

CAS 2010/A/2226 Carlos Manuel Brito Leal Queiroz v. Autoridade Antidopagem de Portugal (ADoP)

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr. Martin Schimke, Attorney-at-law, Dusseldorf, Germany

Arbitrators: Mr. Michele Bernasconi, Attorney-at-law, Zurich, Switzerland
Prof. Richard H. McLaren, Professor, London, Canada

Ad hoc clerk Ms. Erin McDermid, Attorney-at-law, London, Canada

in the arbitration between

Carlos Manuel Brito Leal Queiroz, Portugal

represented by Mr. Carlos Osório de Castro and Mr. Rui Patrício, Attorneys-at-law, Lisbon, Portugal, and Mr. Antonio Rigozzi, Attorney-at-law, Geneva, Switzerland

- the Appellant -

and

Autoridade Andidopagem de Portugal (ADoP), Portugal

represented by Mr. François Kaiser, Attorney-at-law, Lausanne, Switzerland

- the Respondent -

1. THE PARTIES

- 1.1 The Appellant, Mr. Carlos Queiroz (“Mr. Queiroz”) is a Portuguese football coach. At the time of the facts which are the subject matter of this dispute, Mr. Queiroz was the coach of the Portuguese National Football Team (the “National Team”).
- 1.2 The Respondent, the Autoridade Antidopagem de Portugal (“ADoP”) is the national anti-doping body in Portugal. ADoP is the entity responsible for all anti-doping matters in Portugal.

2. FACTUAL BACKGROUND

- 2.1 Mr. Queiroz is appealing a 30 August 2010 decision of the ADoP imposing a six month sanction of ineligibility upon him for an alleged violation of Article 3(2)(e) of the Portuguese Law n. 27/2009 of 19 June 2009 (“Law 27/2009”).
- 2.2 Given that the parties are in considerable disagreement regarding how and in what order the events of the day in question unfolded, the Panel reproduces in this Background section only what it considers to be undisputed facts that it deems relevant.
- 2.3 In mid May 2010, the National Team was involved in a World Cup training camp in Covilha, Portugal. The team members were staying at the Hotel Serra de Estrela (the “Hotel”).
- 2.4 On the morning of 16 May 2010, three anti-doping officers (“ADOs”) of ADoP arrived at the Hotel to perform an unscheduled, no advance notice anti-doping control on some of the National Team players. At the time of their arrival, Mr. Queiroz was having breakfast. The players were presumably still asleep in their rooms for they had been working hard the previous day and had been given an extended sleep-in that morning.
- 2.5 At some point following the arrival of the ADOs (but before they had reached the room in which they were to perform the anti doping control), the ADOs were approached by Mr. Queiroz. Before the ADOs and Mr. Queiroz parted ways, and the ADOs continued on to conduct the anti-doping control, Mr. Queiroz uttered some very distasteful and sexually descriptive comments regarding Dr. Luis Horta’s mother (Dr. Horta being the current president of ADoP). According to all the witness statements provided, these comments were not uttered at the ADOs and were made as he was walking away.

- 2.6 Following this interaction with the ADOs, Mr. Queiroz left to return to the breakfast room and the ADOs continued on to the room in which the anti-doping control was to be carried out.
- 2.7 On 20 May 2010, it was observed that one of the ADOs, Dr. M. (“Dr. M.”), failed to record the urine density for one of the samples taken on 16 May 2010.¹ Dr. Horta, in his role as President of ADoP, subsequently reprimanded Dr. M. for that failure. A few days after this reprimand, Dr. Horta requested that the two other ADOs (Dr B. and Dr. D.) file supplementary reports. It is unclear why this was done, although the Appellant speculates that it must have been as a result of Dr. Horta’s review of an Annex which accompanied or followed the Doping Control Report (“DCR”) of 16 May 2010.²
- 2.8 On 18 June 2010, Dr. B. and Dr. D. sent Dr. Horta separate emails attaching their own supplementary reports. The supplementary reports were dated 16 May 2010 and both indicated that Mr. Queiroz did not act in a welcoming fashion and used very inappropriate and/or offensive language.
- 2.9 On 2 July 2010, the Instituto de Deporte de Portugal (“IDP”) opened an inquiry into the 16 May 2010 incident. The three ADOs were questioned by the Head of IDP’s legal department. All three ADOs advised that Mr. Queiroz’ comments did not undermine the anti-doping control procedure, but that they did disturb their work.³
- 2.10 On 23 July 2010, the President of the Portuguese Football Federation (“PFF”) received a copy of the inquiry and documentation relating thereto from IDP. PFF subsequently opened disciplinary proceedings (conducted by PFF’s Disciplinary Council). The PFF Disciplinary Council heard evidence from 13 people and on 19 August 2010, rendered a decision acquitting Mr. Queiroz of an anti-doping rule violation, but nevertheless sanctioning him with a 30-day suspension from all sports-related activities, for conduct that was considered unbecoming of the sport.
- 2.11 On 30 August 2010, the President of IDP issued a decision which: revoked the PFF Disciplinary Council decision, found the Appellant guilty of an anti-doping rule violation

