Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2017/A/5061 Samir Nasri v. UEFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof. Dr. Christoph Vedder, Professor of law in Munich, Germany
Arbitrators:	Prof. Dr. Gustavo Albano Abreu, Professor of law in Buenos Aires, Argentina
	Mr. Clifford J. Hendel. Attorney-at-law in Madrid, Spain

In the arbitration between

Samir Nasri, France

Represented by Mr. Juan de Dios Crespo Pérez, Attorney-at-law, Ruiz-Huerta & Crespo in Valencia, Spain

Appellant

and

Union des Associations Européennes de Football, Nyon, Switzerland

Represented by Dr. Emilio García, Managing Director Integrity, and Dr. Martin Bauer, Disciplinary Lawyer, UEFA, in Nyon, Switzerland

Respondent

I. THE PARTIES

1. Mr Samir Nasri (hereinafter: "the Athlete" or "the Appellant) is a 30-year old French professional football player who, at the time of filing the appeal, was playing for the Spanish club Sevilla FC on a loan agreement from the English club Manchester City FC.

2. The Union des Associations Européennes de Football (hereinafter: "the UEFA" or "the Respondent") is the governing organization of European football. The UEFA is an association under Swiss law with its headquarters in Nyon, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. Over Christmas 2016, during the competition break in the Spanish League, the Appellant, together with several members of his family was on a holiday trip in Los Angeles, USA. On 26 December 2016 he felt bad and vomited. He decided to call a doctor. With the help of his ex-girlfriend who lived in Los Angeles, Dr. Sarabjit Anand, a general surgeon licensed and practicing in Maryland, was called. Dr. Anand visited him a few minutes later from 4:00 to 5.00 p.m. in his hotel room and diagnosed: "*weak, lethargic, fatigue, unsteady gait, sweating, confusion, Mr Nasri appears in a state of dehydration. He is very weak and confused, s/s of fever, vomiting, diarrhea all present at the time of visit.*" Dr. Anand further stated: "*according to the patient he has lost weight due to all the vomiting and diarrhea, possibly 10%, bringing his weight down to 69 kg.*"

5. Dr. Anand established a "Plan of Care" prescribing an intravenous infusion of a sodium chloride solution and stated: "*In general cases treatment would be given PO (i.e. per oral), yet given the circumstances with the patient having to fly back to Europe. This would be the fastest and most efficient treatment*".

6. The Appellant decided to receive the treatment at the hotel room by a company called "Drip Doctors". The Drip Doctors specialize in providing medical services such as IV infusions at the location of the patients, in particular celebrities, transferring all necessary medical equipment to the place of the patient in order to avoid exposure to public places where they may be bothered by fans or press.

7. At 7:30 pm the Appellant started to undergo the infusion of 500 ml of sterile water containing micronutrient components.

8. According to the Drip Doctors' report, the Athlete's temperature had gone down to 37.1°C (compared to 38.8°C during Dr. Anand's call) and he was not vomiting. The Athlete "*was feeling under the weather*" and was suffering from "*pre-viral like symptoms attempting to gain preventive health and immunesystem support.*"

9. On 30 December 2016, the Appellant flew back to Europe and arrived in Seville on the same day.

10. In the meantime, it had become known through social media and traditional media that the Appellant had received an intravenous infusion of 500 ml on 26 December 2016. By letter of 28 December 2016 the Spanish Agency for Health Protection in Sport (AEPSAD) had requested information from the club. In reply, by letter dated 30 December 2016, the General Manager of Sevilla FC informed the AEPSAD that, on 30 December 2016, the Athlete had declared that he had taken two infusions of no more than 50 ml each in an interval of more than six hours. A written report was requested from the Drip Doctors.

11. The Athlete contacted Dr. Adolfo Muñoz Macho, at that time the Head of Medical Services of Sevilla FC. As a result of these considerations, on 21 January 2017, on behalf of the Appellant, Dr. Muñoz sent an application for a retroactive Therapeutic Use Exemption ("TUE") for the intravenous infusion of 500 ml sterile water the Appellant had received on 26 December 2016, to the Respondent.

12. The TUE Committee of UEFA refused the application by decision of 7 February 2017 which was notified to the Appellant on 8 February 2017.

13. Against this decision the Appellant, on 1 March 2017, filed a Request for Review before the TUE Committee of WADA. By letter dated 10 March 2017 that Committee declined to conduct a formal review of the Appellant's TUE application.

14. By his Statement of Appeal dated 31 March 2017 the Appellant appealed the decision of the UEFA TUE Committee of 7 February 2017.

15. On 25 April 2017 the Appellant submitted his Reply to the UEFA Control, Ethics and Disciplinary Body that had initiated anti-doping proceedings against the Athlete and requested to suspend these proceedings until a final decision of the CAS in the dispute about the TUE pending before this Panel.

B. Proceedings before the UEFA TUE Committee

16. The UEFA TUE Committee, under the chairmanship of Dr. Jacques Lienard, reviewed the Appellant's application and took the medical report of Dr. Anand as well as the report from the Drip Doctors into consideration.

17. Based on Section M2 of the WADA Prohibited List, which defines intravenous infusions of more than 50 ml per a six-hour period at all times as a prohibited method, except for those legitimately received in the course of hospital admissions, surgical procedures or clinical investigations, and having considered the WADA International Standards for Therapeutic Use Exemptions (ISTUE), the TUE Committee reached the following decision:

"The UEFA TUE Committee has decided to refuse the TUE request.

The UEFA TUE Committee considers that the following criteria of the ISTUE required for granting a Therapeutic Use Exemption have not been fulfilled:

- *4.1 a The Prohibited Substance or Prohibited Method in question is needed to treat an acute or chronic medical condition, such that the Athlete would experience a significant impairment to health if the Prohibited Substance or Prohibited Method were to be withheld.*

  The report from Drip Doctors, who administered the treatment, noted that you requested the treatment because you were feeling "under the weather" and were "attempting to gain preventive health and immune system support". Your temperature at the time of treatment was 98,8 F (37.1 C).

- *4.1 c There is no reasonable Therapeutic alternative to the Use of the Prohibited Substance or Prohibited Method.*

  No medical evidence was provided to demonstrate why oral rehydration, a permitted alternative treatment, was not a valid option. Indeed, the report from Dr. Anand stated that "in general cases treatment would be given PO." The only reason given for the use of an IV infusion rather than oral rehydration was that you had to fly back to Europe.

