

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations
Relating to the Game

A N D

IN THE MATTER of an alleged doping
offence by STEVEN
SHORTLY contrary to
Regulation 21

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

Judicial Committee

Tim Gresson	(New Zealand)	(Chairman)
Doctor Barry O'Driscoll	(Ireland)	
Doctor Roger Evans	(Wales)	

Appearances and Attendances

For the Board

Susan Ahern	(Counsel for the International Rugby Board)
Tim Ricketts	(Anti-Doping Manager)

The Player

Steven Shortly	
Morgan Martin	(Counsel for the Player)

Canadian Rugby Union

Trevor Arnold

Hearing

14th and 22nd October 2008

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. The Board Judicial Committee ("BJC") has determined that the player committed an anti-doping violation in contravention of the IRB Regulation 21.2.1 (where "*the presence of a prohibited substance or its metabolites or markers in a player's bodily sample*" constitutes an anti-doping rule violation) when during in-competition testing he tested positive to Finasteride

metabolite which is an alpha-reductase inhibitor, classified under Section 5 – Diuretics and other Masking Agents – of the 2008 WADA Prohibited List.

2. In relation to sanction Regulation 21.22 provides that when the use of certain “*specified substances*” including Finasteride was not intended to enhance performance for a first violation the sanction shall be “*At a minimum, a warning and reprimand and no period of ineligibility from future Events, and at a maximum, one (1) year’s ineligibility.*”
3. The BJC is satisfied that the player has established on a balance of probabilities his taking of Finasteride (commercially known as “Proscar”) was unintentional, in that it was not to enhance his performance in rugby but for hair loss. The medication has been prescribed to him since 2005 by his doctor, who conducts a full time specialist practice in medical and surgical hair restoration. Until recently both the doctor and the player were unaware Finasteride was a banned substance. Further, the IRB has properly indicated that Finasteride will not be retained on the 2009 WADA Prohibited List which comes into effect on 1 January 2009. In these circumstances the BJC has determined that it should impose the mandatory minimum sanction whereby the player receives a warning and is reprimanded for his anti-doping violation. For the sake of clarity it follows the player’s provisional suspension will lapse forthwith.
4. The BJC also records in counsel’s written and oral submissions the IRB helpfully referred to the “*Lex Mitior*” principle which has been introduced in the 2009 WADA Code. Article 25.2 provides:

Non-Retroactive Unless Principle of “Lex Mitior” Applies

“With respect to any anti-doping violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date, the case shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred unless the panel hearing the case determines the principle of “lex mitior” appropriately applies under the circumstances of the case.”

This principle (which is based on Criminal law jurisprudence and is applied in many jurisdictions throughout the world) has been discussed and applied in a number of sports-law cases. For example, Mrs Ahern referred to CAS advisory Opinion to CONI CAS 2005/C/841 CONI; AC v Fina (CAS 96/146); Advisory opinion UCI and CONI CAS94/128; The ATP Tour Anti-Doping Tribunal Appeal of D Luis Feo Bernabe (7 April 2005) and The ATP Tour Anti-Doping Tribunal Appeal of Gaydon Oliver (February 2004). However, because of the circumstances of this case including the fact Finasteride is currently prohibited under the 2008 WADA Code the BJC did not consider the principle has any application in this case.

5. The BJC provisionally considers that there should be no orders for costs but if either of the parties 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 30th October 2008, with any responding written submission to be provided by no later than 17.00 Dublin time on 12th November 2008.
6. 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 limit within which the process must be initiated.
7. Because of the exigencies in relation to the player's playing commitments this brief written decision has been prepared in the limited time that is available today. However it addresses (albeit, more briefly than usual) the main issues that arose during this hearing and consequently the BJC does not propose to issue a more detailed decision unless specifically requested (preferably with reasons) by either party.

DATED this 23rd day of October 2008



T.M Gresson - Chairman (Board Judicial Committee)
Doctor Barry O'Driscoll
Doctor Roger Evans