¹ That error did not affect the integrity of the sample or the subsequent analysis conducted upon them..

² The Doping Control Report (DCR) was signed by all three ADOs. All items concerning the evaluation of the doping control session were qualified as “good” without any reference to any incident. In the field entitled “Observations”, there is a handwritten statement referring to an “Annex.” Strangely, this field also contains a slash through it. The Appellant alluded to the fact that this gave rise to some suspicion as to the authenticity (or the actual time of creation) of the Annex. The Annex is dated 16 May 2010.

³ The Panel takes note of the fact that this was the first time any reference is made to the fact that the comments disturbed the work of the ADOs in any way.

for breaching Article 3(2)(e) of Law 27/2009⁴; and suspended the Appellant for a period of six months from all sports activities.

2.12 It is this decision that is the subject of the appeal before this Panel.

2.13 At this stage the Panel would like to highlight that there is some discrepancy regarding the correct translation of Article 3(2)(e) of Law 27/2009. In its Appeal Brief at p.3, the Appellant argues the relevant Article stipulates that “*obstruction, unjustified delay, occultation and all further conducts which, by an act or omission, hinder or disturb the collection of samples within the scope of anti-doping control*” constitute an anti-doping rule violation (while a subtly different translation is contained in the Appellant’s exhibit CQ-2). The Respondent, in exhibit 15 to its Answer, however, translates Article 3(2)(e) as follows: “*Obstructing, unwarrantedly delaying, concealing and engaging in any conduct which, by act or omission, prevents or disturbs sample collection during doping control.*” In any event, the Panel notes that the parties are in agreement that, in the present case, the Appellant’s conduct must have “disturbed the sample collection” for him to be guilty of an anti doping offence.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 The Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (“CAS”) on 13 September 2010.

3.2 Upon the Appellant’s request, and with the Respondent’s agreement, on 1 October 2010 the CAS Court Office granted a one week extension to the time limit for the filing of the Appeal Brief. Thereafter, on 11 October 2010, the Appellant filed his Appeal Brief, with exhibits and witness statements in accordance with Article R51 of the Code of Sports-related Arbitration (2010 edition) (the “CAS Code”). In his Appeal Brief the Appellant requests the Panel issue an arbitral award:

- (i) Setting aside the Decision under appeal;*
- (ii) Holding that Mr. Queiroz has not committed any anti-doping rule violation; and*
- (iii) Ordering ADoP to reimburse Mr. Queiroz’ costs*

3.3 Upon the Respondent’s request, and with the Appellant’s agreement, on 2 November 2010 the CAS Court Office granted an extension to the time limit for the filing of the

⁴ Under law 27/2009, ADoP has the power to revoke the decisions of sports federation and issue a new decision.

Answer until 12 November 2010. Thereafter, on 12 November 2010, the Respondent filed its Answer, exhibits and witness statements in accordance with Article R55 of the CAS Code. In its Answer, ADoP requests the CAS rule that:

1. *The Appeal filed by Mr Carlos Manuel Brit Leal Queiroz against the ADoP decision (NO. 8/DISC-10/11), dated 30 August 2010, is dismissed; consequently the Appellant shall serve any remaining part of the period of ineligibility resulting from the ADoP decision which he has not yet served.*
2. *ADoP is granted an award for costs.*

4. THE ISSUES

4.1 There are two issues before this Panel:

4.1.1. Which law is applicable to the merits, in particular whether it is Law 27/2009 or the previous version; and

4.1.2. Whether Mr Queiroz' behaviour intentionally or negligently disturbed the sample collection, both from a factual and a legal standpoint.

