

**CAS 2024/A/1234 World Anti-Doping Agency (WADA) v. Leslie Young**

**ARBITRAL AWARD**

rendered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Ms Dominique Leroux-Lacroix, Attorney-at-law, Lausanne, Switzerland

Arbitrators: Mr Michele Bernasconi, Attorney-at-law, Zürich, Switzerland

Mr Emilio García Silvero, Attorney-at-law, Zürich, Switzerland

in the arbitration between

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

Represented by Ms Cheng Fengyao and Ms Wang Zhiheng

Wuhan University, Wuhan, China

-Appellant-

and

**Mr Leslie Young**, Iridonia

Represented by Mr Christian Thomassen and Mr Fabian Laurenz Heß

IE University, Madrid, Spain

-Respondent-

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## **I. PARTIES**

1. The World Anti-Doping Agency (“WADA” or “the Appellant”) is an independent agency that promotes and coordinates the fight against doping internationally. It is a nonprofit foundation established under the Swiss Civil Code, with its seat in Lausanne, Switzerland.
2. Mr Leslie Young is a 17-year-old football player from the Republic of Iridonia (“the Player” or “the Respondent”).
3. WADA and the Player are jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

### **A. Introduction**

4. The present proceedings were initiated by WADA against the FIFA Disciplinary Committee Decision FDD-202404, of 5 March 2024 (“FIFA DC Decision”). This Decision found the Player guilty of two Anti-Doping Rule Violations (“ADRVs”) but imposed no sanction on the basis that he bore no fault or negligence.
5. WADA submits that the appealed decision infringes the terms of the World Anti-Doping Code (“WADC”) and, thus, the Player shall be subject to a four-year ineligibility sanction for the intentional violation of the FIFA Anti-Doping Regulations (“FIFA ADR”). Subsequently, WADA submits that the Player must be subject to a two-year suspension if this Panel does not find the ADRV intentional.
6. The Player argues that he is not guilty of any of the ADRVs because (i) the doping control was not in-competition, (ii) the substance found was not prohibited when it was ingested; and, in case he was found guilty, he should at most be subject to a reprimand.
7. The key facts and arguments exposed below were drawn from the Parties’ written submissions, oral pleadings, and evidence. This Panel has considered all elements submitted by the Parties. It will nevertheless refer in this Award to those elements necessary to explain its reasoning and conclusions.

## **B. Background facts**

8. On 28 October 2023, during a friendly match with Iridonia, the Player contracted a mild muscle strain in his left thigh. He missed two preparatory matches but recovered fully in late November 2023 and re-joined the national team.
9. On 16 December 2023, the Player's mother, Ms Susan García, broke her right arm. She was prescribed Tramadol capsules to deal with the pain (medication contained in soluble containers instead of hard pills).
10. On 22 December 2023, the head coach of the Iridonia national team, announced the Squad List of 26 players for the FIFA World Cup. The Respondent was not selected in that list, although he featured in the 55-man provisional squad.
11. Following this announcement, the Player had serious trouble sleeping and suffered from the stress of not being able to join the national team.
12. On 26 December 2023, the Player was distressed and suffering from a headache. The Player's mother advised him to drink herbal tea to help with these issues.
13. A few days later, in the middle of the night, the Player asked his mother to give him something to help with his insomnia and headache. He therefore drank a herbal tea prepared by Ms García. It is disputed whether this occurred on the evening of 31 December 2023 or in the early hours of 1 January 2024.
14. At 13:30 on 2 January 2024, the Respondent received a call from Mr Deloscampos asking him to replace an injured player in the national team ahead of the first match, scheduled for 3 January 2024. Mr Deloscampos informed the Player that there were no guarantees that he would play the first match.
15. At 9:30 on 3 January 2024, while the Player was in the Airport awaiting his flight to Tulipania, he provided a urine sample in the presence of a FIFA Doping Control Officer. It was split into A and B samples.

16. On 3 January 2024, the Player played as a substitute in Iridonia's World Cup match.
17. On 9 January 2024, Iridonia played their second match. The Player did not participate as he felt some pain in his left thigh again. The Player had been suffering from chronic pain due to this injury.
18. On 12 January 2024, the laboratory reported an Adverse Analytical Finding ("AAF") as the Player's A Sample revealed the presence of Tramadol (0.8 ng/mL). The B Sample confirmed the AAF. This AAF was compliant with all applicable standards.
19. Tramadol is a narcotic, prohibited In-Competition and listed as a Specified Substance in Section S7 of the 2024 WADA Prohibited List (in force since 1 January 2024).
20. On 13 January 2024, the Player was notified of the AAF by the FIFA Anti-Doping Unit and warned that he may have committed ADRVs pursuant to Articles 6 and 7 of the FIFA ADR.
21. FIFA provisionally suspended the Player with immediate effect.
22. The Player is part of the FIFA's Registered Testing Pool. He has been subject to five doping control tests before. All of them tested negative for prohibited substances.

