



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1446 WADA v/ Qatar Football Association & Hamad Rakea Humood Alanezi

ARBITRAL AWARD

Pronounced by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Mr Lars Halgreen, Attorney-at-law, Copenhagen, Denmark

Arbitrators: Mr Quentin Byrne-Sutton, Attorney-at-law, Geneva, Switzerland
Mr Ulrich Haas, Professor, Zurich, Switzerland

Ad hoc Clerk: Mr Nicolas Cottier, Attorney-at-law, Lausanne, Switzerland

in the arbitration between

World Anti-Doping Agency (WADA), Lausanne, Switzerland,

Represented by MM François Kaiser and Claude Ramoni, Attorneys-at-law, Lausanne, Switzerland

As Appellant

and

Qatar Football Association, Doha, Qatar

Represented by Mr Ettore Mazzilli, Attorney-at-law, Doha, Qatar,

As 1st Respondent

and

Hamad Rakea Alanezi, Bahrein,

Represented by Mr Pierre Ochsner, Attorney-at-law, Geneva, Switzerland

As 2nd Respondent

* * * * *

I. FACTUAL BACKGROUND

1. Parties

- 1.1 The World Anti-Doping Agency (hereinafter "WADA") is the international independent organisation created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms. It coordinates the development and implementation of the World Anti-Doping Code ("the WADC"). It is a Swiss private law Foundation with corporate seat in Lausanne, Switzerland and its headquarters in Montréal, Canada.
- 1.2 The Qatar Football Association (hereinafter "the QFA") is the national football federation in Qatar and is affiliated with FIFA since 1970.
- 1.3 The football player Mr Hamad Rakea Alanezi (hereinafter "the Player") was born in Riffa, Bahrain, on 22 April 1984.

2. Facts

- 2.1 The Player signed an employment contract with the Qatari football club "Al-Arabi Sports Club" for the period from March 2007 to May 2007. In consideration for his work with the Al-Arabi Sports Club's first team, the Player received a total amount of 30,000 USD, another 30,000 USD being paid to a third party, namely the Al Refa Club from Bahrein.
- 2.2 On 1 April 2007, on the occasion of an in-competition test performed on an urine sample provided by the Player during a football game between Al-Arabi Sports Club and Al-Ahli Sports Club, the Player tested positive to 19-norandrosterone at a concentration higher than the 2 ng/ml threshold stated in the World Anti-Doping Agency Technical Document.
- 2.3 In a letter dated 3 June 2007, the QFA notified the Player of the presence of a prohibited substance in his bodily specimen and explained that this was in violation "*of the Qatar Football Association Regulations and the Regulations Doping Control for FIFA competitions In and Out of Competitions [sic]. As consequence, you [the Player] could be seriously sanctioned by the competent judicial bodies in accordance with the above-mentioned Regulations.*" In the same letter, the QFA informed the Player of his right to request the analysis of the B-sample, as provided by the QFA and FIFA anti-doping rules. The Player did not request the analysis of the B-sample.
- 2.4 On 6 June 2007, the Player was questioned by the QFA General Secretary, Mr. Saud Al-Mohannadi, the QFA Medical Officer, Dr. Saadalla Mohamed Seemer and the QFA Legal Advisor, Mr. Ettore Mazzilli. During his examination, the Player declared that he had never in his life taken any substance to improve his physical ability or his sports performance and that he had not taken any medicine during the three days preceding the game in which he tested positive. However, he took medicine under medical prescription for about 45 days, from 15 January 2007 until the end of February 2007.

- 2.5 During the procedure before the QFA, the Player produced a medical report dated 14 March 2007 which had been issued by Prof. Dr. Med. Ziad Al-Naieb, an urologist at the Bahrain Specialist Hospital B.S.C.. According to this report, the Player was under Prof. Al-Naieb's care for a chronic prostatitis diagnosed 3 months before the certificate was issued. Consequently, he was daily given a low dose of Lomax 400, an antibiotic therapy, for 6 weeks and then another daily dose of Tavanic 250mg for another 6 weeks. In the meantime the Player started to complain about some sexual dysfunctions, which was a part of his post-prostatitis period. Therefore, Dr. Al-Naieb confirmed in his medical report that the Player was given a low dose of Proveron 25mg for one month. It was the Player's father who procured the medicine for him in Bahrain.
- 2.6 On 7 June 2007, at a hearing before the QFA Disciplinary Committee, the Player confirmed his statements made the previous day and emphasized once again that he had never taken any prohibited substance to improve his physical ability or sports performances.
- 2.7 During the hearing, Dr. Seemer declared that the medicine taken by the Player to cure his "prostate's disease" (Proveron 25 mg.) contained some prohibited substances and that, after a long period of treatments with such medicine, the level of testosterone in the blood as well as in the urine can be very high, even several weeks after the date of the last medical treatment.
- 2.8 On 7 June 2007, the Disciplinary Committee of the QFA decided not to pronounce any sanction against the Player.
- 2.9 The decision of the Disciplinary Committee of the QFA included the following reasoning and holding:

"II. Considerations of the Disciplinary Committee

- 1. First of all, after a depth and careful analysis of all the doping test procedures as well as of the subsequent disciplinary procedures related to the case at stake, the Disciplinary Committee confirmed the regularity of both these procedures.*
- 2. In continuation, and entering into the substance of the matter, the Members of the Disciplinary Committee started by acknowledge the above mentioned facts and all the further documentation contained in the file. In particular, they took note of contents of the minutes related to the Player's questioning held on 6 June 2007, which was also fully confirmed by the same Player during the hearing of today. In particular, the Disciplinary Committee evaluated carefully that the Player was suffering from a "prostate's disease" and, in consequence of such sickness, of a sexual dysfunction. As consequence of the above, the Player took a medicine (Proveron 25 mg) that contains the prohibited substance in accordance with the prescription issued by his doctor. Such circumstance was officially and unquestionably attested by the "Medical Report" of the Prof. Al-Naieb on 14 March 2007.*

3. *In addition, the Disciplinary Committee took note of the reason why the Player, at the moment of the doping test concerned, did not inform the QFA Doping Control Doctor about his previous medical treatment to cure the aforesaid disease.*
4. *Equally, the Disciplinary Committee also took in due account the statement of Dr. Seemer, QFA Medical Official and Member of the QFA Doping Control Committee, who officially confirmed that after a long medical treatment with the medicine taken by the Player to cure his sickness (Proveron 25 mg.), the level of testosterone in the blood as well as in the urine can be very high, even several weeks later.*
5. *The Disciplinary Committee then concluded that the presence of the prohibited substance in the Player's urine was exclusively due to a therapeutic use exemption.*
6. *Finally, the Disciplinary Committee passed to evaluate the behaviour held by the Player and, in particular, the reason why, at the doping test concerned, he did not inform the Doping QFA Control Doctor about the medicine that he had taken. Also in this respect, the Disciplinary Committee concluded that the Player was entitled not to inform the QFA Doping Doctor of such circumstance, as the medicine in question was taken by the player for the last time more than 72 hours before the date of the doping test concerned. As consequence of the above, this specific Player's omission should be considered correct and legitimate.*
7. *In the view of all the above, the Disciplinary Committee considered that the Player did not commit any anti-doping rule violation and he therefore cannot be sanctioned as the presence of a prohibited substance in his urine sample was exclusively due to a specific as well as legitimate therapeutic use.*

III Decision of the Disciplinary Committee

1. *The Bahrain player Mr Hamad Rakea Humood Alanezi, Jersey no. 11 of Al-Arabi Sports Club, has not committed any anti-doping rule violation, as the presence of a prohibited substance in his urine sample was exclusively due to a specific as well as legitimate therapeutic use.*
 2. *As consequence of the above, the aforesaid Player is acquitted."*
- 2.10 On 1 September 2007 and on 29 September 2007, FIFA requested the QFA to provide it with a copy of the decision. On 2 December 2007, the QFA eventually sent to FIFA and WADA, a "free translation" of the decision issued by its Disciplinary Committee.

3. Proceedings before the Court of Arbitration for Sport

3.1 On 21 December 2007, WADA filed with CAS an appeal against the decision taken by the Disciplinary Committee of the QFA and confirmed its statement of appeal with the filing of an appeal brief on 11 February 2008.

3.2 WADA's submissions, in essence, may be summarized as follows:

- 3.2.1 FIFA is the football world's governing body and a signatory of the WADC. QFA is the football governing body in Qatar and is a member of FIFA. Pursuant to article 13 par. 1 let. (a) and (d) of the FIFA Statutes in force until 31 July 2007 ("2006 FIFA Statutes"), as well as of the FIFA Statutes in force as from 1 August 2007 ("2007 FIFA Statutes"), QFA has to "*comply fully with the Statutes, regulations, directive and decisions of FIFA bodies at any time*" and to "*ensure that [its] own members comply with the Statutes, regulations, directives and decisions of FIFA Bodies*". As the Player was affiliated to QFA, he had therefore also to comply with the FIFA Statutes and regulations.
- 3.2.2 The decision being appealed states that it was rendered pursuant to the QFA and FIFA Regulations. In its letter to the Player dated 3 June 2007, the QFA stated that the presence of a prohibited substance in the athlete's bodily sample was in violation of the QFA and FIFA Regulations.
- 3.2.3 According to WADA, none of the national rules and regulations provided by the QFA contained specific detailed provisions on doping control and sanctions. These national regulations only contained general rules, which refer to the regulations adopted by FIFA or WADA. WADA refers in particular to article 96 of the QFA competition rules, which refer to the FIFA regulations governing doping control, as well as to article 2 par. 1 of the 2004 QFA Statutes, which refers to the "*regulations approved by FIFA*", to article 2 par. 11 of the 2004 QFA Statutes, which further states that one of the objectives of QFA is "*to maintain international regulations & principles of the games as approved by the International Federation*".
- 3.2.4 WADA stresses further that the 2007 QFA Statutes contain many references to the FIFA regulations and to the WADC. More specifically, article 2 par. 2 let. 1) of the 2007 QFA Statutes states that one of the objectives of QFA is "*to combat the use of prohibited substances as stipulated by FIFA and WADA*". Article 4 of the 2007 QFA Statutes further states that: "*The legislation of QFA consists in: [...] (d) the FIFA and AFC Statutes and Regulations. (e) the WADA Anti-Doping Regulations.*"
- 3.2.5 According to WADA, the WADC and the FIFA Statutes and Regulations are therefore applicable to the present case, together with the QFA