instead inferred from the overall circumstances of the case;

c. key actions reinforcing intentionality include: (i) failing to attend sample collection before training, (ii) leaving for lunch after training despite notification, (iii) repeatedly obstructing the chaperone, (iv) preventing full observation of urine collection by the DCO, and (v) disregarding orders by leaving the urine collector open and unattended;

d. these factors confirm that the Athlete acted deliberately and for these reasons he would "*follow*(s) *the vote of the rapporteur in its entirety*";

- Mr Martinho Neves Miranda found that the Athlete had failed to disprove the official account of the events.

  a. The witnesses brought by ABCD provided consistent and credible testimonies, whereas the witnesses indicated by the Athlete contributed less to clarifying the facts.

  b. The records clearly indicate that the sample collection procedure was not properly followed due to the Athlete's deliberate actions and this was not a case of forgetfulness, distraction, or negligence, but of intentional misconduct, as required by Article 122 of the CBA.

  c. The CBA does not distinguish between motives for non-compliance, whether personal reasons, an attempt to hide prohibited substances, or insubordination. Mr Martinho Neves Miranda therefore concluded that "*I vote for the athlete's conviction, in the form of the rapporteur's vote*";

- Mr Jean Batista Nicolau noted that the Test was not without issues. During the Athlete's testimony his discomfort with undergoing repeated doping controls was evident, a sentiment corroborated throughout the proceedings.

  a. However, there was no indication of remorse for his treatment of the DCOs, which was characterized by a lack of courtesy and respect.

  b. While the Athlete did not properly receive the DCOs and treated them with little civility, this conduct does not constitute tampering or attempted tampering under Article 122 of the CBA. Although his actions were inappropriate, they do not demonstrate an intent to manipulate the collection procedure for personal gain.

  c. Since the evidence does not support a violation of Article 122, the appropriate course of action was acquittal. Mr Jean Batista Nicolau therefore concluded that "*In view of the foregoing, I vote for the absolution of the accused athlete*";

- Ms Selma Fátima Melo Rocha (Vice-President of the BADT) considered that the

Athlete's actions did not constitute tampering under Article 122 of the CBA.

a. The DCOs' contradictory statements undermined their credibility, and their failure to properly monitor the Athlete could not be attributed to him.

b. While the Athlete was repeatedly tested and may have expressed frustration, this does not justify a suspension. The doping sample met technical standards, and ISTI protocols were ultimately followed. Any delays did not interfere with the control process, nor was there intent to gain an unfair advantage.

c. Applying the principle of proportionality, no violation occurred, and no sanction was justified. On such basis, Ms Selma Fátima Melo Rocha concluded that "*I accept the defense's request, and therefore there is no need to apply any type of sanction. That's how I vote under the censorship of my peers*";

- Mr Vinicius Loureiro Morrone considered that the Athlete committed multiple procedural violations, including avoiding the supervision of the DCOs, failing to provide evidence of his physical activity at the time of notification, attempting to collect the urine sample unsupervised, and leaving the sample vessel open on a table.

  a. The sequence of events indicates intentional tampering, rather than mere procedural failures. The Athlete delayed the collection for nearly 6 hours, a timeframe inconsistent with normal hydration.

  b. His actions, as trying to collect urine outside supervision and returning to an unsupervised area, suggested an attempt to manipulate the test. Although no single violation alone would confirm tampering, their cumulative effect does and constitutes an attempted tampering under Article 122 of the CBA, as it is the more severe charge, absorbing the lesser violation under Article 120.

  c. Mr Vinicius Loureiro Morrone concluded that "*The evidence, although not complete, seems to me more than sufficient to affirm that the athlete tried to tamper the anti-doping test. And, considering that the standard of evidence for cases like this, as determined by article 295, paragraphs 1 and 2, of the CBA, must be higher than the balance of probabilities, which I consider reached in the present case*". Therefore, considering the circumstances, Mr Vinicius Loureiro Morrone concluded that no exceptional circumstances justified a penalty reduction;

- Ms Fernanda Farina Mansur observed that the analysis of the events of 8 April 2023 was complicated by inconsistencies in testimonies.

  a. While the Athlete was rude and uncooperative with the DCOs, this alone does not constitute tampering.

  b. Discrepancies in the DCOs' statements, especially regarding the Athlete's whereabouts and notification process, cast doubt on the sequence of the events. The security footage confirms that the Athlete arrived at the TC before the DCOs, contradicting a DCO's mistaken recollection. Further

inconsistencies arise about whether the DCOs knew he was in physiotherapy, with conflicting testimonies suggesting they were, in fact, informed of the circumstance.

c. The claim that the Athlete evaded his chaperone is also unclear, as documentation does not match testimonies, and there is no consensus on whether he deliberately secluded himself. Regarding the accusations of evasion and failure to follow the procedures, the notification process itself was irregular.

d. The DCOs did not notify the Athlete directly, as required by the rules, but relied on the Club's staff. Given this and the medical advice to wait 2 hours before blood collection, the Athlete may have reasonably believed he could delay his appearance.

e. Ms Fernanda Farina Mansur concluded that "*my vote is to follow the divergence and dismiss the claim and vote for the absolution of Athlete Gabriel Barbosa Almeida from the imputation of the penalties provided for in art. 122 of the CBA*";

- Mr Ivan Pacheco highlighted the inconsistencies in the DCOs' testimonies regarding the notification, chaperoning and monitoring of the Athlete.

  a. Contradictions emerged about the Athlete's presence at the TC and the supervision of his urine collection, with differing accounts on whether he was left unattended for an extended period. A conflict between the Athlete and the DCOs should not be equated to tampering or attempted tampering, as this could set a dangerous precedent and allow subjective rulings.

  b. The doping control process was not flawless, and any potential procedural errors should be addressed in good faith, rather than assumed to indicate wrongdoing. The case appeared to stem more from a breakdown in communication than from a deliberate violation of antidoping rules.

  c. While the Athlete's conduct may have been discourteous, this does not constitute a violation warranting sanctions.

  d. Mr Ivan Pacheco concluded that "*I keep my vote against, absolving the athlete Gabriel Barbosa Almeida of the accusation contained in Article 122 of the CBA, based on a different interpretation of the facts and the law applicable to the case*";

- Mr Joao Antonio De Albuquerque e Souza (President of the BADT)considered that the violation of Article 122 of the CBA requires intentional conduct by the athlete, and the burden of proof falls on the antidoping authorities, not the athlete. According to Article 295 of the CBA, the required standard of proof is "comfortable satisfaction", which is higher than the balance of probabilities, but lower than beyond reasonable doubt. On such basis the following could be found:

  a. "*No attendance for collection before training*". The Athlete failed to present himself for doping control upon the DCOs' arrival, unlike his teammates, who completed testing before training. Despite being notified, he ignored the

officers and proceeded to train, delaying blood collection by over 4 hours and urine collection by 5. While physiotherapy may have temporarily prevented blood collection, it did not justify his lack of communication. His failure to acknowledge the testing process before training constituted a violation of international procedures;

b. "*Going to lunch after training and difficulty to allow the escort at all times until collection*". After training, the Athlete went to have lunch without full escort, missing another opportunity to provide a urine sample. He then caused further delay by going to rest, claiming he was not yet ready to urinate and needed to wait for blood collection. This marked a second failure to comply with testing standards. Given that he repeatedly avoided the DCOs before and after training, as well as before and after lunch, and that he was not under continuous escort, the 5-hour delay in urine collection constitutes a non-compliance attributable to him;

c. "*Difficulty allowing DCO to fully visualize urine collection*". The DCO responsible for urine collection stated that the Athlete hindered the procedure by not properly lowering his shorts and underwear, keeping his back turned, and failing to lift his shirt, limiting visibility. Additionally, the Athlete took the collection vessel and went to the bathroom without informing the DCO. Despite knowing he had to allow clear observation, he acted to obstruct the process. This constitutes a third failure to comply with international testing standards;

d. "*Failure to comply with DCO orders for leaving the urine collector vessel open, abandoned and uncapped*". The Athlete left his urine sample unattended and returned to the bathroom, violating antidoping protocols;

e. While each individual failure might not constitute tampering alone, their cumulative effect indicates intent to hinder the doping control process. The system requires athletes to present themselves for testing upon notification, not at their convenience. Although the DCOs accepted the sample despite procedural breaches, this does not validate the Athlete's conduct. Under Article 297 of the CBA, non-compliance with testing standards does not nullify evidence of an antidoping violation. Mr De Albuquerque e Souza concluded therefore that "*I to follow the rapporteur's vote in its entirety, including with regard to the period of suspension, two years, and with regard to the start of compliance from the date of the facts.*".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 2 April 2024, the Appellant filed an appeal with the Court of Arbitration for Sport ("CAS") pursuant to Article R47 of the Code of Sports-related Arbitration (the "CAS Code") to challenge the Appealed Decision (the "Appeal"), naming União and ABCD as respondents together with Justica Desportiva Antidopagem (TJDAD) ("TJDAD"). The Statement of Appeal contained, *inter alia*, the nomination of Mr Jeffrey G. Benz, Attorney-at-Law in Los Angeles, USA, and Barrister in London, United Kingdom, as an

arbitrator, as well as a Request for Provisional Measures, by which the Athlete requested the CAS to stay the execution of the Appealed Decision.

26. On 9 April 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal and sent copies (together with exhibits) to the named respondents and granted each of them a deadline of 15 April 2024 "*to file their position on the Appellant's request*" for provisional measures. By the same date, they were requested to jointly nominate an arbitrator.

27. On 9 April 2024, the Second Respondent wrote to the CAS Court Office stating that, pursuant to Article 13.2.3.3 of the WADC, all parties to any CAS appeal had to ensure that WADA and all other parties with a right to appeal have been given timely notice of the appeal; and that WADA and FIFA therefore needed to be notified.

28. On 10 April 2024, the CAS Court Office wrote to the Parties (and to TJDAD) stating that, pursuant to Article 13.2.3.3 of the WADC, the obligation to notify WADA and FIFA was on the "*parties to any CAS appeal*" and not on the CAS Court Office. It also invited the Second Respondent to make an application for the joinder of WADA and FIFA, should it so wish.

29. On 11 April 2024, TJDAD wrote to the CAS Court Office stating, *inter alia*, that, as the "Antidoping Court of Justice", it had no interest in the appeal and that it should not have been named as a respondent.

30. On 12 April 2024 the CAS Court Office suspended all the time limits set to the TJDAD and granted a deadline for the Appellant to provide its position on the TJDAD's request.

31. On 12 April 2024, the Second Respondent wrote to the CAS Court Office setting out its position in opposition to the Appellant's Request for Provisional Measures. In the same letter, the Second Respondent proposed Prof. Ulrich Haas for nomination as arbitrator.

32. On 15 April 2024, the Appellant wrote to the CAS Court Office stating, *inter alia*, that he did not object to the release of TJDAD from these proceedings, provided that the Respondents confirmed their agreement to such release and that no point would be taken against the Appellant in that respect.

33. On 16 April 2024, the CAS Court Office invited the Respondents to indicate whether they agreed with the Appellant's condition for the release of TJDAD as a respondent. In the same letter, the CAS Court Office invited the First Respondent (and the TJDAD) to advise whether they agreed to the nomination of Prof. Haas as arbitrator.

34. On 17 April 2024, the Second Respondent confirmed its agreement to the exclusion of TJDAD as a respondent.

35. On 18 April 2024, the CAS Court Office noted that, in the absence of a reply by the First Respondent (and the TJDAD) with respect to the nomination of Prof. Haas as arbitrator, the arbitrator would be nominated by the President of the CAS Appeals Arbitration Division or her Deputy. At the same time, it invited the Appellant to confirm whether he

wished to exclude TJDAD as a respondent, which the Appellant did on the same day.

36. On 18 April 2024, therefore, the CAS Court Office recorded the Appellant's withdrawal of his appeal against TJDAD and that the procedure would be referred to as "*CAS 2024/A/10473 Gabriel Barbosa Almeida v. União & ABCD*".

37. On 23 April 2024, the CAS Court Office notified the Parties of the formation of the CAS Panel (the "First CAS Panel") as follows:

President:	Mr James Drake KC, Barrister and Arbitrator in London, United Kingdom;
Arbitrators:	Mr Jeffrey G. Benz, Attorney-at-Law in Los Angeles, USA, and Barrister in London, United Kingdom, United Kingdom; and
	Mr Dolf Segaar, Attorney-at-law in Loosdrecht, the Netherlands.

38. On 29 April 2024, the Appellant filed his Appeal Brief pursuant to Article R51 of the CAS Code. The Appeal Brief contained *inter alia* the request that some individuals be heard as witnesses (Mr Machado, Mr Rodrigo de Souza da Silva, Mr Antony Rui Moreira, Mr Phelipe Oliveira de Macedo, Mr Carvalho, Dr Tannure and Mr Leandro Martins) or experts (Prof. Luiz Claudio Cameron and Dr Fernando Solera), and had attached, among the other documents, also an expert report signed by Prof. Cameron.

39. On 30 April 2024, the First CAS Panel issued an Order on Provisional Measures (the "First Order on Provisional Measures") as follows:

> "*1. The request for a stay filed by Gabriel Barbosa Almeida on 2 April 2024 in the matter CAS 2024/A/10473 Gabriel Barbosa Almeida v. União Federal do Brasil and Autoridade Brasileira de Controle de Dopagem (ABCD) is granted.*
>
> *2. The twenty-four (24) month suspension imposed by the Brazilian Anti-Doping Tribunal on Gabriel Barbosa Almeida is stayed.*
>
> *3. The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration*."

