

**INTERNATIONAL RUGBY BOARD**

**IN THE MATTER** of an alleged anti-doping rule violation by **SIRELI NAQELEVUKI** contrary to Regulation 21

**DECISION OF A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21(20) AND 21(22)**

**Committee:** Tim Gresson (New Zealand), Chair  
Dr Ismail Jakoet (South Africa)  
Ichiro Kono (Japan)

**Present:** Sireli Naqelevuki, the Player  
Alofa Seruvatu, Counsel for the Player  
Kelvin Rayasi, Local Agent for the Player  
Sophia Tuibua, FRU Representative  
Susan Ahern, Counsel, International Rugby Board  
Tim Ricketts, Anti-Doping Manager, International Rugby Board

1. The International Rugby Board ("the Board") alleges that (Sireli Naqelevuki) ("the Player") a member of the Fiji International Sevens Team, committed an anti-doping violation contrary to Regulation 21 of the Regulations Relating to the Game ("the Regulation") when a urine sample provided in the course of a doping control test taken in George, South Africa, following the Fiji vs New Zealand match on the 9<sup>th</sup> December 2006, was found to have contained the prohibited substance namely 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid metabolite of cannabis (cannabinoids) at a concentration greater than the threshold level set by the World Anti-Doping Agency ("WADA").
2. A preliminary review pursuant to Regulation 21.20.1 undertaken on 19<sup>th</sup> December 2006 confirmed there was no apparent departure from the International Standard for Testing and the Board had no record of a Therapeutic Use Exemption ("TUE") on the file for the use of this substance. Therefore an anti-doping rule violation may have been committed.
3. The Player's urine specimen was divided into "A" and "B" samples and they were sent to WADA's accredited laboratory at the University of the Free State,

Bloemfontein, South Africa. The laboratory subsequently provided the Board with an analytical report dated 19 December 2006 indicating adverse analytical findings from the testing of the Player's "A" sample for 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid metabolite of cannabis at a concentration higher than 15ng/ml.

4. The Player was advised by letter dated 20 December 2006 of the results of the "A" sample. He was further advised that in accordance with Regulation 21.19.1 he was provisionally suspended pending the outcome of the case. The provisional suspension became effective on the 22<sup>nd</sup> December 2006 being the date the Fiji Rugby Union ("the FRU") handed the letter to the Player. Further, the Player was given the option of having the "B" sample of his specimen analysed.
5. On the 10<sup>th</sup> January 2007 the Player, through Ms Seruvatu, exercised his right under Regulation 21.20.3 to have his "B" sample analysed. On the 30<sup>th</sup> January 2007 the laboratory confirmed the "B" sample contained the substance 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid metabolite of cannabis at a concentration higher than 15ng/ml.
6. By letter to the Player (via the FRU) dated the 30<sup>th</sup> January 2007 the Player was informed that the analysis of the "B" sample of the specimen had resulted in an adverse analytical finding and was informed of his right to a hearing before a Board Judicial Committee.
7. On the 4<sup>th</sup> February 2007 Ms Seruvatu, by email, wrote to the Board acknowledging receipt of the "B" sample test results and stated that she wished to *"...inform you that after consultations with my client we wish to request a hearing before the Board Judicial Committee in respect of the sanctions to be applied and mitigation of my clients case pursuant IRB Regulation 21.20.9."*
8. On the 5<sup>th</sup> February 2007 the Player, through Ms Seruvatu, was advised that an independent Board Judicial Committee ("BJC") was appointed to hear the Player's case. Following directions given by the BJC and a preliminary hearing held on the 1<sup>st</sup> March 2007 by agreement the hearing proceeded by way of a telephone conference call on Wednesday the 7<sup>th</sup> March 2007.

## **IRB Regulation – Anti-Doping Regulations – Framework**

9. The Board Anti-Doping Regulations (which adopt the mandatory provisions of the WADA Code) set out the framework under which all players can be subjected to doping control. The Regulations (and the WADA Code) are based on the principles of personal responsibility and strict liability for the presence of prohibited substances.
  
10. Pursuant to Regulation 21.2.1 the “presence of a Prohibited Substance or its Metabolites or Markers in a Player’s bodily sample” constitutes an anti-doping rule violation. The violation occurs whether or not the player intentionally or unintentionally used the Prohibited Substance or was negligent or otherwise at fault.
  
11. Regulation 21.6 addresses the principle of personal responsibility. It provides:

*“21.6.1 It is each Players responsibility to ensure that no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used. It is also the personal responsibility of each Player to ensure that he does not commit any other anti-doping rule violation.*

*21.6.2 It is the sole responsibility of each Player and Person to acquaint himself with all of the provisions of these Anti-Doping Regulations including the Guidelines. It is also each Player’s sole responsibility to notify Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to ensure that any medical treatment received by them does not violate any of the provisions of these Regulations.”*

12. The Board has the burden of establishing that an anti-doping rule violation has occurred to the comfortable satisfaction of the hearing body (Regulation 21.3.1). In this regard the Player, through Ms Seruvatu, prior to and at the hearing, acknowledged the use of a prohibited substance and accepted the analytical findings. Accordingly, we are satisfied that the Player has committed an anti-doping rule violation due to the presence of a prohibited substance namely cannabinoids in the Player’s urine sample.

