

FÉDÉRATION INTERNATIONALE DE GYMNASTIQUE



FONDÉE EN 1881

Decision by the FIG Presidential Commission

Ms. DOS SANTOS Daiane (BRA), antidoping test performed on 2 July 2009, Nr. 3020542 A

Facts:

Ms. DOS SANTOS Daiane, born on 10 February 1983 and competing for the National Federation (« **NF** ») of Brazil (« **BRA** »), underwent an out of competition antidoping test. The urine sample Nr. 3020542 A, analyzed by the WADA accredited laboratory, LAB DOP – LADETEC /IQ – UFRJ Rio de Janeiro Doping Control Laboratory at Rio de Janeiro, Brazil, revealed a positive result to furosemide (see page 10 of the file). Furosemide is a diuretic included in the list of prohibited substances and methods established by the World Anti-Doping Agency (« **WADA** »).

No Therapeutic Use Exemption (« **TUE** ») was granted by the Fédération Internationale de Gymnastique (« **FIG** ») nor requested by the gymnast.

No apparent departure from the International Standards for Testing or for Laboratories resulted in the adverse analytical finding.

By letter dated 2 October 2009 sent by DHL, e-mail and fax (pages 12 to 23), the FIG informed the « Confederacao Brasileira de Ginastica » (« **BRA-NF** ») of the positive test result, of the opening of proceedings and of the gymnast's rights. A "B Sample Analysis Request form" and a "Hearing Request form" were attached to this letter.

On 13 October 2009, the FIG received by e-mail and by fax, a letter confirming that the gymnast was indeed notified (p. 24 to 31). The gymnast does not request the analysis of the B Sample and furthermore explains in her letter:

- That she underwent surgery on 23 October 2008 and that she had been in convalescence since then. That she again underwent surgery at the end of May 2009 in order to take out the metal plates and screws that had been inserted during the first surgery.
- That she was in rehabilitation until that day, without having the right to compete, and that she was hence out of any antidoping control at the moment of the test.
- That her coach, her national federation, the doctor of the national federation and the doctor of the National Brazilian Olympic Committee (« **NOC-BRA** ») were informed by letter of 21 October 2008 (p. 27) of her surgery and of her non participation in the next stage and Final of the Artistic Gymnastics World Cup.
- That during this period of convalescence, following the surgeries she underwent, she followed a treatment of « Hyalosima 2000UTR » and « Lasix » (furosemide) (p.31) during 6 weeks in order to take out the fat accumulated. This treatment started in June 2009.
- That during the anti-doping test, she mentioned on the doping control form all the substances she had taken, including furosemide.
- That in her opinion, following the surgeries incurred that prevented her from training and competing, she did not consider herself bound by the antidoping rules and that she considered herself free to undergo any other treatment, including aesthetic treatments.
- That considering having observed the rules of FIG and WADA, she should not be sanctioned, moreover since she has always been loyal to the sports organisms, that she

never used any forbidden substance and that her physical state was well-known to the concerned sports authorities.

A medical report signed by the orthopedic surgeon of the gymnast is joined to her letter (p. 30). It establishes that the gymnast underwent surgery on 23 October 2008 and 7 May 2009, that she was in rehabilitation during this time and that she is still following the rehabilitation program, being unable to go back to competition. He specifies that the medical diagnostic and the treatment followed by the gymnast were communicated to her coach, her national federation, the doctor of the national federation and the doctor of the NOC-BRA.

On 29 October 2009, the FIG informed the gymnast and the BRA-NF that since no Therapeutic Use Exemption (TUE) was requested to the FIG, this file was transmitted to the Disciplinary Commission (page 39 to 43).

On 30 October 2009, the FIG received a letter from the BRA-NF (p. 49-50) confirming having been informed of the gymnast's condition, that her last competition was 16 August 2008 and that she was excluded from the Brazilian National Team in September 2008. It is attested that the gymnast was not in physical condition to actively participate in the sport and that she could neither train nor compete. The BRA-NF nevertheless confirms that they have not withdrawn her from the list of gymnasts subject to be tested and that this mistake led to the test conducted on the gymnast on 2 July 2009.