- *4.3 An Athlete may only be granted retroactive approval for his/her Therapeutic Use of a Prohibited Substance or Prohibited Method (i.e., a retroactive TUE) if:*

  Emergency treatment or treatment of an acute medical condition was necessary.

  UEFA Anti-Doping Regulations are clear that TUEs must be obtained in advance of treatment unless there is a medical emergency, The UEFA TUE Committee finds the evidence provided with the TUE application does not support the idea that there was a medical emergency or an acute medical condition that would justify the granting of a retroactive TUE.

You may request the decision to be reviewed by WADA according to Article 4.4.6 of WADA Anti-Doping Code. WADA may charge a fee for such a review. Such a request does not suspend UEFA's decision."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. With respect to the decision of the UEFA TUE Committee rendered on 7 February 2017, the Appellant filed a Statement of Appeal on 31 March 2017 against UEFA with the CAS. Mr. Clifford J. Hendel was nominated as arbitrator.

19. By letter of 12 April 2017, UEFA nominated Dr. Gustavo Albano Abreu as arbitrator. Though the Appellant voiced observations with regard to the nomination of Dr. Abreu, eventually his nomination was accepted and confirmed by letter of the CAS Court Office dated 19 April 2017.

20. Within the time limit, which was extended by letter of the CAS Court Office of 7 April 2017, the Appeal Brief, dated 21 April 2017 was filed on 25 April 2017.

21. Upon the request to pay the advance of the costs the Appellant, by letter of 8 May 2017, submitted that the dispute at hand was related to a disciplinary matter and, therefore, free of charge. By letter of 29 May 2017 the CAS Court Office notified the Parties of the determination of the CAS Secretary General that the appeal is not free of charge because it does not concern a suspension of the Athlete, but only a denial to grant a TUE. The Appellant acknowledged that decision by letter of the same day.

22. Upon request by the Respondent dated 22 May 2017, under letter of 26 May 2017 the Appellant disclosed a document containing the decision taken by the WADA on 1 March 2017.

23. By letter of 30 May 2017 the Respondent requested an extension of the time limit to provide its Answer until the Appellant had paid his advance of the costs. Hence, the CAS Court Office, under letter of 29 June 2017, granted the Respondent a time limit of 20 days from receipt of the said letter to file its Answer.

24. By the same letter the Parties were notified of the composition of the Panel: Mr. Clifford J. Hendel, Attorney-at-law in Madrid Spain (arbitrator), Dr. Gustavo Abreu, Professor of law in Buenos Aires, Argentina (arbitrator), and Dr. Christoph Vedder, Professor of law in Munich, Germany (President of the Panel).

25. Within the time limit set, the Answer of the Respondent was filed on 3 July 2017.

26. By letter of 12 July 2017 the CAS Court Office confirmed that both Parties had requested to hold a hearing.

27. On 2 August 2017 the CAS Court office notified the Parties that the hearing would take place on 3 October 2017 in Lausanne.

28. Also on 2 August 2017 the Order of Procedure was forwarded to the Parties and duly signed and returned by the Respondent on 4 August and by the Appellant on 30 August 2017.

IV. SUBMISSIONS OF THE PARTIES

1. The Appellant

29. In the Appeal Brief as well as throughout the whole proceedings it is not challenged that the intravenous infusion of 500 ml constitutes a Prohibited Method according to M2 2 of the WADA 2016 Prohibited List.

30. Rather the Appellant submits that the considerations of the UEFA TUE Committee to deny a TUE were "*erroneous*". The Appellant claims to establish, by a balance of probability, that the criteria required by Article 4.1 ISTUE are fulfilled.

31. With reference to Dr. Anand's report, it is submitted that the condition under Article 4.1 a ISTUE which requires "*an acute ... medical condition*" is met. Dr. Anand stated that the physical conditions of the Appellant "*were very weak, confused, vomiting and diarrhea*" which made it "absolutely impossible for him to travel back to Seville from Los Angeles (15h flight)."

32. The second condition, set forth in Article 4.1 b ISTUE, *i.e.* that the use of the Prohibited Method is highly unlikely to produce any additional performance enhancement, was, the Appellant states, not even discussed by the TUE Committee.

33. With regard to the third condition for a TUE which is provided for in Article 4.1 c ISTUE, *i.e.* that there is "*no reasonable therapeutic alternative*", the Appellant relies on Dr. Anand's explanation why he prescribed the intravenous infusion: "*given the circumstances with the patient having to fly to Europe, this would be the fastest and most efficient treatment,*" making reference to a published paper which states that intravenous rehydration "*may provide a means of more rapidly replenishing the body's fluid stores compared with oral rehydration*". Therefore, the Appellant concludes that this medical evidence, "*connected with the fact that the Player had to fly to Europe, is reasonable enough for not to consider the oral rehydration as a comparable alternative.*"

34. In this connection the Appellant refers to the fact that the low humidity in the cabin of planes coupled with decreased fluid intake "*causes dehydration*" and concludes that the Appellant's symptoms "*made absolutely impossible for him to take a 15h flight back to Seville.*" According to the Appellant, airlines actually do not allow sick passengers to fly.

35. In conclusion, the Appellant submits that it is "*undisputed that the player suffered from nausea and vomiting due to the gastroenteritis. Therefore, it was highly recommendable the intravenous infusion instead of the oral intake because IV fluid has the clear advantage of providing no oropharyngeal stimulation.*"

36. Furthermore, the Appellant states that the fourth criterion, *i.e.* that the Prohibited Method "*is not a consequence ... of the prior use ... of a substance or method which was prohibited ...*" was not discussed by the UEFA TUE Committee.

37. In support of the foregoing the Appellant refers to Dr. Muñoz, at the time Head of Medical Services of Sevilla FC, who confirmed that intravenous infusion "*is a safe method ... and it is the most efficient treatment taking into consideration the circumstances of the case at stake.*" According to Dr. Muñoz, the WADA requirements for the treatment received by the Appellant were met: a clear diagnosis by Dr, Anand; established evidence that no better alternative was available; the treatment had to be conducted following the Doctor's instruction; and corresponding records had been produced.