40. On 30 April 2024, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter, pursuant to Article R57 of the CAS Code.

41. On 8 May 2024, the CAS Court Office informed the Parties that, after considering the positions expressed by the Appellant and the Second Respondent, the Panel had decided to hold an in-person hearing at the CAS Court Office's headquarters in Lausanne, Switzerland.

42. On 23 May 2024, the CAS Court Office informed the Parties that they were called to appear at the hearing on 7 June 2024 at the CAS Court Office in Lausanne, Switzerland. At the same time, the CAS Court Office invited the Respondents to provide the proof that they had sent their respective answers to the Appeal Brief within the deadline that had expired on 22 May 2024.

43. On 24 May 2024, the Second Respondent asked the CAS Court Office to grant an

additional time limit to file its Answer to the Appeal Brief due to the fact that the letter containing the Appeal Brief never reached its correct address.

44. On 27 May 2024, the CAS Court Office invited the Appellant to comment on the correspondence sent by the Second Respondent and to state his position on the request of an additional time limit for the Second Respondent to submit its Answer to the Appeal Brief.

45. On 30 May 2024, the Appellant objected to an extension of the Respondents' deadline to file their respective Answers to the Appeal Brief.

46. On 31 May 2024, the CAS Court Office advised the Parties that, having considered both Parties' submission as well as the proof of notification presented by the CAS Court Office, the Panel has considered that both Respondents had been duly notified on 2 May 2024 and, therefore, their deadline for submitting their respective answers had expired on 22 May 2024.

47. On 5 June 2024, the First Respondent in a letter to the CAS Court Office objected to the regularity of its notification, stating that it was not aware of its participation in the present procedure, since "*the request for arbitration submitted by the appellant did not correctly indicate the information about União. Therefore, the communication from CAS was never properly delivered. ...*". Consequently, the First Respondent requested:

> "*(i) That the Panel attest the irregularity of União's notifications, with the consequent annulment of the whole procedure, guaranteeing União the right to fully participate and exercise its rights, as granted by Law, as the right to jointly nominate an arbitrator, to present its answer to the appeal and any other right linked to its condition as party;*
>
> *(ii) In the remote event of not being immediately recognized the above, União requires the suspension of the hearing that is supposed to take place next Friday, June 7, to allow the necessary time for other parties to present its reasons about the above reasoning and the Panel to decide União's plea.*"

48. On 6 June 2024, the CAS Court Office informed the Parties that the hearing scheduled for 7 June 2024 was adjourned and the new date would be fixed in due course. Furthermore, the Appellant was invited to comment on the First Respondent's requests.

49. On 27 June 2024, the Appellant submitted his comments on the First Respondent's correspondence. Preliminary, he criticized the procedural conduct of União and underlined the detrimental effects that the adjournment of the hearing would cause him; furthermore, he focused on "*the nature of the participation of the First Respondent in the present proceedings*" and on "*the regular notification of the First Respondent*" to conclude that:

> "*... there can be no doubts whatsoever that the First Respondent was properly and correctly notified to the right address, having failed to timely present its Answer to the Appeal Brief.*
>
> *Moreover, assuming but not admitting that the First Respondent was not correctly notified, its participation in the present proceedings as a respondent is no longer necessary nor required following the withdrawal of JAD from the proceedings by its own request.*

Notwithstanding the above and considering that the Second Respondent has also failed to timely present its Answer, the Appellant considers that it may be of the proceeding's best interest that the Panel hears the position of the First Respondent on the merits of the case.

Therefore, in extreme good faith, the Appellant would not object that the First Respondent is granted with a further time limit of, at maximum, 05 (five) days to present its Answer to the Appeal Brief'', provided that it acknowledges and consents, expressly declaring its acceptance, to all the procedural acts carried out until the present date, and confirming that it will not object or challenge, before any court or jurisdiction and by no means whatsoever, any act or decision issued by the Panel within the present proceedings."

50. On 3 July 2024, the First Respondent submitted its response to the Appellant's letter of 27 June 2024 and concluded that:

"*49. ... the Appellant has not complied with the obligation of identifying the proper respondent at the outset of the procedure, since, as said, a proper notification of União is only made in its Attorney General's Office - AGU, as constitutionally stated and well-known by every Brazilian attorney.*

50. Considering the above and since the article 190 of Swiss Federal Law about Private International Law, states that the arbitral sentence is null and void if "d. (...) the equality of parties or their right to be heard in an adversarial procedure wasn't respected", União reiterates its request that the Panel attest the irregularity of União's notifications, with the consequent annulment of the whole procedure, guaranteeing União the right to fully participate and exercise its rights as party, as granted by Law."

51. On 8 July 2024, the CAS Court Office advised the Parties that the First CAS Panel, "*after considering their position on the matter, ... ha[d] decided to declare the irregularity of the First Respondent's notification*" and, consequently, granted the First Respondent a deadline to file its answer to the Appeal Brief. Furthermore, the CAS Court Office invited the Respondents to inform by 11 July 2024 whether they agreed that the dispute be decided by the First CAS Panel in its composition.

52. On 11 July 2024, the Respondents informed the CAS Court Office that they both disagreed with the composition of the First CAS Panel and requested that a new panel be constituted instead.

53. On 18 July 2024, the CAS Court Office advised the Parties that Mr Dolf Seegar and Mr James Drake KC had decided to voluntary resign from the First CAS Panel and consequently, pursuant to Article R53 of the CAS Code, invited the Respondents to jointly nominate an arbitrator by 29 July 2024.

54. On 22 July 2024, the First Respondent in a letter to the CAS Court Office requested to be given:

"a) Full access to the decision that led to the aforementioned correspondence, including its reasons, concerning all points of the decision (namely, the annulment of the procedure, the maintenance of orders and decisions issued, and the non-renewal of the entire arbitral panel);

b) Clarification on whether there were any notifications - even informal - at any time before

July 18, 2024, concerning the issues there decided;

c) *Clarification on whether the arbitrators resign voluntarily or did they do so in response to União's request for the renewal of the Panel;*

d) *Clarification regarding the apparent contradiction between the various decisions issued by the Arbitral Panel; and*

e) *Access to the entirety of the arbitral procedure in question.*"

55. On 29 July 2024, the Respondents jointly nominated Prof. Dr Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany, as an arbitrator.

56. On 30 July 2024, the First Respondent submitted its Answer to the Appeal. In its Answer the First Respondent *inter alia* requested that, in the event of a hearing, it be granted the opportunity to cross-examine the witnesses and the experts indicated by the Appellant.

57. On 29 August 2024, the First Respondent insisted that:

"(i) União is granted full access to the records of this procedure;

(ii) The claims presented by União in its submission dated July 22, 2024, are reviewed and decided upon;

(iii) A new Arbitral Tribunal is constituted to adjudicate the case;

(iv) The appropriate adversarial process is established, and the request for stay submitted by the athlete is decided; and

(v) The remaining phases of the procedure are conducted for its swift resolution."

58. On 4 October 2024 the CAS Court Office advised the First Respondent that "*... as no decision has been rendered to date on the First Respondent's request for annulment of the procedure, no reasoning exists and, consequently, as no procedural acts have been annulled, they remain in force. The First Respondent's request shall be dealt with by the new Panel, once constituted. ...*". Furthermore, the CAS Court Office invited the Parties to express a preference as to the holding of a hearing or whether they wished the Panel to decide based on their written submissions. The Parties were also invited to inform the CAS Court Office whether they requested a case management conference with the Panel to discuss procedural issues.

59. On 9 October 2024, the CAS Court Office noted that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Panel ("this CAS Panel") had been formed as follows:

President:	Prof. Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy;
Arbitrators:	Mr Jeffrey G. Benz, Attorney-at-Law in Los Angeles, USA and Barrister in London, United Kingdom, and Prof. Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany.

60. On 11 October 2024, the First Respondent sent a petition in answer to the CAS Court

Office correspondence of 4 October 2024. The First Respondent requested *inter alia* that (i) its application for the annulment of the procedure and the resulting consequences of such annulment, including the revocation of the First Order on Provisional Measures, be considered; (ii) its claim for the complete renewal of the Panel, including the arbitrator indicated by the Appellant, be analysed and decided; (iii) a copy of the entire case file, including all submissions and communications issued in the procedure before its involvement, be provided. The First Respondent, in addition, expressed its position on the holding of a hearing to discuss the Appeal and of a case management conference to debate some procedural points.

61. On 17 October 2024, the CAS Court Office clarified that in the present case there was a mere substitution of arbitrators pursuant to Article R36 of the CAS Code, following the resignation of 2 of its former members. Furthermore, the CAS Court Office advised the First Respondent, with regard to its request of annulment of the procedure, that this CAS Panel, "*after having reviewed the case file and considered the First Respondent's request in this regard, has decided to reject said request and accept what was done by the previous Panel without the need to repeat any procedural acts*".

62. On 18 October 2024, the Appellant informed the CAS Court Office that he considered necessary to hold a case management conference in the present arbitration and expressed his agreement with the preliminary agenda suggested by the First Respondent in its letter dated 11 October 2024.

63. On 25 October 2024, the First Respondent complained about an unequal treatment suffered due to the fact that it had not yet had access to all the documents of the present proceeding, namely that the First Order on Provisional Measures had not been shared yet. Moreover, the First Respondent submitted other considerations about the unequal treatment regarding (i) the requests for extensions of deadlines made by the Parties; (ii) the formation of the CAS Panel; (iii) the total lack of justification for the decisions issued by this CAS Panel since the First Respondent's entry in the arbitration. On such basis, the First Respondent asked:

"*a) that, in light of all the information above demonstrating the unequal treatment dispensed to União since its integration in this procedure and in addition to all the arguments already addressed by União in this matter, the Arbitral Tribunal reconsider the decision to reject its plea for annulment and declare the nullity of this procedure since its irregular notification;*

b) in the event that the first request is not granted, that the Arbitral Tribunal reconsider its decision of not presenting the decision grounds, as it is a procedural decision that could affect the entire arbitration process, and not providing its grounds corresponds to a denial of jurisdiction;

c) that, independent of the above, the Arbitral Tribunal: 1) clarifies how article R36 could be applicable to this procedure, as it was not a replacement of a sole arbitrator; 2) determines that the order of relief (provisional measure granted by the former Tribunal) be immediately shared with União; 3) incorporates the annexes of União's first petition into the case file; 4) applies the measures provided in the CAS Code (article R59) by analogy, considering that the delay in question cannot be attributed to the Arbitral Tribunal but to

the CAS Secretariat itself."

64. On 31 October 2024 the CAS Court Office informed the Parties on behalf of this CAS Panel, with respect to the motions submitted by the First Respondent, of the following:

    i. this CAS Panel has noted that the notifications have been completed, and the Parties are now in a full and equal position to state their respective cases. In any event, the Panel is available to address any detailed request that any Party may submit (*e.g.*, extension of deadlines, new opportunities to state the case) concerning any specific step in this arbitration in order to ensure that any Party is satisfied that that its right to a fair trial is satisfied. The Panel has therefore decided not to declare the nullity of the entire procedure;

    ii. this CAS Panel's decision not to declare the nullity of the entire procedure, but to be available to hear specific applications, also for the re-consideration of procedural decisions already rendered, was based on Article R36 of the CAS Code and on the finding that no prejudice to the Parties' position could be established, which could not be cured by continuing the arbitration, since the Parties are in a position to fully state their respective cases;

    iii. following the resignation of 2 members of the First CAS Panel, replacements were made pursuant to Article R36 of the CAS Code and the deadline reset once this CAS Panel was constituted pursuant to Article R59;

    iv. copy of the First Order on Provisional Measures was transmitted together with the CAS Court Office letter, and the documents submitted by the First Respondent were part of the file of the arbitration;

    v. this CAS Panel was available to conduct a Case Management Conference.

65. On 8 November 2024, the First Respondent submitted to the CAS Court Office its "*Petition regarding the provisional measure*", asking the Panel to "*review the decision rendered by the former Panel in favor of the Appellant and revoke the order of stay, reinstating the effects of the suspension determined by the Brazilian Anti-Doping Court*" without opening the case to the opposing party.

66. On 11 November 2024, the CAS Court Office informed the First Respondent that:

    "*The Panel has considered the application and found that it cannot decide on it without giving the other Parties the opportunity to state their position on it. Therefore, considering its request set out at para 53 of the Application, the Applicant is informed that, unless it notifies the CAS Court Office, by 13 November 2024, that it withdraws the Application, that Application will be transmitted to the other Parties for comments*".

67. On 14 November 2024, the First Respondent informed the CAS Court Office of its decision not to withdraw the União Petition on Provisional Measures, and of its request to be given the possibility to reply, once the other Parties had filed their observations in that regard.

68. On 14 November 2024, therefore, the União's Petition on Provisional Measures was

transmitted to the Appellant and to the Second Respondent, and a deadline was given to them to submit their replies.

69. On 27 November 2024, the Second Respondent submitted its observations on the União's Petition on Provisional Measures.

70. On 2 December 2024, the Appellant filed his reply to the União's Petition on Provisional Measures.

71. On 3 December 2024, a Case Management Conference was held with the participation of this CAS Panel and the representatives of the Parties in order to discuss some organizational matters regarding the hearing in this case.

72. On 10 December 2024, the First Respondent replied to the other Parties submissions.

73. On 15 January 2025, this CAS Panel issued an Order on Provisional Measures ruling as follows:

> "*1. The twenty-four (24) month suspension imposed on Gabriel Barbosa Almeida by the Brazilian Anti-Doping Tribunal on 25 March 2024 is stayed.*
>
> *2. The stay granted on 30 April 2024 in the matter CAS 2024/A/10473 Gabriel Barbosa Almeida v. União Federal do Brasil and Autoridade Brasileira de Controle de Dopagem (ABCD) is confirmed.*
>
> *3. The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration.*"

74. On the same 15 January 2025, the CAS Court Office informed the Parties that they were called to appear at a hearing, which would be held on 3 and/or 4 April 2025 in Rio de Janeiro, Brazil. The Parties were also invited to provide the CAS Court Office by 31 January 2025 with the names of all persons who would be attending the hearing.