On 12 November 2009, the FIG received a request to be heard by the Disciplinary Commission, a power of attorney in favor of Mr. Cristiano Caus authorizing him to represent the gymnast, various requests and considerations from the gymnast relating to the hearing and the official declaration of the BRA-NF already sent on 30 October 2009.

On 18 November 2009, the FIG notified the gymnast and the BRA-NF, per e-mail, fax and DHL, that a hearing was offered on 18 December 2009 at the FIG Headquarters in Lausanne. A deadline was set to 30 November 2009 for the gymnast to give her reply and send the written argumentation she wished to. On 23 November 2009, the gymnast confirmed having received the notification.

On 30 November 2009, the FIG received the written argumentation and all the documents attached thereto. These documents explain the gymnast's career, while coming from a modest family she had to fight in order to obtain many excellent results and the status of "icon" in the Brazilian public's eyes, largely influencing therewith the Brazilian sports and gymnastics community. They relate the medical problems of the gymnast and the 3 subsequent surgeries (23 October 2008, 9 January 2009 and 7 May 2009), all this being illustrated by medical exams and X-ray images. The fact that it was well-known for any authority and for Brazil that the gymnast was no longer competing and was in rehabilitation is expressed despite the fact that she was not withdrawn from the FIG RTP list by her federation. It is precisely expressed that the gymnast underwent an aesthetic treatment consisting of enzyme injections in order to accelerate the fat burning process at the location to be healed. In addition to the enzymes, the doctor responsible for the treatment, who is not specialized in sports, prescribed furosemide in order to eliminate the enzyme excess through urines. This treatment was done in 6 sessions, from 4 June to 20 August 2009. The gymnast explains having been informed of the intake of this substance only at the moment of the antidoping test, when she called her doctor in order to obtain the list of substances taken in order to enter them on the doping control form.

On 18 December 2009, the gymnast, together with her lawyer and a translator, was heard during the hearing that took place in Lausanne, before the FIG Disciplinary Commission. The gymnast admitted all the facts, even those playing against her. She responded to all the questions with sincerity and straightness.

The Presidential Commission, considering:

- That the result of the analysis of the sample 3020542A is positive to furosemide;
- That the gymnast did not contest the positive result;
- That the gymnast did not ask for a TUE;
- That there is no apparent departure from the International Standards for Testing or the International Standard for Laboratories;
- That the gymnast did not require the analysis of the B sample;
- That therefore, the FIG Anti-Doping Rule (« **FIG ADR** ») and the WADA Code, both effective since 1st January 2009, are applicable;
- That according to the WADA « List of Prohibited Substances 2009», which forms an integral part of the FIG ADR and of the WADA Code, furosemide is a diuretic to be considered as a specified substance under Article 4.2.2. of the FIG ADR and 4.2.2 of the WADA Code;
- That according to Article 10.4 FIG ADR and Article 10.4 WADA Code, the suspension period provided for under Article 10.2 FIG ADR and 10.2 WADA Code may be reduced provided that the gymnast may establish how a specified substance entered her body and that such specified substance was not intended to enhance the athlete's sport performance nor mask the use of a performance-enhancing substance;
- That the gymnast admitted not to know the FIG and WADA antidoping rules, despite the fact that she admitted having followed information sessions on doping issues in all major competitions;
- That the gymnast has not only competed at an international level for several years, but also obtained many medals at the most important competitions;
- That the gymnast had already been tested approximately fifteen times before the test in question;
- That the gymnast confessed not to be aware that she could ask for a TUE in order to use a prohibited substance;
- That the gymnast did not know that furosemide is prohibited;
- That the gymnasts did not know that the injections that were made on her contained furosemide;
- That the gymnast did not inquire about the content of the injections that were made on her before they were made;
- That the gymnast did not inform her doctor (not specialized in sports) about her responsibilities of high level gymnast and the list of prohibited substances;
- That as an athlete she is responsible for what she takes, for her choice of medical personnel and for advising her medical personnel that she cannot be given any prohibited substance;
- That the gymnast was informed 2-3 weeks before the test that she would be tested;
- That the gymnast contacted her federation in order to know whether she really had to comply with the test but did not request more information from her federation;
- That she did not consider herself as a gymnast at the moment because she was out of competition for almost a year;
- That the gymnast has almost not trained following the 3 knee surgeries she underwent between October 2008 and May 2009;
- That the last surgery undergone was on 7 May 2009 in order to take out the 8 screws fixed in her knee on 23 October 2008;
- That her club had duly informed the BRA-NF and the BRA-NOC that she would no longer compete until further notice;
- That despite all this, her federation left her on the FIG RTP list and did not inform the FIG;
- That given her out of competition and out of training status, she did not even consider herself "a gymnast" and actually wondered if she even could be tested;