### **Sanctions**

13. Although the period of ineligibility for a first offence involving the presence of a prohibited substance is usually two years, certain “specified substances”, including cannabinoids, are governed by Regulation 21.22.2, which provides as follows:

### **Imposition of Ineligibility for Specified Substances**

*21.22.2.1 The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where a player can establish that the use of such a specified substance as not intended to enhance sport performance, the period of ineligibility found in Regulation 21.22.1 shall be replaced with the following:*

*First violation: At a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year's ineligibility.*

*Second violation: Two (2) years' ineligibility.*

*Third violation: Lifetime ineligibility.*

*However, the player or other person shall have the opportunity in each case, before a period of ineligibility is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Regulation 21.22.4.*

14. Regulations 21.3.1 and 21.22.2 require us to consider whether the player has established on a balance of probabilities that his use of cannabinoids was not intended to enhance sport performance and, if so, to decide the sanction that should be imposed for a first violation by the Player.

### **The Player's Account**

15. At the hearing the Player provided sworn affidavit evidence supplemented by oral evidence. He stated that on the 13<sup>th</sup> November 2006 over a period of two to three hours, he smoked "two joints" of cannabis with two others (including one "old friend") following a particularly traumatic and difficult period in his life. During this period he had been detained over the preceding period of twenty-eight days at Fiji Naval Bases on a charge of being absent without leave from the Fiji Navy between July and October 2006 when he had played rugby for Western Province in the South African Currie Cup competition.

16. The Player stated that although he was found guilty of the charge, in his view it was unjustified because, prior to his departure to South Africa, the Fiji Navy had not processed his letter indicating that he wished to take leave without pay. He stated the experience left him "*totally depressed, emotionally troubled, physically exhausted, hurt and angry*".
17. He stated this was the only occasion that he had ever smoked cannabis and it occurred because he wished "*to forget*" the previous twenty-eight days. Further, because he had not received any education from the FRU or the Western Province Union about anti-doping issues he was unaware of his responsibilities under the IRB Anti-Doping Regulations. He had been a member of the Fiji National Sevens team for six years but at that stage he had not been selected as a member of the Fiji National Sevens Side to participate in the IRB Dubai and George Sevens tournaments held over the first two weekends in December. The Player acknowledged that he was aware the smoking of cannabis in Fiji is a criminal offence. He stated that at the time of smoking the cannabis on the 13<sup>th</sup> November 2006 he did not appreciate that the substance remained within the system for as long as "*six months*".
18. Additional evidence (by letter) was adduced from the Lieutenant Commander of the Fiji Navy who confirmed that the Player had been confined to barracks for a period of twenty-eight days from the 16<sup>th</sup> October 2006 to the 13<sup>th</sup> November 2006. There was no additional supporting or corroborative evidence of the Player's account from other witnesses. The balance of the written evidence consisted of character evidence from Mr Waisele Serevi, the coach of the Fiji Sevens team, Mr Daunivaulu, manager of the Fiji Sevens team, the Lieutenant Commander of the Fiji Navy.

### **Discussion**

19. We find the Player's explanations that he smoked two joints of cannabis on 13<sup>th</sup> November 2006 (i.e. twenty-six days before he was tested) and that he was unaware that under the IRB doping programme it was not permissible to smoke cannabis, less than convincing.
20. With regard to the date the cannabis was consumed, the BJC acknowledges that scientifically there are difficulties in determining exactly when cannabis is absorbed into the body. In this regard Mr Ricketts stated, in response to a

question from the BJC, that as part of its anti-doping educational programme, the Board's advice is that cannabis can remain in the body for up to six weeks after consumption. Generally a high concentration level would indicate heavy consumption or that cannabis was consumed relatively close to the time the player was tested. But in this case, such information was not available as the Analyst's reports state that the Player tested positive because the presence of cannabinoids in his urine exceeded the prescribed level (15ng/ml) WADA has determined is the threshold level which distinguishes those persons who have passively ingested cannabis from others.

21. Thus, as to the credibility of the Player's account that he smoked cannabis twenty-six days before he was tested, the laboratory reports were inconclusive, but as Mrs Ahern submitted, there was no additional evidence corroborating the Player's account nor was the Player able to provide the BJC with any evidence as to why the supporting evidence was unavailable. Further, the BJC was puzzled that the Player found it necessary to depose that cannabis can remain in the system for up to six months. No evidence was adduced in support of this assertion and in the context of this case the BJC had concern about the accuracy and relevance of the statement given that the Player admitted smoking two joints twenty-six days before he was tested.