### **C. Proceedings before FIFA**

23. On 30 January 2024, the Secretariat of the FIFA Disciplinary Committee ("FIFA DC") issued the Player with a formal Charge Letter for two ADRVs:
  - i. Article 6 of the FIFA ADR (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample); and
  - ii. Article 7 of the FIFA ADR (Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method).
24. The Charge Letter also invited the Player to inform the FIFA DC within 20 days whether he wished:
  - i. To admit the alleged ADRVs and accept the sanction set out therein; or

- ii. To contest the alleged ADRVs and/or the proposed consequences and/or request a hearing before the FIFA DC.
25. On 7 February 2024, the Player contested the alleged ADRVs, refused the proposed consequences and requested a hearing.
  26. On 1 March 2024, a hearing was held before the FIFA DC.
  27. On 5 March 2024, the FIFA DC communicated its operative decision by which the Player was found to have committed the alleged ADRVs but was found to bear no fault or negligence for the ADRVs. Any otherwise applicable period of ineligibility was therefore eliminated.
  28. On 20 March 2024, the FIFA DC communicated the grounds of its decision to the parties (FIFA and the Player), as well as to the Iridonian Anti-Doping Agency (“IADA”) and WADA. Based on the evidence before it, the FIFA DC was satisfied that the Player had inadvertently ingested Tramadol before the sample collection.

#### **D. Proceedings before CAS**

29. On 25 March 2024, WADA requested the full case file.
30. On 29 March 2024, the FIFA DC sent the case file to WADA and the parties.
31. On 30 March 2024, IADA also requested the full case file.
32. On 31 March 2024, the FIFA DC sent the full case file to IADA.
33. Following its receipt, IADA opted not to appeal. FIFA and the Player similarly opted not to appeal.
34. On 8 April 2024, WADA noted that the Player’s witness statement was missing from the case file and requested a copy of it.

35. On 11 April 2024, FIFA sent WADA the missing document.
36. On 2 May 2024, WADA paid the filing fee of CHF 1,000 and filed a statement of appeal before CAS against the Player.
37. On 10 May 2024, WADA filed its appeal brief.
38. On 15 May 2024, the Respondent filed his answer to the appeal brief.
39. On 24 May 2024, a hearing was held at the headquarters of the Madrid International Arbitration Centre (“CIAM”) in Madrid, Spain.

### **III. SUBMISSIONS OF THE PARTIES**

40. The Panel has carefully considered all the factual allegations, legal arguments and evidence submitted by the Parties. The following is not an exhaustive analysis of all of such elements but rather a recapitulation of those elements ultimately deemed pertinent by the Panel.

#### **A. The Appellant**

41. The submissions of the Appellant may, in essence, be summarised as follows:
  - i. The appeal is admissible because it was filed respecting both deadlines set out in Article 82.1.b) of the FIFA ADR.
  - ii. The Player violated both Articles 6 and 7 of the FIFA ADR, being subject to a strict liability standard under both Articles. There is no need for WADA to prove the intent, fault, negligence or any other subjective intention of the Player. This way, the Respondent violated:
    - Article 6, because the doping test and the urine sample were taken In-Competition and the testing results comfortably satisfied the proving paths provided by Article 6.2.

- Article 7, as established by reliable means.
- iii. The doping test and the urine sample taken on 3 January were In-Competition. The In-Competition period commenced at 23:59 on 2 January since the match in which the Respondent participated took place on 3 January.
- iv. It is the Respondent's sole responsibility to prove the source of the substance. According to Mr Smith's expert report, the Player ingested a standard 50mg dose of Tramadol hours before sample provision. Mr Herrera's expert report is unreliable: it deviates from common sense and Mr Herrera is much less experienced and doubtfully impartial; the Respondent's and his mother's witness statements are neither persuasive.
- v. The sanction to be imposed on the Player should be four years of ineligibility according to Article 20.1.b) of the FIFA ADR, since he committed the ADRVs intentionally under Article 20.3 of the FIFA ADR.
- vi. If the commission is deemed to be unintentional, the sanction should be two years of ineligibility and no venue for elimination or reduction of the sanction, according to Article 20.2 of the FIFA ADR.
  - The Respondent cannot plead that he bore no fault or negligence since he failed to establish the thresholds established by the FIFA ADR.
  - Neither can he plead that he bore no significant fault or negligence under Article 23 of the FIFA ADR because his fault was significant considering both objective and subjective elements.

