



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2020/A/6811 Federation Internationale de Football Association v. Maïke Lizabet Weber and Confederacion Sudamericana De Futbol (CONMEBOL)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Matthew J. Mitten, Professor of Law, Chicago, Illinois, United States of America

Arbitrators: Mr Ricardo de Buen Rodriguez, Attorney-at-Law, Mexico City, Mexico
Mr Luiz Felipe Guimarães Santoro, Attorney-at-Law, São Paulo, Brazil

in the arbitration between

Federation Internationale de Football Association (FIFA), Switzerland

Represented by Mr Miguel Lietard Fernandez-Palacios, Director of Litigation, and Mr Jaime Cambreleng Contreras, Head of Litigation, FIFA, Zurich, Switzerland

Appellant

and

Maïke Lizabet Weber, Brazil

Represented by Mr Guilherme R. Marreto and Mr Vinicius A.F.R. Cascone, Attorneys-at-Law, Cascone Advogados Associados, Campinas, Brazil

First Respondent

Confederacion Sudamericana De Futbol (CONMEBOL), Paraguay

Represented by Mr Monserrat Jimenez, General Counsel, CONMEBOL, Luque, Paraguay

Second Respondent

I. PARTIES

1. The Fédération Internationale de Football Association (“FIFA” or the “Appellant”) is the international federation governing the sport of football worldwide. It is based in Zurich, Switzerland.
2. Ms Maike Lizabet Weber (the “Player” or “First Respondent”) is a Brazilian professional football player, specifically a goalkeeper, born on 18 December 1992.
3. The Confederacion Sudamericana De Futbol (“CONMEBOL” or the “Second Respondent”) is the governing body of South American football. It is based in Luque, Paraguay.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence as presented before and at the hearing. Additional facts and allegations found in the parties’ written submission, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 22 August 2018, the Player provided a urine sample pursuant to a doping control in connection with a Brazilian National Championship 2018 match between the Brazilian clubs Esporte Clube Iranduba (the Player’s team) and Kindermann SC. Her urine sample tested negative for any substances in the 2018 WADA Prohibited List.
6. On 18 November 2018, the Player provided a urine sample pursuant to a doping control in connection with a CONMEBOL Libertadores Feminino Brazil 2018 match between the Player’s team and a Venezuelan club Flor de Patria. In her doping control form, she did not list her use of any medications or supplements prior to or at the time of her sample collection.
7. The analysis of the Player’s “A-Sample” was carried out by the UCLA Olympic Analytical Laboratory (USA) (the “Laboratory”), which reported an Adverse Analytical Finding (“AAF”) of 6ng/ml for the prohibited substance “metabolite 4-amino-6-chloro-1,3-benzenedisulphonamide,” a metabolite of Thiazides in the category “S5. Diuretics and Masking Agents” in the 2018 WADA Prohibited List. The usage of Thiazides, a “specified substance,” is prohibited at all times (i.e., both in-competition and out-of-competition).
8. On 23 January 2019, the Player was notified of the AAF and granted a 12-hour deadline to request analysis of her “B-Sample” or the re-testing of her “A-Sample.” Acting on her behalf, the Player’s team requested analysis of her “B-Sample” and was informed that the analysis would be conducted on 7 February 2019. The Player chose not to

attend the opening of her “B-Sample” or to request that a representative be present on her behalf.

9. On 12 February 2019, the CONMEBOL Antidoping Unit notified the Player that the Laboratory’s analysis of her “B-Sample” confirmed the AAF in her urine sample.
10. Thereafter, the Player suspected that the source of the Thiazide that resulted in her AAF was a contaminated bottle of Redufite, an herbal supplement given to her by a friend and former football club teammate, which she took to prevent fluid retention. Before taking Redufite for the first time (approximately one month before the 18 November 2018 doping control), she read its product label, which stated it contained only “natural” ingredients and did not list Thiazide or any other prohibited substances. Prior to using it, although she had available Internet access, the Player did not conduct any online research about Redufite or take any other precautions to ensure it did not contain any prohibited substances. After using it for less than one week, she stopped taking Redufite because it was causing her to experience nausea, a feeling of weakness, and several other sensory impairments.
11. Because of its potential adverse health effects, the sale of Redufite, which is purported to have body slimming and fat burning effects, is illegal in Brazil. Nevertheless, it could be obtained on the Brazilian black market around the time the Player claims that she took this product. Thiazide is not listed as an ingredient of Redufite. The Player did not have any laboratory tests conducted to determine if Redufite contains Thiazide or that the Redufite given to and consumed by her was contaminated with Thiazide because “she did not find any authorized [laboratory] in Brazil that performs this type of verification.” (Answer, p. 5).
12. After a preliminary hearing concerning the Player’s AAF, on 7 March 2019, CONMEBOL’s Disciplinary Unit opened disciplinary proceedings against the Player for an antidoping rule violation and the President of the CONMEBOL Disciplinary Tribunal provisionally suspended the Player.
13. Beginning on 7 March 2019 and continuing through 6 January 2020, the Player served a provisional suspension of ten (10) months.
14. From 7 January 2020 until 12 March 2020, the Player participated in games or matches for her Portuguese professional football club. When the football season was suspended on 13 March 2020 because of the Covid-19 pandemic, she engaged in football training from her home in Portugal. On 27 September 2020, she resumed playing games or matches for her Portuguese professional football club.