38. Moreover, it is submitted in particular, that the Appellant could follow the instructions of Dr. Anand without "*questioning the medical indications of a Doctor.*"

39. In support of the latter submission reference is made to the award in CAS 2008/A/1452 where the relevant panel concluded that the athlete concerned "*had no capacity to evaluate the professional judgment of the treating medical practitioner.*" Therefore, the Appellant concludes that "*an athlete who is suffering an acute disease and relies on the medical criterion of a qualified doctor cannot be driven to a situation of clear defenselessness when the criterion is not shared ex post by the TUE bodies.*"

40. Having made submissions with regard to the granting of a preventive TUE, the Appellant turns to the conditions required for a retroactive TUE provided for in Article 4.3 ISTUE. According to that provision, a retroactive TUE "*may only be granted ... if a) Emergency treatment or treatment of an acute medical condition was necessary or b) due to other exceptional circumstances there was insufficient time ... to submit an application for the TUE prior to the Sample collection.*" The Appellant submits that both conditions are met.

41. According to the Appellant, his gastroenteritis and dehydration required an urgent treatment in the sense of Article 4.3 a ISTUE.

42. The overall circumstances of the Appellant, *i.e.* being abroad during Christmas holidays, suffering from gastroenteritis, the necessity to take a very long flight, it is submitted, shall be considered exceptional. The additional criterion "*prior to Sample collection*" could not be interpreted to the effect that it does not apply in a situation where the Athlete did not have to undergo a doping control but applied for a TUE on his own initiative. The Appellant concludes that, under the given circumstances, he had no "*reasonable opportunity to submit an application for the TUE prior to the treatment.*"

43. In support the Appellant refers to the awards in CAS 2002/A/389 and CAS 2006/A/1102 which, according to him, established the criteria for granting a retroactive TUE. Based on these awards, the Appellant concludes that the medical treatment was necessary to cure the acute gastroenteritis and, under the given circumstances, the oral ingestion could not be taken into account as a valid alternative treatment due to the vomiting and the nausea of the Appellant.

44. Furthermore, the treatment was not capable of enhancing performance, there was a medical diagnosis, the medical treatment was applied by qualified medical personnel, and adequate medical records were kept.

45. In conclusion, the Appellant submits that:

> "*It is crystal clear after revising the facts that the Player was not in condition to discuss or argue with the Doctor about the legitimacy of the treatment or its urgency. The treatment received ... was absolutely harmless, absolutely unable to enhance his performance and had the only scope of rehydrating him while suffering and acute gastroenteritis.*"

46. The Appellant's requests for relief are as follows:

"1. To Upheld this Appeal and to adopt an award to set aside the appealed Decision, and concluding that the TUE requested by the Player must be granted retroactively.

2. Condemn the Respondent to the payment of the whole CAS administration costs and Panel fees; and

3. Fix a sum to be paid by the Respondent to the Player in order to cover its defence fees and costs in the amount of CHF 10,000."

2. The Respondent

47. UEFA chiefly submits that the Athlete "*during a holiday trip, felt sick as he was allegedly suffering from a "gastroenteritis" and chose, despite his obligations as a professional athlete submitted to the WADA Code, the WADA Prohibited List and the UEFA ADR, to use a method, the intravenous infusion of 500 ml, i.e. more than 50 ml every six hours, which is undoubtedly labelled as a Prohibited Method according to the WADA Prohibited List. Consequently, he violated the UEFA ADR.*"

"*The player deliberately chose to ignore his obligations and his responsibilities as an experienced professional football player for reasons of convenience, having the consequence that the UEFA TUE Committee rightfully refused the TUE application which was submitted by the Athlete almost one month after the incident under scrutiny, acting fully in line with the WADA ISTUE requirements.*"

48. In support of this submission the Respondent refers to the collective conditions for obtaining, first a TUE under Article 4.1 WADA ISTUE and, second a retroactive TUE under Article 4.3 WADA ISTUE.

49. At the outset the Respondent states that it is the burden of proof of the Athlete to establish that the four criteria set forth in Article 4.1 ISTUE for the granting of a TUE are met. In reply to the Appellant's reference to the award in CAS 2008/A/1452, the Respondent points out that, compared to that award, a substantial change in the wording of M2 2 of the WADA Prohibited List has taken effect and, hence, the jurisprudence cited did not constitute valid authority. As from the 2008 version and under the 2016 WADA Prohibited List which applies to the dispute all intravenous infusions of more than 50 ml par six hours are prohibited.

50. With regard to the first condition under Article 4.1 a ISTUE, *i.e.* that the Prohibited Method was necessary "*to treat an acute ... medical condition, such that the Athlete would experience a significant impairment to health if the ... Prohibited Method were to be withheld*", the Respondent submits that the Appellant's medical condition was not "*acute*" in the sense of Article 4.1 a ISTUE. Dr. Anand's medical report, according to the Respondent, states "*typical symptoms of gastroenteritis without any particular serious symptoms*" with fever described between modest and moderately high. The Appellant did not provide any evidence for the alleged weight loss. The evaluation of the Athlete's application form made by Dr. Gordon, a member of the UEFA TUE Committee, came to the conclusion that the Appellant suffered "*from a mild dehydration that would have been amenable to oral fluids*".

51. Furthermore, the Respondent refers to the report of Ms. Jamila Sozahdah of the Drip Doctors who, only two-and-a-half hours after the examination by Dr. Anand, treated the Appellant and checked his body functions. This report states that the temperature already had gone down to 37.1°C (compared to 38.8°C in Dr. Anand's report) and the Appellant was not vomiting. As "*chief complaint*" the report notes that the patient was feeling under weather and was suffering from "*pre.-viral like symptoms attempting to gain preventive health and immune system support*" without mentioning a diagnosis of gastroenteritis or any other indication of acuteness. This is understood by Dr. Liénard, the Chairman of the UEFA TUE Committee, as "*a description of clinical signs of observation which do not appear to be particularly serious.*" According to the Respondent, neither the medical report of Dr. Anand nor the report of the Drip Doctors in describing the situation used the term "*acute*".

