

## **INTERNATIONAL RUGBY BOARD**

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **FRANCISCO METUAZE (CHILE)** CONTRARY TO REGULATION 21

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

Judicial Committee:

**Dr. Ismail Jakoet** (South Africa)

**Dr. Barry O'Driscoll** (Ireland)

**Graeme Mew** (Canada – Chair)

Appearances and Attendances:

Tim Ricketts (Anti-Doping Manager, International Rugby Board)

Johnny Bottomley (Spanish-English Translator)

For The Board:

Susan Ahern (Counsel)

For The Player:

Francisco Metuaze (Player)

Francisco Davanzo (President, Valparaíso Sporting Rugby Club)

Dr. José Francisco Soza (Chief Medical Officer, Federación Rugby de Chile)

### **DECISION OF BOARD JUDICIAL COMMITTEE**

1. The International Rugby Board (the "Board") alleges that Francisco Metuaze (the "Player"), committed an anti-doping rule violation as a result of an adverse analytical finding for the presence of Clenbuterol, following an Out of Competition Test in Chile on 13 April 2008. Clenbuterol 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 that he may have committed an anti-doping rule violation *via* the Federación de Rugby de Chile (the “Union”) on 25 April 2008 and was provisionally suspended on the same date. The Player was also advised in person by an IRB Anti-Doping Coordinator that there had been an adverse analytical finding and that he was suspended on a provisional basis: this occurred at the 2008 Junior World Trophy in Santiago, Chile, in which the Player had been participating. The Player remains suspended, pending the outcome of his case.
3. The Player, by letter dated 6 May 2008, waived his right to have the “B” sample of his urine tested.
4. This 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 20 June 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 Clenbuterol, a Prohibited Substance listed under S1 Anabolic Androgenic Steroids on the WADA Prohibited List 2008, in the Player's bodily Sample.

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

10. The Player is a 19 year old commercial engineering student. He has been playing rugby for 8 years and has represented his country at the Under 19 and Under 20 levels. He plays in the full back position, weighs 78kg and is 1.70 m tall.

11. On 6 May 2008, the Player wrote:

“...I must say that I never voluntarily intended to gain a sportive advantage by means of intaking any substance. Furthermore I was not aware and I ignored completely that my conduct was against the regulations in force. Notwithstanding the previous statements I recognize the fact that my samples gave an adverse analytical finding.”

[Translation]

12. The Player attributes his anti-doping rule violation to his use of the contents of a container marked “clenbuterol” which he obtained from a friend at a gymnasium. He claims that he did not realise that clenbuterol was a Prohibited Substance. He took it “out of vanity” and “naïveté” for a period of 2-3 weeks to reduce the percentage of fat in his body.

13. The Player did not list clenbuterol on the doping control form which he completed prior to being tested on 13 April 2008. Ironically, when he took an in-competition test at the IRB Junior World Trophy on 19 April 2008, he did list clenbuterol (that test did not yield a positive result for the presence of clenbuterol). The Player claims that he forgot to list clenbuterol when he was tested on 13 April (he did list two non-prohibited substances).

14. The Player has received anti-doping education both from the Union and as a participant in the Under 19 World Championship in Belfast in 2007. Notwithstanding this, he claims that he understood doping to be associated with “high-end” drugs such as cocaine. He had heard of steroids but did not know that clenbuterol was a steroid.

### **Submissions**

#### *The Player*

15. The Player accepts that he is responsible for everything in his system. In both his written submission and his oral presentation, he offered to help repair the effects of his conduct by participating in doping education programmes so that others could learn from his mistakes.

16. He offered by way of mitigation the following factors:

- a) His acknowledgment of an anti-doping rule violation;
- b) His lack of intention and lack of knowledge of his wrong doing;
- c) His previous good record;
- d) His willingness to “repair or try and repair the harm caused”.

### *The Union*

17. The Union while emphasising its efforts to provide anti-doping education, expressed the hope that the Player would be able to continue with his rugby career. He was described as a “leader in the field” and an example for younger players.

18. The Union acknowledged that some young players were not taking doping issues seriously. The hope was expressed that the Player could assist with the Union’s continued efforts to get the anti-doping message across.

### *The Board*

19. 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 no “exceptional circumstances” or other mitigating factors which would justify a reduction of that penalty.

### **Discussion**

20. Although the Player now seems to accept his responsibilities, there is really no excuse for his anti-doping rule violation and no exceptional circumstances that would warrant a reduction of the two year minimum sanction.

21. The Player was at best wilfully blind to the consequences of his actions. He exercised no care whatsoever. He clearly ignored the anti-doping education he had received.

22. If he is, indeed, committed to the Game, the Player will fulfill his promise to assist with the Union’s ongoing anti-doping educational programmes.

### **Decision**

23. On 13 April 2008 the Player committed an anti-doping rule violation, namely, the presence of Clenbuterol in his bodily Sample. Clenbuterol is a Prohibited Substance under both Regulation 21 and the *World Anti-Doping Code*.

24. The sanction imposed for this anti-doping rule violation is a period of ineligibility of 2 years, commencing on 25 April 2008 (the date upon which the Player was provisionally suspended under Regulation 21.19) and concluding (but inclusive of) 24 April 2010.

25. 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**

26. 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 *via* Mr. Ricketts by 17:00 Dublin time on 15 August 2008, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin on 22 August 2008.

### **Review**

27. 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.

4 August 2008

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a stylized flourish at the end.

Graeme Mew, Chairman