B. Proceedings before the CONMEBOL Disciplinary Tribunal

15. On 23 April 2019, a hearing was held before the CONMEBOL Disciplinary Tribunal, in which the Player and her counsel participated.
16. On 26 July 2019, the Disciplinary Tribunal issued its Operative Decision, which determined that the Player committed an anti-doping rule violation (ADRV) and

imposed a 10-month suspension on her pursuant to CONMEBOL Anti-Doping Regulations (CONMEBOL ADR).

17. On 2 December 2019, the Disciplinary Tribunal notified the Player and Respondent of its Reasoned Decision, which in relevant part and free English translation is summarized as follows:
 - the Player committed an ADRV because of the presence of the specified substance Thiazide in her system and its use pursuant to Articles 18.1 and 18.2 of the CONMEBOL ADR;
 - the source of the Thiazide is Redufite, a product that is banned in Brazil because of its severe health risks, including one death, which the Player used;
 - there is “*a certain degree of negligence on the part of the [Player]*” because she “*did not show the minimum diligence expected of an Player in order to ensure that no prohibited substance could enter her body*” (§19); therefore, Article 101 of the CONMEBOL ADR (if “*there was no guilty or negligent conduct, the applicable suspension will be null and void*”) is inapplicable;
 - applying Article 102 (b) of the CONMEBOL ADR (“*Reduction of sanctions for specific substances or contaminated products for infractions of Articles 18.1, 18.2 or 18.6*”), the Player has no significant fault or negligence for her ADRV because the Redufite label did not disclose Thiazide and other findings (§21); and
 - “*taking into consideration the circumstances of the case and the degree of fault and negligence of the [Player], the Tribunal considers it appropriate to impose a period of ineligibility of ten (10) months*” (§24), beginning on 7 March 2019.
18. On 16 December 2019, FIFA requested that CONMEBOL provide it with a copy of the complete file for this case.
19. On 22 January 2020, the CONMEBOL Disciplinary Unit sent a letter to FIFA with a link to the case file. Because the link could not be accessed, FIFA again requested that CONMEBOL provide it with the case file on 24 January 2020 and on 3 February 2020.
20. On 10 February 2020, the CONMEBOL Disciplinary Unit provided FIFA with the complete case file.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 2 March 2020, the Appellant filed its Statement of Appeal against the CONMEBOL Disciplinary Tribunal’s 2 December 2019 Reasoned Decision in accordance with Article R47 *et seq* of the Code of Sports-related Arbitration (the “Code”). In its Statement of Appeal, the Appellant nominated Mr. Ricardo de Buen Rodriguez as arbitrator.

22. In a 5 March 2020 letter, the CAS Court Office informed the parties that the Appellant choose English as the language of this arbitration proceeding and proposed that *“the language of the procedure remain in English but that any exhibits to the written submission in Spanish be maintained in their original format (i.e., Spanish) and other exhibits in Portuguese or any other language be translated (in whole, in part, or where necessary) into English.”* The Parties were invited to comment on this proposal within three (3) days from receipt of this letter, and the deadline for the filing of Appellant’s Appeal Brief was temporarily suspended.
23. On 8 March 2020, the Athlete agreed to the hybrid approach to the language of this procedure.
24. On 9 April 2020, following an agreed-upon extension of time, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
25. On 29 April 2020, following an agreed-upon extension of time, the Player filed her Answer in accordance with Article R55 of the Code.
26. On 11 May 2020, the CAS Court Office informed the Parties that the Panel appointed to decide on the present proceedings was constituted as follows:

President: Prof. Matthew J. Mitten, Professor in Chicago, USA

Arbitrators: Mr. Ricardo de Buen Rodriguez, Attorney-at-Law, Mexico City, Mexico
Mr Luiz Felipe Guimarães Santoro, Attorney-at-Law, São Paulo, Brazil
27. On 15 May 2020, following an agreed-upon extension of time, CONMEBOL filed its Answer in accordance with Article R55 of the Code.
28. On 12 October 2020, the CAS Court Office confirmed receipt of the Parties’ signed orders of procedure.
29. On 15 October 2020, Appellant objected to the Player’s 1 October 2020 email communication stating that she intended to call two witnesses (Marlisa Wahlbrink and Samhia Grasielle Pereira Simao) during the hearing. It noted that her Answer stated: *“The requested party does not intend to listen to any expert or witness, believing that the facts presented fully demonstrate the total innocence of the Player.”* It asserted: *“Aside from the fact that the persons indicated in the First Respondent’s e-mail of 1 October 2020 have not even been mentioned in her answer – thereby contravening Article R55 CAS Code and impeding FIFA from being aware of their expected testimony –, as a matter of principle FIFA objects to the belated summoning of any witness, especially since there has been no explanation as to any exceptional circumstances having been met as per Article R56 CAS Code.”*
30. In a 17 October 2020 email, the Player responded by asserting: *“Initially, it is worth mentioning that the ‘exceptional circumstances’ mentioned by R56 of the Code are more than evident, since the hearing would be done in person, however, due to pandemic situations, it was decided that this would be by videoconference, severely*

altering the situation and possibility of hearing witnesses. . . . It is evident that the decision to change the hearing needs to generate a new deadline for the appointment of witnesses, which is why the Player has appointed witnesses who will be able to declare the care the Player has taken throughout her career. Finally, there is no way for the Appellant to claim ignorance of the witnesses or even their testimony, since the indicated witnesses have no technical character, having already been indicated in the process attributed by CONMEBOL, and their speeches in the sense of declaring that the Player always took proper care.”