52. Based on these reports the Respondent asserts that the Athlete does not "*provide proof for the allegation that he was suffering from a disease so acute that it required immediate intravenous drip therapy instead of regular oral rehydration.*"

53. In reply to the Appellant's assertion that Dr. Anand's report cannot be rebutted by the Drip Doctors' report because Ms Sozahdah "*was a physician assistant*" only, the Respondent submits that, according to the professional skills required she had the medical training and education to deal with cases as simple gastroenteritis. Therefore, the Respondent concludes, that "*her assessment and the observations made in the DD report have to be regarded as not only accurate but as absolutely critical for the evaluation of the medical condition of the Appellant given that she was the last medical practitioner who has examined the Appellant before the Prohibited Method was administered.*" For the Respondent the Drip Doctors' report confirms Dr. Anand's report in that the Athlete was not in an acute medical condition.

54. Furthermore, the Respondent notes that the Drip Doctors administered in intravenous micronutrient therapy with sterile water while Dr. Anand had recommended an IV hydration with sodium chloride and other particular components. This, for the Respondent, highlights the negligence regarding the administration of the treatment.

55. The argument suggested by the Appellant that his medical condition was so acute that he was afraid not to be able to fly back to Europe is considered by the Respondent as "*not a valid argument*" to rebut the medical assessment of the three medical experts in the UEFA TUE Committee.

56. Then the Respondent turns to the second part of Article 4.1 a ISTUE which has to be taken into account when interpreting what an "*acute*" medical condition is, *i.e.* the necessity that the Athlete "*would experience a significant impairment to health if the ... Prohibited Method would be withheld.*" The assumption that it would be absolutely impossible to take a 15 hour flight to Seville, the Respondent states, cannot be regarded as a potential impairment to health.

57. With regard to the next condition required for a TUE under Article 4.1 b ISTUE, *i.e.* that "*no additional enhancement of performance*" might result from the treatment, the Respondent concurs with the Appellant that no performance enhancement was intended.

58. However, with regard to the third condition for obtaining a TUE, set forth by Article 4.1 c ISTUE, *i.e.* that there was "*no reasonable therapeutic alternative*" to the use of the Prohibited Method, the Respondent submits that the Athlete does not establish, by a balance of probability, that there was no therapeutic alternative, but, in the Athlete's case, oral rehydration actually was "*clearly*" a valid therapeutic alternative. In support of that conclusion the Respondent refers to medical literature which states that "*IV rehydration may provide a means of more rapidly replenishing the body's fluid stores compared with oral rehydration*" and suggested that such circumstances together with the fact that the Athlete had to fly to Europe "*is reasonable enough for not to consider the oral rehydration as a comparable alternative.*" Dr. Anand stated that "*in general cases treatment would be given PO*" but such treatment was not chosen because the Athlete wanted to fly back to Europe.

59. From that statement the Respondent concludes that oral rehydration was possible and that the report does not provide any medical reason as to why oral rehydration would not have been possible. Even if intravenous infusion is more efficient, the Athlete could have been rehydrated by the simple way of drinking fluids since he was, according to the Drip Doctors, no longer vomiting. According to the Respondent, here again, the only reason to choose intravenous treatment was that the Athlete intended to fly back to Europe. That does not constitute a medical reason and does not make oral rehydration inappropriate. These circumstance are, according to the Respondent all the more irrelevant considering that the Athlete was supposed to fly back on 30 December 2016, *i.e.* four day after the treatment.

60. The Respondent refuses the argument suggested by the Appellant that, based on the awards in CAS 2008/A/1452 and in CAS 2002/A/389, the Athlete had no choice but to rely on the recommendation of the treating doctor to administer the intravenous treatment. The Respondent submits that the circumstances were different. In the former case, the player saw his team doctor who recommended the intravenous treatment. Under these circumstances, the CAS panel ruled that the athlete could rightfully rely on the recommendation of the team doctor who was experienced in doping matters. In contrast to such situation, the Appellant did not even try to reach his team doctor or medical personnel even though he had 2,5 hours between the call of Dr. Anand and the treatment. Exactly this, according to the Respondent, would have been his obligation under Article 21.1 WADA Code which requires "*to inform medical personnel of their obligation not to use ... Prohibited Methods and to take responsibility to make sure that any medical treatment received does not violate anti-doping policies and rules ...*"

61. The Respondent is of the view that the Appellant actually knew that he committed an anti-doping rule violation given the fact that he first gave false information to the medical team of his club when, on 30 December 2016, for the Reply to the AEPSAD he indicated that he underwent two intravenous infusions of no more of 50 ml each with more than six hours difference.

62. Therefore, the Respondent concludes that the Appellant, instead of relying blindly on the recommendation of Dr Anand, had the clear obligation to make sure that the treatment was executed in compliance with the anti-doping requirements, in particular in a situation where two medical practitioners unknown to the Athlete were acting. The Athlete was treated by a medical doctor who was recommended by a friend, no expert

in treating professional athletes and not even an expert in gastroenteritis diseases given that he is practising as a general surgery doctor.

63. Given that two of the aforementioned cumulative conditions have not been met the Respondent does not discuss the fourth requirement of Article 4.1 d ISTUE, *i.e.* that the necessity for the use of a Prohibited Method is not a consequence of the prior use of Prohibited Substances or Prohibited Methods.

64. From the above, the Respondent concludes that the Athlete neither before the UEFA TUE Committee nor in the *de novo* proceedings before the Panel did provide information justifying the granting of a TUE pursuant to Article 4.1 ISTUE and, therefore, failed his burden of proof.

65. In addition, the Respondent turns to examining the requirements for a retroactive TUE under Article 4.3 ISTUE which should have been met as well. The first of two alternative conditions is, pursuant to Article 4.3 a ISTUE, that "*emergency treatment or treatment of an acute medical condition was necessary.*" According to the Respondent, no information was provided as to why an immediate care was necessary which could have required the intravenous infusion. At the time the Drip Doctors administered the infusion the Athlete, according to their report, was already feeling much better, his fever had decreased to almost normal temperature and he was not vomiting any more. The Respondent states that the only explanation delivered for the necessity of the infusion was that he needed to fly back to Europe.

66. Furthermore, the Respondent submits that the "*global circumstances of the Player at that moment (abroad during leisure holidays in Christmas time with the necessity to take a very long flight to return to Seville)*"as described by the Appellant, do not constitute "*other exceptional circumstances*" in the sense of Article 4.3 b ISTUE.

