

## **INTERNATIONAL RUGBY BOARD**

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **MIGUEL ANGEL GONZALEZ (VENEZUELA)** CONTRARY TO REGULATION 21

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

### Judicial Committee:

**Dr. Ichiro Kono** (Japan)  
**Dr. Barry O'Driscoll** (Ireland)  
**Graeme Mew** (Canada – Chair)

### Appearances and Attendances:

Tim Ricketts (Anti-Doping Manager, International Rugby Board)  
Azucena Bermudez (Spanish-English Translator)

### For The Board:

Susan Ahern (Counsel)

### For The Player:

Miguel Gonzalez (Player)  
Miguel Marquez (Counsel for the Player)  
Manuel Salas (Secretary, Federación Venezolana de Rugby)  
José Rodriguez (President, Federación Venezolana de Rugby)  
Dr. Leonardo Pinto (Medical Representative, Federación Venezolana de Rugby)

## **DECISION OF BOARD JUDICIAL COMMITTEE**

1. The International Rugby Board (the “Board”) alleges that Miguel Angel Gonzalez (the “Player”) has committed an anti-doping rule violation as a result of an adverse analytical finding for the presence in his bodily Sample of Nandrolone or its precursors at a concentration of 24.2 ng/ml, which is greater than the permitted threshold level of 2ng/ml, following an In Competition Test after his participation in the Rugby World Cup Sevens 2009 Qualifiers (Venezuela v Paraguay on 19 January 2008, in Montevideo, Uruguay). Nandrolone is a Prohibited Substance listed under S1 Anabolic Androgenic Steroids on the WADA Prohibited List 2008

2. Following a preliminary review of the case in accordance with IRB Regulation 21.20, the Player was notified via the Federación Venezolana de Rugby on 4 March 2008, that he may have committed an anti-doping rule violation and was provisionally suspended on 17 March 2008. The Player remains suspended, pending the outcome of his case.
3. The Player, by letter dated 26 March 2008, has confirmed his acceptance of the findings arising from the testing of the "A" sample of his urine.
4. This independent Board Judicial Committee ("BJC") has been appointed to consider the Player's case. The Player indicated that he wished to have a hearing before the BJC and participate in that hearing by way of telephone conference.
5. The hearing took place by way of a telephone conference call on 22 May 2008. Written submissions were received prior to hearing from both the IRB and the Player. At the hearing, verbal evidence was received from the Player and additional information was provided to the BJC by the Player and the representatives of the Union.

#### **Anti-Doping Rule Violation Established**

6. Regulation 21.2 of the Regulations Relating to the Game provides, inter alia:

The following constitute anti-doping rule violations:

21.2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's bodily Sample.

- (a) It is each Player's personal duty to ensure that no Prohibited Substance enters his body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Sample. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping violation under Regulation 21.2.1.

7. Regulation 21.6 addresses the principle of personal responsibility and provides:

21.6.1 It is each Player's 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 Regulation including the Guidelines. It is also each Player's sole responsibility to notify the 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.

8. Under Regulation 21.3.1, the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC.

9. The Player advised the BJC that he accepts the analytical findings of the laboratory. Accordingly, we conclude that the Board has established, in respect of the Player, an anti-doping rule violation, namely, the presence of Nandrolone or its precursors, a Prohibited Substance, at a concentration greater than the permitted threshold level of 2ng/ml, in the Player's bodily Sample.

#### **Circumstances of the Anti-Doping Rule Violation**

10. The Player attributes his anti-doping rule violation to his use of legally purchased nutritional supplements.

11. In a letter dated 26 March 2008, the Player set out some details of his use of these nutritional products which he identified as "Gain Fast", "Mega-Mass", "Genesis of Universal", "Megaviton", "Hepaviton", "No-Explode of BSN", liquid, powder and pills of creatine as well as supplements labelled as "natural" stimulants called "Orntine", "Arginine", ginseng and other products naturally manufactured to stimulate strength. The Player claims that all of these products were purchased from shops selling naturally sourced products.

12. The Player has, since being notified of his positive test, learned a great deal about the risks of using "natural" products and now understands that it is not uncommon for such products to contain prohibited substances. He has also learned that he cannot always rely solely on the information contained on the labels of the supplements that he has used.

13. The Player asserted that it was never his intention to improve his condition above that of his colleagues. His only intention was to maintain physical fitness but never to manipulate the chemistry of his body. While he readily acknowledged his error, he maintained that it was never his intention to cheat.

14. The Player did not obtain professional advice prior to his use of supplements. He noted that, in many cases, information concerning the products was not available in Spanish.

15. Before this incident, the Player acknowledges that he was generally aware of doping issues in rugby and other sports. However, he did not realise that the use of supplements that were freely available in health food shops could result in anti-doping rule violations.

16. Of great concern to the BJC, the Player claimed that he had never received information from the Union with respect to anti-doping matters.

17. The Player was, as noted above, tested during the course of the Rugby World Cup Sevens 2009 qualifying tournament in Uruguay. As a member of the Venezuela national sevens team, he signed a participation agreement which confirmed his acceptance of, amongst other things, the tournament's anti-doping programme. He confirmed his signature on the signature page of the participation agreement. The Player's evidence was that only the signature page was presented to him to sign. He did not, so he claims, see the rest of the agreement. Furthermore, he noted that the document which he did sign was in English, a language that he does not speak or read.

18. The Player is 31 years old. He has been playing rugby for 14 years. He is well educated. He holds a bachelor of administration degree. He has a clean disciplinary record in rugby.