31. On 19 October 2020, following various adjournments for travel and health restrictions because of the COVID-19 pandemic, the Panel held a hearing by videoconference. On behalf of the Respondent, Mr. Fernandez-Palacios and Mr. Cambreleng Contreras participated from Zurich (Switzerland). Ms. Weber participated from Portugal (her testimony was translated from Portuguese to English by Ms. Isabelle Moreno) along with her counsel Mr. Cascone, who was in Campinas (Brazil). On behalf of CONMEBOL, Messrs. Mariano Zavala, Luis Gomez, and Rodrigo Aquirre and its counsel Mr. Jimenez participated from Luque (Paraguay). The Panel members conducted the Hearing from their respective locations: Prof. Mitten (Chicago, USA); Mr. de Buen Rodriguez (Mexico City, Mexico); and Mr Guimarães Santoro (São Paulo, Brazil).
32. At the beginning of the hearing, the Parties’ respective counsel confirmed the Panel’s jurisdiction and that there was no objection to the constitution of the Panel. The Panel ruled that Appellant’s appeal admissible, thereby rejecting the Player’s contention that it was not timely filed. Pursuant to R44.3 of the Code, the Panel deemed it appropriate to enable the supplementation of the Player’s presentation of evidence by permitting Ms. Wahlbrink to testify during the hearing, while reserving its right to determine the weight her testimony should be given in resolving the dispositive issues in this case. The Player did not produce Ms. Pereira Simao as a witness at the hearing.
33. During the Hearing, Prof. Martial Saugy, Ms. Wahlbrink, and Ms. Weber testified. Before the hearing was closed, each of the Parties and their respective counsel acknowledged receiving a full and fair opportunity to be heard.

IV. SUBMISSIONS OF THE PARTIES

A. FIFA

34. The Appellant’s Appeal Brief contained the following requests for relief:

“CAS to issue an award on the merits:

(a) admitting this appeal;

(b) setting aside the Appealed Decision issued by the CONMEBOL Disciplinary Tribunal on 26 July 2019;

(c) imposing on Ms Maïke Lizabet Weber a period of ineligibility of twenty-four (24) months. The ten (10) month period of ineligibility already served by the Player as of 7 March 2019 shall be credited against the final sanction; and

(d) ordering CONMEBOL to make a substantial contribution to FIFA's legal and other costs."

35. The Appellant's submission, in essence, is as follows.

- *"[T]he case revolves around the sanction to which the Player shall be subjected, particularly in light of the absence of a realistic explanation on her part concerning the source of the Prohibited Substance detected in her samples, as well as on her more than significant fault or negligence."*
- *"In the absence of any reference to the Prohibited Substance on the container that could potentially explain how the Prohibited Substance entered her system, or of any other evidence to corroborate the Player's farfetched theory of contamination, . . . the Player's submissions concerning the use of Redufite and its supposed contamination with the Prohibited Substance have not been proven on a balance of probabilities and shall be rejected."*
- *"[T]he CONMEBOL Disciplinary Tribunal perversely evaluated the Player's degree of fault or negligence when reducing her period of ineligibility from the standard 24 months to a mere 10 months. Although the CONMEBOL Disciplinary Tribunal found that the Player's consumption of the Supplement included behaviors that fall within the scope of significant fault or negligence, it nevertheless chose to forego these objective elements of fault and reduce the sanctions based on elements other than fault in a manner completely at odds with the applicable regulations and CAS jurisprudence."*

B. The Player

36. The Player's Answer contained the following request for relief:

"CAS to issue [an] award on the [merits]:

- (a) the inadmissibility of the appeal presented, due to the loss of time, under the terms presented.*
- (b) In the case of admission, requires the maintenance of the stipulated penalty of 10 months of suspension, already served.*
- (c) That the other parties make the due contributions of costs, exempting the Player."*

37. The Player's submission, in essence, is as follows:

- *"[A] suspension of 10 (ten) months was determined [by the CONMEBOL Disciplinary Tribunal] as of March 7, 2019," which has already been served."*

- “[T]he decision handed down is in full agreement with the provisions of the codes of conduct, both from CONMEBOL, WADA and even FIFA, since it remained proven that the athlete had no fault in the ingestion of the substance, being totally error-induced, which is why it is impossible to penalize it with a still lenient sentence longer than the determined one.”
- “[T]he athlete suffered contamination through supplementation, since there is no mention on the label about the indicated substance, nor is it possible to find the substance on the internet as a contaminated product.”
- “[O]nce the origin has been proven and there is no mention of prohibited substances on the label of the product in question, contamination is characterized, demonstrating that that the athlete has no guilt or negligence in its contamination.”
- “[T]he appellant party [does not meet] the 21-day deadline to present its summary of the appeal.”