5. THE PARTIES' SUBMISSIONS

5.1 The Appellant's submissions are briefly summarized below:

Applicable Law:

5.2 The law under which Mr. Queiroz was charged was not in effect at the time of the alleged violation. In support of this contention, the Appellant states the following:

- Law 27/2009 is not self-executing and needs to be implemented by the Portuguese national federations and sports governing bodies;
- The PFF implemented Law 27/2009 through its 2010 Anti-Doping Regulations which entered into force on 17 June 2010; and
- The PFF had not implemented Law 27/2009 as of the date of the facts in dispute, accordingly Mr. Queiroz' conduct simply cannot be sanctioned.

Disturbance:

5.3 Mr. Queiroz did not disturb the sample collection process in light of the following facts:

- The absence of any immediate reaction from the ADOs to Mr. Queiroz' comments (i.e. they simply continued on their way to the doping control room);
- Mr. Queiroz did not follow the ADOs to the doping control room, he was not present during the sample collection;
- All three ADOs signed the Doping Control Report form ("DCR") stating that all matters relating to the doping control were "good" (as opposed to any being "unsatisfactory"), and the DCR itself made no reference to the incident;
- In the field entitled "Observations" on the DCR, there is a handwritten reference made to an "Annex", despite the presence in the field of a dash which would indicate the absence of comments;
- While Dr. M.' Annex refers to the distasteful language used by Mr. Queiroz, the Annex does not contain any indication that the statement had in any way disturbed the ADOs; and
- The supplementary reports prepared by Dr. B. and Dr. D. refer to the incident in a strikingly similar way.

5.4 In order to discharge the burden of proving that Mr. Queiroz caused a disturbance, the Respondent has to establish that Mr. Queiroz either acted with intent or negligence or that the conduct constituted a strict liability offence. Article 3(2)(e) is not a strict liability offence.

5.5 The Panel would have to interpret Article 3(2)(e) of Law 27/2009 very broadly in order for Mr. Queiroz' conduct to fall within its confines. To find otherwise would:

- Depart from the common understanding of the clear wording of the provision;
- Create an unpredictable offence and thus violate the *principle of legality*;
- Constitute a violation of the *principle of proportionality*; and
- Be incompatible with ADoP's obligations as a signatory of the World Anti Doping Code (the "WADA Code").

5.6 There is no reliable evidence that Mr. Queiroz' conduct disturbed the work of the ADOs. In support of this argument, the Appellant states the following:

- The wording of Article 3(2)(e) of Law 27/2009 requires a tangible objectively verifiable effect of the disturbance of the collection of the samples; and
- Absolute peace of mind of a DCO is not essential to the performance of a sample collection.

5.7 Even if the disturbance does not need to be “material”, the Appellant states:

- The DCR form does not even mention the incident with Mr. Queiroz;
- The ADOs clearly indicated the collaboration by the delegates was good;
- If the ADOs had truly been disturbed in their work, it is reasonable to expect they would have reported it immediately on the DCR form;
- The incident was only reported in a document prepared by Dr. M. that was attached as an annex, and the annex appears to have been prepared after the incident;
- The annex does not refer to a disturbance;
- A formal investigation was not opened until Dr. Horta received confirmation of Mr. Queiroz’ comments from the supplementary reports filed by the two other ADOs;
- While all three ADOs have a different recollection of the events that took place, they all answered the question as to the influence of Mr. Queiroz’ conduct upon the anti-doping control in the exact same way in their original witness statements saying “*it did not undermine its taking place but it disturbed their work*”;
- The allegation that the ADOs were disturbed in their work is suspiciously timed and is not credible;
- It is the duty of sports governing bodies under Portuguese Law to ensure that sample collection is carried out without disturbances. If this requirement is not fulfilled, the overseeing ADO must refuse to carry on with the doping control process and provide an account thereof on the DCR;
- The first reference to the ADOs being disturbed was 45 days after the incident;

- There is no sufficient reliable evidence to allow the Panel to consider to its comfortable satisfaction that Mr. Queiroz actually disturbed the work of the ADOs; and
- Even if Mr. Queiroz interfered with the work of the ADOs, such interference clearly does not qualify as a disturbance of the sample collection within the meaning of Article 3(2)(e) of Law 27/2009.