19. The Player was full of remorse and readily accepted his responsibilities. He clearly understood that it was not an adequate answer for him to plead ignorance of his obligations as the time of his anti-doping rule violation.

20. While the Player made reference to the lack of anti-doping education, he did not appear to complain. He acknowledged that he uses the internet but had not read any of the information on the IRB website or elsewhere which describes the various anti-doping rules and programmes in Spanish.<sup>1</sup>

21. On behalf of the Union, Mr. Rodriguez advised that the national trainer had been requested to distribute the WADA Prohibited List to all constituents. He had understood that national team members were, in fact, sent the list. However, the Union itself did not send the list or any other anti-doping information to anyone and Mr. Rodriguez could not be absolutely sure that the national trainer (who is no longer employed by the Union) had done so either.

22. No one in the Union has a particular responsibility for anti-doping matters. The government of Venezuela is currently in the process of establishing a national sport institute which will have responsibilities including anti-doping.

23. Mr. Rodriguez acknowledged that no doping education programme for players or coaches has ever been undertaken by the Union.

24. Mr. Rodriguez was critical of the fact that the participation agreement for the Uruguay tournament was in English, rather than Spanish, which he described as the official language of the region. He acknowledged, however, that it would have been unsatisfactory if the players were only provided with the signature page of the participation agreement whether it was in English or Spanish (this was likely the case and would have been the action of the team manager).

25. Mr. Rodriguez commented that the Union has done the best it felt it could do to disseminate information with very limited resources. There are 34 clubs and around 2,000 players in Venezuela. Three people within the Union are involved in development.

26. On behalf of the Board, it was submitted that the minimum sanction of 2 years ineligibility, provided for my Regulation 21.22.1 should apply. It was submitted that there were not “exceptional circumstances” or other mitigating factors which would justify a reduction of that penalty.

---

<sup>1</sup> [www.irb.com/training/antidoping/education/index.html](http://www.irb.com/training/antidoping/education/index.html); [www.wada-ama.org](http://www.wada-ama.org)

27. On behalf of the Player it was submitted that his admission of responsibility and his lack of intention to use a Prohibited Substance should be mitigating factors. Our attention was also drawn to his exemplary disciplinary record as a player.

28. In support of the Player, the Union, while acknowledging that no formal complaint had been made about the fact that the participation agreement for the sevens qualifying tournament was not in Spanish, submitted that it was not the Player's fault that there has been a lack of information provided to him concerning the IRB anti-doping programme in particular, or anti-doping matters in general.

### **Discussion**

29. The anti-doping regulations of the rugby union and of all other sports which follow the *World Anti-Doping Code* impose strict liability on all athletes. This means that athletes are ultimately responsible to ensure that no prohibited substances enter their bodies. It does not matter, from the standpoint of whether an anti-doping rule violation has been committed, whether the athlete knew that a substance was a Prohibited Substance or whether the athlete intended by use of the substance to enhance sporting performance.

30. Just as the Regulations impose strict liability, they also impose firm sanctions. For many anti-doping rule violations, there is a fixed sanction of two years ineligibility. Judicial committees are given very little discretion to alter the period of ineligibility and, in the vast majority of cases, cannot do so.

31. While we give credit to the Player for his candour and his ready admission of responsibility, in order for us to reduce the 2 year minimum sanction, we would have to be persuaded that there had been "No Fault or Negligence" or "No Significant Fault or Negligence" on the part of the Player. As noted in the *World Anti-Doping Code*, only in circumstances which are "truly exceptional" will a reduction of a sanction on grounds of exceptional circumstances be warranted. Such circumstances do not exist in this case.

32. The BJC notes, with great concern, that once again, we find ourselves dealing with an international level player who has received little, if any, anti-doping education. Although appropriate information and material is disseminated by the Board to every union, for one reason or another it seems that such information is often not disseminated onwards to players, coaches, medical advisers and others involved in the Game. It seems to us that the Board should, at a political level, be considering whether unions are meeting their responsibilities in terms of disseminating anti-doping information and providing education to players and athlete support personnel. The time may have come where sanctions should be sought against those whose failure to meet their responsibilities to disseminate and educate has been a factor in the lack of awareness of players and player support personnel. In this regard, we emphasise that the anti-doping regulations apply at all levels of the game, not just to professionals or those who play in international tournaments.

33. We direct that this decision should be published in Spanish as well as the original English text to assist with the dissemination of anti-doping information.

### **Decision**

34. On 19 January 2008 the Player an anti-doping rule violation, namely, the presence in his bodily Sample of Nandrolone or it's precursors at a concentration greater than the permitted threshold level of 2 ng/ml. Nandrolone is a Prohibited Substance under both Regulation 21 and the *World Anti-Doping Code*.

35. The sanction imposed for this anti-doping rule violation is a period of ineligibility of 2 years, commencing on 17 March 2008 (the date upon which the Player was provisionally suspended under Regulation 21.19) and concluding (but inclusive of) 16 March 2010.

36. The Player's attention is drawn to Regulation 21.22.7 which provides:

No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match, Series of Matches and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by the Board or any Member Union. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB. In addition, for any anti-doping rule violation not involving specific substances described in Regulation 21.22.2, some or all sport related financial support or other sport-related benefits received by such Player or Person will be withheld by the Board and its Member Unions.

### **Costs**

37. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC by Mr. Ricketts by 17:00 Dublin time on 3 July 2008, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin on 10 July 2008.

### **Review**

38. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.24.1) and an appeal to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.24.2, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.

29 June 2008

Graeme Mew, Chairman