



Tribunal Arbitral du Sport
Court of Arbitration for Sport

By email

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Lausanne, 29 July 2015/BN/ak

Re: CAS 2014/A/3845 WADA v. Confederação Brasileira de Futebol (CBF) & Mr. Michael Vinicius Silva de Moraes

Dear Sirs,

Please find enclosed a copy of the Consent Award issued by the Court of Arbitration for Sport in this procedure.

You will receive an original copy of the Award, signed by the Panel, in due course.

In accordance with Article R59 of the Code of Sports-related Arbitration, the attached award is not confidential and can be published in its entirety by the CAS. If the parties consider that any of the information contained in the award should remain confidential, they should send a request, with grounds, to the CAS by **7 August 2015** in order that such information could potentially be removed, to the extent that such removal does not affect the meaning or the comprehension of the decision.

Please be advised that I remain at the parties' disposal for any further information.

Yours faithfully,

Brent J. NOWICKI
Counsel to the CAS

Enc.
cc: Panel



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2014/A/3845 WADA v. Confederação Brasileira de Futebol (CBF) & Mr. Michael Vinicius Silva de Moraes

CONSENT AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Matthew J. Mitten, Professor of Law in Milwaukee, USA
Arbitrators: Mr. Patrice M. Brunet, Attorney-at-law in Montreal, Canada
Mr. Juan Pablo Arriagada Aljaro, Attorney-at-law in Santiago, Chile

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Mr. Ross Wenzel and Mr. Yvan Henzer of Carrard & Associés, Lausanne, Switzerland

Appellant

and

Confederação Brasileira de Futebol (CBF), Rio de Janeiro, Brazil

Represented by Mr. Bichara Abidao Neto, Mr. Marcos Motta, Mr. Pedro Fida, and Mr. Fernando Guitti of Bichara e Motta, Rio de Janeiro, Brazil

First Respondent

Mr. Michael Vinicius Silva de Moraes, São Francisco de Sales, Minas Gerais, Brazil

Represented by Mr. Daniel Cravo Souza of Cravo, Pastl, Balbuena, Porto Alegre, Brazil

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency (the “Appellant” or “WADA”) is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA is an independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.
2. The Confederação Brasileira de Futebol (the “CBF” or “First Respondent”) is the governing body of football in Brazil.
3. Mr. Michael Vinicius Silva de Moraes (the “Athlete” or the “Second Respondent”) is a professional football player affiliated with the CBF.

II. FACTUAL BACKGROUND

A. Background Facts

4. A summary of the factual background of the case, as it has been presented by the Parties in the course of the present proceedings, is as follows.
5. On 6 April 2013, the Athlete was subjected to an in-competition anti-doping control test (urine), which resulted in his positive test for Benzoyllecgonine, a metabolite of cocaine. This substance is classified under “S6” (Stimulants) on the 2013 World Anti-Doping Agency’s Prohibited List and its presence is tested for during in-competition testing. Cocaine is not a specified substance.
6. On 17 May 2013, the Court of Sports Justice of the State of Rio de Janeiro (TJD/RJ) imposed a provisional suspension on the Athlete.
7. On 5 September 2013, the Superior Court of Sports Justice in Football (the “STJD”) rendered a decision regarding the Athlete’s anti-doping rule violation and imposed a 16-month period of ineligibility on the Athlete, with the possibility to reduce this sanction by half (i.e., 8 months) provided the Athlete underwent monthly tests to prove he was drug free and he gave monthly lectures on drug prevention to his club’s youth division.
8. By decision dated 16 January 2014, the STJD authorized the Athlete “to return to fully exercising his professional activity without any restriction” because he fulfilled the foregoing conditions to reduce his sanction to 8 months and required him to undergo monthly drug tests to prove he is not using prohibited substances for the remainder of his suspended sentence (i.e. 8 months), failing which the original 16-month suspension would be reinstated (the “Appealed Decision”).

B. Proceedings before the Court of Arbitration for Sport

9. On 5 December 2014, WADA filed its statement of appeal at the Court of Arbitration for Sport (the “CAS”) against the CBF and the Athlete with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). In its statement of appeal, WADA nominated Mr. Patrice Brunet as arbitrator.

10. On 16 December 2014, WADA filed its appeal brief in accordance with Article R51 of the Code.
11. On 12 January 2015, both the CBF and Athlete filed their respective answers in accordance with Article R55 of the Code.
12. On 23 January 2015, the CAS Court Office confirmed that the Respondents had mutually nominated Mr. Juan Pablo Arriagada Aljaro as arbitrator.
13. On 10 February 2015, the parties were advised on behalf of the President of the CAS Appeals Arbitration Division that the Panel appointed to decide this appeal was as follows:

President: Prof. Matthew J. Mitten, professor of law in Milwaukee, Wisconsin, USA
Arbitrators: Mr. Patrice M. Brunet, attorney-at-law in Montreal, Canada
Mr. Juan Pablo Arriagada Aljaro, attorney-at-law in Santiago, Chile
14. On 6 March 2015, the parties signed and returned the Order of Procedure in this appeal.
15. On 10 March 2015, a hearing was held in Rio de Janeiro, Brazil. The Panel was assisted by Mr. Brent J. Nowicki, counsel to the CAS, and the following individuals attended on behalf of the parties:

For the Appellant: Mr. Yvan Henzer (counsel) and Mr. Julien Sieveking (Chief Legal Manager – WADA)

For the First Respondent: Mr. Stefano Malvestio (counsel) and Mr. Fernando Guitti (counsel)

For the Second Respondent: Mr. Daniel Cravo Sousa (counsel), Mrs. Paula de Castro Moreira Sordi (counsel), Mr. Luis Eduardo, Guimaraes Barbosa (counsel), Ms. Anna Vianna (interpreter), Mr. Kevin Arnold (counsel), and Mr. Michael Vinicius Dilva de Moraes (athlete).
16. During the course of the hearing, the parties advised the Panel that they had agreed to settle this dispute and requested that the Panel confirm the parties' agreement in a consent arbitral award (the "Settlement Agreement").

III. JURISDICTION

17. Article R47 of the Code of Sports-related Arbitration (the "CAS Code") states that "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*"

18. The Panel notes that all Parties acknowledge and recognize CAS jurisdiction to render a Consent Award incorporating the material and relevant terms of the Settlement Agreement.
19. Moreover, the Panel notes that the Parties signed the Order of Procedure, in which they expressly consented to CAS jurisdiction.
20. Therefore, the Panel finds that it has jurisdiction to issue this Consent Award.

IV. THE PARTIES' SETTLEMENT AGREEMENT

21. The Settlement Agreement signed by the Parties on 16 March 2015 provides as follows:

For the purposes of the following settlement, CBF hereby confirms that Mr Michael Vinicius Silva De Moraes was listed in CBF games between 23 April and 22 October 2014;

Now, the parties have reached the following agreement:

I. Exclusively for the purposes of this settlement, CBF withdraws the objection regarding its standing to be sued.

II. Mr Moraes hereby accepts to serve a two-year period of ineligibility, which will end on 31 August 2015. Mr Moraes is therefore allowed to compete as of 1st September 2015. WADA accepts that the period of ineligibility ends on 31 August 2015.

III. From now on and until 31 August 2015, Mr Moraes is allowed to train with his team in application of the 2015 WADA Code.

IV. The Respondents bear all the costs associated with the CAS proceedings in equal shares. The advance of costs already paid by Mr Moraes will be taken into account.

V. The Parties do not request any compensation for their legal costs.

VI. Given this settlement agreement, WADA hereby withdraws its appeal.

VII. The Parties request the CAS Panel to issue a Consent Award based on this settlement agreement.

V. ENDORSEMENT OF THE SETTLEMENT AGREEMENT

22. Under Swiss Law, an arbitration tribunal has authority to issue an award embodying the terms of a settlement agreement concluded by the parties if the contesting parties agree to a termination of their dispute in this manner. The ratification of their settlement and its incorporation into an award by consent serves the purpose of enabling the enforcement of their agreement.

23. The Parties have requested the Panel to ratify and incorporate the above terms of the Settlement Agreement into a Consent Award. The Panel is required to verify the bona fide nature of the Settlement Agreement, to ensure it accurately reflects the intention of the Parties and is not the product of any fraud, and to confirm the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to their dispute.
24. After carefully reviewing the Settlement Agreement, the Panel finds no grounds to object or to disapprove of its terms and is satisfied that the Settlement Agreement constitutes a bona fide settlement of the present dispute.
25. In accordance with the mutual consent of the Parties, the Panel hereby directs the Parties to fully comply with the terms of the Settlement Agreement as set forth above. Given this conclusion, the Panel determines it is unnecessary for the Panel to consider the Parties' pre-settlement requests for relief and therefore any and all of those prayers for relief are rejected.
26. This Consent Award shall therefore terminate the present arbitration styled *CAS 2014/A/3845 WADA v. Confederação Brasileira de Futebol (CBF) & Mr. Michael Vinicius Silva de Moraes*.

VI. COSTS

27. The Parties agreed that the Respondents shall bear the entire arbitration costs arising from these proceedings. Each party has also agreed to bear its own legal and other costs. The Panel does not see any reason to deviate from the agreement reached by the Parties, which is therefore confirmed by this Consent Award.
28. The final amount of the costs of the arbitration proceedings shall be communicated separately to the Parties by the CAS Court Office in accordance with Article R64.4 of the Code.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Panel hereby ratifies the Settlement Agreement executed by the World Anti-Doping Agency, Confederação Brasileira de Futebol (CBF), and Mr. Michael Vinicius Silva de Moraes on 16 March 2015, which is incorporated into this Consent Award.
2. The arbitral procedure *CAS 2014/A/3845 WADA v. Confederação Brasileira de Futebol (CBF) & Mr. Michael Vinicius Silva de Moraes* is hereby terminated and deleted from the CAS roll.
3. Each party is hereby ordered to perform their respective obligations and duties in accordance with the Settlement Agreement.
4. The costs of the arbitration, which shall be determined and separately communicated to the parties by the CAS Court Office, shall be borne entirely by the Confederação Brasileira de Futebol (CBF) and Mr. Michael Vinicius Silva de Moraes.
5. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 29 July 2015

THE COURT OF ARBITRATION FOR SPORT



Prof. Matthew J. Mitten
President of the Panel