C. CONMEBOL

38. CONMEBOL’s Answer contained the following request for relief:

“respectfully requests this honourable CAS Panel:

- a) To dismiss the Appeal in full and to confirm the decision under appeal;*
- b) In any event, to charge the costs of the arbitration to the Appellant;*
- c) In any event, to order Appellant to pay CHF 10'000 as contribution to the expenses incurred by Second Respondent within the frame of the present CAS proceedings.”*

39. CONMEBOL’s submission, in essence, is as follows:

- *“[T]he appeal that has been filed does not provide valid legal motives to reject the judgement that the competent CONMEBOL disciplinary tribunal has rendered, after careful analysis of the facts and the application of legal rules in force.”*
- *“[T]he decision issued by CONMEBOL’s Tribunal strictly abides to the rule of law and CONMEBOL’s antidoping regulations.”*
- *“The key question that must be analyzed is whether the mitigating factors were considered and valued correctly.”*
- *“[T]he womens doping cannot be judged with the same standard as the mens, that is the reason the regulations give the possibility of extenuating responsibility on a case by case basis.”*

- *“Therefore, the decision and sanction imposed by CONMEBOL’s Disciplinary Tribunal is in line with its own regulations, and in accordance with the margin of discretion, therefore CAS must show utmost restraint in interfering such a decision.”*
- *“The [Athlete] took a prohibited substance and it was punished in accordingly with the regulations. For all these reasons, the present Appeal has to be dismissed.”*

V. JURISDICTION

40. Article R47 of the Code provides as follows:

“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.”

41. Article 58(5) of the FIFA Statutes provides as follows:

“FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations.”

42. In relevant part, Article 75 of the FIFA Antidoping Regulations (FIFA ADR) (*“Appeals against decisions regarding anti-doping rule violations, consequences, Provisional Suspensions, recognition of decisions and jurisdiction”*) provides as follows:

“A decision . . . imposing consequences or not imposing consequences for an antidoping rule violation . . . may be appealed exclusively as provided in arts 75 to 80.

1.

*Appeals involving International-Level Players or International Competitions
In cases arising from participation in an International Competition or in cases involving International-Level Players, a final decision within FIFA’s, the Confederation’s or the Association’s process may be appealed exclusively to CAS.*

...

3.

*Persons entitled to appeal
In cases under art. 75 par. 1 (Appeals involving International-Level Players or International Competitions), the following parties shall have the right to appeal to CAS: . . . (c) FIFA . . .”*

43. In their respective Answers, the Player “agrees with the CAS jurisdiction” and CONMEBOL states that jurisdiction is “not challenged.” In paragraph one of the 5 October 2020 Order of Procedure and at the beginning of the 19 October 2020 hearing, the parties confirmed the jurisdiction of the CAS Panel.

VI. ADMISSIBILITY

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

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”

45. Article 80(1) (“*Appeals to CAS*“) of the FIFA ADR provides as follows:

“1.

The time to file an appeal to CAS shall be 21 days from the date of receipt of the motivated decision in an official FIFA language by the appealing party. . . .

3.

. . .

b) Where FIFA appeals against a decision of an Association, Anti-Doping Organisation or Confederation to CAS under this chapter, FIFA’s time limits stipulated in art. 80 par. 1.1 shall start with the receipt of the relevant document(s) by the FIFA Anti-Doping Unit (antidoping@fifa.org).

4.

The time limits set out above shall start from the day following receipt of the relevant document.”

46. FIFA received the CONMEBOL Disciplinary Unit’s Reasoned Decision on 10 February 2020, and its appeal of this decision was filed with the CAS on 2 March 2020. Respondent’s appeal was filed within 21 days and is admissible pursuant to Article R49 of the CAS Code and Article 80 (1) of the FIFA ADR. Therefore, the Player’s assertion that this appeal is untimely and inadmissible is rejected.

VII. APPLICABLE LAW

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

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or

sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

48. Article 80(3) (a) of the FIFA ADR provides as follows:

“Where FIFA appeals against a decision of an Association, Anti-Doping Organisation or Confederation to CAS under this chapter, the applicable law for the proceeding shall be the FIFA regulations, in particular the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code”.

49. Pursuant to Article R58 of the CAS Code and Article 80(3) (a) of the FIFA ADR, the Panel will apply the relevant provisions of the FIFA ADR, and subsidiarily Swiss law because the Respondent is domiciled in Switzerland, to resolve the merits of this case. Accordingly, CONMEBOL’s unsupported and contrary contention that its Disciplinary Regulations (ed. 2019), and subsidiarily Paraguayan law, are applicable is rejected.

50. In accordance with Article 1(3) of the 2019 FIFA ADR and because neither the Player nor CONMEBOL contend that its requirements are not satisfied, the Panel will apply its provisions: “[...] *These Regulations also apply to previous facts if these Regulations are equally favourable or more favourable for the perpetrator of the facts and if the judicial bodies of FIFA are deciding on these facts after the Regulations have come into force . . .*”.

VIII. MERITS

51. In relevant part, Article R57 of the Code provides:

“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. . .”

52. It is undisputed that the Player committed an ADRV, which is a strict liability offense under FIFA ADR Articles 6 (1) and 7 (1). The Player did not cross-appeal the CONMEBOL Disciplinary Tribunal’s determination that she committed an ADRV because of the presence of metabolites of the specified substance Thiazide in her system and its use. Pursuant to FIFA ADR Article 6 (2), the *“presence of a Prohibited Substance or its Metabolites or Markers in a Player’s [‘A’] Sample”*, which is confirmed by *“analysis of the Player’s ‘B’ Sample”*, constitutes an ADRV. It also establishes the Player’s violation of FIFA ADR Article 7 (2) by the *“use”* of a *Prohibited Substance*, which is defined as the *“utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance”*. FIFA ADR (*“Definitions and Interpretations No. 73”*).