75. On 20 January 2025, the CAS Court Office informed the Parties of the venue of the hearing.

76. On 18 February 2025, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the "Order of Procedure"), which was signed by the Appellant and by the First Respondent on 25 February 2025, and by the Second Respondent on 26 February 2025.

77. On 3 and 4 April 2025, a hearing was held in the present matter in Rio de Janeiro, Brazil. In addition to the Panel and Mr Antonio de Quesada, CAS Head of Arbitration, the following persons attended the hearing:

For the Appellant:	the Appellant in person, assisted by Mr Bichara Abidão Neto, Mr Victor Eleuterio, Ms Juliana Avezum and Mr Matheur Vasconcelos, counsel;
For the First Respondent:	Mr Pitágoras Dytz, Ms Tatiana Mesquita Nunes, Ms Júlia Thibaut Sacramento, Ms Paula Butti Cardoso, Ms Marcia

Uggeri Maraschin, Ms Aristhá Totti Silva Castelo Branco de Alencar, Ms Ana Paula Ameno Sobral, counsel;

For the Second Respondent: Ms Luciana Corrêa de Oliveira, counsel.

78. At the beginning of the hearing, the Parties declared that they had no objection to the composition of the Panel and the way the proceedings were conducted so far. The Panel, then, invited the interpreters, to tell the truth, under the sanction of perjury. The interpreters confirmed their understanding of such obligation. In the same way all the witnesses heard were duly sworn in.

79. After the opening statements, the Appellant rendered the following declarations, answering the questions asked by the Parties' counsel:

- when the DCOs arrived at the Club, he was already in the gym for physiotherapy. He was then informed by Dr Tannure that a test was planned for that day. However, he was never requested to immediately present himself to the DCOs, which he would have done, if ordered. In any case, when he received the information of the Test by Dr Tannure, he did not feel the need to urinate and he could not provide a blood sample, since he had already started his physical preparation. It is true that Dr Tannure did not expressly mention a blood test, but he was aware that in any "surprise test" a blood sample was to be provided together with an urine sample;
- he never prevented anybody from having access to him, in the gym or in the cafeteria. If the Club restricted the access of the DCOs to some areas of the TC, then only the Club is to be blamed;
- he first met the DCOs on his way to the cafeteria, when he received the authorization to have lunch and to provide the samples later;
- he did not receive any instruction regarding the sealing of the urine sample and nobody told him that his behaviour on the occasion of the Test could be considered an ADRV.

80. Thereafter, the following persons were heard as witnesses and declared as follows:

i. Dr Tannure:

- when the DCOs arrived at the TC without prior notice, the Athlete was already conducting his pre-training routine and physiotherapy. He was therefore requested by the DCOs to inform the Athlete of the Test, but without any instruction as to the content of the information to be given to the Athlete. The other players who had been selected for the doping control could be informed of the Test upon their arrival at the TC, as they had to pass in front of the DCOs when entering the building;
- following the DCOs' request, he informed the Athlete of the Test, but did not prevent the DCOs to go with him to meet the Athlete. In the same way, he did not restrict the access of the DCOs to any other part of the TC;
- after meeting the Athlete, he informed the DCOs that the Athlete did not feel the need to urinate and that he could not provide a blood sample, since he had

already started physical activity. The DCOs did not order him to have the Player immediately report to the doping control station;

ii. Mr Machado:

- he is an experienced DCO, having participated in 3 editions of the Olympic Games in such capacity. However, in his career he never experienced what happened at the Test;
- it was difficult for the DCOs to move within the TC. Mr Carvalho, who was leading the Test and who was in charge of the notification, could not reach the Athlete to notify him of the Test. However, he does not remember exactly who within the Club told the DCOs that they could not move around the TC;
- he first met the Athlete only when the latter passed in front of the doping control station in order to go to the cafeteria for lunch. On that occasion, the DCOs asked the Athlete to complete the Test. The Athlete, without stopping, just mentioned that he would do that later. The DCOs could not follow him into the cafeteria;
- no authorization, supported by some form of justification, was requested by anybody to postpone the control on the Athlete, contrary to the provisions of the ISTI;
- when the Athlete returned to the doping control station for a first attempt, he did not seriously try to provide the sample. He did not even lower his pants. He threw the collection vessel away after just a couple of seconds and then left the doping control station without requesting any authorization. He just went away;
- on his second attempt, the Athlete, after providing the sample, left the urine collection sample unsealed on a table outside the toilet, where he returned for a few seconds, too briefly finish urinating. On that occasion, the Athlete did not follow his instructions;
- he could see the urine leaving the Athlete's body during the Athlete's second attempt;
- the Test was not the first he conducted on the Athlete. On other occasions, whenever players of the Club were involved, he had to test the Athlete. On every single occasion, the Athlete behaved in an aggressive manner;
- the Athlete provided dubious information to be filled in the DCF. For instance, the telephone number seemed very strange;

iii. Mr Phelipe Oliveira de Macedo:

- he attended the Test as the Blood Control Officer. When the blood sample was eventually collected, the Athlete did not fully cooperate: for instance, it was necessary for him to seal the collection vial, because the Athlete failed to do so;
- the collection of the blood sample was delayed by the Athlete without any authorization, which he could have requested by providing a valid justification. In the event of a low intensity physical exercise there is no need

to wait 2 hours before collecting the blood sample;

- the blood was collected in order to verify the presence of GH isoforms. The purpose of the Test was mentioned in the Mission Order and was clear because a portion of the blood, once collected, had to be placed in a specific vial. As a result, the Athlete could have been informed of the purpose of the Test and could have delayed it in order to reduce the traceability of the prohibited substance;
- he attended other doping controls on players of the Club. On every single occasion, the DCOs had to face restrictions and could not freely move around the TC. In addition the Club's staff behaved in a hostile manner.

81. The Appellant in fact had announced at the outset of the hearing that Mr Leandro Martins and Prof. Cameron were not available to provide testimony. Following an objection by the First Respondent, who underlined the importance of the deposition of Mr Leandro Martins, the Panel invited the Appellant to make an additional effort to secure the testimony of Mr Martins, at least by video-conference. At the beginning of the second day of the hearing, the Appellant filed the printouts of some messages sent by Mr Martins, confirming his unavailability, in light of his travel commitments with the Club.

82. In addition, the Panel decided that it was unnecessary to hear the experts named by the Parties, *i.e*. Prof. Cameron and Dr Solera.

83. The Parties were then invited to submit their pleadings. In that context, the Parties answered questions asked by the Panel and insisted for the granting of the relief respectively sought.

84. At the conclusion of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

IV. THE POSITION OF THE PARTIES

85. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellant

86. In his Statement of Appeal, the Appellant requested the CAS to issue an award to:

"a) Admit the present appeal;

b) Order the full stay of execution of the Appealed Decision until the final Award is issued by the Panel;

c) Set aside the Appealed Decision;

d) Decide that the Appellant committed no Tampering or Attempting to Tamper and thus that

no sanction nor ineligibility period shall be imposed on the Appellant;

e) Order the Respondents to bear any and all costs and fees of the present arbitration; and

f) Order the Respondents to pay a contribution towards legal fees and other expenses incurred in connection with the proceedings, pursuant to article 64.5 of the CAS Code, in an amount to be fixed by the Panel at its own discretion."

87. In his Appeal Brief, the Athlete reiterated his requests for relief, as follows:

"a) Admit the present appeal;

b) Set aside the Appealed Decision;

c) Decide that the Appellant committed no Tampering or Attempt to Tamper the Exam and thus that no sanction nor ineligibility period shall be imposed on the Appellant;

d) Order the Respondents to bear all costs and fees of the present arbitration; and

e) Order the Respondents to pay a contribution towards legal fees and other expenses incurred in connection with the proceedings, pursuant to article 64.5 of the CAS Code, in an amount to be fixed by the Panel at its own discretion."

88. In essence, the Appellant notes that he received a 2-year suspension for allegedly attempting to tamper with the Test. However, he argues that (i) he had no motive to tamper, (ii) the DCOs' accusations are contradicted by both the Athlete's evidence and some DCO statements, and (iii) the Athlete's conduct, at most, amounted only to rudeness, which, according to CAS case law, does not constitute tampering. Therefore, since 5 out of the 9 BADT members erred in their votes, the Appealed Decision must be overturned and no sanctions apply. In the same way, the Appellant denies that his conduct amounted to an antidoping rule violation under Article 120 of the CBA (Article 2.3 of the WADC), even though at the hearing he eventually conceded that this CAS Panel would be entitled to review his conduct on the occasion of the Test also under that provision.

89. In support of his submissions, the Appellant underlines that:

i. the facts narrated by the DCOs are substantially different from what actually happened on the day of the Test;

ii. the reasons justifying the votes of the 5 BADT members who sustained the sanction are legally flawed and based on false factual premises;

iii. he did not attempt to tamper with the antidoping procedure, nor would he have gained any advantage by failing to provide his samples. The doping control process was properly completed and the Athlete's samples returned negative for prohibited substances;

iv. a suspension of 2 years would be disproportionate.

90. In more details, the position of the Appellant can be summarized as follows:

i. as to the "*reality of the facts*":

a. the security cameras of the Club show that on 8 April 2023 he arrived at 7:52 am to prepare for an important match the next day. Unaware of a doping control, he began his exercises. Around an hour later, the DCOs arrived and, due to the number of players to be tested, asked the Club's doctor, Dr Tannure, to notify the Athlete. Following the WADA's guideline to wait 2 hours post-exercise before giving a blood sample, Dr Tannure advised the Athlete to complete the Test after training. The Athlete did not delay the Test intentionally, but complied with Dr Tannure's instructions. In addition, when informed of the Test, the Athlete did not feel the need to urinate and informed Dr Tannure of his inability to provide the urine sample immediately;

b. as a result, he proceeded to train with his teammates. Training concluded between 11:00 and 11:30 am, but, due to significant water loss from exercise, the Athlete could not urinate and went to the Club's restaurant for lunch. The DCOs were fully aware of his decision and did not prevent him from doing so when he met them on his way to the cafeteria. At that point, the Athlete was unaccompanied by the DCOs, who attributed this to structural issues within the Club that made it challenging to chaperone the Athlete in certain areas. According to the DCOs' own statements, the Athlete made no effort to avoid them, and any lapse in supervision was due solely to the logistical limitations in the Club's setup. Any restriction, then, if imposed on the DCOs, were only the responsibility of the Club and did not depend on the Athlete;

c. after the 2-hour post-training window had elapsed, he went to the doping control station to provide his samples:

   - security footage confirms that he provided his blood sample at 1:07 pm, and the blood control officer, Mr Phelipe Oliveira de Macedo, noted no misconduct and affirmed that the procedure adhered to WADA standards;
   - at 1:21 pm, the Athlete made his first attempt to provide a urine sample, entering the bathroom with the DCO, Mr Machado, who unexpectedly stood closely inside, rather than waiting outside as in previous controls. Although surprised, the Athlete cooperated, but was unable to provide the sample. He then returned to his room to hydrate, with a DCO accompanying him;
   - by 2:10 pm, less than an hour later, the Athlete returned to the doping control station for another attempt. He entered the bathroom again with Mr Machado observing. After successfully filling the collection vessel, the Athlete placed it on a nearby table, with no contrary instructions from the DCOs. He briefly returned to the bathroom, then promptly closed the vessel. The DCOs did not raise any issues regarding his handling of the sample nor requested a retest, confirming the sample's validity at that time;

d. after providing the samples he completed the DCF, despite feeling tired and anxious about an upcoming match. He expressed frustration to the DCOs about being frequently selected for doping controls, but did not refuse future

testing. Following this Test, he underwent several more antidoping controls in 2023, all of which he completed. The personal data provided by the Athlete in the DCF was accurate: Mr Machado's claim that the Athlete submitted "dubious data", including a questionable signature, appears unfounded and biased, suggesting a possible intent to cast the Athlete in a negative light;

e. despite the fact that the DCOs repeatedly claimed that the Athlete was rude and disrespectful during the doping control process, he was only anxious about an upcoming match and focused on his training, wanting to rest afterwards. While he may not have been fully polite at all times, this should not be misconstrued as an attempt to tamper with, or as a failure to submit to sample collection. Upon reviewing the DCOs' allegations, it became clear that their displeasure with the Athlete's behaviour led to animosity, resulting in fabricated accusations: it appears that the DCOs created a false narrative to seek revenge and damage the Athlete's career;

ii. the notification of the Test was not performed according to the ISTI. More specifically, the Athlete was not informed of the consequences of the notification. In general, the rules and procedures set by the ISTI were not respected by the DCOs in charge of their application. In addition, the ISTI provides that a blood sample for the purposes of an athlete's biological passport is not collected within 2 hours of the athlete's training or "*other similar physical activity*". This includes the activity the Athlete was performing when informed of the Test;

iii. the declarations of the DCOs do not enjoy any enhanced or prevailing evidentiary force, under the applicable rules. Their content can be rebutted by the Player on a balance of probabilities;

iv. the videos submitted showing the Athlete's arrival at the TC and the collection of the urine sample, have not been edited or modified in any way, as was also confirmed before the BADT by the company in charge of the security footage at the TC;