67. The Respondent comes to the final conclusion that no medical explanation for the necessity of administering the intravenous infusion of 500 ml was provided. It would have been the obligation of the Appellant, instead of following the instruction of medical personnel unknown to him and without experience in doping matters, to contact his team doctor and to choose the adequate alternative treatment which was drinking fluids.

68. The Respondent's requests for relief are:

> *"i) Dismissing Mr. Nasri's prayers for relief.*
>
> *ii) Confirming the decision under appeal.*
>
> *iii) With regard to the Respondent's costs, bearing in mind that the UEFA is represented in these proceedings by in-house lawyers, the Respondent considers that no contribution towards the legal fees incurred by UEFA in connection with these proceedings must be paid by Appellant regardless of the outcome."*

V. The Hearing

69. The hearing took place on 3 October 2017 in the Hotel Beau-Rivage in Lausanne. Present were, in addition to the Panel and Mr. José Luis Andrade, CAS Counsel:

- on behalf of the Athlete: the Athlete himself, Messrs. Juan de Dios Crespo Pérez and José Agustín Amoros, Counsel, Mr. Alain Migliaccio, Agent of the Athlete.

- on behalf of the Respondent: Dr. Martin Bauer, Disciplinary Lawyer, Dr. Emilio Garcia, Managing Director of Integrity, Mr. Carlos Schneider, Legal Counsel and Ms. Carolin Thom, UEFA Anti-Doping Manager.

70. At the outset of the hearing, the Panel asked the Parties whether they had observations with regard to the proceedings so far, in particular concerning the jurisdiction, the composition of the Panel as well as the applicable law. Both Parties declared not to have any objections.

71. Furthermore, the President instructed the Parties about the time-table proposed for the hearing which was accepted by the Parties.

72. UEFA declared that Dr. Jacques Liénard, the chairman of the UEFA TUE Committee, was not available to testify. Likewise, the Appellant indicated that Dr. Anand was not available to testify. Both had been expected to testify at the hearing.

73. UEFA challenged the nomination of Dr. Muñoz as expert by the Appellant as untimely. By letters dated 30 August and 26 September 2017 the Appellant had indicated that Dr. Muñoz would attend the hearing as an expert. In response, by letter of 29 September 2017, UEFA objected to the request to hear Dr. Muñoz at the hearing. In the Appellant's Appeal Brief of 21 April 2017 Dr. Muñoz was mentioned in connection with the filing of the Appellant's TUE application but not specifically named as witness or expert as Dr. Anand was.

74. After both Parties had the opportunity to comment on their positions the Panel issued the following order:

> "*Pursuant to Article 44.3 of the Code, the Panel deems it appropriate to admit the testimony of Dr. Muñoz as an expert at the hearing. The subject of his expert testimony is restricted to what is already contained in the file.*"

75. In his opening statement, Counsel for the Appellant described the situation of the Appellant who was on a holiday trip with members of his family. According to him, he was sick for two days already and lost weight. His ex-girlfriend who lived in Los Angeles called a doctor. Dr. Anand visited him, prescribed the infusion and made his medical report. The ex-girlfriend called the Drip Doctors and after their treatment the Athlete felt better.

76. It was chiefly submitted that the Appellant accepted what the doctor had prescribed, that it was the Doctor's decision and the Athlete had no competence to evaluate that decision.

77. UEFA, in its opening statement, submitted that the dispute is about the TUE decision, exclusively. The Athlete, the Respondent stated, had all options to comply with the rules. As an experienced professional football player he was not a regular patient and a "*red light*" must have switched on if something should be injected.

78. There was no "*acute medical condition*" as required in order to obtain a TUE and alternative treatment available. The Appellant did not provide sufficient evidence in support to the new information that he was sick for two days already. Furthermore, in order to be granted a retroactive TUE an emergency treatment must have been necessary. According to the Respondent the situation in the hotel room does not indicate such emergency. UEFA indicated that, back in Spain, the Athlete declared that he took two infusions of 50ml in a six-hour interval.

79. After both statements Dr. Muñoz' expert testimony was heard. Dr. Muñoz declared that he has 15 years of medical experience in soccer, in general, 10 years alone as the medical doctor of Sevilla FC. Presently, he works for the club Villareal. Dr. Muñoz first repeated what he had explained in his statement of 20 April 2017, concluding from Dr. Anand's report that the Athlete suffered from a "*severe dehydration*". In such situation the benefits and the risks of a treatment should be balanced. Dr. Muñoz indicated risks such as lower level of consciousness, shock, and kidney insufficiency and pointed out that it was the doctor's role and obligation to define what had to be done.

80. The Respondent referred Dr. Muñoz to the letter of the club Sevilla FC, dated 30 December 2016, to the AEPSAD in which the Athlete was quoted to have undergone two infusions of no more than 50 ml with a time difference of more than 6 hours. In response, Dr. Muñoz declared that the Athlete did not remember what the treatment was.

81. With regard to an alternative treatment Dr. Muñoz replied that the less risky and more efficient treatment should be applied and concluded that the Athlete must have trusted Dr. Anand. Mr. Nasri himself, who was asked, declared that it was Dr. Anand who took the decision in the afternoon of 26 December 2016. Finally. Dr. Muñoz stated that it took 3 to 5 days to recover from a modest dehydration by oral treatment.

82. After the examination of Dr. Muñoz, Mr Nasri himself was heard. He explained the situation. He felt "*very sick*" for two days from the arrival in Los Angeles. For two days he could not eat and stayed in the hotel room without medication. On 26 December 2016 he got worse and started vomiting. Under these circumstances he called his ex-girlfriend to call a doctor. She organized the visit by Dr. Anand and later on the treatment by the Drip Doctors. The Athlete did not want to go to an emergency room in order not to worry his family. Two or three hours after the visit by Dr. Anand, Mr. Nasri declared, the Drip Doctors arrived and administered the infusion. Mr. Nasri further stated that the examination by the Drip Doctors was conducted after the infusion. The report of the Drip Doctors, according to Mr. Nasri, was made on 28 or 29 December 2016. Mr Nasri delivered no explanation concerning his statement that he received two infusions of 50 ml.

83. At the end of the evidentiary proceedings UEFA requested not to regard Dr. Anand's report because, though nominated, he was not available for examination at the hearing.

Counsel for the Appellant requested not to take into consideration the statement by Dr. Liénard who was likewise not present at the hearing.

