

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations
Relating to the Game

A N D

IN THE MATTER of an alleged anti doping
rule violation by
RUSSELL WARD
contrary to IRB
Regulation 21

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

Judicial Committee

Mr Tim Gresson (New Zealand, Chairman)
Dr Barry O'Driscoll (Ireland)
Dr Ismail Jakoet (South Africa)

Appearances and Attendances

For the Board

Darren Bailey (Senior Counsel for the International Rugby Board)
Tim Ricketts (Anti-Doping Manager)

For the Canadian Rugby Union

Geraint John (High Performance Director)

The Player

Russell Ward

Hearing

Thursday, 31 July 2008 (GMT) by way of telephone conference

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. In previous Board Judicial Committee ("BJC") decisions, it has been made clear that the use of cannabinoids contravenes the Regulations Relating to the Game and the World Anti-Doping Code and violations will lead to sanctions

being imposed on the player. Disappointingly, this case follows the cases of Zhamutashvili and Todua¹, Pupuke² and Mdzinarishvili³, where the players were suspended for various periods following recreational cannabis use during IRB tournaments; including two tournaments being below senior level.

2. Russell Ward (“the player”) from Canada was urine tested in competition on 17 May 2008 following the match between Canada East and Canada West at the IRB North American 4 Tournament held in Markham, Ontario, Canada.
3. Subsequently the player’s “A” sample provided in the course of the test was found to have contained the prohibited substance 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid (a metabolite of cannabis) at a concentration level of 41ng/ml, which is a higher level than that prescribed by WADA (15ng/ml). Carboxy-THC is a prohibited substance listed under s.8 Cannabinoids on the WADA Prohibited List 2008.
4. A preliminary review of the case undertaken by Gregor Nicholson (Scotland) on 18 June 2008 in accordance with IRB Regulation 21.20 confirmed that there was no apparent departure from the International Standard for Testing, there were no TUE’s (Therapeutic Use Exemptions) on file for use of the substance for the player and therefore an anti-doping rule violation by the player may have been committed in contravention of IRB Regulation 21.2.1.
5. The player was advised by letter dated 24 June 2008 of the results of the “A” sample and advised that in accordance with IRB Regulation 21.19 he was provisionally suspended. The provisional suspension became effective on 30 June 2008.
6. By e-mail dated 11 July 2008 via Rugby Canada the player accepted the “A” sample results.
7. This Board Judicial Committee has been appointed to consider the player’s case. The player, through the Canadian Rugby Union, indicated that he

¹ IRB v Davit Zhamutashvili and Davit Alexander Todua, 27 September 2007

² IRB v Jovan Pupuke, 15 July 2008

³ IRB v Vakhtang Mdzinarishvili, July 2008

wished to have a hearing before the BJC to participate in that hearing by way of telephone conference.

8. The hearing took place by way of a telephone conference call on 31 July 2008 (GMT). Written submissions were received prior to the hearing from the IRB. At the hearing, oral evidence was received from the player and further submissions were made on behalf of the IRB and Mr John on behalf of the player.
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, prior to and at the hearing, acknowledged the use of the 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 metabolites of cannabinoids in the player’s urine sample.

Sanctions – Regulatory Framework

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. The player informed the BJC that he had previously represented Canada as an Under 19 representative at the Junior World Championships held in Belfast in 2007 when he received anti-doping education by attending the IRB seminar prior to the commencement of that tournament. Further, he had received anti-doping education from his union. Thus, as he properly acknowledged, he was fully aware of the perils of taking prohibited substances prior to and during tournaments.
16. Also the player acknowledged that the commencement of the North American tournament, he had signed a consent and agreement form, which clearly stipulated his obligations under the anti-doping programme.

17. He informed the BJC that he had previously smoked cannabis at high school. On 20 April 2008 following his university exams, during the evening whilst socialising with his student friends at a private party he smoked cannabis not to enhance his playing performance on the rugby field, but for enjoyment. The cannabis caused him to feel “euphoric” and for this reason he thought it was potent. Subsequently, he stated there were no adverse effects to his health including no hangover from a combination of the cannabis / alcohol which he also consumed that evening.
18. Although his club rugby season (with his university team) had finished on 20 April 2008, at the time the player was training for the North American 4 Competition followed by the IRB Junior World Cup to be held in Wales. He had previously participated in tournaments where testing had occurred although he was not one of the players selected for testing.
19. The player candidly acknowledged that his smoking of the cannabis amounted to a bad error of judgment and apologised to both the IRB and Rugby Canada for his conduct which he very much regretted. He acknowledged his conduct could not be readily excused given that the violation occurred before two significant IRB tournaments. He stated that most of his fellow students involved in consuming cannabis do not play rugby and that was the reason why there was a lapse in judgment. Given that three weeks had elapsed since he had smoked the cannabis, he did not expect a positive result following the taking of his sample. In this regard, he was unable to explain why the recorded level was significantly in excess of the prescribed threshold level.
20. Mr John advised the Committee that upon being notified of the result of the “A” sample analysis, the player immediately apologised and was upset not only for himself but also Rugby Canada, acknowledging that his anti-doping violation could reflect poorly on the image of rugby in the region. Mr John stated that the player (a tight forward) had the potential to achieve high level success in the game.
21. Senior counsel for the IRB, in referring to the statutory framework of Regulation 21, submitted that in the event of the player proving, on a balance of probabilities that the cannabis use was not to enhance his performance playing

rugby, then the BJC was empowered to exercise its discretion in determining the appropriate sanction.