v. several contradictions in the DCOs' statements undermine their credibility. They relate to:

a. the Athlete's time of arrival at the premises of the Club and of the notification of the Test. It is proven that the Athlete arrived at the Club approximately one hour before the DCOs. Mr Carvalho initially stated that the DCOs were informed upon their arrival that the Athlete had already started physiotherapy. However, Mr Carvalho later contradicted himself, claiming that he had supposedly seen the Athlete arriving at the Club, suggesting that the Athlete had arrived after the DCOs. The Athlete's actual time of arrival was confirmed not only by the security camera footage, but also by statements of Dr Tannure and Mr Leandro Martins, an employee of the Club, who attended part of the Test;

b. the time of the urine sample collection. Mr Machado in the Supplementary Report claims that 90 minutes passed before the Athlete's first and second

attempt to urinate. However, the security camera footage and the DCF indicate only a 50-minute interval between the first attempt at 1:21 pm and the second successful attempt at 2:10 pm. During this time, the Athlete was hydrating in his room and did not prevent the DCOs from accompanying him;

c. the chaperoning of the Athlete. Mr Machado claimed that the Athlete made chaperoning difficult. However, at the hearing before the BADT, he clarified that it was the Club's structure that created these difficulties, not the Athlete's actions. Mr Machado also stated that Mr Carvalho was responsible for chaperoning the Athlete, while Mr Carvalho contradicted this, saying that Mr Machado had that responsibility. Furthermore, Mr Carvalho noted that there were not enough DCOs to adequately chaperone all athletes on the day of the test, and that the Club's structure hindered effective control. Given these inconsistencies, the responsibility for any gaps in chaperoning cannot be placed on the Athlete, undermining any claims of tampering based on this reason;

d. the Athlete's second attempt to provide the urine sample. Mr Machado alleges that during the Athlete's second attempt to provide a urine sample, the Athlete took a collection vessel and went to the bathroom without notifying the DCOs, forcing Mr Machado to "run" after him in order to witness the collection. However, the video footage reveals that Mr Machado was calmly present, standing by the collection table, and accompanied the Athlete the short distance to the bathroom without any issues;

e. the Athlete's position while providing the urine sample. Mr Machado claimed that he could not properly observe the Athlete's urine entering the collection vessel, as the Athlete allegedly had his back turned towards him. However, during the hearing before the BADT, Mr Machado confirmed that he could, in fact, see the Athlete's urine sample being provided. According to the ISTI rules, if there had been doubts about the sample's validity, the DCO should have requested a new sample. Since the sample was accepted without requesting another, later questioning its authenticity indicates possible bad faith, suggesting an intent by the DCOs to condemn the Athlete;

vi. the Athlete's conduct cannot be considered as an attempt to subvert the doping control process, as made clear by a comparison with the cases heard by CAS (CAS 2008/A/1632&1659; CAS 2008/A/1718&1724; CAS 2016/A/4700; CAS 2017/A/5142; CAS 2018/A/6047; CAS 2019/A/6148; CAS 2021/A/7983), or as a failure to submit to it. The Athlete complied in fact with the request for sample collection when being selected for testing, and eventually provided the blood and urine samples when he was able to do that. The statements of the DCOs, on the basis of which the ADRV was alleged against the Athlete, are contested:

a. "*The Athlete allegedly did not present himself to the DCOs when they arrived in the premises of the Club*". As already demonstrated, the Athlete arrived at the Club before the DCOs and had already begun his exercises when Dr Tannure informed him of the doping control. Since ISTI rules restricted him from providing a blood sample immediately post-exercise and since he did

not need to urinate at that time, Dr Tannure advised the DCOs that the Athlete would provide his samples after the training session. Dr Tannure communicated this plan to the DCOs, who did not object or suggest alternative actions. The DCOs confirmed that they had reserved the entire day for the procedure, as such processes often take time. Given the sequence of events, no action by the Athlete suggests tampering or an attempt to tamper with, or a failure to submit to, the doping control procedure;

b. "*After training, the Athlete had lunch, having supposedly ignored the DCOs*". It was the responsibility of the DCOs to chaperone the Athlete after his training, but they failed to do so due to the Club's structural limitations and their insufficient staffing. During the hearing before the BADT, the DCOs acknowledged that the Athlete did not prevent them from accompanying him while he had lunch. Additionally, the DCOs never informed the Athlete that he could not eat, and eating was reasonable, given he needed to wait at least 2 hours before providing his blood sample. Consequently, the Athlete's conduct did not interfere with or subvert the doping control procedure in any way;

c. "*The Athlete was allegedly disrespectful towards the DCOs, and complained about the fact that he was constantly submitted to Anti-Doping exams*". Even if the Athlete's behaviour towards the DCOs was disrespectful, this does not qualify as a violation of the antidoping rules. According to the WADC, tampering does not include an offensive conduct toward the DCOs, if it does not interfere with the doping control process itself. The Athlete was under considerable stress due to an upcoming match, and while he may not have been entirely polite, this does not justify the sanction;

d. "*On his first attempt to provide his urine sample, the Athlete was supposedly annoyed for having Mr. Machado accompany him into the bathroom and stand beside him*". Contrary to the DCOs' claims, the Athlete did not obstruct Mr Machado from following him into the bathroom. The Athlete was merely surprised by the DCO's proximity, as previous doping controls had allowed him privacy with DCOs observing from outside the bathroom. Even if the Athlete had shown annoyance, this would not constitute an ADRV;

e. "*After allegedly 90 (ninety) minutes of his first attempt to provide the urine sample, the Athlete returned to the doping control station and took the collection vessel without communicating the DCOs, making his way to the bathroom, which supposedly resulted in the DCO having to run after him in order to accompany the urine collection*". The security footage confirmed that the Athlete returned after only 50 minutes following the first attempt to provide a urine sample, and that the DCOs were already present, contradicting claims that they had to chase him. Additionally, the DCOs did not instruct the Athlete to wait before attempting to provide another urine sample;

f. "*The Athlete supposedly did not follow the instructions provided by the DCOs*". The accusation against the Athlete lacks clarity and does not specify any particular instruction that he allegedly failed to follow. If the DCOs had genuine concerns about the validity of the Athlete's urine sample, they should

have instructed him to provide an additional sample and documented any specific issues regarding the first sample's validity. However, they failed to take these actions, which strongly suggests that they had no actual doubts about the authenticity or validity of the sample provided by the Athlete;

g. "*After providing the urine sample, the Athlete placed the vessel on top of the table in the doping control station, without instantly closing the vessel*". The Athlete did not violate any rules in this situation, as he received no instructions from the DCOs indicating that he should act differently. It was the DCOs' responsibility to provide any necessary guidance or warnings. After collecting the required urine sample, the Athlete placed it on a table in the doping control station, returned to the bathroom briefly, and then came back to complete the procedure. In addition, any risk to the sample during the Athlete's brief absence would have impacted only the Athlete himself, not the DCOs. The DCOs ultimately accepted the sample, acknowledging its validity without any objections;

h. "*Mr. Machado claimed that the data provided by the Athlete in the DCF were suspicious*". The Athlete did not provide any false information to the DCOs, as declared by Mr Machado, who acknowledged that his accusations lacked foundation. Mr Machado reportedly based his accusation on a personal dislike of the Athlete's tone of voice. This admission by the DCO undermines the credibility of his accusations and suggests a bias against the Athlete;

i. "*The Athlete supposedly requested the DCOs to write down in the DCF that this Examination would be the last one of his career*". The Athlete has consistently fulfilled his obligations to provide urine and blood samples for doping control, despite expressing frustration over the frequency of his selection compared to his teammates. Although he voiced concerns about this issue, he fully recognizes his responsibilities as a professional athlete and has continued to comply with the doping control requirements*;*

vii. it is suggested that the Athlete may have deliberately delayed the Test to eliminate any traces of growth hormones; however, both his blood and urine samples tested negative for all prohibited substances, including growth hormones. Additionally, as Prof. Cameron's scientific report demonstrates, the sophisticated equipment used by the WADA-accredited laboratories can detect the use of growth hormone up to 30 days prior to the test, making it improbable that a few hours' delay affects the test results. The claim is therefore unsubstantiated and ungrounded. The Athlete's delay in providing his blood sample stemmed only from his adherence to proper protocol, as he had already begun exercising and was advised by Dr Tannure to wait 2 hours before the blood draw, in line with ISTI requirements;

viii. the "*principle of proportionality*" has not been respected. The purpose of antidoping rules is to ensure fair play by identifying athletes who attempt to cheat for an unfair advantage. This is not the case with the Athlete, who has consistently respected the principles of fair play, undergoing numerous doping tests throughout his career, and it would not be reasonable to punish him for allegedly tampering with the antidoping process. The reality of the facts and the principle of proportionality must

be considered when assessing this case. It is evident that the DCOs abused their power, fabricating accusations and misrepresenting the Athlete's actions. As a result of these accusations, the Athlete has been suspended, causing significant damage to his reputation, career, and financial well-being. In contrast, the DCOs have faced no repercussions for their actions.

91. In light of the foregoing, the Appealed Decision must be set aside, and no period of suspension should be imposed.

B. The Position of the Respondents

B.1 The First Respondent

92. In its Answer to the Appeal, the First Respondent submitted the following prayers for relief (emphasis omitted):

"*a) Regarding the need to respect the procedure stages:*

a.1) União requests that the content of this statement only be made known to the Appellant at the appropriate procedural stage, i.e., after the analysis of União's statement of July 22, 2024, the proper constitution of a new Arbitral Panel, and the effective advancement of the additional costs by the Appellant;

a.2) In accordance with Article R39 of the Code of Sports-related Arbitration, applicable to any and all advancements of costs by the Appellant, although União has presented its Response on this date to avoid any claim of preclusion, it reiterates that only after the regular payment of the costs due by the Appellant should the procedural process be resumed, for any of its purposes, requesting the observance of the phases referred to in the previous request;

a.3) União also reserves its right to, in the event that the decision on the above points has any influence on what is addressed in this statement, present a supplementary statement on the matter in question.

b) Regarding the merits, União requests that THE APPEAL BE DISMISSED, including the possibility of, if the elements characterizing fraud are found to be absent but those of failure are present, legally reclassifying the conduct under Article R57 of the Code of Sports-related Arbitration, and also requests that the Court of Arbitration for Sport restrict its analysis to the documentary evidence accompanying the appeal and the responses of the Respondents, prohibiting the reproduction of evidence and, especially, the introduction of new evidence, since:

b.1) There is a duty of deference to the decision under appeal, which is not only valid and legal but also reasonable and, as such, should be analyzed by this Court in an exercise of self-restraint;

b.2) The proof system established by the Brazilian Anti-Doping Code was strictly observed by the judges, analyzing the allegations of the prosecution according to the comfortable satisfaction and the allegations of the accused according to the balance of probabilities;

b.3) It's a constitutive element both to Fraud and Failure the divergence between the accused's behavior and the pre-established standard for sample collection, which happened in this case, since the result of the collection outside the standard, whether positive or negative, loses the presumptive strength it had and becomes questionable;

b.4) Any deviation from the notification and without conclusive proof that he was authorized for such a deviation – through justification validated by the control agent – may result in a conviction, as demonstrated in CAS 2022/A/9033, remembering the presumption of validity and truthfulness of DCO´s actions conferred by the ISTI 2021 and by Article 292 of the Brazilian Anti-Doping Code;

b.5) It's undisputed that the athlete was aware of the doping control and his justification varied over time and wasn't prove, although he had the burden of proof and there were cameras in both areas mentioned, remembering he presented videos footage of other moments of the day. Also, using the club's structured as excuse is invalid (CAS 2008/A/1557);

b.6) There's no evidence that the Appellant received an "authorization" to be without escort, remembering this responsibility is personal and non- transferable (CAS 2008/A/1557 and CAS 2022/A/9033), so balance of probabilities strongly favors the actions of the DCOs. Legal recapitalization is valid, if necessary (CAS 2020/A/7526).

b.7) It was not one or another isolated act that deviated from the standard, but a set of actions that, combined, constituted a pattern that disrupt the procedure. Comparing the athlete's actions to what ISTI 2021 stipulated, it is exactly what he did on April 8, 2023 not only voluntarily but also consciously and deliberately;

b.8) Some substances have very short detection windows in the body, as GH, which makes any delay potentially crucial for their 'disappearance,' benefiting the [attempted] fraudster, who has a higher chance of a negative result, and mere doubt is enough to legitimize this Court to act in promoting the principle enshrined by the Code;

b.9) The contradictions are only apparent, since it cannot be expected that the doping control officers would remember, in minute detail, exactly how everything actually happened and inconsistencies are indicative of a lack of preparation or rehearsal for the testimony, thus being indicative of the truth of the facts;

b.10) Due attention was given to the principle of proportionality (CAS 2005/A/976, 986, CAS/A/8651), as TJD-AD stablished the sanction in 24 months (the minimum), not 48 months; and

b.11) The presence of União in this arbitration demonstrates the Brazilian State's commitment to the anti-doping prevention and enforcement system and the decision in this case will set a precedent that will guide the actions of various actors ant therefore requires the Court to exercise extra care in endorsing deviant behaviors.

c) Regarding Evidence-Related Matters:

c.1) União, considering the prerogative granted by article R57 of the Code of Sports-related Arbitration, requests that the hearing in question not be held, as it would merely duplicate evidence already produced, to which the Appellant has granted full access to the Panel;

c.2) <u>Alternatively</u>, should the Appellant request a hearing and that request be granted by the Panel, União hereby requests that the costs related to such a hearing be borne entirely by the Appellant;

c.3) União requests in advance the holding of the case management conference referred to in article R56, considering it relevant to discuss the scope of evidence at the hearing, if any, as well as other aspects related to the case management; and

c.4) Alternatively, in the event of a hearing, União requests that, in addition to the documentary evidence accompanying this statement, it be granted the opportunity to cross-

examine the witnesses and experts indicated by the Appellant, participating on equal terms in the procedural instruction."