## **B. The Respondent**

42. The submissions of the Respondent may, in essence, be summarised as follows:
- i. The appeal is admissible as the FIFA DC Decision is appealable, the appeal has been filed on time and WADA has standing to appeal.



- ii. The doping test was conducted Out-of-Competition, as it was performed outside the match venue, pursuant to Article 41 of the FIFA ADR.
- iii. As far as Tramadol is only prohibited In-Competition, and the test was conducted Out-of-Competition, no ADRV can be established under Article 6 or 7 of the FIFA ADR.
- iv. The Player was accidentally contaminated by the herbal tea prepared by his mother on the night of 31 December, so it was Out-of-Competition and before Tramadol became a prohibited substance. Additionally, due to the substance only being prohibited In-Competition, the ingestion shall be presumed to be non-intentional, as per Article 20.3 of the FIFA ADR.
- v. Concerning the expert reports, the one provided by Mr Smith shows clear inconsistencies: if the player had taken a whole pill, his concentration would have been significantly higher.. Moreover, Mr Smith has a close affiliation with WADA, serving as an expert 22 times in three years, more than once every two months, meaning he is not impartial nor independent.
- vi. The Player exercised the utmost caution to prevent contamination, thus bearing no fault or negligence. Alternatively, considering both objective and subjective elements, he bore no significant fault or negligence:
  - As regards the objective elements, the Player acted like any other reasonable person in his situation would.
  - As regards the subjective ones, (a) Mr Young is only 17 years old and has been playing professionally for only two years; (b) he had an insufficient anti-doping education; (c) the Player was suffering a high degree of stress; and (d) the contamination occurred in the family home, where the Player feels safe.
  - Moreover, Mr Young did not gain a performance advantage from the substance, which was only hours away from being completely undetectable.

Based on these elements, the Player should receive no period of ineligibility, but only a reprimand.

If the Panel imposes a period of ineligibility, the provisional suspension must be credited against any such period as per Article 29.2 of the FIFA ADR.

#### **IV. JURISDICTION**

43. CAS jurisdiction to hear this appeal has not been contested. It has to be affirmed following Articles R47 of the CAS Code and 77 of the FIFA ADR.
44. Article R47 of the CAS Code establishes CAS jurisdiction if the regulations of the federation that issued the appealed decision so provide<sup>1</sup>. Thereby, Article 77.1 of the FIFA ADR determines CAS exclusive jurisdiction “[i]n cases arising from participation in an International Competition or in cases involving International-Level Players”.
45. On the one hand, these proceedings arise from the Player’s participation in the World Cup, an International Competition (Section 39 of the Preliminary Title of the FIFA ADR). On the other hand, the Respondent is an International-Level Player because he is part of FIFA’s Registered Testing Pool (Section 40 of the same Preliminary Title). CAS jurisdiction can thus be confirmed.
46. Moreover, this dispute resolution forum was foreseeable for both Parties, as contemplated in the FIFA DC Decision (Exhibit 8, last page: “Note relating to legal action”).

#### **V. ADMISSIBILITY**

47. The admissibility of the appeal has not been contested either and must be declared in light of the following rules.

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<sup>1</sup> “and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”. In this case, according to Article 76.3 of the FIFA ADR, WADA is exempt from exhausting other legal remedies and is entitled to appeal directly to CAS.