22. As to the Player's lack of knowledge, given that the Player is a professional rugby player and that in 2005 he had signed a consent and an agreement form which clearly stipulated his obligations under the tournament anti-doping programme, again the BJC had some difficulty in accepting that he was unaware that it was not permissible to smoke cannabis.

23. However, although the BJC has reservations about the Player's account, we are satisfied that given the well-documented effects of cannabis consumption (including impaired physical reactions and cognitive function) at the time it was used there was no intention on the Player's part to enhance performance but that irresponsibly it was consumed for a recreational purpose.

### **Sanction**

24. Although (as has been stated in previous decisions of the Board Judicial Committee) the recreational use of cannabis is not behaviour which is unknown in the rugby community, the Regulations Relating to the Game make it clear it is

prohibited. Accordingly the BJC is not prepared to look on the Player's violation as a minor matter deserving of no more than a slap on the wrist in the form of reprimand.

25. In mitigation, Ms Seruvatu submitted that the Player has a distinguished record representing his country at rugby. Further, he deeply regretted his foolish behaviour and appreciated that he has brought nothing but shame, not only to himself but his family, friends and many fans.

26. The Player is aged twenty-six. We were informed because of his anti-doping infraction, his professional playing contract with the Stormers in the Sanzar Super 14 competition is threatened. Since his suspension he has not been permitted to play in the IRB Sevens series at Wellington and San Diego. To date he has not participated in the Sanzar Super 14 competition. He has no other means of employment. In his current situation he is finding it difficult to provide for himself and his children.

27. Ms Seruvatu was referred to four previous decisions of the Board Judicial Committee, namely the cases of *Davy Larguet* (8 October 2004), *Younes Ho* (22 December 2004), *Kolyshkin Vadym* (25 July 2005) and *Andrey Garbuzov and Yaroslav Rechnev* (October 2006) all of which involve cannabis infractions. In supplementary submissions counsel sought to distinguish those cases.

28. In the case of *Younes Ho*, the player admitted that he had smoked cannabis at a friend's wedding ten days prior to his departure for an IRB Sevens qualifying tournament. The player admitted that at the time of the celebrations he had forgotten about his responsibilities and the committee was satisfied that the player regretted his conduct. The committee suspended the player from participation in rugby for a period of three months stating:

*"Notwithstanding the contrition shown by the player and the supportive participation in the hearing by his club, the fact remains that the Regulations Relating to the Game make it quite clear that cannabinoids are prohibited and that their presence in the event of doping controls will result in an Adverse Analytical Finding, which, in turn, will lead to sanctions. Accordingly the Judicial Committee is not prepared, in the absence of any truly mitigating circumstances, to look on the player's violation as a trivial matter. Indeed,*

*the player's position as a role model for younger people in his community underscores the magnitude of the player's failure to meet his responsibilities when committing this infraction."* (Paragraph 14)

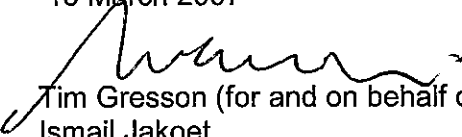
29. The BJC considers that there is a broad parallel between this case and *Ho's* case. Further, as an international sevens rugby player and a potential Super 14 player, the Player has role model responsibilities for aspiring sportspersons in Fiji and elsewhere and as the BJC has emphasised in previous cases, it deprecates the use of cannabis by players prior to or around the time of IRB tournaments. Thus, the BJC considers there is a need for a condign sanction to demonstrate that cannabis use is unacceptable. Taking into account all the relevant factors, the BJC has determined that the starting point sanction for this offending should be a four month period of suspension but allowing for the mitigating factors, that period will be reduced to three months.

30. Accordingly, the BJC directs that the period of suspension should commence from the 22<sup>nd</sup> December 2006 (being the date that the provisional suspension became effective) until and including the 22<sup>nd</sup> March 2007.

31. This decision is, subject to review by a Post Hearing Review Body (Regulation 21.25) and an appeal to the Court of Arbitration for Sport, binding on both the Player and the Union. For the sake of clarity, it is intended that the sanctions determined by the BJC in this matter shall replace any domestic sanctions imposed on the Player by his Union.

32. If the Board wishes the BJC to exercise its discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC and to the player by 17:00 hours Dublin time on 2<sup>nd</sup> April 2007, with any written submissions by the player in response to be provided to the Board (which shall be responsible for forwarding such submissions on to the BJC) by no later than 17:00 hours Dublin time on 9<sup>th</sup> April 2007.

16 March 2007

  
Tim Gresson (for and on behalf of Board Judicial Committee)  
Ismail Jakoet  
Ichiro Kono