93. In other words, and in summary, the First Respondent requests this CAS Panel to dismiss the Appeal and find the Athlete responsible of the violation of Article 122 of the CBA (Article 2.5 of the WADC) for which he was sanctioned by the BADT, or, in the alternative, of Article 120 of the CBA (Article 2.3 of the WADC). According to the First Respondent, in fact, the actions of the Athlete on the day of the Test amounted to tampering with a doping control, as found by the BADT; but the same actions can be considered by this CAS Panel, using its power to review *de novo* the facts and the law (Article R57 of the CAS Code) and to recharacterize from a legal point of view the imputed violation (CAS 2020/A/7526), as a failure to submit to the doping control.

94. In support of its requests, the First Respondent submits the following:

i. the Appealed Decision is valid and reasonable and this CAS Panel should pay deference to the findings of the BADT, based on the same evidence which is now before CAS;

ii. consistently with the findings in CAS 2023/A/9364, this CAS Panel must allocate the burden of proof according to the law which governs the merits of the dispute, *i.e*. Brazilian law. As a result, the facts reported by the DCOs, who are public officers under Brazilian law, "*enjoy a presumption of veracity*" under Article 296 of the CBA for the purposes of Article 292(III) of the CBA, and the Athlete, faced with such "*presumption of veracity*", has to offer evidence beyond a reasonable doubt to rebut it;

iii. the BADT followed the relevant rules in rendering the Appealed Decision, and the members of the BADT based their conclusions on the evidence presented through proper procedures. The Appellant does not invoke any formal irregularities to have the Appealed Decision set aside, but challenges its fairness, particularly how the evidence was assessed. However, the Appellant's arguments do not deserve acceptance by this CAS Panel for the following reasons:

a. the documents from the Second Respondent indicate that the Appellant's actions violated the ISTI, particularly in relation to the attempts to provide a sample without escort and hindering the DCOs' supervision. For example, during the second sample collection attempt, the Appellant turned his back on the DCO; in addition, the Appellant failed to comply with the ISTI, by not immediately presenting himself for testing, while other athletes promptly provided their samples, and the Appellant chose to follow the Club doctor's instructions, rather than those required by the ISTI or those from the DCOs, and the Appellant isolated himself in a room, without escort, for 50 minutes

b. the CBA, which implements the WADC into Brazilian law, defines "*fraud*" in Article 122 and Annex I to include intentional acts or attempts that subvert the doping control process, such as offering or accepting bribes to alter actions, preventing sample collection, affecting analysis, falsifying documents, obtaining false testimony, or any interference aimed at

influencing result management. The CBA emphasizes that not only material acts like preventing sample collection or offering bribes are punishable, but also actions intended to conceal adverse results, especially those resulting from substances with short detection windows, like growth hormone. Both CBA and the WADC share similar elements, allowing judges to consider which conduct fits the legal framework, especially regarding proper sample collection processes. There is in fact significant concern about potential frauds in doping controls, because even small deviations can undermine the entire process. The purpose of control is not just to collect samples, but to ensure that the athlete's achievements are legitimate and not the result of fraudulent actions. A sample collected and analysed properly guarantees that the results reflect the athlete's true abilities, safeguarding fair competition. Control serves the principle of "fair play" and ensures the integrity and trustworthiness of the antidoping system. If any aspect of the sample collection process is subverted, it undermines the system's credibility, and the results will be questioned. This is why the system cannot tolerate even minimal deviations in doping control procedures, because the antidoping system must ensure not just honesty, but also the appearance of it to maintain trust and integrity in sports;

c. the Appellant's conduct should be evaluated on the basis of the standards outlined in the ISTI, which dictate the expected behaviour for both doping control authorities and athletes. Once an athlete is notified of being selected for doping control, it must comply with strict rules, including immediate submission to the sample collection and remaining under supervision until the process is complete. Failure to comply with these rules, such as evading the control or discarding urine, can lead to violations of antidoping regulations. In out-of-competition or surprise tests, constant supervision is crucial to prevent evasion. While delays or postponements are allowed if valid reasons are provided and approved by the DCO, the athlete must remain under supervision during any such absences. Deviation from these standards without valid justification can result in a violation and lead to sanctions;

d. the Appellant did not provide sufficient evidence to challenge the accuracy of the DCOs' account of events, particularly regarding the Athlete's refusal to cooperate. In addition, the videos filed to evidence the actions of the Athlete contain several gaps, and are therefore unreliable. As a result, the facts as presented by the DCOs are sufficient to uphold the Appealed Decision;

e. the Appellant claimed that he was occupied with physiotherapy or other physical activity when notified, which prevented him from presenting himself to the DCO right away. However, it is possible to highlight several inconsistencies and lack of evidence supporting this claim, such as:

- the lack of video evidence: no footage from surveillance cameras within the TC's gym or physiotherapy area was provided, even though other footage (from the parking lot, for instance) was presented to support other aspects of the case. This lack of specific evidence to confirm the Appellant's whereabouts at the time of notification weakens his

defence, as the burden of proof was on him;

- inconsistencies in testimony and claims: the narrative regarding the Appellant's exact location at the time of notification varied, leading the BADT to question its reliability;
- camera timing and entry details: the footage did not clearly show the Appellant entering the facility before the DCOs, leaving open the possibility of a timing discrepancy that would align his arrival with the DCOs' setup. Given that proving such timing was under the control of the Athlete, this absence of evidence is significant;

f. the BADT relied on established standards and previous CAS decisions to uphold the Appellant's sanction for obstructing the doping process, citing his intentional and voluntary actions as grounds for conviction:

- in antidoping cases, the athletes bear the responsibility of providing concrete evidence if they allege procedural breaches or justifiable reason for not complying with a doping test notification. Without conclusive evidence to validate his claim, the Athlete's assertion had to be dismissed by the BADT. The Appellant could have easily substantiated his claim that he was engaged in other activities when notified, as other surveillance footage was available and presented for different aspects of his case. The decision not to produce the footage of the Athlete's whereabouts suggests that it may not support his version of events;
- the Appellant's explanations evolved over the time: he initially stated that he was in physiotherapy, then later asserted he was doing physical exercises. This inconsistency, together with a lack of proof, raised doubts about the truthfulness of the claims: such shifting narratives implied that none of the stated activities were compelling reasons for his failure to report;
- the Appellant did not request any authorization from the DCOs to postpone the sample collection and the reliance on a Club doctor's word does not absolve the Athlete of responsibility, as outlined by prior CAS rulings;
- by not reporting immediately to the doping control station, the Appellant effectively postponed the blood collection. This delay could be avoided if he had complied with the initial notification, leading the BADT to question the reliability of the sample and its potential impact on detecting certain substances;
- the Appellant's conduct displayed a series of violations regarding the required escort and supervision throughout the doping control process, as mandated by the ISTI. Following notification, he proceeded to various locations unaccompanied, including to lunch, and failed to provide proof of any authorization allowing him to do so. The Appellant's claim that he received an authorization is unsupported and it appears implausible that the DCOs would have permitted him

unsupervised freedom contrary to the ISTI, which emphasizes the need of continuous supervision in such cases;

g. the Appellant's approach, lacking cooperative behaviour, aligns with attempts to undermine the procedure, as found by the BADT:

- the Appellant's repeated actions on the day of the doping control reveal a pattern of deliberate evasion and non-compliance with the ISTI. He frequently moved without escort, including taking a sample collection container to the bathroom without notifying the DCOs. His irritation upon encountering the DCOs suggests that he neither sought nor received permission to be unaccompanied, as per the mandatory protocol;
- the Appellant's failure to remain under supervision, alongside shifting justifications, indicates intentional avoidance, rather than a genuine misunderstanding or authorization oversight. The Appellant's responsibility to comply with doping control measures is a personal duty and cannot be transferred to others, including team doctors. The Appellant's personal obligation to ensure proper procedure was clear and continuous from the moment of notification, a duty not reduced by any claimed need to defer the sample collection;
- the BADT referenced a similar case (CAS 2008/A/1557), where 2 athletes were sanctioned after failing to immediately attend a doping control, choosing instead to attend a meeting that kept them out of the officers' sight. This case set a precedent by emphasizing that antidoping procedures must be conducted without unsupervised intervals to maintain integrity and trust in the results: delays, irrespective of the reason, violate antidoping rules when the athlete deliberately subtracts himself from officers' observation. The Appellant's extensive, unsupervised delay of 4 hours for the collection of the blood sample and of 5 hours for the collection of the urine sample rendered the control invalid. The antidoping system's strict requirements are in fact essential to verify that no prohibited substances or methods are hidden or manipulated;
- the BADT emphasized that antidoping responsibilities are non-transferable, and athletes cannot justify non-compliance by citing external barriers or personal assumptions. Just as with the athletes in CAS 2022/A/9033, who were accountable for their whereabouts records, the Appellant's responsibility to remain within the DCOs sight from notification until sample provision was underscored. His repeated absences exceeded what prior cases considered acceptable, with multiple extended periods out of sight deemed to obstruct the doping process. The BADT's reliance on strict liability principles and reversed burden of proof is critical; in doping cases, athletes are presumed guilty if banned substances are found in their system, requiring them to prove their innocence. Similarly, deviations from required visibility, even

when justified by circumstantial excuses, place the onus on the athlete to demonstrate compliance;

h. the Appellant argues that, according to Article 122 of the CBA (Article 2.5 WADC), fraud requires intentional actions aimed at obstructing the doping control process and that such allegations should be treated with utmost seriousness. However, the entire antidoping procedure deserves this same level of seriousness, which the Appellant disregarded during the doping control on 8 April 2023, by deliberately obstructing the process:

- contrary to the Appellant's claims, it is unnecessary for fraud to fully subvert the process or for the Athlete to understand that his actions constitute a violation. It is sufficient that he knowingly accepted the risk that his actions could hinder the control process;
- the Athlete's behaviour disrupted the standardized procedure set by the ISTI. The Athlete's voluntary actions intentionally deviated from this standard, which constitutes an attempt of fraud under the antidoping rules;
- the Appellant's actions suggest a clear intent to disrupt the order of the process. The Appellant's behaviour, in fact, presented a pattern of actions that cumulatively represented a fundamental deviation from the antidoping standards, threatening the integrity and uniformity of the process. Proving intent to commit fraud does not require evidence of deliberate malfeasance; it is enough to establish that the actions had the potential to subvert the process, regardless of the accused's awareness at the time. According to CAS 2021/A/7983, fraud can be found if the accused acted in a way that objectively disrupted the doping control order. Here, the Appellant's conduct showed insubordination and disregard for rules, straying so far from protocol that it risked undermining the doping control system's purpose of equal treatment and fair play for all athletes;

i. delay in sample collection may help to hide/prevent the detection of substances having a very short detection window. The Athlete deliberately delayed his urine sample collection, leading to a 5-hour wait after notification. The lack of any reasonable explanation for this delay raises suspicion that the Athlete was attempting to manipulate the process:

- timely sample collection is essential for maintaining the integrity of the test, as it minimizes the risk of administration of masking substances or of their excretion from the body. By postponing the sample collection, the Athlete may have been trying to avoid testing for substances with short detection windows, such as growth hormone, for which a delay in testing could mean the difference between a positive and negative test result. DCOs are tasked with monitoring and documenting any irregularities during the process. Without constant supervision, the Athlete may have engaged in behaviour, like excessive hydration, that could undermine the integrity of the Test. Additionally, the Athlete's

actions, that obstructed the DCO's view, created further suspicion that he might have used a device to provide a fraudulent sample, a tactic previously used by other athletes. Despite his claims, the Athlete failed to justify his actions. The absence of a valid explanation made the situation intolerable for the antidoping system, which relies on the athletes' adherence to rules and the integrity of the process;

- the Athlete was aware that the Test implied the collection of a blood sample and that his blood was to be analysed for the detection of GH, as made clear by a vial clearly marked as for GH testing, and not only for the purposes of the biological passport. In addition, the analyses conducted in Brazil are aimed only at the search of GH isoforms, as marked on the "*Mission Order*" for the Test, and the detection window for GH isoforms is limited to 8 hours after administration;
- the Athlete's history of being involved in antidoping tests makes it implausible that he could have misunderstood the process. All his actions point towards intentional subversion of the doping control procedure;

j. the Appellant argues that there are contradictions in the way his conduct was described by the DCOs, and claims that these contradictions show bad faith on the part of the DCOs. The Appellant's claims are offensive and unfounded. Such accusations assume coordinated action by the DCOs, which would require the Appellant's active involvement in the alleged infractions. The DCOs could not have recorded the Appellant's actions without his participation, and the Appellant has not denied the actions as described. Furthermore, the DCOs' reports are deemed reliable, while the DCOs' and the Athlete's recollections of specific details almost a year after the Test might have been affected by the passing of time. This highlights why reports made at the time of the incident are given more probative value, as they reflect the facts as they occurred. Inconsistencies in testimonies are not necessarily indicative of dishonesty, but may point to the truth, as they suggest the testimony was not rehearsed, reinforcing the reliability of the facts as presented. In any case:

- the Athlete was notified by the Club's doctor, and the reports from Mr Machado align with his testimony, confirming that Mr Carvalho was responsible for notifications. There are no contradictions between their statements;
- regarding the statements from the DCOs, Mr Carvalho did not fill out a record on the day of the control, but his statement, supported by Mr Rodrigo da Silva, who signed the DCF as the *chaperone*, affirmed that the Athlete passed by them and refused to provide a sample. The Appellant provides no evidence, such as video footage, to challenge this claim. As for the alleged discrepancy about the Athlete's arrival time, no significant contradictions exist. The core issue is that the Athlete was notified, that he had not started training and that he failed to provide video evidence to support his version of events;

- the discrepancy regarding the time between attempts to collect the urine sample (50 minutes vs. 90 minutes) is a minor detail which does not change the violation of the antidoping rules;
- in response to the claim that the DCOs should have requested a new urine sample if there were doubts about its validity, it is clarified that they followed the protocol by documenting the events without additional instructions, as required by the ISTI. Pursuant to Article 297 of the CBA, deviations from the standard do not invalidate the sample or justify objections. During the hearing before the BADT, Mr Machado noted that the DCOs are not responsible for invalidating a sample. He did not act on the Appellant's choice to leave the collection vessel open due to the tense environment, opting instead to record the event and notify the ABCD for follow-up. This response illustrates that the DCOs acted according to their duties, countering the Appellant's accusation of bias or misconduct. The actual abuse came from the Athlete, who disregarded the rules;

k. the Appellant argues that the 2-year suspension imposed on him is disproportionate, as his actions were not intended to gain an unfair advantage, did not cause harm to the doping control procedure, and his sample tested negative. However, the Appellant's actions did violate antidoping rules. Although the penalty for fraud is 4 years, the BADT imposed a shorter suspension. This decision aligns with the principles of necessity, adequacy and proportionality. The WADC emphasizes fair play as a guiding principle, promoting values like respect for the rules, equality, and the integrity of sport. Given the importance of these values and the Athlete's role in social life, the sanction was deemed appropriate and within the framework of the antidoping system. The material consequences of the suspension, while impactful, do not justify avoiding the penalty, as it applies equally to all athletes. In this case, the BADT considered all such circumstances and reduced the penalty to 2 years. In conclusion, the Appealed Decision respects the global antidoping system and its principles.