48. Article R49 of the CAS Code refers, as a first criterion, to the “*time limit set in the statutes or regulations of the federation, association or sports-related body concerned*”. In this regard, the deadline for WADA to appeal before CAS is envisaged in Article 82.1.b) of the FIFA ADR:
- “b) Notwithstanding the above, the filing deadline for an appeal filed by WADA shall be the later of:*
- i) Twenty-one days after the last day on which any other party having a right to appeal could have appealed; or*
- ii) Twenty-one days after WADA’s receipt of the complete file relating to the decision.”*
49. In this case, the later deadline for WADA to file its appeal is the one indicated in subparagraph i).
50. The deadline of Article 82.1.b).i) is based on the time limit of IADA, as another “*party having a right to appeal*”. Although IADA was not a party before the FIFA DC proceeding, this does not preclude its ability to appeal; the difference between “*party to the previous proceedings*” and “*party entitled to appeal*” is recognised in Article 82.1.a) (“*appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed*”). In this context, Article 77.3.d) of the FIFA ADR establishes:
- “In cases under art. 77 par. 1 (Appeals involving International-Level Players or International Competitions), the following parties shall have the right to appeal to CAS: [...] d) the NADO of the Person’s country of residence or countries where the Person is a national or licence holder [IADA].”*
51. Regarding the deadline for IADA to appeal, under Article 82.1.a), it must have requested the case file “*within 15 days from notice of the decision*” [subparagraph i)] and, thereafter, it would have “*21 days from receipt of the file to file an appeal to CAS*” [subparagraph ii)]. In this case, IADA received the decision on 20 March 2024 and requested the file on 30 March 2024, thus complying with the stipulated 15-day period. IADA received the case file on 31 March 2024, giving it until 21 April 2024 to appeal before CAS.

52. Hence, WADA’s period started on 21 April and finished on 12 May 2024. Additionally, according to Article R32 of the CAS Code, as 12 May 2024 was Sunday (a non-business day “*in the location from where the document is to be sent*”), the deadline was finally Monday 13 May 2024.
53. This Panel acknowledges that WADA filed its appeal on 2 May 2024 and therefore timely.
54. WADA also lodged the appeal brief timely. Under Article R51, para. 1, of the CAS Code, the Appellant shall file the appeal brief “[w]ithin ten days following the expiry of the time limit for the appeal”. Considering the deadline for the appeal to be 13 May 2024, the Appellant had until 23 May 2024 to file the appeal brief. As it was lodged on 10 May, the time limit was complied with.

## **VI. APPLICABLE LAW**

### **A. To the Procedure**

55. This arbitration procedure is governed by the CAS Code and the Swiss Private International Law Act (“PILA”); specifically, Articles 176 et seq.

### **B. To the Substance**

56. Article R58 of the CAS Code establishes:
- “The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. [...]”*
57. As recognised in CAS 2020/A/7605 Mol Fehervar FC v. Joan Carrillo Milan & FIFA, the applicable regulations are the “(autonomous) rules of the association that made the first-instance decision that is being contested in the appeals arbitration procedure” (para. 169).

58. There is no dispute concerning the applicability of the FIFA ADR. Article 1, para. 1, provides:

*“These Regulations shall apply to FIFA, its Member Associations and the Confederations, [...] and to Players, clubs, Player Support Personnel, Match Officials, Officials and other Persons who participate in activities, Matches or Competitions organised by FIFA or its Associations by virtue of their agreement, membership, affiliation, authorisation, accreditation or participation.”*

59. The Panel also acknowledges the applicability of the WADC<sup>2</sup> and Swiss law, as the Parties did not choose any other law and FIFA, the federation that issued the challenged decision, is domiciled in Switzerland.

## **VII. MERITS**

60. Having considered the Parties’ submissions, the issues to be addressed are:

- i. Did the Player commit the alleged ADRVs?
- ii. Is the doping test to which the Player was subjected to and the urine sample taken as a result a case of In-Competition or Out-of-Competition testing?
- iii. How did the prohibited substance enter Mr Young’s system?
- iv. In the event Mr Young is found to have committed the ADRV(s), what sanction should be imposed?

### **A. Did the Player commit the alleged ADRVs?**

61. In addressing whether the Player violated Articles 6 and 7 of the FIFA ADR, the Panel considers the standard and burden of proof established in Article 3.1 of the WADC:

*“The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the*

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<sup>2</sup> “FIFA has accepted the World Anti-Doping Code 2021 and implemented the applicable provisions of this Code and the International Standards in these Regulations. Thus, in the event of questions, the comments annotating various provisions of the World Anti-Doping Code 2021 and the International Standards shall be used to construe these Regulations where applicable. The Code and the International Standards shall be considered integral parts of these Regulations and shall prevail in the event of any conflict.” (Preface/Objective of the FIFA ADR).

*comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. [...]*”

**a. Article 6**

62. Regarding the violation of Article 6, the Appellant submits that it is undisputed that the analysis of the Player’s “A” and “B” samples revealed the presence of Tramadol. Furthermore, as Tramadol is only prohibited during In-Competition periods, the Appellants position is that the test of 3 January 2024 was In-Competition.
63. On the other side, the Respondent claims that the Player did not violate Article 6 as the test was conducted Out-of-Competition.
64. Pursuant to Article 6, para. 1, it is the Player’s personal duty to ensure that no prohibited substance enters his body. He is responsible for any prohibited substance or its metabolites or markers being present in his samples, without it being necessary to demonstrate the presence of intent, fault, negligence or knowing use on his part to establish an ADRV.
65. Additionally, Article 6.2 states that an ADRV is sufficiently proven when the analysis of the Player’s “B” sample confirms the presence of the prohibited substance, its metabolites, or markers found in the “A” sample.
66. In this case, it is undisputed that on 12 January 2024, the analysis of the Player’s “A” sample detected Tramadol at a concentration of 0.8 ng/mL, which was subsequently confirmed by the analysis of the “B” sample.
67. However, Tramadol is only prohibited during In-Competition periods. Therefore, for the athlete to have violated Article 6, Tramadol must have been detected in his samples as a result of In-Competition testing. As will be discussed in the following section, the test conducted on the morning of 3 January 2024 was indeed an In-Competition test.

68. Consequently, based on the strict liability standard of Article 6, and considering that the test was conducted In-Competition, it can be concluded that the Player violated Article 6.

**b. Article 7**

69. Concerning the violation of Article 7, and since Tramadol is prohibited only In-Competition, the Appellant's position is that the Player used the prohibited substance In Competition, and consequently violated Article 7.

70. On the other hand, the Respondent submits that the Player used the substance Out-of-Competition and, therefore, did not commit the ADR.

71. Article 7 para. 1 establishes that “[i]t is the Player’s personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used”. In the same manner as Article 6, it sets a strict liability standard.

72. Pursuant to Article 7 para. 2, the Panel is aware that the proving pass for Article 7 is much more varied than for Article 6. In addition to the testing results, any reliable means such as admissions by the athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, and expert reports can be used to establish such use.

73. The only evidence that the Appellant presents to demonstrate the commission of an ADRV under Article 7 is Mr Brandon Smith’s expert report (Exhibit 2).

74. In that report, Mr Smith indicates that the amount of the substance found present in the Player’s body is not consistent with it being detected three days after the alleged date of contamination (31 December). Instead, it is consistent with him ingesting a standard 50mg dose of Tramadol approximately six to twelve hours before the test (Exhibit 2, para. 11).

75. On the other hand, in the expert report submitted by the Respondent, Mr Javier Herrera maintains that the source of the substance was a contaminated glass of tea consumed by the Player on 31 December (Exhibit 1).
76. Mr Herrera, unlike Mr Smith, highlights that the Player's stress, age, and physical condition could have prolonged the detection period of Tramadol in his system, aligning it with the described chronology of events (Exhibit 1, para. 11).
77. The Respondent provides his and his mother's witness statements, which support that sequence of events.
78. He also submits Mr Deloscampos' statement, a series of WhatsApp messages exchanged between the Player and his national team's doctor, Mr John McGuinness, and the Doctor's Tramadol prescription addressed to the Player's mother. These pieces of evidence contribute to proving that he had consistently demonstrated a high level of diligence and awareness regarding anti-doping regulations.
79. In assessing contradictory pieces of evidence, this Panel follows the decisions CAS 2016/A/4803 Ekaterina Gnidenko v. IOC & UCI and CAS 2016/A/4804 Maria Abakumova v. IOC & CAS 2017/A/4983 Tatyana Lebedeva v. IOC & AMA: "[in] cases where experts differ, the Panel will apply logic and common sense in deciding which view is to be preferred, or which parts of the evidence are to be accepted".
80. After evaluating the contents of both expert reports, as well as the rest of the evidence presented, this Panel finds that the Appellant has failed to demonstrate, to a comfortable satisfaction standard, that the Respondent used Tramadol In-Competition.
81. This is due to (i) the specific circumstances considered in each report, and (ii) the personal qualifications and impartiality of each expert.
82. (i) Mr Herrera's report not only provides an impartial and detailed analysis of the Tramadol levels found in the Player's urine sample but also explains that the detection period of Tramadol can vary based on various individual factors (Exhibit 1, para. 11).