84. In his final oral pleadings, Counsel for the Appellant submitted that the Athlete was sick for two days and did not recover. As Dr. Anand stated in his report the Athlete was "*very weak and confused*" and diagnosed a "*severe dehydration*". Under these circumstances, it is submitted, Dr. Anand was the one to decide what treatment was to be administered in order to protect the health of his patient. The Athlete was not in a position to question the doctor's instructions. In accepting that, the Athlete did nothing wrong and did not hide anything from UEFA. Dr. Anand's report actually was considered by the UEFA TUE Committee and, therefore, must be taken into consideration by the Panel as well. Since the UEFA TUE Committee acknowledged that the Athlete was "*confused*", it should have granted the TUE.

85. It is further submitted that the Drip Doctors' report was prepared on 29 December 2016 only, not signed and not confirmed by the Athlete. Ms Sozahdah of the Drip Doctors who made the report was "*just a nurse*".

86. At the outset of its final oral pleadings, UEFA refers to the legal conditions for the granting of a TUE and a retroactive TUE, in particular. The first of these conditions requires an "*acute medical condition*" which means that no alternative was available, that there must be a medical setting and appropriate medical records. In contrast to that, the Respondent submits, there was no clear diagnosis, there were other medical treatment that could and should have been administered, and there were two contradicting medical reports. Chiefly, UEFA submits that it was the Athlete himself who had the responsibility to decide what treatment had to be administered.

87. Furthermore, no specific indication was provided which "*significant impairment to health*" the Athlete would have experienced if the intravenous infusion would have been withheld. No other medication was experienced, i.e. no medication against the vomiting. The reason for taking the infusion was that the Athlete wanted to fly back to Europe some days later.

88. For the Respondent, no indication was provided that the conditions for a retroactive TUE were met. *i.e.* that an "*emergency treatment ... was necessary*" or that "*due to other exceptional circumstances, there was insufficient time*" to apply for a TUE. Instead of going to a hospital, three hours passed with no action or medication.

89. The CAS awards which were referred to by the Appellant pertain to situations different from the case before the Panel. In those cases the athletes approached the doctors or medical personnel of their teams while the Appellant trusted in the instruction and treatment by Dr. Anand and the Drip Doctors who were unknown to him and had no doping-related experience.

90. UEFA comes to the conclusion that no evidence was provided in order to meet the requirements for obtaining a retroactive TUE and, therefore, the appeal is to be rejected.

91. Upon request by the Appellant, the Panel granted the Parties a second round of pleadings. Counsel for the Appellant insisted that there was an acute medical condition, that there was no reasonable medical alternative, that there was only one reliable

medical assessment, *i.e.* the one by Dr. Anand, and that only the doctor could decide what treatment should be applied. Furthermore, there were material discrepancies between the statements of Dr. Liénard and Dr. Gordon, both members of the UEFA TUE Committee.

92. In conclusion, the Appellant requested the Panel to grant the TUE the Appellant had applied for.

93. In response, the Respondent submitted that a medical setting and medical reports would have provided transparency which, in the case at hand, totally lacks. UEFA refers to the fact that its TUE Committee issued an agreed decision, not a split decision and that the picture of the Athlete with the Drip Doctor shows that he was much better off.

94. In conclusion, UEFA requests the Panel to dismiss the appeal and to confirm the decision reached by its TUE Committee.

95. Before the end of the hearing the Athlete was granted the opportunity to make a personal statement. Mr. Nasri admitted that, on 26 December 2016, he may have done several things wrong but he was not cheating and did not hide anything.

96. The Parties confirmed that, during the hearing, they had the full and fair opportunity to make their case.

97. The President of the Panel announced that the Panel would deliberate the facts and the law and render a written and reasoned award in due time and closed the hearing.

98. After the closure of the hearing, by letter of 18 October 2017, the Appellant requested the Panel to take fresh information about what had happened with another football player in a match on 14 October 2017 into consideration. However, the Panel considers that request late and without relevance for the dispute before it.

VI. Jurisdiction

99. Article R47 of the Code of Sports-related Arbitration (the "Code") provides as follows:

> "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*"

100. Pursuant to Article 5.19 UEFA ADR, which are the rules applicable to the present dispute (see below), the Athlete has the right to appeal exclusively to the CAS against any TUE decision rendered by the UEFA that is not reviewed by the WADA. The decision of the UEFA TUE Committee was refused to be reviewed by the WADA.

101. Therefore, the CAS has jurisdiction to hear the present case. The Panel's jurisdiction was not contested.

VII. Admissibility

102. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late."*

103. By virtue of Article 17.05 UEFA ADR, which are the rules applicable to the present dispute (see below), the Athlete is entitled to appeal from the decision of the UEFA TUE Committee within "*21 days from the date of receipt of the motivated decision ... by the appealing party.*" The appealed decision was issued on 7 February 2017 and notified on 8 February 2017. The Appellant's request to have that decision reviewed by the WADA was declined by the WADA by letter of 10 March 2017. This decision must be taken into consideration for the calculation of the time limit. Consequently, the WADA, in its letter dated 10 March 2017, had notified the Athlete of his right to appeal "*within 21 days from the date of the reception of this letter.*" Therefore, the Statement of Appeal dated 31 March 2017 and received by the CAS Court office on 3 April 2017, was lodged within the time limit. The admissibility of the Appeal was not challenged by the Respondent.

VIII. Applicable Law

104. Article R58 of the Code provides as follows:

> *"The Panel shall decide the 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."*

105. Since the Athlete is a professional football player under the jurisdiction of the UEFA, the Statutes and regulations of the latter, in particular the UEFA ADR together with the WADA Code, the WADA ISTUE, and the WADA Prohibited List constitute the law applicable to the present dispute, all of them in their respective versions valid in 2016. The application of these rules was not contested by the Parties.

IX. Merits

106. The UEFA TUE Committee, in its appealed decision of 7 February 2017, relied on the evidence provided until then. However, in these appeal proceedings, according to Article R57 of the Code, the Panel has the power to review the facts and the law *de novo*.

1. Use of a Prohibited Method

107. On 26 December 2016, the Appellant received an intravenous infusion of 500 ml. Such infusion, pursuant to Article 4.01 UEFA ADR in connection with M2 2 of the 2016 WADA Prohibited List, constitutes a Prohibited Method. This fact and its legal assessment is not challenged by the Appellant.