53. In relevant part, FIFA ADR Article 19 (*“Ineligibility for presence, Use or attempted Use, or Possession of a Prohibited Substance or Prohibited Method”*) provides as follows:

“The period of Ineligibility for a violation of arts 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample), 7 (Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method) or 11 (Possession of a Prohibited Substance or a Prohibited Method) shall be as follows, subject to potential elimination, reduction or suspension pursuant to arts 21 (Elimination of the Period of Ineligibility where there is No Fault or Negligence), 22 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) or 23 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault):

1.

The period of Ineligibility shall be four years where:

a) the anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional;

b) the anti-doping rule violation involves a Specified Substance and FIFA can establish that the anti-doping rule violation was intentional.

2.

If art. 19 par. 1 does not apply, the period of Ineligibility shall be two years.

3.

As used in arts 19 (Ineligibility for presence, Use or attempted Use, or Possession of a Prohibited Substance or Prohibited Method) and 20 (Ineligibility for other anti-doping rule violations), the term “intentional” is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. . . .”

54. The Player’s ADRV is the presence and usage of Thiazide, a specified substance. The Appellant does not contend that the Player committed an intentional ADRV, and the Panel was not presented with any evidence that she cheated or engaged in any conduct encompassed within the foregoing definition of an “intentional” ADRV. Therefore, Article 19(1) does not apply, and the Player’s presumptive period of Ineligibility is two years pursuant to Article 19(2).
55. The CONMEBOL Disciplinary Tribunal found that there is “a certain degree of negligence on the part of the [Player]” because she “did not show the minimum diligence expected of an Player in order to ensure that no prohibited substance could enter her body” (¶19); therefore, Article 101 of the CONMEBOL ADR (if “there was no guilty or negligent conduct, the applicable suspension will be null and void”) is inapplicable. Because the Player did not cross appeal this determination, Article 21 (“Elimination of the Period of Ineligibility where there is No Fault or Negligence”), which is the corresponding provision of the FIFA ADR, is inapplicable. CAS

2011/A/2495/2496/2497/2498 (to challenge before CAS a determination or ruling by a national anti-doping tribunal, “it would have been necessary for the Respondents to file a cross-appeal”); CAS 2016/A/4371 (“all factual determinations and rulings of the AAA Panel that have not been appealed by either party are finally decided and not subject to de novo review by this Panel”).

56. Neither the Player nor CONMEBOL contends that FIFA ADR Article 23 (*“Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault”*) is applicable based on the evidentiary record.
57. In relevant part, FIFA ADR Article 22 (*“Reduction of the period of Ineligibility based on No Significant Fault or Negligence”*) provides as follows:

“1.
Reduction of sanctions for Specified Substances or Contaminated Products for violations of art. 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample), 7 (Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method) or 11 (Possession of a Prohibited Substance or a Prohibited Method)

a) Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Player or other Person can establish No Significant Fault or Negligence, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Player’s or other Person’s degree of Fault.

b) Contaminated Products

In cases where the Player or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years’ Ineligibility, depending on the Player’s or other Person’s degree of Fault”.

58. Pursuant to the FIFA ADR’s *“Definitions and Interpretations No. 43”*, *“no significant fault or negligence”* is defined as follows:

“No Significant Fault or Negligence: the Player or other Person’s establishing that his Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of art. 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample), the Player must also establish how the Prohibited Substance entered his system”.

59. FIFA ADR Article 66(2) (*“Burdens and standards of proof”*) provides as follows:

“Where these Regulations place the burden of proof upon the Player or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability”.

60. Read together, FIFA ADR Articles 22 and 66(2) along with its definition of “*No Significant Fault or Negligence*” require the Player to prove by a balance of probability (i.e., more likely than not) 1) how Thiazide entered her system; and 2) she has no significant fault or negligence for its presence in her system for the Panel to reduce the presumptive two-year period of ineligibility for her ADRV.

A. Source of Prohibited Substance

61. The Player contends that the source of the Thiazide in her system was a contaminated container of Redufite, an herbal supplement she began using to prevent fluid retention one month before the 18 November 2018 doping control resulting in an AAF for a metabolite of Thiazides in her system and stopped using after one week (i.e., approximately three weeks before the collection of her urine sample). (Answer, pp. 4-5). Prior to using this supplement, she checked the label of its container, which did not list Thiazides as an ingredient. She contends: “*[A]ll [her] vitamin supplements or dietary supplements are controlled and extensively checked to avoid . . . the ingestion of any prohibited substance*”, and “*she had not ingested any type of adverse substance from those previously used in the period before the match*”. (Answer, p. 4).
62. Her Internet research regarding Redufite, which was conducted only after being informed of her AAF for Thiazides, did not find any evidence that this product actually contained or was contaminated with this substance, or that it was mislabeled by not listing it as an ingredient. The Player asserts: “*since there is no other possibility that [she] ingested the present substance, it remains evident that [she] was the victim of contamination of a food supplement or a possible fraud regarding the substances contained in the indicated product*”. (*Id.*).
63. In support of this contention, the Player relies on the definition of a “contaminated product” in the FIFA ADR, which is “a product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable internet search” (“*Definitions and Interpretations*” No.17) and argues as follows. “*In research on the internet it is not possible to verify the presence of the substance [i.e., Thiazides] verified in the product.*” (Answer, p. 5). She did not find any Brazilian laboratories that could verify that Redufite contained this substance. Because she “*has demonstrated the origin of the substance, as well as being willing to perform any tests with it during the process carried out by CONMEBOL*” and “*presented all the elements that were within her reach to assist the process, as well as the verification by all agents*”, she has satisfied this requirement. (Answer, pp. 11-12).
64. In its Answer, CONMEBOL does not address the issue of how Thiazides entered the Player’s system. During the hearing, it did not present any evidence that Redufite was the source of her AAF for Thiazides.