83. For his part, Mr Smith limits his analysis to an abstract consideration of how long Tramadol can remain in a person's system, without taking into account any of the Player's specific characteristics. Furthermore, his report is not supported by any other evidence.
84. (ii) While both experts possess notable qualifications in the field of sports doping, Mr Smith has a long-standing affiliation with the Appellant. Since 2021, he has presented 22 expert reports on behalf of WADA before first-instance adjudicatory bodies and CAS. Hence, there is a potential perception of bias towards findings that support anti-doping enforcement, which must be considered when assessing his conclusions.
85. In contrast, Mr Herrera has only appeared as an expert in six CAS proceedings. The fact that he shares nationality with the Respondent is insufficient to undermine his independence and impartiality.
86. Nevertheless, as will be further explored in issue C, while the Respondent has presented sufficient evidence to demonstrate that Tramadol was used Out-of-Competition, Mr Javier Herrera's report does not, on a balance of probabilities, definitively establish whether the ingestion occurred on the evening of 31 December or in the early hours of 1 January.
87. In conclusion, although the Player committed an ADRV under Article 6, he did not violate Article 7, as there is insufficient evidence to prove that Tramadol was used In-Competition.

**B. Is the doping test to which the Player was subjected to and the urine sample taken as a result a case of In-Competition or Out-of-Competition testing?**

88. As mentioned in the previous issue, Tramadol is prohibited only In-Competition. This way, for the Player to have violated Article 6, the test should have been made In-Competition.
89. The Appellant submits that, given the timeframe established in Section 34 of the Preliminary Title of the FIFA ADR, as the Respondent played for Iridonia on 3 January,

the In-Competition period began at 11:59 PM on 2 January. Consequently, since the Respondent was tested at 9:30 AM on 3 January, the doping test would unquestionably qualify as an In-Competition test.

90. On the contrary, the Respondent claims that, while the Appellant correctly identifies Section 34 as the In-Competition period, under Article 41 of the ADR (“General rules for Testing”), “*every Player may be subject to In-Competition Testing at the Matches in which he competes and to Out-of-Competition Testing at any time and place*”. Therefore, as the test revealing Tramadol in the urine sample was conducted before travelling to Tulipania, the match venue, the test would be Out-of-Competition.
91. In light of the differing positions and provisions cited by each party, it is advisable for the Panel to refer to the relevant FIFA ADR articles on In-Competition, as well as to the WADC.
92. Section 34 defines In-Competition as “*the period commencing at 23:59 on the day before a Match in which the Player is scheduled to participate through to the end of said Match and including the Sample collection process relating to said Match*”.
93. On the other side, Article 41 states that, under these ADR, “*every Player may be subject to In-Competition Testing at the Matches in which he competes and to Out-of-Competition Testing at any time and place*”.
94. In other words, while Section 34 establishes a broader time frame and does not specify where the test must be conducted, Article 41 states that In-Competition tests are restricted to the matches themselves.
95. Given this ambiguity surrounding where In-Competition tests must take place, it is advisable to refer to the WADC, as another applicable rule contemplated by the Preface/Objective of the FIFA ADR.
96. The Panel, faced with the doubt of where In-Competition tests can be conducted, refers to the commentary of Article 5.3.1 of the WADC (Commentary 36) which indicates that “[s]ome ruling bodies for International Events may be doing their own Testing

*outside of the Event [“Competition” under FIFA terminology] Venues during the Event Period [...]”.*

97. Thus, and given that the test was conducted within the defined In-Competition window, the Panel concludes that the test was indeed In-Competition, meeting the conditions for an ADRV under Article 6.

**C. How did the prohibited substance enter Mr Young’s system?**

98. The origin of the prohibited substance is crucial to determine whether the Player acted with fault or negligence when he was contaminated.

99. While the Respondent asserts that the prohibited substance entered his body accidentally through a glass in which his mother had previously dissolved a Tramadol pill, the Appellant argues that Tramadol entered the Player’s system because he ingested a pill a few hours before the match on 3 January 2024.

100. To address this controversy, the Panel aligns itself with previous CAS awards, including CAS 2016/A/4804 Maria Abakumova v. IOC (para. 103), CAS 2017/A/5296 WADA v. Gil Roberts (para. 51), CAS 2009/A/1926, ITF v. Richard Gasquet & CAS 2009/A/1930, WADA v. ITF & Richard Gasquet (para. 29).