108. The use of that Prohibited Method is considered an anti-doping rule violation in the sense of Article 2.01 b UEFA ADR unless, pursuant to Article 5.01 UEFA ADR, it is consistent with a TUE granted in accordance with the ISTUE. The Application for a retroactive TUE, filed by the Appellant on 21 January 2017, was denied by the appealed decision.

2. Obtaining the TUE

109. With this appeal the Appellant requests to be granted a retroactive TUE for the intravenous infusion he received on 26 December 2016. The collective requirements for a preventive TUE are set out in Article 4.1 ISTUE while the additional conditions for a retroactive TUE are provided for in Article 4.3 ISTUE.

a. Burden of proof: Article 4.1 ISTUE

110. According to the introductory part of Article 4.1 of the 2016 version of the ISTUE, "*an Athlete may be granted a TUE (and only if) he/she can show, by a balance of probability, that each of the following conditions is met*:" Therefore, it is the Appellant's onus to establish that the collective requirements of both Articles 4.1 and 4.3 ISTUE are accomplished.

b. Conditions for obtaining a preventive TUE: Article 4.1 ISTUE

aa. Acute medical condition

111. According to the first condition which is set forth in Article 4.1 a ISTUE, the Prohibited Method must be "*needed to treat an acute ... medical condition, such that the Athlete would experience a significant impairment to health if the ... Prohibited Method were to be withheld.*"

112. The Athlete contends that, on 26 December 2016, an acute medical condition was present and, in support, relies on both the medical report by Dr. Anand established on 26 December 2016 and Dr. Anand's witness statement, dated 18 April 2017. Though Dr. Anand at the very last minute had declared to be unable to attend the hearing and, therefore, was not available for examination, the Panel accepts both pieces of evidence. The report dated 26 December 2016 was considered by the UEFA TUE Committee and the statement dated 18 April 2017, which was attached to the Appeal Brief, is essentially identical to the earlier report.

113. Having examined the Athlete, Dr. Anand noted as "*subjective assessment: nausea, vomiting, diarrhea, dizziness, fever, headache*" and as "*objective assessment: weak, lethargic, fatigue, unsteady gait, sweating, confusion. Mr. Nasri appears in a state of dehydration. He is very weak and confused, s/s of fever, vomiting, diarrhea.*" The fever

was measured as 101.8°F [= 38.8°C]. Dr. Anand further noted that, according to the Athlete, he had lost weight down to 69 kg. The overall assessment, as laid down in the report after a visit of one hour on 26 December 2016, in its substance does not indicate an acute medical condition nor does the term "*acute*" appear in the report.

114. As "*care*" Dr. Anand proposed rehydration through intravenous infusion of a certain Sodium Chloride solution. Related to that prescription, however, Dr. Anand noted: "*In general cases treatment would be given PO, yet given the current circumstances with the patient having to fly back to Europe, this would be fastest and most efficient treatment.*" Implicitly Dr. Anand said that the medical situation did not require an intravenous infusion but could be cured by oral intake of fluids. Dr. Muñoz, in his testimony, stated: "*If a player has nausea and is vomiting, you have to try oral but if it doesn't work, you have to consider IV very strongly.*" Oral rehydration was not even tried.

115. The medical report further shows that the Athlete had informed Dr. Anand that he would receive the treatment from the Drip Doctors, *i.e.* in his hotel room but not in a hospital. Dr Anand did not object to that kind of treatment.

116. In order to show that there was no acute medical condition the Respondent refers to the report of Ms Jamila Sozahdah from the Drip Doctors. This report states that the Athlete had declared "*I feel under the weather*" and assessed "*viral or pre-viral like symptoms attempting to gain preventive health and immune system support, ... severe nausea but not vomiting; Pt reports not being able to drink fluids due to nausea*" and dehydration as well.

117. The Drip Doctors' report was apparently prepared only on 29 December 2016 upon request of the Athlete in relation with the answer of his club to the AEPSAD. Furthermore, according to the reliable statement of the Athlete during the hearing, the examination was conducted after the treatment. Nevertheless, this report shows that the Athlete recovered very quickly and he was in a condition to be photographed in good shape after the treatment. Dr. Anand's visit took place from 4.00 to 5.00 pm and the infusion was received on 7.30 pm, *i.e.* only two-and-a-half hours later. In the application form for the TUE the Athlete stated that "*after the first visit* [*i.e.* the one of Dr. Anand and before the infusion was made] *he began to feel better.*" The Panel concludes from the above that the Drip Doctors' report does not support the assertion of an acute medical condition. Even if there should have been an acute medical condition at the time of Dr. Anand's visit this was no longer the case when the infusion was administered.

118. In addition, the "*medical best practice*" requirements were not respected. The WADA TUE Physician Guidelines on Intravenous Infusions or Injections (July 2016 version), under part 3, require that when an IV infusion is administered four criteria should be fulfilled: a "*clearly defined diagnosis*", "*supportive evidence that no permitted alternative treatment*" was available, the treatment was "*ordered by a physician and administered by qualified medical personnel in an appropriate medical setting*", and finally that "*adequate medical records*" be kept. In the case before the Panel there is no clear diagnosis neither by Dr. Anand nor by the Drip Doctors and no evidence that oral treatment was not possible (see below).

119. Furthermore, the "*acute medical condition*" must have been of a kind that the non-administration of the intravenous infusion would have led to "*a significant impairment to health*" of the Athlete. Neither Dr. Anand's report nor the one of the Drip Doctors give any indication that the Athlete's state of health would have been significantly deteriorated without the infusion. Dr. Muñoz, in his expert testimony at the hearing named a number of risks which could have appeared if no infusion would have been administered. However, this information has no evidentiary weight for the situation on 26 December 2016 given that he was not present at the place.

bb. No performance enhancement

120. The second of the conditions for obtaining a TUE which is set forth in Article 4.1 b ISTUE requires that the use of the Prohibited Method "*is highly unlikely to produce any additional enhancement of performance beyond what might be anticipated by e return to the Athlete's normal state of health ...*"

121. There is no indication whatsoever that the infusion might have had the effect of performance enhancement. Dr. Anand stated in his report: "*This treatment* [*i.e.* the infusion] *should not enhance his performance as an athlete, only bring him to a normal state of health and hydration.*" The Respondent has not asserted, either in the context of the proceedings before the UEFA TUE Committee or in these proceedings, that this condition is not met.

