

CONTAMINATED MEAT AND NO FAULT SANCTIONS: HOW RECENT CONMEBOL DECISIONS EXEMPLIFY THE PROPER ADJUDICATION OF MEAT CONTAMINATION CASES

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ABSTRACT:

This article examines recent CONMEBOL Disciplinary Committee decisions addressing the issue of inadvertent meat contamination resulting in Adverse Analytical Findings (AAFs) for Boldenone. It explores how these cases illustrate the correct application of the No Fault or Negligence mechanism under the strict liability regime of the World Anti-Doping Code (WADC). Through a detailed analysis of evidentiary standards, the article demonstrates how the athletes successfully established that the ingestion of the prohibited substance was unintentional and occurred without fault, leading to findings of no ineligibility. The author argues that these decisions exemplify fair, context-sensitive, and scientifically grounded adjudication in anti-doping cases from high-risk regions, ensuring both the integrity of competition and the protection of athletes' rights.

KEYWORDS:

CAS, anti-doping, strict liability, no fault, meat contamination, Boldenone, proportionality, CONMEBOL, WADA Code.

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Summary: 1. Introduction. 2. The Intersection of Strict Liability and Inadvertent Meat Contamination. 3. Strict Liability in Anti-Doping. 4. The No Fault Mechanism. 5. Strong Evidentiary Basis is Necessary for a Finding of No Fault. 6. The CONMEBOL Disciplinary Committee's Decisions: No Fault, no Ineligibility. 7. Conclusion: The CONMEBOL Decisions Exemplify Strong and Effective Results Management.

1. INTRODUCTION

On 3 February 2024, in the context of the 2024 CONMEBOL Pre-Olympic Tournament, various out-of-competition (OOC) doping controls were conducted on members of a U-23 national team in northern South America. Subsequent analysis of the samples conducted by the WADA accredited laboratory in Cologne, Germany returned 8 Adverse Analytical Findings (AAFs) for the presence of Boldenone, a category S1.1 non-Specified anabolic androgenic steroid prohibited *at all times* under the WADA Prohibited List.

The Athletes affected advanced the argument that the presence of Boldenone found in their Samples was due to the unintentional ingestion of contaminated beef during a team dinner at a hotel the day before, on 2 February 2024. In the end, the CONMEBOL Disciplinary Committee (**Disciplinary Committee**) handed down a No Fault finding to all 8 affected Athletes. Most importantly to the Athletes involved, a No Fault finding means that the athletes were able to establish that they did not know or suspect, and could not have reasonably known or suspected, even with the exercise of utmost caution, that they had ingested a Prohibited Substance¹. To someone who does not have experience with anti-doping results management, the concept that an Athlete could return a positive test for an anabolic steroid after consuming contaminated meat might be a surprise. Even more so, it may sound surprising to hear that an Athlete can be found to have tested positive for a steroid and yet not be suspended. However, for anti-doping practitioners, this is an ever-developing area of highly technical and difficult cases² where close attention to detail is required to achieve the most just result for both the Athlete and the integrity of competition.

This article will briefly discuss the legal context under which meat contamination cases are adjudicated in sport, and how the above cases (herein after referred to as the “CONMEBOL decisions”) exemplify strong and effective meat contamination results management.

¹ Capitalized terms not otherwise defined in this text have the meaning ascribed to them in the WADA Code or International Standards.

² Meat contamination defences brought by athletes are difficult to adjudicate and generally present varying levels of success for the athlete, for example in (i) CAS 2011/A/2384 UCI v Contador, the CAS rejected the athlete’s claim that contaminated meat was the most likely source of the banned substance and imposed a two year ban, and in (ii) CAS 2019/A/6443 CCES v Jamnicky, the CAS Panel accepted that the source of the banned substance was most likely contaminated cattle and the athlete could not be blamed in any way, imposing No Fault.

2. THE INTERSECTION OF STRICT LIABILITY AND INADVERTENT MEAT CONTAMINATION

The World Anti-Doping Code (**WADC**) is founded on the legal principle of strict liability, a principle which holds athletes accountable for any Prohibited Substances found in their bodies, regardless of their specific intent to ingest those substances.³ This principle is a critical component of the global anti-doping regime. It is in place to enforce clean sport and protect the integrity of competition. It similarly acts as a deterrent in anti-doping that places significant responsibility, rightfully so, on the individual Athlete to ensure that they are not only complying with their anti-doping obligations but also behaving with utmost caution to avoid a potential anti-doping rule violation.