B.2 The Second Respondent

95. The Second Respondent did not file an Answer to the Appeal. At the hearing before this Panel, the Second Respondent, however, requested that the Appeal be dismissed. In support of its request, the Second Respondent underlined the following:

i. the Athlete engaged in an intentional conduct subverting the doping control: in fact, he did not immediately report to the doping control station, without asking for an authorization to postpone the Test, and behaved in an aggressive and hostile way, disrespecting the instructions given to him, when he finally got in touch with the DCOs;

ii. the reasons given later to justify his behaviour are not credible. For instance, it is not credible that he did not need to urinate for more than 5 hours;

iii. the other players of the Club immediately submitted to the doping control, without raising any issue;

iv. the video footage provided by the Appellant is not helpful, as important moments are missing;

v. the DCOs could not freely move around the TC. The difficult relationship between the DCOs and the clubs is a recurring issue within the Brazilian football.

V. JURISDICTION

96. The jurisdiction of the CAS is not disputed by the Parties.

97. According to Article R47, first paragraph of the CAS Code:

"*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.*"

98. The jurisdiction of CAS is contemplated by Articles 317, 318 and 331 of the CBA as follows:

Article 317[1]

"*An appeal shall be filed exclusively against the decision:*

I - of the Brazilian Anti-Doping Tribunal which determines the commitment, or not, of an anti-doping rule violation, or related infractions;

II - of the Brazilian Anti-Doping Tribunal that imposes, or not, consequences for an anti-doping rule violation. […]"

Article 318[2]

"*The appeal referred to in the previous article shall be filed:*

I - before the Court of Arbitration for Sport, in the case of extraordinary proceedings; or

II - before the Brazilian Anti-Doping Tribunal, in other cases, in accordance with the rules set out in this Section. […]"

Article 331[3]

"*The decision of the Supreme Doping Court may be appealed to the Court of Arbitration for Sport only in the cases provided for in articles 318, item I and article 320 of this Code, and must be*

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1 Brazilian original: "*Caberá recurso, exclusivamente, da decisão: I- do TJD-AD que determinar o cometimento, ou não, de uma violação de regra antidopagem, ou de infrações conexas; II- do TJD-AD que impuser, ou não, consequências para uma violação de regra antidopagem; […]*".

2 Brazilian original (version modified in December 2022): "*O recurso de que trata o artigo anterior será apresentado: I- perante a Corte Arbitral do Esporte, no caso de procedimento ex-traordinário; ou II- perante o TJD-AD, nos demais casos, de acordo com as regras previstas nesta Seção.[…]*".

3 Brazilian original (version modified in December 2022): "*A decisão do Tribunal Pleno poderá ser objeto de recurso à Corte Arbitral do Esporte somente nas hipóteses previstas nos artigos 318, inciso I e artigo 320 deste Código, e deverá ser divulgada publicamente, conforme previsto nos arts. 340 e seguintes.*"

made public, as provided for in articles 340 et seq."

99. The Panel, consequently, has jurisdiction to decide on the appeal filed by the Appellant against the Appealed Decision. Furthermore, the Parties signed the Order of Procedure without any reservation and did not raise any objection to CAS jurisdiction at the hearing, and all Parties participated fully in the proceedings.

VI. ADMISSIBILITY

100. The Statement of appeal was filed by the Appellant within the deadline set in Article R49 of the CAS Code and in Article 324 of the CBA[4] and it complied with the requirements of Article R48 of the CAS Code. The admissibility of the appeal is not challenged by any Party.

101. The appeal is therefore admissible.

VII. SCOPE OF THE PANEL'S REVIEW

102. According to Article R57, first paragraph of the CAS Code,

"*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...*".

VIII. APPLICABLE LAW

103. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the CAS Code.

104. Article R58 of the CAS Code provides the following:

"*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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

105. In light of the foregoing, the "applicable regulations" for the purposes of Article R58 of the CAS Code are in the present case those contained in the CBA. Brazilian law applies subsidiarily.

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4 "*The time limit for filing an appeal with the Court of Arbitration for Sport will be twenty-one calendar days from the date of receipt of the decision by the appellant*" (Brazilian original: "*O prazo para interpor recurso à Corte Arbitral do Esporte será de vinte e um dias corridos a partir da data de recebimento da decisão pelo recorrente*").

106. With respect to the CBA, the Panel notes the following general provisions, defining its relations with the WADC:

Preamble[5]

"*This Brazilian Anti-Doping Code is adopted and implemented in accordance with Brazil's responsibilities towards the World Anti-Doping Agency [...]*

[…] the principles set out in this Code and in any national legislation shall not override the mandatory principles of the World Anti-Doping Code.

Anti-doping justice bodies should be aware of and respect the distinctive nature of these anti-doping rules, which implement the World Anti-Doping Code, and represent the consensus of a broad spectrum of stakeholders around the world on what is needed to protect and ensure fair sport. […]"

Article 348[6]

"[…] The comments and annotations of the World Anti-Doping Code shall be used to interpret the provisions of this Code and are incorporated by reference."

Annex II: "*Parameters used in the interpretation of the CMA for the purpose of internalization of the rules by the CBA*"[7]

"*The official text of the World Anti-Doping Code, published in English and French, is the responsibility of WADA, subject to the following rules of interpretation:*

a) in the event of a conflict between the English and French versions, the English version shall prevail;

b) the comments on the provisions of the CMA serve its interpretation;

c) the CMA is interpreted as an independent and autonomous text and not by reference to existing legislation or statutes of signatories or governments; […]"

107. In other words, the CBA has to be interpreted in accordance with the provisions set out in the WADC (edition 2021), which it purports to implement in the Brazilian domestic antidoping system. In addition, the rules set by the WADC having mandatory nature have prevailing force over any conflicting provisions in the CBA. The mandatory provisions of the WADC, *i.e*. those provisions which "*must be implemented by Signatories without*

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5 Brazilian original "*PREÂMBULO. Este Código Brasileiro Antidopagem é adotado e implementado de acordo com as responsabilidades do Brasil perante a Agência Mundial Antidopagem […]. […] os princípios previstos neste Código e em qualquer legislação nacional não deverão se sobrepor aos princípios obrigatórios do Código Mundial Antidopagem. Os órgãos julgadores da Justiça Antidopagem devem estar cientes e respeitar a natureza distinta destas regras antidopagem, as quais implementam o Código Mundial Antidopagem, e representam o consenso de um amplo espectro de partes interessadas em todo o mundo sobre o que é necessário para proteger e garantir um esporte justo […]*".

6 Brazilian original "*[…] Os comentários e anotações do Código Mundial Antidopagem deverão ser utilizados para interpretar o disposto neste Código e são incorporados por referência.*"

7 Brazilian original: "*DOS PARÂMETROS UTILIZADOS NA INTERPRETAÇÃO DO CMA PARA FINS DE INTERNALIZAÇÃO DAS REGRAS PELO CBA. O texto oficial do Código Mundial Antidopagem, publicado nos idiomas inglês e francês, é de responsabilidade da AMA, observa das as seguintes regras de interpretação: a) em caso de conflito entre as versões em inglês e em francês, prevalece a versão em inglês; b) os comentários sobre as disposições do CMA servem à sua interpretação; c) o CMA é interpretado como um texto independente e autônomo e não por referência à legislação ou a estatutos existentes dos signatários ou dos governos; […]*".

substantive change (allowing for any non-substantive changes to the language in order to refer to the organization's name, sport, section numbers, etc.)", are listed at Article 23.2.2 of the WADC and include Article 1 (Definition of Doping), Article 2 (Anti-Doping Rule Violations), Article 3 (Proof of Doping), Article 10 (Sanctions on Individuals), Article 26 (Interpretation of the Code), Appendix 1 (Definitions).

108. At the same time, the Panel notes that the First Respondent in its submissions made several references to the version of 2021 of the ISTI. It is to be remarked, however, that a new edition of the ISTI came into force as of January 2023, which falls to be applied to the testing of the Athlete in April 2023. In the following sections, therefore, any reference by this CAS Panel to the ISTI must be understood as a reference to its 2023 edition.

X. MERITS

A. The issues

109. The object of this arbitration is the Appealed Decision, which found the Athlete responsible of the antidoping rule violation within the meaning of Article 122 of the CBA (Article 2.5 of the WADC) and sanctioned him with a period of ineligibility of 2 years. On one hand, the Appellant challenges the Appealed Decision and requests this CAS Panel to set it aside: the Appellant, in fact, denies any responsibility and submits that he did not commit an antidoping rule violation. On the other hand, the Respondents defend the Appealed Decision, which they find to be correct, seeking the dismissal of the Appeal: in the Respondents' opinion, the Athlete is responsible of the antidoping rule violation found by the BADT or, in alternative, of the violation contemplated by Article 120 of the CBA (Article 2.3 of the WADC).

110. As a result of the foregoing, this CAS Panel has to examine the following issues:

    i. is the Athlete responsible of a violation under Article 122 of the CBA (Article 2.5 of the WADC)?

    ii. in the alternative, is the Athlete responsible of a violation under Article 120 of the CBA (Article 2.3 of the WADC)?

    iii. in the event of a positive answer to any of those two questions, what is the sanction to be applied to the Player?

111. Before turning to the mentioned questions, however, this CAS Panel finds it necessary to address an issue that was discussed at the hearing, regarding the evidentiary value of the reports prepared by the DCOs following the Test with respect to the facts therein described. According to the First Respondent, actually, the facts described in the reports signed by the DCOs enjoy a presumption of veracity pursuant to Article 296 of the CBA, and are therefore exempt from proof in accordance with Article 292 of the CBA. As a result, according to the First Respondent, it is for the Appellant to disprove "*beyond a reasonable doubt*" the facts reported by the DCOs.

112. This CAS Panel notes that according to Article 3 of the WADC (a mandatory provision

pursuant to Article 23.2.2 of the WADC):

i. facts related to antidoping rule violations may be established by any reliable means, including admissions;

ii. the antidoping organization (in this case, ABCD) has the burden of establishing that an antidoping rule violation has occurred;

iii. the standard of proof for the antidoping organization is whether it has established an antidoping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability, but less than proof beyond a reasonable doubt;

iv. where the WADC places the burden of proof upon the athlete alleged to have committed an antidoping rule violation to rebut a presumption or to establish specified facts or circumstances, the standard of proof is by a balance of probability;

v. presumptions apply only to "*Analytical methods or Decision Limits*" (presumed to be scientifically valid), and to the "*Sample analysis*" made, and the "*custodial procedures*" followed, by WADA-accredited laboratories (presumed to have been conducted in accordance with the applicable International Standard for Laboratories).