5.8 Mr. Queiroz' conduct would not constitute a violation under the WADA Code. The Appellant states that Article 3(2)(e) requires to comply with the WADA Code and that in fact it does not. In support of this argument, the Appellant states:

- Pursuant to Article 23.2.2 of the WADA Code, ADoP is under an obligation to implement the list of anti-doping rule violations in Article 2 of the WADA Code “*without substantive changes*”;
- Article 3(2)(e) of Law 27/2009 constitutes a substantive change to Article 2 of the WADA Code, more specifically it is an offence which is broader than ‘*tampering with doping control*’;
- ADoP must show that the WADA Code does not prevent the Signatories from adding other anti-doping rules; and
- The comment at Article 23.2.2 clearly indicates that the Signatory's residual powers are limited to prohibiting conduct/behaviour that is not already covered by the list of anti-doping rule violations provide for by the WADA Code.

5.9 The Respondent's Submissions are briefly summarized below::

Applicable Law:

5.10 Law 27/2009 is the applicable law for the following reasons:

- Only clear and unambiguous words within the law can suspend its application. A State law might suspend itself in two ways: (i) either by explicitly stating that it shall not apply until future implementing regulations are introduced or (ii) by making clear that past regulations shall apply for a transitional period;
- Law 27/2009 does not contain any statement that it cannot apply directly and that its terms can be given effect only by implementing regulation;
- A sports federation cannot circumvent Law 27/2009 simply by not implementing it;

- Law 27/2009 places an obligation on sports federations to adapt their regulations to the Law, but this obligation does not explicitly (or even implicitly) exclude the direct application of the Law;
- Law 27/2009 does not contain any statement that it cannot apply directly without the future adoption of regulations;
- Law 27/2009 introduced a new concept in the fight against doping through Article 3(2)(e). If the Legislature had intended for a violation of this provision to bear no consequences (even if only for a transitional period) it would have to express this in the clearest of terms;
- The transitional provision in Article 76(3) applies only to the sanctions included in the previous law, and not to new anti-doping offences. To use Article 76(3) to apply no sanction for a violation of Article 3(2)(e) would be to not apply a pre-existing sanction to a not previously existing violation; and
- Law 27/2009 introduced a new violation and contains all the necessary components for it to be applied.

5.11 Under Portuguese Law, a punitive law must (i) be precise and accurate; (ii) exist and apply at the time the offence was committed; and (iii) be interpreted in a strict fashion. Law 27/2009 does not offend the concept of ‘legality’ under Portuguese Law for the following reasons:

- Article 3(2)(e) is succinct and its meaning is clear. The word disturbance is sufficiently precise for the Panel to judge Mr. Queiroz’ actions;
- Law 27/2009 was in force at the time of the alleged violation; and
- The new Law was aimed precisely at protecting the environment of the ADOs during doping control so that they could conduct their work properly and calmly.

Disturbance:

5.12 Article 23.2.2 of the WADA Code establishes the list of the provisions of the WADA Code which must be implemented without substantive changes in the Signatories’ regulations. Article 2 (Anti-Doping Rules Violations) and Article 10 (sanctions) are among such mandatory provisions of the WADA Code.

5.13 The comment at Article 23.2.2 of the WADA Code states that:

nothing in the Code precludes an Anti-Doping Organization from adopting and enforcing its own specific disciplinary rules for conduct by Athlete support Personnel related to doping but which does not, in and of itself, constitute an anti-doping rule violation under the Code.