However, the application of strict liability sometimes leads to harsh decisions and can, and does, inevitably result in well-meaning Athletes facing periods of Ineligibility for unintentional Adverse Analytical Findings (**AAFs**). As it relates to its application in cases of unintentional ingestion due to contaminated meat, the No Fault mechanism has revealed tensions between procedural consistency and substantive justice.

In recent years, athletes have returned AAFs for substances like Clenbuterol, and relevantly, Boldenone, after consuming meat in countries where these substances are still used in livestock. Clenbuterol has since been recognized by WADA as a substance which carries an especially high risk of meat contamination, particularly in Mexico, Guatemala and China.⁴ Cases of very low Clenbuterol concentration in urine samples are generally treated as Atypical Findings and athletes are given an opportunity to point their exposure to potentially contaminated meats before entering formal results management for an AAF.

³ See for example how the CAS explains strict liability in CAS 2004/A/690 Hipperdinger v ATP: “...The principle of strict liability means that an athlete is responsible for whatever substance is in his body, without having regard to the reasons for such presence and the degree of any respective fault of the athlete. While there are exceptions to this principle under the antidoping regulations inspired and influenced by the WADC, every athlete must be considered to be aware of the fact that he is responsible for any substance found in his body. This also means that every athlete must be concerned about substances he or she is ingesting, in particular if this is done for a medicinal purpose.”, at para 21

⁴ In 2021 WADA issued a “Stakeholder Notice regarding potential meat contamination cases” involving Clenbuterol, among other banned substances. The notice clarifies that the WADA Contaminants Working Group has determined that Clenbuterol is used in China, Mexico and Guatemala, and that this could result in low urinary concentrations in the sample of athletes who consume those meats. As such, Clenbuterol findings at concentrations of (>) 5 ng/mL are now reported as Atypical Findings, prompting an investigation into a possible meat contamination.

Boldenone presents an increasingly recognized problem very similar to that of Clenbuterol. Colombia has emerged as a focal point for Boldenone-related AAFs⁵, however, the widespread use of Boldenone in cattle in other countries of Latin-America, and the close interaction between Colombia and its bordering neighbors such as Venezuela necessitate that Anti-Doping Organizations approach Boldenone related meat contamination cases from this region with caution. To date, WADA does not treat low concentration Boldenone cases in the same way as Clenbuterol does. This difference in treatment means that Athletes contaminated with Boldenone in high-risk countries won't benefit from safeguards similar to those established by WADA for Clenbuterol.

3. STRICT LIABILITY IN ANTI-DOPING

As a signatory to WADA, FIFA employs the same strict liability obligations on its athletes as does WADA through the FIFA Anti-Doping Regulations (FADR).

Strict Liability imposes responsibility on Athletes for any Prohibited Substances detected in their samples, regardless of how they entered their body. This mechanism supports efficiency in enforcement and removes the burden (in most circumstances) on anti-doping authorities to demonstrate that there was intent to prove a doping violation has occurred. More importantly however, this means that an Athlete does not get a "free pass" simply for demonstrating that they did not intend to violate the anti-doping rules. An AAF is sufficient to establish a violation in and of itself and any reduction in sanctions that may follow must be justified by the Athlete through strict evidentiary requirements.

⁵ There is a growing list of *lex sportiva* decisions recognizing the widespread use of Boldenone in Colombia and its likelihood to contaminate athletes. See for example a recent decision from the ITIA in the case of Nicolas Zanellato where No Fault was established the athlete demonstrated he consumed contaminated meat shortly before a doping control: "*Given all of the circumstances of this case, and considering cases involving comparable facts (i.e., the detection of boldenone only, in a low concentration that can plausibly be explained by the ingestion of contaminated beef, and in circumstances where the athlete has established that he ingested one or multiple portions of Colombian beef shortly before sample collection), the ITIA accepts the Player has established that it is more likely than not that the boldenone found in his urine sample 1427480 was due to the presence of boldenone residues in the beef that he consumed in the days and/or hours prior to collection of the Sample.*" at para 25. Similar decisions include ITF v Farah and ITA v Mosquera.