101. Considering those decisions, the Panel notes that the Athlete must establish the origin of the prohibited substance, as envisaged in Sections 55 and 56 of the Preliminary Title of the FIFA ADR. The Player must do so on the balance of probabilities according to Article 68.2 of such ADR. In this regard, the Panel adopts the approach set out in CAS 2009/A/1926 ITF v. Richard Gasquet and CAS 2009/A/1930 WADA v. ITF & Richard Gasquet:

*“[F]or the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred.”*

102. Furthermore, with regard to the assessment of the content of the evidence presented, it should be noted that neither the FIFA ADR, the WADA Code nor the CAS Code contain any detailed provision. However, Article 9(1) of the IBA Rules of Evaluation of Evidence<sup>3</sup> states that “[t]he Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of evidence”. In CAS proceedings, the aforementioned rules essentially imply that each Panel is at liberty to determine the evidentiary weight of any given evidence. The Panel is also at liberty to choose between contradictory elements of evidence during the decision-making process<sup>4</sup>.
103. In the case at hand, the Player submitted several pieces of evidence to support this means of ingestion: in particular, Mr Herrera’s expert report (Exhibit 1) and his (Exhibit 3) and his mother’s witness statement (Exhibit 4).
104. Now, in light of the comprehensive assessment of the available evidence, it can be reasonably inferred that the Player has demonstrated, on a balance of probabilities, that the prohibited substance entered his body through a glass into which his mother had previously dissolved a Tramadol pill.
105. Not only do both testimonies concur as to the source of cross-contamination, but also Mr Herrera maintains that this is a case of cross-contamination. Consequently, if the Player had ingested an entire Tramadol pill, as the Appellant postulated, then the concentration of Tramadol found in his body would have been markedly higher (Exhibit 1, para. 13).
106. By contrast, it is notable that neither of the two witness statements nor Mr Herrera’s report conclude that the ingestion took place on 31 December. That report, in particular, only affirms that the Player could not have ingested a whole Tramadol pill on 31 December or afterwards because the concentration found would have been significantly higher (Exhibit 1, para. 13). Nevertheless, this assertion is insufficient to conclude that cross-contamination should have occurred on 31 December.

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<sup>3</sup> In accordance with Swiss international arbitration law, these IBA Rules are regarded as a comprehensive codification of evidence-related legal principles. They are often viewed as a valuable resource for arbitrators faced with procedural matters not expressly addressed in the applicable arbitration rules.

<sup>4</sup> Rigozzi A. and Quinn B. “Evidentiary issues before CAS”, page 51.

107. In conclusion, while the Respondent has provided sufficient evidence to substantiate the origin of the prohibited substance in question, such evidence is not conclusive, on a balance of probabilities, to corroborate that the ingestion took place on 31 December.

**D. In the event Mr Young is found to have committed the ADRV(s), what sanction should be imposed?**

**a. Intent**

108. The Panel first considers whether the Player's actions constituted an intentional violation under Article 19.1 of the FIFA ADR, which would entail four-year ineligibility sanction. Intent, within the FIFA ADR concept, involves an athlete knowingly engaging in conduct that constitutes an ADRV or acting with the conscious awareness that such conduct might result in an ADRV. The burden rests on the Anti-Doping Organisation to establish that the athlete acted with intent.

109. Upon careful examination of the evidence, including the Player's testimony, his mother's statement, and both expert reports, the Panel finds no evidence to suggest that the Player knowingly ingested Tramadol or acted with reckless disregard for the risk of violating anti-doping rules. The ingestion occurred in a domestic setting, where the Player relied on his mother, who inadvertently used a glass contaminated by her prescription medication. The Panel is persuaded that the Player had no knowledge of the contamination and no intention of enhancing his performance or breaching anti-doping regulations.

110. This conclusion is consistent with established CAS jurisprudence, notably in CAS 2017/A/5296 WADA v. Gil Roberts, where the Panel found no intent in a case of accidental contamination. In the absence of evidence to support a finding of intent, the Panel concludes that the Player's ADRV was not intentional. Accordingly, the four-year sanction for intentional violations under Article 19.1 is not applicable.

**b. No Fault or Negligence**

111. The Panel next considers whether the Player has demonstrated bearing no fault or negligence for the ADRV, which would allow for the elimination of any period of ineligibility under Article 19.4 of the FIFA ADR. The standard for no fault or negligence is exceptionally stringent, requiring the athlete to prove that they did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that they had ingested a prohibited substance.
112. In this case, the Player's age and the domestic context in which the violation occurred are relevant mitigating factors. However, the principle of strict liability, which underpins the FIFA ADR, imposes a high duty of care on athletes to avoid any situation that could lead to an ADRV. Even in a domestic setting, athletes are expected to exercise vigilance, particularly when consuming substances that could potentially be contaminated.
113. The Panel finds that, while the Respondent may not have been fully aware of the risks, he failed to take the necessary precautions to verify the safety of what he consumed. His reliance on his mother, though understandable, does not absolve him of the responsibility to exercise caution, especially given the proximity of the incident to a competition.
114. Based on these considerations, the Panel concludes that the Player has not met the high threshold required to establish no fault or negligence. Consequently, the complete elimination of a sanction is not warranted.