cc. No reasonable therapeutic alternative

122. Article 4.1 c ISTUE requires as a third condition for obtaining a TUE that "*(t)here is no reasonable therapeutic alternative to the use of ... the Prohibited Method.*"

123. In this regard it is chiefly submitted by the Appellant that the infusion, as Dr. Anand stated in his report, was "*the fastest and most efficient treatment.*" Dr. Muñoz confirmed that assessment in his expert testimony at the hearing. These characteristics of the infusion, however, are not relevant. There must be "*no reasonable therapeutic alternative*." The alternative could have been oral rehydration by drinking fluids. That is what Dr. Anand in his report named the treatment "*in general cases*". According to the report, intravenous infusion was chosen not because it was the only reasonable but the fastest and most efficient treatment. That choice was not driven by medical considerations but by the fact that Athlete was scheduled to fly back to Europe soon.

124. The Appellant chiefly submits that it was for the doctor to decide about the treatment and that he was not in a position to evaluate the judgment of the doctor. The Panel is not convinced by that argument. First, Dr. Anand's suggestion to administer an infusion instead of oral intake was not based on medical reasons. Second, though the Athlete was "*confused, weak, lethargic*" etc., he was not unconscious or otherwise unable to take decisions such as not to go to a hospital and to take the infusion from the Drip Doctors.

125. Given that, according to Article 2.01 b i) UEFA ADR, it is the responsibility of the Athlete that no Prohibited Method is used, he could not simply rely on the decision taken by Dr. Anand to take the infusion. Dr Anand who runs his medical practice in Maryland was unknown to him and had no doping-related experience. That clearly distinguishes the situation at hand from the situation dealt with in the CAS awards

invoked as authorities by the Appellant where the athletes concerned consulted their team doctors. Although it was in the early morning of the second Christmas day in Spain the Appellant did not even try to contact the medical personnel of his club during the two-and-a-half hours between Dr. Anand's visit and the administration of the infusion. The appellant was an experienced professional football player who, as he testified at the hearing, checked the Prohibited List every year.

dd. No consequence of prior use of a Prohibited Substance or Prohibited Method

126. As for the fourth condition for obtaining a TUE, as provided for in Article 4.1 d ISTUE, *i.e.* that "*the necessity for the use of the ... Prohibited Method is not a consequence ... of the prior use*" of a Prohibited Substance or Method, the Respondent has not asserted either in the context of the proceedings before the UEFA TUE Committee or in these proceedings, that this condition is not met.

c. Conditions for obtaining a retroactive TUE: Article 4.3 ISTUE

127. According to Article 4.3 ISTUE, a retroactive TUE "*may only be granted*" if either, under a., "*an emergency treatment or treatment of an acute medical condition was necessary*" or, under b., "*due to other circumstances, there was insufficient time or opportunity for the Athlete to submit*" a TUE application.

128. With regard to Article 4.1 a ISTUE the Panel already determined that no "*acute medical condition*" was present. All the more, there is no evidence of a situation where an "*emergency treatment ... was necessary*". An emergency situation connotes even more severe circumstances than an acute medical condition in the sense of Article 4.1 a ISTUE. Dr. Anand would not have left the Athlete in his hotel room without the infusion or any treatment at all when an emergency treatment would have been necessary.

129. The Athlete's intent or even a necessity to fly back to Europe three or four days later does not constitute "*other exceptional circumstances*" which would have left insufficient time to apply for a TUE, in the sense of Article 4.3 b ISTUE.

X. CONCLUSION

130. Having thoroughly considered the submissions of the Parties, the written and oral testimonies as well as the explanations provided by the Athlete at the hearing the Panel finds that the Appellant failed to establish, by the balance of probability, that the cumulative conditions for obtaining a retroactive TUE for the intravenous infusion of 500 ml administered an 26 December 2016 are fulfilled. No medical evidence provided, in particular but not limited to, by Dr. Anand's medical report indicates an acute medical condition or even an emergency situation where no reasonable alternative treatment was available. Due to his responsibility as an athlete, the Appellant could not leave the decision to administer an intravenous infusion to Dr. Anand but he was the one to decide about the treatment.

131. Therefore, the Panel comes to the conclusion that the appealed decision is to be upheld. The Panel finds that there are no material contradictions between the application reviews by Dr. Gordon and Dr. Liénard, respectively, and that both evaluations fully support the decision reached by the full TUE Committee.

132. The Panel acknowledges, however, that, in the afternoon of 26 December 2016, the Athlete was in an unfortunate situation: family holidays abroad over Christmas time, sick in a hotel room, no medical personnel experienced in doping-related matters around. In his statement at the hearing, which the Panel considers credible and compelling, he explained his situation and conceded that he may have taken wrong decisions. However, according to Article 4.1 and 4.3 ISTUE, for the issue of whether or not a retroactive TUE should be granted, considerations concerning intent or the degree of negligence are irrelevant. The Athlete was under the strict obligation not to receive an intravenous infusion of 500 ml without a present TUE and, though an experienced professional player, did not respect that prohibition.

XI. COSTS

133. As the dispute is considered not to be of a disciplinary nature (see above) Article R65 of the Code does not apply with regard to the costs. Therefore, the general provisions on the costs, set forth in Article R64 of the Code, apply.

134. Pursuant to Article R64.5 of the Code, the Panel, in its award, "*shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters.*"

135. In its requests for relief the UEFA disclaimed a contribution towards its costs.

136. In accordance with Article R64.5 of the Code, the Panel therefore rules that the Appellant shall bear the arbitration costs, to be determined by the CAS Court Office, and that each party shall bear his/its own legal costs and expenses incurred in connection with the present proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Samir Nasri on 31 March 2017 against the decision of the UEFA TUE Committee of 7 February 2017 is dismissed.

2. The decision issued by the UEFA TUE Committee on 7 February 2017 is upheld.

3. The costs of the arbitration, to be determined and served by the parties by the CAS Court Office, shall be borne by Mr Samir Nasri.

4. Each party shall bear his/its own costs and other expenses incurred in connection with the present proceedings.

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 15 December 2017

THE COURT OF ARBITRATION FOR SPORT