- That she considers not having been informed sufficiently about her obligations by her federation, notably when she contacted them in order to know whether she had to comply with the test;
- That she took furosemide for a therapeutic purpose and not in order to enhance her performance;
- That she never denied the intake of furosemide by indicating all the substances that she had taken on the doping control form, after having been informed by all the doctors that followed her;
- That the gymnast expressed many regrets and shame towards her family, her federation, her country and gymnastics and the sport in general;
- The highly negligent behavior of the gymnast;
- The attenuating circumstances taken into consideration by the Presidential Commission;
- That, therefore, all the conditions for a reduction of the suspension period are gathered, Article 10.4 FIG ADR and 10.4 WADA Code apply;
- The proposal of the Disciplinary Commission to the Presidential Commission on 5 January 2010 ;

For these reasons, and based on articles 2, 10.2 and 10.4 FIG ADR, the FIG Presidential Commission confirms the proposals made by the Disciplinary Commission and

decides:

- **to suspend Ms. DOS SANTOS Daiane for a period of five (5) months starting from the date of the decision of the Presidential Commission;**

Costs of Proceedings:

The costs of the 1st instance disciplinary proceedings (Disciplinary Commission and Presidential Commission) are paid by the FIG. Each Party shall bear its own fees and expenses.

Remedy:

The appeal duly signed by the Appellant and with rationale, shall be sent in writing, to the address of the FIG headquarters to the attention of the FIG Appeal Tribunal within 21 days from the notification of the decision. The Appellant shall indicate if his appeal is intended to be dealt with within the framework of a hearing or review of the case, without appearance of the parties.

Should the Appellant wish to call witnesses or experts, a hearing shall be held.

The appeal shall either be directly delivered to the FIG headquarters at the latest within the appeal deadline or to a Swiss post office at the latest by midnight of the last day of the deadline. The Appellant is responsible for showing proof, within a time limit to be determined by the President of the Appeal Tribunal, that his appeal has been lodged in due time, otherwise, the appeal shall be considered inadmissible.

The Appellant shall pay in advance the expenses of CHF 5'000.- to the FIG account at the same time as he shall lodge his appeal and at the latest by the end of the time limit for the appeal. While this amount shall be reimbursed to the appellant in the event that his appeal is allowed, this amount shall be kept by the FIG in the event that his appeal is considered inadmissible or is fully or partly rejected. The FIG is exempt from the obligation to pay the expenses in advance for its appeal.

Should the Appellant omit to pay in advance the expenses of CHF 5'000.- within the time limit, his appeal shall be considered inadmissible.

The appeal statement shall contain an account of the facts, the reasons for the appeal, the presentation of all evidence relied on by the appellant or an offer to present all the evidence (such as, the request for the hearing of witnesses or the request for an expert) and the arguments of the Appellant, failing which it shall be considered inadmissible.

The Appellant shall not be authorized to produce new elements of proof once his appeal is submitted, unless he justifies that he has not been able to do so for reasons beyond his control or his behest. The Appeal Tribunal may automatically conduct the investigations they may deem necessary.

Lausanne, 27 January 2010

Fédération Internationale de Gymnastique
On behalf of the Presidential Commission



Prof. Bruno Grandi
President



André F. Gueisbuhler
Secretary General