- 5.14 It is clear in reading this comment that Signatories are allowed to add other anti-doping rule violations to the list established in the WADA Code.
- 5.15 Article 3(2)(e) was implemented in the Portuguese Law to broaden the scope of the Law to include any kind of misconduct that could disturb the process of sample collection.
- 5.16 An event taking place before the ADOs enter the doping control station is of course capable of continuing to exert a “disturbing” effect thereafter. Likewise an act after physical collection of samples but prior to departure from the premises which causes a doping control officer to fail to properly fill out the necessary forms would nonetheless vitiate the sample collection process.
- 5.17 In the absence of a definition of “disturbance” in the Law, the Panel must look to the ordinary meaning of the word as defined in the common dictionary. The Portuguese word “*perturbar*” can include the intimidating presence of a delegation. Any relevant disturbance (psychological or physical) could constitute an offence, including creating a context for the collection operation which, upon evaluation through shared experience, effectively constitutes a “disturbance.” Creating a hostile environment in which the collection is set to take place would fall into the meaning of this provision.
- 5.18 The Appellant did disturb the collection process. The Respondent states the following in support of this position:
- Mr. Queiroz shouted aggressively at the ADoP doctors. He hurled a series of particularly coarse and violent profanities aimed at Prof. Luis Horta and his mother, respectively;
 - The aggression had serious psychological and emotional effects on the ADOs;
 - The evidence clearly demonstrates that the three ADOs were shocked, intimidated and emotionally affected by the aggression;
 - In order to properly perform doping tests, the responsible doctors must be provided with a calm and professional atmosphere;
 - Any perturbation, disturbance or distraction can easily impact on the conduct of anti-doping tests; and

- Dr. M. testified that not only did a mental disturbance occur, but a material disturbance took place; in particular, Dr. M. asserts that the important mistake which he committed during the sample collection was a direct effect of the stress caused by Mr. Queiroz' aggression.

5.19 It is necessary to show that the Appellant either intended, or acted negligently with respect to, the consequences of his actions:

- Mr. Queiroz must have been aware that his actions could have a disturbing effect on the sample collection;
- Mr. Queiroz did not take reasonable precautions to ensure that the sample collection procedure was not disturbed. He continued to shout profanities at the ADOs and failed to control himself in their presence.
- Mr. Queiroz did not apologize to the ADOs.

6. THE CONSTITUTION OF THE PANEL AND THE HEARING

6.1 The Panel was constituted on 9 November 2010.

6.2 A hearing took place in Lausanne, Switzerland, at the head offices of the CAS on 19 January 2011. The following individuals were present at the hearing: on behalf of the Appellant were his counsel Mr. Carlos Osorio de Castro, Mr. Antonio Rigozzi, Mr. Pekka Aho and Mr. Paulo Rendeiro. Mr. Queiroz was also present throughout the hearing. Present on behalf of the Respondent were ADoP's counsels, Mr. François Kaiser, Mr. Ross Wenzel and Mr. Serge Vittoz. Also present for ADoP was Mr. Jose Fanha Vieira, Vice-President of the IDP.

6.3 The following witnesses were heard: [...]

7. APPLICABLE LAW

7.1 Pursuant to Article R58 of the CAS Code:

The Panel shall decide this dispute according to the applicable regulations and 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.

7.2 Mr. Queiroz was charged for an anti-doping rule violation under Portuguese law. Accordingly, this dispute shall be decided in accordance with Portuguese Law.

8. JURISDICTION

The parties agree that the Panel has jurisdiction to hear this matter.

9. THE PANEL'S FINDINGS ON THE MERITS

9.1 There are basically two issues before this Panel:

9.1.1. Which law is applicable to the merits, i.e. is it Law 27/2009 or the 1998 version of the PFF Anti Doping Regulations?; and

9.1.2. Whether Mr Queiroz' behaviour intentionally or negligently disturbed the sample collection, both from a factual and a legal standpoint.

9.2 In making its decision, the Panel has considered all the evidence and arguments presented to it, even if not expressly referred to or reproduced in this Award.