**c. No Significant Fault or Negligence**

115. The final issue for the Panel's consideration is whether the Player's actions constitute "no significant fault or negligence" under Article 22 of the FIFA ADR, which would allow for a reduction in the period of ineligibility. This standard applies when the athlete's fault, while present, is not significant in the overall context of the violation.

116. In this case, the Panel notes several important mitigating factors. At the time of the violation, the Player was only 17 years old, with limited experience in professional sports and anti-doping protocols. The violation occurred in a domestic setting, where he reasonably relied on his mother's care. Furthermore, he has no prior ADRVs, indicating that this incident was not part of a pattern of behaviour.
117. However, these mitigating factors must be weighed against the expectation that athletes, regardless of age or setting, exercise a reasonable level of caution. The strict liability principle requires athletes to take proactive steps to ensure that they do not inadvertently ingest prohibited substances. The Player's failure to verify the safety of the tea he consumed, especially in the lead-up to the competition, reflects a lapse in the standard of care expected of him.
118. This Panel's conclusion is supported by CAS jurisprudence, including CAS 2017/A/5301 & 5302 WADA v. Andre Casiraghi & Maurizio Briatore, where the Panel imposed a reduced sanction on athletes who ingested a prohibited substance through contaminated supplements, recognising that their fault, while present, was not significant. Similarly, in the Player's case, while there was a lapse in vigilance, it did not rise to the level of significant fault.
119. Accordingly, the Panel determines that a reduced sanction is appropriate in this case. A two-year period of ineligibility reflects the seriousness of the violation while acknowledging the mitigating circumstances that reduce the Player's degree of fault. This sanction is consistent with the principles of fairness, proportionality, and the need to uphold the integrity of sport.

**d. Period of Ineligibility**

120. Following Article 29 of the FIFA ADR, "*the period of Ineligibility shall start on the date of the final-hearing decision providing for Ineligibility*", i.e., 2 September 2024.
121. Moreover, under para. 2.a) of said Article, the Player shall receive a credit for the period he was provisionally suspended, which amounted to 53 days, starting on 13 January 2024 and ending on 5 March 2024, when the FIFA DC communicated its operative

decision. Thus, the period of ineligibility ends, not on 2 September 2026, but 53 days before, on 11 July 2026.

## **VIII. COSTS**

122. The rules on costs for CAS appeals against decisions rendered by an international federation in disciplinary matters are stated in Article R65 of the CAS Code. The Parties have not objected to its application.
123. According to Article R65.2, this proceeding shall be free of charge. No expenses were incurred by the Parties in relation to the costs of the arbitration, except for the non-refundable fees of the Office of the Court of CHF 1,000 which were paid by the Appellant and will be retained by CAS.
124. Regarding the Parties' costs, Article R65.3 provides, as a general rule, that each party shall bear its own costs, leaving it to the discretion of the Panel to award the prevailing party a contribution to cover its costs. Having considered the outcome of this arbitration, the conduct of the Parties, their respective financial resources and all other relevant circumstances, the Panel considers that each party shall bear its own costs.



## **ON THESE GROUNDS**

The Court of Arbitration for Sport rules:

1. The appeal filed by the World Anti-Doping Agency on 2 May 2024 is partially upheld.
2. The Decision issued on 5 March 2024 by the FIFA Disciplinary Committee is set aside.
3. Mr Leslie Young committed an Anti-Doping Rule Violation under Article 6 of the FIFA Anti-Doping Regulations, but not under Article 7.
4. The doping test and the urine sample taken on 3 January were In-Competition.
5. Mr Young bore no significant fault or negligence and is therefore sanctioned with two years of ineligibility with effect from 2 September 2024. Given the credit for provisional suspension served, the ineligibility ends on 11 July 2026.
6. The Parties shall each bear their own fees, but not the costs of the arbitration proceedings.
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland.

Date: 2 September 2024.

## **THE COURT OF ARBITRATION FOR SPORT**

Ms Dominique Leroux-Lacroix

President

Mr Michele Bernasconi

Arbitrator

Mr Emilio García Silvero

Arbitrator