113. In light of such provision, this CAS Panel finds the First Respondent's position to be untenable: ABCD has the duty to prove that the Athlete committed an antidoping rule violation; the commission by the Athlete of an antidoping rule violation can be proved by the ABCD by any reliable means, including the reports of the DCOs. However, the evidence adduced by the ABCD must be suitable to establish the violation to the comfortable satisfaction of the hearing panel, and the reports of the DCOs do not enjoy any prevailing probatory force: their content can be rebutted by the Athlete on a balance of probability basis. Any different provision of the CBA cannot be sustained, since, as indicated in its Preamble (and noted above: § 106), "*the principles set out in* [the CBA] *and in any national legislation* [including Brazilian legislation] *shall not override the mandatory principles of the World Anti-Doping Code.*"

114. Taking the foregoing in mind, this CAS Panel now turns to the mentioned issues in sequence.

i. Is the Athlete responsible of a violation under Article 122 of the CBA (Article 2.5 of the WADC)?

aa) The applicable legal framework

115. Article 122 ["*Fraud or attempted fraud of any part of the doping control process by an athlete or other person*"][8] of the CBA defines an antidoping rule violation as follows:

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[8] Brazilian original: "*Da fraude ou tentativa de fraude de qualquer parte do processo decontrole de dopagem por um atleta ou outra pessoa*": "*Fraude ou tentativa de fraude de qualquer parte do processo de controle de dopagem por um atleta ou outra pessoa.*"

"*Fraud or attempted fraud of any part of the doping control process by an athlete or other person.*"

116. The term "*Fraud*"[9] is then defined as the:

"*intentional conduct, or attempt to do so, that subverts the doping control process not included in the definition of prohibited methods, which includes, but is not limited to, offering or accepting bribes to perform or refrain from performing an act, preventing the collection of a sample, affecting or making impossible the analysis of a sample, falsifying documents submitted to an Anti-Doping Organization, TUE or Court committee, obtain false testimony from witnesses or commit other fraudulent acts aimed at affecting earnings management or the imposition of consequences in addition to any other type of intentional interference that is similar to or attempted interference related to any aspect of doping control.*"

117. Those provisions match those contained at Article 2.5 of the WADC, which contemplates "*Tampering or Attempted Tampering with any Part of Doping Control by an Athlete or Other Person*" as an antidoping rule violation, and the corresponding definition:

"*Tampering: Intentional conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organization or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organization or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control.*"

118. At the same time, this CAS Panel remarks that the definition of "*Tampering*" is supplemented in the WADC by a comment in a footnote, which reads as follows:

"*For example, this Article would prohibit altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis, altering a Sample by the addition of a foreign substance, or intimidating or attempting to intimidate a potential witness or a witness who has provided testimony or information in the Doping Control process. Tampering includes misconduct which occurs during the Results Management process. […]. Offensive conduct towards a Doping Control official or other Person involved in Doping Control which does not otherwise constitute Tampering shall be addressed in the disciplinary rules of sport organizations.*"

119. As already noted (*supra*, § 106) such comment shall be used to interpret the provisions

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[9] Brazilian original: "*Fraude: conduta intencional, ou sua tentativa, que subverte o processo de controle de dopagem não incluída na definição de métodos proibidos, a qual inclui, entre outras práticas, oferecer ou aceitar propina para realizar ou deixar de realizar um ato, impedir a coleta de uma amostra, afetar ou impossibilitar a análise de uma amostra, falsificar documentos apresentados a uma Organização Antidopagem, comissão de AUT ou Tribunal, obter depoimento falso de testemunhas ou cometer outros atos fraudulentos voltados a afetar a gestão de resultados ou a imposição de consequências além de qualquer outro tipo de interferência intencional que for semelhante ou tentativa de interferência relacionada a qualquer aspecto do controle de dopagem*."

of the CBA and are therein incorporated by reference (Article 348 of the CBA).

120. In light of the foregoing, it is to be established whether the actions imputed to the Athlete constituted an "*Attempted Tampering*" with the doping control that he underwent on 8 April 2023. For such purposes, "*Attempt*" must be understood, according to the WADC (in a definition corresponding to the definition contained in the CBA[10]), to consist of:

"*Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an Attempt to commit a violation if the Person renounces the Attempt prior to it being discovered by a third party not involved in the Attempt.*"

bb) The term "Tampering" and "Attempted Tampering" in the jurisprudence of the CAS

121. Before conducting such examination, this CAS Panel finds it important to underline a point of interpretation, concerning the scope of Article 2.5 of the WADC. As made clear by the very wording of Article 2.5 WADC (which makes reference to the "*intentional conduct, or attempt to do so, that subverts the doping control process*"), "*Tampering*" requires intentional interference with, or obstruction of, the doping control process, such as delaying or obstructing the investigation or results management in a tangible and meaningful way. The provision, in fact, is intended to guarantee the integrity, and therefore the reliability, of the doping control process. This interpretation has been consistently upheld in the CAS jurisprudence, where "*Tampering*" violations have only been established in cases involving deliberate efforts to mislead, obstruct, or undermine the doping control process. In other words, "*Tampering*" requires a significant and intentional effort to manipulate the antidoping process in a way that compromises its integrity. Such line of interpretation is also backed by the non-exhaustive list of examples listed in the definition section of the term "*Tampering*" in the WADC (§ 118). All these examples have as a "common denominator" that the reproachable act must have a severe impact on the doping control procedure.

122. A review of key decisions adopted by CAS panels clarifies this standard and highlights the level of interference or subversion required to establish "*Tampering*" under Article 2.5 WADC. In fact, such violation was found in the following circumstances:

- CAS 2008/A/1572, 1632 & 1659: the CAS panel established that the samples collected from an athlete on different occasions did in fact not stem from the same person, but that a doubleganger was employed;
- CAS 2008/A/1718 & 1724: the CAS panel found that the out-of-competition samples provided by the athletes were not those of the Athletes;

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10 "*Attempt: intentional involvement in conduct that constitutes a substantial step in a sequence designed to culminate in the commission of an anti-doping rule violation, except in the case of withdrawal of the attempt before discovery by an uninvolved third party*" (Brazilian original: "*Tentativa: envolvimento intencional em conduta que constitui etapa substancial de uma sequência planejada para culminar na prática de uma violação de regra antidopagem, salvo em caso de desistência da tentativa antes da descoberta por terceiro não envolvido*").

- CAS 2015/A/4128: the athlete submitted a falsified medical report claiming that a severe haemorrhage caused by a road accident and that the doctor treated her with an EPO injection. The CAS panel found that the submission of fabricated evidence constituted "*Tampering*", because it was a deliberate act intended to mislead the results management process and to justify a positive test result. The panel emphasized that the athlete's actions fundamentally subverted the disciplinary process by introducing false documentation designed to undermine the integrity of the investigation and affect its outcome;
- CAS 2016/A/4700: the CAS panel found that trying to persuade the doping control officer that a substitute athlete was in fact the real athlete selected to be tested, respectively attempting to persuade the doping control officer to test another athlete instead, was an effort to tamper with the doping control process within the meaning of this form of antidoping rule violation;
- CAS 2017/A/4937: the CAS panel considered whether a simple lie could constitute "*Tampering*". The Panel concluded that while dishonesty may be relevant, it does not automatically amount to "*Tampering*". The decision emphasized that "*Tampering*" requires an intentional and substantial effort to obstruct the doping control process: telling a lie does not equate to committing "fraud" or providing "fraudulent information". The CAS panel underlined the importance of considering the extent of the conduct aimed at concealing the truth in order to determine whether there was an intent to subvert the process; therefore, a simple lie, on its own, was deemed insufficient to interfere with, obstruct or delay an antidoping proceeding;
- CAS 2017/A/5142: it was held that the deliberate contamination of a urine sample with a substance was likely to undermine the effectiveness of doping control tests conducted on a sample and was prohibited in order to protect the integrity and effectiveness of a doping control process;
- CAS 2018/A/6047: the CAS panel found that offering a bribe to a DCO for the replacement of a sample was an attempt to interfere with the doping control;
- CAS 2021/A/7983 & 8059: the athlete altered the date on a document evidencing the day of a medical intervention in an attempt to justify her failure to respond to a doping control. The CAS panel found that this manipulation directly impacted the antidoping process by misleading the investigation and attempting to evade accountability for a missed test. The panel concluded that the athlete's actions amounted to "*Tampering*", because they represented an intentional attempt to delay and obstruct the results management process through the submission of false information;
- CAS 2022/ADD/49: the CAS antidoping judge concluded that that the filing of erroneous whereabouts information on the ADAMS system was done knowingly by the athlete, and due to the fact that this happened on a number of consecutive occasions and despite advice given by the DCO to the athlete to amend his ADAMS whereabouts information, such violation amounted to "*Tampering*".

123. In summary, according to this CAS Panel, these decisions collectively establish that "*Tampering*" under Article 2.5 WADC involves conduct that goes beyond providing false

information, lying or being rude. It requires an intentional act that materially subverts or obstructs the doping control process, such as delaying an investigation, affecting results management, or undermining the integrity of the disciplinary proceedings.

cc) The actions imputed to the Athlete

124. In the opinion of this CAS Panel, the actions of the Athlete, taken as a whole, but also in their individual manifestations, do not meet this threshold and cannot be classified as "*Tampering*" under the WADC (and the CBA).

125. The actions imputed to the Athlete consist in:

i. the failure of the Athlete to report to the doping control station upon notification: according to the Respondents, the Athlete had no justification and received no authorization (which he did not even request) to delay the doping control of which he was notified;

ii. the lack of escort: the Athlete remained unsupervised by the DCOs for over 5 hours, from the moment of notification to the completion of the Test, and any supposed difficulties to chaperoning caused by the TC's structure do not excuse the Athlete's personal responsibility;

iii. other actions such as his disrespectful attitude towards the DCOs, the turning of his back when passing the urine sample, the aborted (but indeed not seriously made) first attempt to provide a urine sample, the leaving of the urine sample unsealed on a table after his second attempt, his behaviour when filling out the DCF: all those actions allegedly show the intention of the Athlete to subvert the doping control process.

126. The Panel remarks initially that none of those alleged matters of conduct correspond to the "typified" (but not exhaustive) examples of "*Tampering*" listed in its definition by the WADC: the Athlete did not alter the identification numbers on a DCF during testing, did not break the B bottle at the time of B Sample analysis (or any bottle at any time), did not alter a sample by adding a foreign substance, did not intimidate or attempted to intimidate a potential witness or a witness who provided testimony or information in the doping control process. The actions imputed to the Player were alleged to have a different impact on the doping control: it is in fact the Respondents' submission that by his actions the Athlete interfered with the process in order to avoid a positive test, by delaying the control, remaining unsupervised, by trying to hide the production of the urine when passing the sample or to create a potential procedural issue by leaving the sample unsealed on a table for some minutes.

127. This CAS Panel will examine in sequence the conducts imputed to the Athlete, starting from the Athlete's failure to immediately report to the doping control station and the lack of escort.

dd) The Athlete's duty to submit to sample collection and to remain under supervision

128. Several provisions of the ISTI have been invoked to show that the Athlete tried to subvert the doping control process by the mentioned actions. For instance, reference was made to Article 5.4.1, which provides, among the Athlete's responsibilities, the requirement to remain within continuous observation of the DCO/chaperone at all times, from the moment initial contact is made to the completion of the procedure; to Article 5.4.2, pursuant to which the DCO/chaperone shall keep the athlete under observation at all times in the period between the initial contact and the completion of the control; to Article 5.4.5, which provides that a request for delay shall be rejected, if it is not possible for the athlete to be continuously observed during such delay.

129. This CAS Panel agrees that immediate reporting to the doping control station and continuous supervision is a necessary requirement of doping controls, as it is intended to guarantee the integrity and reliability of the control. It notes, however, that the foregoing is premised on essential conditions: the proper notification of the athlete in question; and the lack of an authorization to postpone the presentation to the doping control station.

130. The notification process is described by Article 5 of the ISTI, with rules intended to ensure (also) that the rights of an athlete, who has been selected for testing, are maintained (Article 5.1). The main activities relating to the notification by the DCO include (a) locating the athlete, (b) informing him that he has been selected for testing and of his rights and responsibilities, and (c) the athlete's continuous chaperoning from the initial contact to his arrival to the doping control station (Article 5.2).

131. The ISTI provides indeed for a notification of the doping control to the athlete in question directly by the DCO or chaperone. Assistance by a third party can be sought, but only in limited circumstances: in respect of athletes with impairment, of athletes who are minor, and when required to assist the sample collection personal to identify and notify the athlete (Article 5.3.7). In any case, "*should a third party be required to be notified prior to notification, the third party should be accompanied by the DCO or Chaperone to notify the athlete*" (Comment to Article 5.3.7 of the ISTI).

132. Article 5.4.1 then describes the information to be given to the Athlete upon notification. In fact, when initial contact is made, DCO/chaperone must ensure that the athlete is informed that (a) he is required to undergo a sample collection; (b) of the authority under which the Sample collection is to be conducted; (c) of the type of sample collection and any conditions that need to be adhered to prior to the sample collection; (d) of the athlete's rights, including the right to have a representative, to ask for additional information about the collection process and to request a delay in reporting to the doping control station for valid reasons; (e) of the athlete's responsibilities, including the requirement to remain within continuous observation of the DCO/chaperone at all times, to comply with the collection procedures and of the possible consequences of a failure to comply, and to report immediately for sample collection, unless there are valid reasons for a delay; (f) of the location of the doping control station; (g) that should the athlete choose to consume food or fluids prior to providing a sample, he would do so at his own risk; (h) not to hydrate excessively, since this may delay the production of a suitable sample; and (i) that any urine sample provided by the athlete to the sample collection personnel should be the first urine passed by the athlete subsequent to notification.

133. The possibility to postpone the test is contemplated by Article 5.4.4 of the ISTI. Under such provision, the DCO/chaperone may at their discretion consider any reasonable third-party request or any request by the athlete for permission to delay reporting to the doping control station following acknowledgment and acceptance of notification, and/or to leave the doping control station temporarily after arrival. Delayed reporting to, or temporary departure from, the doping control station may be permitted for the following activities, with respect to out-of-competition testing: (i) locating a representative; (ii) completing a training session; (iii) receiving necessary medical treatment; (iv) obtaining photo identification; or (v) any other reasonable circumstances, as determined by the DCO, taking into account any instructions of the testing authority. However, it is established that the DCO/chaperone may grant such permission only if the athlete can be continuously chaperoned and kept under continuous observation during the delay.