4. THE NO FAULT MECHANISM

There exist mechanisms in the global anti-doping regime whereby Athletes who have committed an anti-doping rule violation can have their suspensions eliminated or reduced, these are known as No Fault or Negligence and No Significant Fault or Negligence. Alternatively, the FIFA Anti-Doping Regulations (FADR), much like the WADA Code, also acknowledges exceptional situations through Articles 22 and 10.5 respectively which provide that an Athlete shall not be declared Ineligible (i.e. no suspension shall be imposed on them) if they can establish No Fault or Negligence. This provision requires Athletes to demonstrate, on a balance of probabilities, that they did not know or suspect, and could not reasonably have known or suspected, that they had ingested a prohibited substance.

The analysis in these circumstances revolves around the Athlete's level of Fault even in cases where they accidentally ingested prohibited substances. FADR defines Fault as:

...[A]ny breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player's or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under art. 23 par. 1 or 2 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence).

The rationale behind the No Fault exception lies in proportionality.⁶ While deterrence is critical, anti-doping decisions must also be contextually fair.

⁶ The WADA Code has been drafted giving consideration to the principles of proportionality and human rights, WADA Code, page 10, this has been similarly discussed in literature such as Adam Lewis KC & Jonathan Taylor KC (eds), *Sport: Law and Practice*, 4th edn (Bloomsbury Professional, 2021): "The [WADA Code] respects the legal principle that there should be no punishment without fault (*nulla poena sine culpa*). This include in relation to a... 'strict liability' violation, which is presumed to be

Strict Liability cannot deprive Athletes of a legal “escape hatch” by which varying extenuating circumstances may justify or differentiate the Fault behind one strict liability offence from another. Athletes who exercise due diligence and nonetheless fall victim to exposure of a prohibited substance deserve recourse under the No Fault standard.

Meat contamination cases provide for a perfect example in which exceptional circumstances create room for Anti-Doping Organizations (ADOs) to apply a case-by-case approach with the goal of appropriately attaining proportionality in sanctioning. In the case of meat contamination, considering the appropriateness of No Fault decisions should be an indispensable requirement of proper adjudication and results management. This is especially important in regions which are specifically recognized as having a higher risk of meat contamination.

5. STRONG EVIDENTIARY BASIS IS NECESSARY FOR A FINDING OF NO FAULT

It's important to emphasize that being sensible to the risks of meat contamination in some regions does not mean that any Athlete returning an AAF for a prohibited substance, even in high-risk countries, should automatically receive reduced sanctions in any form.⁷ However, when substantiated with credible evidence, a thorough investigation and analysis of the circumstances is essential for maintaining the legitimacy and fairness of the global anti-doping regime. In these cases, the Athletes who successfully demonstrate that they were contaminated by affected meat should, as in the CONMEBOL decisions, be given a No Fault Finding.

In order to meet this burden, the onus lies with the Athlete to demonstrate two critical points. First, they must prove to the relevant judicial body how

the fault of the athlete, unless the contrary is proven...if the violation was not intentional the athlete is also given the opportunity to establish that the [applicable ban] should be eliminated entirely...or that it should be materially reduced..." at page 909.

⁷ CAS jurisprudence requires strong, persuasive evidence before it can accept a lack of intent, in any circumstance, see for example the reasoning in CAS 2022/A/8970 WADA v SLOADO & Dejan Mlakar: “Protestations of innocence, as has been noted by many a CAS panel, are the common currency of the guilty and innocent, not just in anti-doping cases but also in other areas of society where wrongdoing is alleged against an individual.” at para 66 and CAS 2020/A/6987 Iannone v FIM: “... Even in such cases, it is clear that the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent.” at para 137.

the substance entered their system⁸ (in these cases, via the inadvertent ingestion of contaminated meat), and second, they must demonstrate that they acted with utmost caution to keep their system clear of the Prohibited Substance.⁹

In the CONMEBOL decisions, the Athletes brought forward a variety of critical, necessary and convincing evidence. Key points of their evidence included that the eight Athletes had tested positive together (suggesting a group contamination rather than single isolated use), that Boldenone is a commonly used anabolic substance to promote muscle growth in Venezuelan livestock, that the detected concentration in their samples was very low (in some athletes as low as 4.8 ng/mL), that some of the Athletes had been subject to subsequent doping controls shortly after and returned negative results, and also expert evidence substantiating technical aspects of their defense. Of course, the Athletes also categorically denied any wrongdoing and similarly denied ever having taken Boldenone intentionally.