Applicable Law:

9.3 The Panel is rather of the view that Law 27/2009 can be considered to be applicable to the merits of the case. In this regard, the Panel considered the fact that Law 27/2009 was in effect at the time of the alleged offence, albeit it had not yet been implemented by PFF. The Panel notes that Article 12 of Law 27/2009 requires sporting federations to adapt their doping control regulations to comply with the rules set out in the Law (i.e. they are to become anti-doping rules of the individual sport, but they are also national law). As such, had PFF adopted Law 27/2009 at the time of the alleged offence, it could have prosecuted the Appellant presumably under its own regulations. As PFF had not implemented Law 27/2009 at the time of the alleged offence, the Appellant was prosecuted and charged under that national law. Law 27/2009 gives sporting federations and ADoP the authority to prosecute its violation.

9.4 The Panel notes that it is not entirely persuaded by the Appellant's argument that it is a precondition that for Law 27/2009 to be in effect, it had to be implemented by PFF at the time of the alleged offence. The Panel notes these seem to be two different matters. Law

27/2009 is not a law providing what sporting federations must have as anti-doping rules, it *is* the anti-doping rules, and part of the Law is that sport federations should make sure their own rules comply with its terms.

- 9.5 However, for reasons set out below, the Panel does not find it necessary to make a formal decision as to the applicable anti-doping law. In reaching its decision, the Panel considered the fact that, were the 1998 version of the PFF Anti Doping Regulations applicable, the Appellant could not be found guilty of an anti-doping offence, as the offence of “disturbing the sample collection” simply didn’t exist. Moreover, as will be detailed below, even if Law 27/2009 applies, the Appellant’s conduct cannot be deemed to have disturbed the sample collection. As a result, the question of which version of the law is applicable does not need to be decided in this proceeding for it is the Panel’s conclusion that there could be no violation under either law.

Disturbance:

- 9.6 The Appellant’s argument that Article 23.2.2 of the WADA Code precludes an anti-doping organization from adopting additional anti-doping rule violations is not accepted. The Panel is of the view that nothing in Article 23.2.2 of the WADA Code prevents an anti-doping organization from creating additional provisions within its anti-doping rules. What Article 23.2.2 WADA Code does prohibit anti-doping organizations from doing is adding provisions which change the effect of the compulsory parts of the WADA Code. It is doubtful that Article 3(2)(e) of Law 27/2009 changes the effect of mandatory provisions of the WADA Code, rather it seems to simply amplify a provision which is included in the WADA Code.
- 9.7 For reasons set out below, the Panel does not find it necessary to make a formal decision as to the consistency of Article 3(2)(e) of Law 27/2009 with Article 23.2.2 of the WADA Code.
- 9.8 The Panel accepts that Mr. Queiroz’ comments were both inappropriate and offensive. In fact, Mr. Queiroz himself does not dispute this.
- 9.9 The presence of the ADOs early in the morning on a rest day does not excuse his reaction, no matter the level of frustration Mr. Queiroz felt about it. While the Panel finds his behaviour most unacceptable, for the reasons that follow, it does not find that it disturbed the sample collection process.
- 9.10 Importantly, the Panel is of the view that the incident with Mr. Queiroz and the ADOs did not happen during the “sample collection”. “Sample collection” is not specifically defined

in Law 27/2009. However, it does form a part of the definition of “Testing” in Law 27/2009:

the stage in the doping control process involving test distribution, planning, sample collection, sample handling, and sample transport to the laboratory.