134. The examination of the events on the day of the Test shows that the described ISTI procedures were not followed. In fact:

i. the alleged "notification" of the doping control was not made directly by the DCOs to the Athlete. It is in fact undisputed that the DCOs made a first direct contact with the Athlete only when he was on his way to the cafeteria for lunch. Before that moment, the DCOs made contacts with the Athlete only through Dr Tannure, who informed the Player of the Test: the DCOs did not accompany Dr Tannure to meet the Athlete, and did not receive a refusal to directly locate the Athlete in the TC: they actually not even requested to be allowed to go with Dr Tannure to reach the Athlete where he was staying. It is true that through Dr Tannure the Athlete became aware of the Test, but no rule in the ISTI, or in the WADC, obliged him to immediately reach the doping control station in the absence of a formal notification, or at least of an explicit request by the DCOs to immediately report to the doping control station for testing. At the hearing, the Athlete explicitly declared that, if ordered, he would have reached the doping control station without delay. Therefore, the Athlete's omission to present himself to the doping control station does not constitute a subversion of the doping control process (whether it amounts to avoidance or failure to submit will be considered below: §§ 141-147). The DCO admitted these facts when questioned and that the form of notice was not in accordance with the ISTI, but explained that this is just how it has been done in Brazilian football.

ii. the same applies, in principle, with respect to the moment the DCOs made contact with the Athlete, *i.e*. when he walked by the doping control station in order to reach the cafeteria. It is in fact undisputed that also on that occasion the Player was not notified under the ISTI. One could argue that on that occasion one should not apply an overly formalistic attitude, considering that the Athlete was experienced (with over 30 doping tests in the past) and considering that he knew through Dr Tannure that he had been selected for doping control. Be it as it may, it is uncontested that there was only a brief verbal exchange between the Athlete and the DCO and that there was no firm and clear order by the DCO to the Athlete to stop and immediately provide a urine sample;

iii. in the same way, in the absence of a notification, the Athlete's obligations to request

an authorization, upon the showing of a valid justification, to delay the doping control, and to remain under constant supervision after the notification, were not triggered;

iv. in any case, assuming that the "notification" of the Test to the Athlete took place through Dr Tannure, it is uncontroversial that the DCOs, when being informed by Dr Tannure of the Athlete's reasons for not reporting to the doping control station, did not react in any way. More particularly, they did not accompany Dr Tannure to see the Athlete, they did not verify the justification advanced by the Athlete for failing to report to the doping control station, they did not request Dr Tannure to immediately bring the Athlete to the doping control station or did not inform Dr Tannure of the need to continuously supervise the Athlete supervision. Furthermore, the DCOs did not make it clear to either the Athlete or Dr Tannure that a failure to comply with any of the above obligations would be tantamount to an antidoping rule violation.

135. On such basis, it cannot be accepted that the Athlete, by not reporting immediately to the DCOs and by postponing the control for a period in which he remained unsupervised, took a "*substantial step in a course of conduct planned*" to subvert the doping control. Taking into consideration the "tolerant" actions of the DCOs, this CAS Panel finds that it cannot be established that the Athlete engaged in a conduct which he knew constituted an antidoping rule violation (under Article 122 CBA – Article 2.5 WADC) or knew that there was a significant risk that the conduct might constitute or result in such antidoping rule violation and manifestly disregarded that risk. The process was flawed from the start.

136. The Panel is aware of the precedent (CAS 2008/A/1557, Award of 29 January 2009) invoked by the First Respondent to support its case that the Athlete committed the ADRV, since in that case the players in question were sanctioned (indeed, for the violation of Article 2.3 and not of Art. 2.5 of the WADC) because they arrived at the doping control station with a delay (of 25 minutes) and they remained without supervision for most of that period. However, such conclusion was reached on the basis of the finding that the form of notification used in that situation was in line with the (then) practice in the Italian football. In addition, the Panel notes that in a subsequent procedure upon a review of the question whether the players in question were aware of their duties with respect to the applicable antidoping procedure, the CAS panel revoked the sanction previously issued (CAS 2008/A/1557, Award of 27 July 2009).

dd) The Athlete's disrespectful attitude

137. According to the Respondents, other actions displayed by the Athlete also show the latter's intention to subvert the doping control process. Such actions include his disrespectful attitude towards the DCOs, the turning of his back when passing the urine sample, the aborted (but indeed not seriously made) first attempt to provide a urine sample, the leaving of the urine sample unsealed on a table after his second attempt, his behaviour when the DCF was filled it.

138. This CAS Panel finds that the above actions are clearly an example of offensive conduct

towards the DCOs (for which the Athlete should be blamed), but these actions do not meet the (fairly high) threshold necessary to assume an attempt to subvert the doping control. In addition, this CAS Panel notes that some of those actions were not positively established. For instance, Mr Carvalho confirmed at the hearing that he had an unobstructed view of the urine leaving the Athlete's body, when the second attempt to collect the sample was made. In addition, it has to be noted that, in the event of doubts as to the origin or authenticity of the sample (as possibly affected by the leaving of the unsealed urine container on a table), the DCOs could request the Athlete to provide an additional sample (Article 7.4.3 of the ISTI). In the case at hand, however, they did not order a further sample. In the same way, the filling of the DCF with "dubious data" was not established, however strange the Athlete's telephone number may seem.

139. Overall, this CAS Panel notes that the reasons adduced by the First Respondent to find a motive for the Athlete's actions are not convincing. This CAS Panel in fact remarks that, even assuming that the delay of around 4 hours to provide the blood sample could objectively prevent the detection of GH (a point which was disputed by Professor Cameron), it appears implausible that the Athlete was aware of the fact that the taking of the blood sample was specifically intended for the search of GH "isoforms" (or that other players who were controlled on the day of the Test had remarked the point and later informed the Athlete) and that GH "isoforms" could be detected only within a short window of time after the administration. Nor was it submitted that he was informed of this circumstance by Dr Tannure (who could be deemed to be aware of the purpose of the Test and of the peculiar limits to the detection of GH "isoforms", but was never questioned on the point or investigated, at least for complicity). The absence of the plausibility of this factual basis makes the hearing of the experts irrelevant.

140. In summary, this CAS Panel finds that the Athlete did not commit "*Attempted Tampering*" under Article 122 of the CBA (Article 2.5 of the WADC).

ii. Is the Athlete responsible of a violation under Article 120 of the CBA (Article 2.3 of the WADC)?

141. According to the First Respondent, the actions of the Athlete, if found not to be an infringement of Article 122 of the CBA (Article 2.5 of the WADC), constitute a violation under Article 120 of the CBA (Article 2.3 of the WADC). The Appellant accepts the power of this CAS Panel to review in the present *de novo* proceedings his responsibility also with respect to Article 120 of the CBA, despite the fact that he was originally charged based on Article 122 of the CBA only by the Brazilian antidoping authorities). However, the Appellant submits that the prerequisites of Article 120 of the CBA are not fulfilled.

142. Pursuant to Article 120 ["*Evasion, refusal, or failure to submit to sample collection*"][11] of the CBA, it is an antidoping rule violation the:

"*Evasion; refusal or failure to submit to a sample collection, without valid justification, after*

[11] Brazilian original: "*Evasão; recusa ou falha em se submeter a uma coleta de amostras, sem justificativa válida, após notificação por pessoa devidamente autorizada*".

notification by a duly authorized person."

143. Article 120 of the CBA matches *verbatim* Article 2.3 of the WADC, which qualifies "*Evading, Refusing or Failing to Submit to Sample Collection by an Athlete*" as an antidoping rule violation:

"*Evading Sample collection; or refusing or failing to submit to Sample collection without compelling justification after notification by a duly authorized Person*"

144. This CAS Panel finds that, for the same reasons explained above with respect to the alleged antidoping rule violation under Article 122 of the CBA (Article 2.5 of the WADC), the Athlete cannot be held responsible of the infringement contemplated by Article 120 of the CBA (Article 2.3 of the WADC).

145. This CAS Panel is aware that a violation of "failure to submit" can be established even if the athlete eventually provided a sample (CAS 2008/A/1557, Award of 29 January 2009): the fact, therefore, that the Athlete in the end reported to the doping control station and underwent the Test would not in itself be a reason to exclude the occurrence of that violation. This CAS Panel, however, notes that, as expressly indicated by Article 120 of the CBA (Article 2.3 of the WADC), a "failure to submit" violation can be found only (i) "*after notification by a duly authorized Person*" and (ii) if the Athlete cannot show that he had a "*compelling justification*". In that connection, this CAS Panel finds it relevant that:

i. the "notification" of the doping control was not made to the Athlete by a "*duly authorized Person*";

ii. assuming that the "notification" of the Test to the Athlete took place through Dr Tannure, the DCOs, when informed of the reasons for the Athlete's failure to immediately report to the doping control station, adopted a "tolerant" approach.

146. On such basis, it cannot be considered that the Athlete, by not reporting immediately to the DCOs and by postponing the control for a period in which he remained unsupervised, engaged in a conduct which he knew constituted an antidoping rule violation under Article 120 of the CBA (Article 2.3 of the WADC) or knew that there was a significant risk that the conduct might constitute or result in such antidoping rule violation and manifestly disregarded that risk.

147. In summary, this CAS Panel finds that the Athlete is not responsible for "*Evading, Refusing or Failing to Submit to Sample Collection*" under Article 120 of the CBA (Article 2.3 of the WADC).

iii. What is the sanction to be applied to the Player?

148. In light of the foregoing considerations, this CAS Panel finds that no sanction has to be imposed on the Player.

B. Conclusion

149. In conclusion, this CAS Panel finds that the Appeal has to be granted and that the Appealed Decision is to be set aside.

150. On a final note, the CAS Panel wishes to emphasize the following:

i. the Athlete's behaviour on 8 April 2023 was completely uncooperative. From the evidence on file it follows that the Athlete was angry that he had been selected for doping control. He felt targeted by the Brazilian antidoping authorities, who had selected him repeatedly for doping control, *i.e.* much more often than his teammates. This also follows from the note made by the Athlete on the DCF, where he stated "*it is the last one that I do*", and "*why I am always chosen*". He, thus, felt treated unfairly. At the hearing he further stated that the DCOs treated him with disrespect. No evidence was advanced to back this allegation, however;

ii. as a result of the above, the Athlete tried to make the DCOs' life difficult. This follows from the timing of the events. The Athlete took the blood test approximately 3½ hours after the last blood test of his teammates and the urine test close to 3 hours after the last urine test of his teammates. It is true that the Athlete advanced a series of reasons for this delay. However, these explanations leave behind a bitter taste in light of the Athlete's comments on the DCF and because the DCOs recorded on various reports that the Athlete told them that he would make them wait. Be it as it may, this CAS Panel observes that the Athlete avoided any proactive steps to speed up the doping control process (unlike his teammates). Being an experienced athlete, he knew perfectly well what the various steps of an antidoping control were. However, he used various possibilities to delay the process by not reporting to the doping control station, finishing the physiotherapy first, starting the training session, going to lunch, ignoring the attempts of the DCOs to speak to him, treating them with disrespect, aborting a first attempt for sample collection, going to his room to sleep and – when coming back for the second attempt – ignoring the directions given by the DCOs;

iii. such behaviour could have constituted an antidoping rule violation, had the DCOs notified the Athlete properly and/or had the DCOs adopted a more robust approach by putting the Athlete clearly on guard and advising him that they would not tolerate any further delays. The DCOs, however, chose a different path in order not to escalate things. The behaviour of the Athlete, however unacceptable, does not reach the threshold of an anti-doping rule violation. It is for this very reason that the WADC encourages antidoping organizations to adopt a Code of Conduct in order to sanction an athlete's obstructive and disrespectful behaviour below the threshold of an antidoping rule violation. This CAS Panel observes that the Brazilian antidoping authorities have chosen not to implement such Code of Conduct;

iv. the case at hand shows that a "cultural" problem may exist in Brazilian football, as it concerns out of competition anti-doping controls. The latter tolerates doping controls but does not support the important tasks of the Brazilian antidoping authorities. Dr Tannure is a perfect example of this attitude. The latter at the hearing spread a – completely unsubstantiated conspiracy – theory according to which the doping control performed on the Club's team was purposefully made the day prior

to an important match to disrupt the team's preparation and to put the team at a disadvantage. This is of course nonsensical. A further example of this attitude are the restrictions imposed by the Club to the DCO to access large areas of the TC, thereby making it very difficult for the DCOs to notify the athletes of an antidoping control or chaperone them. The DCOs have accepted such harassing conduct of the Club although they should have objected to these restrictions. At the hearing, this CAS Panel heard the testimony of witnesses according to which the above-described difficulties are not exceptions, but rather the rule when collecting samples in football clubs. This CAS Panel is not in a condition to verify the accuracy of those general statements. However, it notes that the DCOs and, more in general, the antidoping authorities must demand respect from all entities involved in football (clubs, players, support staff) and that clubs, players and support staff must pay respect to the DCOs. For instance, limiting the activities (such as restrictions to access to the training centres) beyond what is strictly necessary according to the antidoping rules, should neither be allowed nor be tolerated; polite behaviour should be followed and demanded; directions by the DCOs should be followed and obstructions to cooperation should be stopped and prevented from the outset. As previously mentioned, the respect of the activity of the antidoping authorities is of essence to the proper functioning of the system. All entities involved must recognize this as a starting point.

XI. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Gabriel Barbosa Almeida on 2 April 2024 against the decision rendered on 28 March 2024 by the Brazilian Anti-Doping Tribunal is granted.

2. The decision rendered on 28 March 2024 by the Brazilian Anti-Doping Tribunal set aside.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 4 July 2025

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
President of the Panel

Jeffrey G. Benz
Arbitrator

Ulrich Haas
Arbitrator