65. Noting “*the absence of a realistic explanation on her part concerning the source of the Prohibited Substance detected in her samples*”, the Appellant asserts that “*the CONMEBOL Disciplinary Tribunal blindly accepted the false premise put forth by the Player, according to which the origin of the [Thiazides] which led to the AAF was the use of an illegal supplement called Redufite*”. (Appeal Brief, ¶ 27-28). Based on the Player’s statements in her Answer that she stopped using Redufite three weeks before providing her sample and the expert testimony of Dr. Martial Saugy, the Appellant contends it is “*scientifically impossible*” that the source of her AAF for Thiazides was Redufite. (Appeal Brief, ¶53).
66. In his written testimony, Dr. Saugy stated it is not “*possible to test positive three weeks after the intake of a supplement contaminated with the prohibited substance [i.e., Thiazides]*” because it “*will be undetectable within less than 24 hours*”. (Respondent’s Exhibit 12, pp. 1-2). More specifically, in response to the following questions, he stated:
- “With an estimated concentration of 6 ng/ml, is there any possibility to test positive after consumption of a normal dose of thiazide which stops three weeks before the test? What would be the longest delay between the last intake of a normal dose and a positive test with such an estimated concentration?”*
- “I estimate that this excretion can result from the intake of a normal dose of the diuretic 2 to 4 days before the sample collection. This result could never correspond to the intake of the medicament three weeks before the sample collection.”*
- Id.* at p. 2.
67. In his hearing testimony, Dr. Saugy stated that because Thiazides is a diuretic/masking agent, it is rapidly excreted. The “*low amount*” of Thiazides in the Player’s sample (6ng/ml) suggested its “*recent intake*” (i.e., 48-72 hours) before her sample collection. Although it was possible that Redufite was the source of the Player’s AAF if a normal dose of Thiazides was taken within this time period, it was “*impossible*” if taken more than 72 hours beforehand (e.g., three weeks prior to her sample collection). He testified that he was not aware of any instances in which Redufite was found to be contaminated with Thiazides.
68. The Player did not present any evidence to rebut Dr. Saugy’s testimony or any proof that the Redufite she consumed was contaminated with Thiazides. After hearing his testimony, the Player testified that she may have been mistaken regarding when she used and stopped taking Redufite, but she did not provide any specific dates. She did not state or provide any evidence that she took Redufite within 72 hours of the time of her urine sample collection that resulted in her AAF for Thiazides.
69. Based on the foregoing evidence, the Panel finds that the Athlete has not proven by a balance of of probability how the prohibited substance (i.e., Thiazides) entered her system. Her speculative hypothesis that Redufite was its source, which is wholly unsupported by any evidence, is refuted by Dr. Saugy’s uncontroverted expert testimony.

B. No Significant Fault or Negligence

70. The Player acknowledges some “minor” fault for her ADRV, but contends she has no significant fault or negligence for the presence of Thiazides in her system because the product’s label did not list this substance as an ingredient and she “*couldn’t have known*” it was contaminated with this prohibited substance prior to taking it even if she had conducted Internet research beforehand. The Player asserts her Brazilian professional club provided “*no guidance whatsoever*” regarding prohibited substances, and that the only anti-doping education she had ever received was being told to “*be careful*” and to check a supplement’s label before taking it, which was provided before participating in the Libertadores Cup competition in 2018.
71. Ms. Wahlbrink, who played for the Brazilian women’s national football team and professional clubs for several years, testified that she has known the Player since she was a little girl and described her as a “*responsible*” athlete who is naïve about supplements. She did not give the Player the Redufite that she consumed. Prior to the Player’s ADRV, she never had any discussions with the Player about supplements or the possibility of their being contaminated with prohibited substances. She testified that Brazilian women’s football clubs generally do not provide any anti-doping, nutrition, or medical guidance to their players. Based on her experiences, the only anti-doping education Brazilian women’s football players receive is within one month of the women’s football World Cup or the Olympic Games.
72. CONMEBOL contends “*this case deals with discrepancies in perspectives between FIFA and the CONMEBOL Disciplinary Tribunal, and how to evaluate that a player has experience in doping.*” (Answer, p. 13). Noting that “*in South America women and men do not receive the same amount of information in relation to doping*” (*Id.*), it explains and asserts: “*Men’s football is the key event for South American clubs, economic and medical resources on men. A very small amount of time and money are provided to womens football. . . . Brazil, despite being one of the most developed countr[ies] in South America, in terms of womens football, they are still very far from being equal to men. For these reasons, the womens doping cannot be judged with the same standard as the mens, that is the reason the [CONMEBOL] regulations give[n] the possibility of extenuating responsibility on a case by case basis.*” (*Id.* at p. 12).
73. CONMEBOL contends that the Player’s individual lack of anti-doping education and experience in elite women’s football competitions because of general inequalities in the level of anti-doping education provided to men’s and women’s football players in South America establish that she does not have significant fault or negligence for her ADRV. It asserts that “*the fact that the athlete has previously taken an antidoping test does not under any circumstances, make a player an expert on these matters. Providing a urine sample does not make the athlete an expert or scientist, or a master on doping rules or on prohibited substances.*” (Answer, p. 13).
74. The Appellant contends that the Player’s conduct evidences “*more than significant fault or negligence.*” (Appeal Brief, ¶27). It notes that she only checked the product’s label without any pre-use Internet search and did not cross-check Redufite’s ingredients with the World Anti-doping Agency’s Prohibited List. Because “*the Player admittedly did*