- 9.11 Furthermore, “doping control” is defined in Article 2(d) of Law 27/2009 as “*the process including all the acts and formalities, from the test planning and distribution until the final decision, in particular, information on athletes whereabouts, sample collection and handling, laboratory analysis ...*”
- 9.12 In order to get a better understanding of the concept of “sample collection” itself, the Panel also undertook a detailed analysis of the World Anti Doping Code International Standard for Testing (2009 version) (the “International Standard”) which, at page 21, defines “Sample Collection Session” as “*All of the sequential activities that directly involve the Athlete from notification until the Athlete leaves the Doping Control Station after having provided his/her Sample/s.*”
- 9.13 In the present case, irrespective of who called the players to notify them, and when the players were called, it is undisputed that the players were not in the vicinity of the incident (and thus the incident did not “directly involve” any of the players pursuant to the definition of Sample Collection Session in the International Standard noted above). Looking at the matter from a different angle, the Panel notes that the International Standard sets out the initial and intermediary stages of the doping control process in the following order: Planning; Notification of Athletes; Preparing for the Sample Collection Session; and Conducting the Sample Collection Session. It thus seems clear to the Panel that a stage exists between Notification of Athletes and Conducting the Sample Collection Session (namely Preparing for the Sample Collection Session).
- 9.14 Taking into account all of the above noted definitions, it becomes clear that “sample collection” describes merely a certain part of the whole process of “doping control” and also that the incident with the Appellant did not occur during the sample collection.
- 9.15 The Panel concedes, however, that it is possible that a course of behaviour engaged in just prior to the sample collection could disturb the sample collection. In particular, the Panel notes Dr. Horta’s testimony that the oldest method of disturbance is to create a hostile environment in which the sample collection process is taking place.
- 9.16 Taking Dr. Horta’s testimony into account, the Panel nevertheless finds that the Respondent has failed to prove that Mr. Queiroz’ behaviour disturbed the sample collection process. The Panel is of the view that there is simply no contemporaneous

evidence of this. Moreover, the testimony of the Respondent's witnesses was unreliable in some aspects, and from time to time in conflict with prior witness statements.

9.17 Examples of such inconsistencies include, but are not limited to:

- Dr. C.:
 - in his witness statement, he commented that the Appellant was “*verbally aggressive towards the DCOs*”. However, at the hearing, he stated that Mr. Queiroz was aggressive, but not towards the ADOs; and
 - did not confirm his witness statement at the hearing.
- Dr. J.:
 - in his witness statement, he states that Mr. Queiroz was “*certainly aggressive towards the three DCOs*”. In contrast, at the hearing, Dr. J. would not confirm that the behaviour was aggressive, but rather stated that the coach was agitated and upset, and speaking a little louder than usual.
- Dr. B.:
 - admitted in the hearing that he might have been a “*little excessive*” in his witness statement when he said things were so tense that they just wanted to just get out of there.
- Dr. M.:
 - in his first witness statement stated that when they first arrived at the Hotel, Mr. Queiroz and the ADOs greeted each other and exchanged pleasantries, while in his second witness statement he said that Mr. Queiroz “*began immediately to be verbally aggressive*” towards the ADOs.

9.18 Furthermore, the Panel takes notice of the fact that the ADOs were extremely experienced, and had been performing sample collections for over 20 years. In the absence of any explicit and reliable evidence of disturbance, the Panel is reluctant to imply their disturbance as a result of the Appellant's behaviour.

9.19 In any event, even if the Appellant's conduct could be deemed to have disturbed sample collection, the parties both agree that the Appellant must have either intended or been negligent as to the consequence of his behaviour. The Panel does not find that Mr. Queiroz' behaviour was intended to disturb the doping control. Indeed, no evidence has been tabled to this effect. Rather, there is evidence that the Appellant has made his rude

remarks as a result of frustration and anger, possibly even pride, but not as a direct aggression against the ADOs. To conclude, the Panel is satisfied that the behaviour of the Appellant had no discernable effect upon the doping control procedure and, therefore, it is not a behaviour that can be the subject of sanctions under Law 27/2009, even assuming this law is applicable, nor of sanctions under the prior Portuguese anti-doping law.

9.20 For all of the foregoing reasons, after due consideration of all arguments submitted by the parties, the Panel finds that the Appeal must be upheld.

9.21 Regarding the other prayers for relief and further requests submitted by the parties, the Panel is of the view that the above conclusion, finally, makes it unnecessary for the Panel to consider such other requests. Accordingly, all other prayers for relief are rejected.

10. [...]

* * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Carlos Queiroz against the decision issued by the Autoridade Antidopagem de Portugal on 30 August 2010 is upheld and the decision is set aside.
2. [...]

Done in Lausanne, on 23 March 2011

THE COURT OF ARBITRATION FOR SPORT

Dr. Martin **Schimke**
President of the Panel

Mr. Michele **Bernasconi**
Arbitrator

Prof. Richard H. **McLaren**
Arbitrator

Ms. Erin **McDermid**
Ad hoc clerk