The Athletes defence team did not only advance a theory of Boldenone exposure from local injected livestock but similarly introduced expert evidence. The expert evidence was provided by a toxicologist and pharmacy professor as well as a veterinarian. The veterinarian concluded that Boldenone is widely used in Venezuelan livestock, that regulatory oversight in the use of Boldenone in Venezuelan agriculture is weak, in that farmers can obtain Boldenone easily and apply it without any regulated withdrawal periods, and that cooking does not remove Boldenone from livestock meat, including even high-quality cuts.

The toxicologist, on the other hand, provided expert evidence which concluded that meat contamination is frequent, and sometimes even more so in higher grade cuts of meat, and that there was a significant likelihood that the players would have consumed contaminated meat at the hotel in question.

The Athletes also provided evidence that they acted diligently to avoid a potential ingestion of Prohibited Substances. The meals they ate were controlled and dictated by their nutritionists and team staff, they followed

⁸ CAS 2018/A/5619 WADA v UWW & Boltukaev: *"there is one crucial point: it concerns the determination of the origin of the prohibited substance found in the Athlete's body. In fact, only in the event the Athlete proves 'how the Prohibited Substance entered his ... system' can a fault-related reduction (or elimination) of the sanction be granted."* at para 73

⁹ CAS 2005/C/976 & 986 FIFA & WADA: *"The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body. ... It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping rule violation has been identified."* at paras 73 and 74

the team's dietary protocols, and they clearly investigated the potential source of their contamination as quickly as possible. The Panel concluded that the Athletes did not deviate from the type of utmost caution that is expected of them. This is especially true considering that they followed the instruction of their team staff and ate from the menus provided to them, indicating no deviation from standard protocol.

6. THE CONMEBOL DISCIPLINARY COMMITTEE'S DECISIONS: NO FAULT, NO INELIGIBILITY

In the end, the CONMEBOL Disciplinary Committee decided the players had committed an anti-doping rule violation due to the presence of Boldenone in their sample, as established under the CONMEBOL Anti-Doping Regulations. This is in line with the strict liability principle that the presence of the substance alone is sufficient to establish a violation.

However, after an exhaustive analysis of the evidence, the Committee concluded that the players had demonstrated the presence of the Boldenone in their Samples was most likely the result of accidental ingestion through contaminated meat consumed during their team dinner while on team duties. This conclusion was supported by the extensive evidence which had been provided by their defence team.

Considering this, and applying Article 22 of their Anti-Doping Regulations, the CONMEBOL Disciplinary Committee found that the athletes had established No Fault or Negligence. As a result, no period of ineligibility or sanction was imposed, and the case was closed without disciplinary measures.

7. CONCLUSION: THE CONMEBOL DECISIONS EXEMPLIFY STRONG AND EFFECTIVE RESULTS MANAGEMENT

The CONMEBOL Decisions serve as a timely and important benchmark for how No Fault findings in cases of high-risk regions for meat contaminants should be adjudicated under the global anti-doping framework. Anti-doping adjudication is fraught with scientific complexity, jurisdictional nuance, and evolving jurisprudence. In a field of law already replete with complexity, meat contamination in high risk regions further complicates the results management exercise and presents a difficult challenge to anti-doping organizations adjudicating these matters. The CONMEBOL Disciplinary

Committee's methodical evaluation of the evidence in these cases highlights the importance of a case-specific approach grounded in fairness and rigor.

By recognizing the unique realities of particular regions, the scientific and contextual realities that accompany these cases, and the need for strong evidentiary standards, CONMEBOL not only ensured that the mechanisms to preserve the integrity of the sport are respected, but it also safeguarded the rights of athletes who were not at Fault. This approach aligns with the spirit and letter of the WADA Code, reinforcing the importance of proportionality in sanctioning.