not consult any medical professional or other expert in doping matters to consult them on the risks of using Redufite. . . [her] level of fault can only be considered as maximal.” (¶67). Her *“alleged liquid retention . . . does not constitute a personal impairment that would lead her to making the unreasonable decision of using a prohibited substance.”* (¶71).

75. Even if the Player had proven that Redufite was the source of her AAF for Thiazides (which she did not), based on the foregoing facts, the Panel finds she did not establish no significant fault or negligence for her ADRV by a balance of probability. If it is true that there are general inequalities in the level of anti-doping education provided to men’s and women’s football players in South America, this undesirable situation (which the Panel urges FIFA and CONMEBOL to remedy as soon as possible) may have contributed to the Player’s ADRV. In this regard, the Panel notes the FIFA ADR’s Preface/Objective states: *“The fundamental aims of doping control are threefold: a) to uphold and preserve the ethics of sport; b) to safeguard the physical health and mental integrity of players; c) to ensure that all competitors have an equal chance.”* Nevertheless, pursuant to FIFA ADR 6 and 7, the Player has a *“personal duty”* to ensure that no prohibited substances are present in her system. Although her individual lack of anti-doping education is one factor in determining her degree of fault or negligence, the Player’s conduct to ensure she satisfied this obligation did not meet the *“standard of care [that] could have been expected from a reasonable person in the athlete’s situation”*) CAS 2016/A/4371 (adopting modified *Cilic* framework for determining level of fault or negligence under the 2015 World Anti-Doping Code).
76. As a professional football player who had at least been warned to *“be careful”* about taking supplements, the Athlete’s failure to do anything more than to check the label of the product that allegedly was the source of her AAF for Thiazides was well below that to be expected by a reasonable person in her situation. For example, a simple Internet search regarding Redufite would have disclosed that the sale of this product is illegal in Brazil because of its potential adverse health effects, thereby providing a warning that she should not use it. The Player’s failure to do so evidences her disregard for her anti-doping responsibilities and exemplifies significant fault or negligence for her ADRV. CAS 2018/A/5583 (*“consuming supplements without undertaking any form of research”* constitutes *“significant or considerable”* fault for an ADRV).

C. Length of Period of Ineligibility

77. Because the Athlete did not satisfy her burden of proving how Thiazides entered her system and that she has no significant fault or negligence for its presence in her system, FIFA ADR Article 22 is inapplicable. Therefore, the appropriate period of Ineligibility for her ADRV is two years pursuant to FIFA ADR Article 19(2).
78. The Player asserts that she already has served the 10 months suspension imposed by the CONMEBOL Disciplinary Tribunal and that its extension to 24 months would end her professional football career: *“Given the facts, the extension of the ineligibility with the argument of negligence goes against not only the Appellant’s own regulation, but also puts all other sporting regulations and anti-doping systems at risk, applying blame to the athlete who was a victim, and not an infringer.”* (Athlete Answer, p. 11).

79. In support of the Player, CONMEBOL asserts that the prohibited substance in her system (i.e., Thiazides, which is in the category of diuretics and masking agents) did not provide her with a competitive or sporting advantage, and contends:

“We consider of utmost importance for this panel to analyze this case, from a human perspective. The position taken by FIFA on this matter is quite shocking, since it seems, they seek to blindly sanction an athlete without taking into account the global context of the athlete, and the circumstances she has to affront on a daily basis.

FIFA’s belief that a ten-month sanction is not a severe punishment for Women’s football is completely unreal. A suspension of ten months, implies not working and not being paid, significantly impacting an athlete’s family wellbeing, personal motivation, and mental health. Beyond any doubt, a ten (10) month punishment is extremely severe.

Our responsibility as organizers of competitions in South American football, is to promote football and it’s development, respecting good sportsmanship and antidoping regulations. The use of prohibited substances in amateur football, most of the time is without intention of gaining advantage or to achieve an improvement in the performance, but a clear misunderstanding or total ignorance of the antidoping regulations. The athletes ignore the facts that the prohibited substance are a real threat to their overall health.”

(CONMEBOL Answer, ¶¶30-32).

80. CONMEBOL asserts:

“Therefore, the decision and sanction imposed by CONMEBOL’s Disciplinary Tribunal is in line with its own regulations, and in accordance with the margin of discretion, therefore CAS must show utmost restraint in interfering such a decision.

[A]ccording to Article 45 of the CONMEBOL Disciplinary Code, in relation to the free assessment of evidence by the Judicial Bodies, . . . Special consideration may be given to the attitude of the parties in processing the procedure, especially with regard to their collaboration with the Disciplinary Unit and the judicial bodies.