22. Counsel referred to several matters of concern in relation to the player's conduct. In particular, the consumption of the cannabis (which the player knew was prohibited) had occurred against a background of the player having attended anti-doping education programmes and thus being fully aware of the danger of smoking cannabis prior to tournaments and indeed during the rugby season.
23. Counsel referred to the player's urine sample (taken on 17 May 2008) concentration level of 41 ng/ml was well above the prescribed maximum of 15 ng/ml and the consumption had occurred against the background of the player having been finally selected to participate in the North American 4 Competition and was on the long list of players eligible to be selected to play for the Canadian team in the June.
24. The IRB acknowledged the player had in effect admitted the offence at an early stage and had clearly regretted his lapse in judgment.

Discussion

25. For the most part the BJC accepted the player's account as being truthful and reliable. However, given the concentration level of cannabis (41 ng/ml) found in the urine sample provided on 17 May 2008, the BJC considered it may not have been fully informed as to whether additional cannabis was consumed during the three week period prior to the testing. Whilst the BJC accepts that cannabis can remain within the bodily system sometimes for periods of several weeks, it has reservations whether that would necessarily still be at a level of 41 ng/ml three weeks after being consumed in all the circumstances described by the player.
26. 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. Irresponsibly as the player acknowledged, it was consumed for a recreational purpose.

Sanction

27. 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 has made it clear in several cases, it is not prepared to look on players' violations as minor matters deserving of no more than slaps on the wrist in the form of reprimands.
28. Prior to the hearing the IRB referred the player to previous BJC decisions involving the consumption of cannabis. They include Larguet⁴, Younes Ho⁵, Vadym⁶, Garbuzov and Rechnev⁷, Nagelevuki⁸, Zhamutashvili and Todua⁹, Pupuke¹⁰ and Mdzinarishvili¹¹. Of course, each of these cases has its own features. In *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 concentration level was not recorded. The BJC 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

⁴ IRB v Davy Larguet, 8 October 2004

⁵ IRB v Younes Ho, 22 December 2004

⁶ IRB v Kolyshkin Vadym, 25 July 2005

⁷ IRB v Andrey Garbuzov and Yaroslav Rechnev, 28 September 2006

⁸ IRB v Sireli Nagelevuki, 16 March 2007

⁹ IRB v Davit Zhamutashvili and Davit Alexander Todua, 27 September 2007

¹⁰ IRB v Jovan Pupuke, 15 July 2008

¹¹ IRB v Vakhtang Mdzinarishvili, July 2008

underscores the magnitude of the player's failure to meet his responsibilities when committing this infraction." (Paragraph 14)

29. In Pupuke the player (a 19 year old Cook Islander who played his domestic rugby in New Zealand) consumed cannabis at a party three weeks before he represented the Cook Islands at the IRB Junior World Cup tournament held in Chile during April 2008. His recorded concentration level was 79 ng/ml. It was clear the player deeply regretted his conduct and the BJC for the most part accepted his explanation. The BJC considered that an appropriate starting point was a period of suspension of four months reduced to three months because of the mitigating factors referred to (refer decision paragraph 28).
30. In contrast, in Vadym, the player's account to the effect that he had made a "terrible mistake" purchasing painkillers in Prague was rejected by the BJC. The level was not recorded. There were no mitigating circumstances and the player was suspended for six months.
31. The BJC considers that there is a parallel between this case and the cases of Ho and Pupuke. As a rugby player chosen to represent his regional team at the recently introduced North American 4 Competition, the player had a responsibility not only to himself but as he has properly acknowledged to others, not to use prohibited substances at any stage, and in particular only days before the North American tournament commenced. 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 and considers there is a need to condign sanction to demonstrate that cannabis use during these periods is unacceptable. As mentioned he BJC is troubled that there has been an increased number of cases involving cannabis use by players under the age of 20.
32. In determining the appropriate starting point for the sanction, the BJC accepts all the aggravating factors that were referred to by counsel for the IRB. In addition, given the player's concentration level in his urine sample, the BJC has concern as to whether the player has been completely candid with regard to the extent of his cannabis use between 20 April 2008 and 17 May 2008. Further, the BJC has taken into account its previous decisions in relation to cannabis violations and the need for consistency in the sanctioning process.

Taking all these matters into account, the Board considers that an appropriate starting point is a period of suspension of four months reduced to three months on account of the player's early acknowledgement of guilt, his expressed regret and remorse that his conduct had the potential to tarnish the image of rugby particularly in relation to the recently introduced North American IRB tournament.

33. Accordingly, the BJC directs that the period of suspension should commence from 30 May 2008 (being the date of the provisional suspension) until 30 September 2008 (both dates inclusive).
34. 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 should replace any domestic sanctions imposed on the player by his union.
35. 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 25 August 2008, 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 2 September 2008.

14 August 2008



Tim Gresson (for and on behalf of the Board Judicial Committee)

Ismail Jakoet

Barry O'Driscoll