We consider that the arguments presented by the [A]ppellant are clearly against the principles of autonomy and independence of the CONMEBOL’s Disciplinary Tribunal. Ultimately, imposing a disciplinary sanction is a crucial matter of internal governance, which is protected by the fundamental principle of the autonomy of CONMEBOL as an association under Paraguayan Law.

[W]hen dealing with disciplinary sanctions imposed to athletes, it [i.e., CAS] may only review the penalties if they lead to a patently unfair result or a shocking unfairness.”

(CONMEBOL Answer, ¶¶39-41) (emphasis original).

81. The Appellant contends that CAS jurisprudence “*confirms that as a general rule, elements other than fault shall not be considered when determining the applicable period of ineligibility.*” (Appeal Brief, ¶74). Therefore, the CONMEBOL Disciplinary Tribunal improperly considered factors other than the Player’s fault such as that Thiazides did not provide her with a competitive advantage or improve her performance as well as her cooperation with the tribunal in sanctioning her with a 10-month suspension. (*Id.* at ¶71). Based on her significant degree of fault or negligence, the Player’s period of ineligibility should be 24 months.
82. Because Article R57 of the Code requires *de novo* review of all issues raised by this appeal, the Panel rejects CONMEBOL’s assertion that it must exercise “*utmost restraint*” regarding its Disciplinary Tribunal’s sanction imposed on the Player for her ADRV or that it has authority to review a sanction causing “*a patently unfair result or a shocking unfairness.*” This assertion conflicts with CAS jurisprudence recognizing that “*the mission of the CAS is that of an appeal body and not that of a review body.*” CAS 2012/A/2924. To fulfill this responsibility, “[w]here, as is the case with Article R57 of the Code, rules or legislation confer on an appellate body full power to review the facts and the law, no deference to the tribunal below is required.” CAS 2011/A/2518. Contrary to CONMEBOL’s assertion, the Panel’s *de novo* review of Disciplinary Tribunal’s sanction imposed on the Player does not violate its autonomy as a private association under Paraguayan law. As a member of FIFA, CONMEBOL has a superseding legal obligation under Swiss law to comply with FIFA’s Statutes, Disciplinary Code, and ADR, which expressly provide for CAS *de novo* review of its Disciplinary Tribunal’s decisions, including sanctions imposed on football players for ADRVs.
83. Consistent with the FIFA ADR, the Panel agrees with the Appellant that the CONMEBOL Disciplinary Tribunal mistakenly considered the Player’s cooperation and whether Thiazides enhanced her performance as football player in determining the length of her suspension. Although it is uncertain whether the Disciplinary Tribunal considered the effects that the length of the sanction would have on the Player’s football career and/or its economic and personal impact on her, the Panel notes that any consideration of these factors or others not relevant to the Player’s fault for her ADRV would be contrary to the FIFA ADR. “*Definitions and Interpretations No. 19 (‘Fault’)*” (“[T]he fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under art. 22 par. 1 or 2 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence).”).
84. Therefore, the Panel determines that the CONMEBOL Disciplinary Tribunal mistakenly sanctioned the Player with only a 10-month suspension for her ADRV. As required by FIFA ADR Article 19(2), the Panel imposes a two-year (i.e., 24 months) period of Ineligibility on the Player. Pursuant to FIFA ADR 28(1), the Panel determines that this period of Ineligibility shall begin retroactively on 1 January 2021 because of

the CONMEBOL Disciplinary Unit's delay of approximately two months in transmitting the complete file regarding its resolution of this case to FIFA.

85. Pursuant to FIFA ADR Article 28(3) (a), the Player is entitled to a credit of 10 months for the period of Ineligibility she served during her provisional suspension from 7 March 2019 and through 6 January 2020. Because she participated in games or matches for and training with her Portuguese professional football club beginning on 7 January 2020, the Player is not entitled to any additional credit.

IX. COSTS

86. This proceeding falls under Article R65.2 of the Code, which provides:

“Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.— without which CAS shall not proceed and the appeal shall be deemed withdrawn.

[...]”

87. Article R65.3 of the Code provides as follows:

“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.”

88. FIFA ADR Article 26 (“Allocation of CAS cost awards and forfeited prize money”) provides: *“The priority for repayment of CAS cost awards and forfeited prize money shall be: first, payment of costs awarded by CAS; and second, reimbursement of the expenses of FIFA.”*

89. Having taken into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties, including that Appellant was represented by its in-house counsel, the Panel rules that all Parties should bear their own legal fees and other expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the Federation Internationale de Football Association (FIFA) on 2 March 2020 against the reasoned decision rendered by the CONMEBOL Disciplinary Tribunal on 2 December 2019 is upheld.
2. Ms. Weber is sanctioned with a period of Ineligibility of two years to begin on 1 January 2021, with credit given for the ten (10) month period of her provisional suspension from 7 March 2019 through 6 January 2020.
3. The costs of this proceeding, including the arbitrators' fees and costs, are free except for the non-refundable Court Office fee of Swiss francs 1,000 paid by FIFA.
4. Each party shall bear her or its own costs, including attorney's fees, incurred in connection with the present proceedings.
5. All other motions, requests, or prayers for relief are denied.

Seat of arbitration: Lausanne, Switzerland

Date: 26 February 2021

THE COURT OF ARBITRATION FOR SPORT

Matthew J. Mitten
President of the Panel

Ricardo de Buen Rodriguez
Arbitrator

Luiz Felipe Guimarães Santoro
Arbitrator