

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **ROGER THOMPSON (NAMIBIA)** CONTRARY TO REGULATION 21

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

Judicial Committee:

Dr. Roger Evans (Wales)

Dr. Barry O'Driscoll (Ireland)

Graeme Mew (Canada – Chair)

For the Board:

Susan Ahern (Counsel)

Tim Ricketts (Anti-Doping Manager)

For Namibia Rugby Union

Karl Kruger

The Player

Roger Thompson

Bradley Basson (Counsel for the Player)

In Attendance

Robert Thompson (Player's father and President, Western Suburbs RFC)

Corrie Mensah (President, Western Suburbs RFC)

Heard: 3 May 2007 (by way of telephone conference)

DECISION OF THE JUDICIAL COMMITTEE

1. On 18 December 2006 Roger Thompson, an international level rugby player from Namibia (the "Player"), spent some time with his friend Marshall Titus. The Player was nursing what he described as a serious groin injury, which he had received about two weeks previously while playing rugby. He was already taking Cataflam, an anti-inflammatory prescribed by his doctor, to treat the injury. He had also obtained, and had been using, a non-prescription remedy, Testopro 100, for pain relief.

2. On the recommendation of the Namibian team physician, the Player had also been using some supplements manufactured by a company called USN, called Testo and Nitrox. He had been told that USN was a reputable supplier of supplements. Other rugby teams used USN products, including the Super 14 Blue Bulls team.
3. The Player also used a nasal spray called Vibrocil.
4. Despite using the various substances already mentioned, the Player was still in pain. His friend Marshall Titus gave him a couple of tablets, which the Player took. He did not ask, and was not told, what was in the tablets. All he knew was that his friend had used the tablets when he had a shoulder injury
5. At 9:06 pm the same day, a Doping Control Officer from the World Anti Doping Agency (“WADA”) turned up at the Player’s residence to undertake unannounced out of competition sample collection on behalf of the International Rugby Board (the “Board”). The Player completed a Doping Control Form and provided a urine sample. Because he did not know what the tablets he had taken earlier that day were called, the Player’s father rang Marshall Titus. He was told that the tablets were of a substance called “Anabol”. The name of this substance was included on the Player’s Doping Control Form.
6. In accordance with the usual practice, the Player’s urine sample was divided into “A” and “B” samples.
7. On 24 January 2007, the South African Anti Doping Control laboratory at the University of the Free State reported that the Player’s “A’ sample had tested positive for Epimetendiol, a metabolite of methandienone, an anabolic androgenic steroid and a prohibited substance under the anti-doping regulations of the Board and the World Anti-Doping Code.
8. The Board notified the Player of the adverse analytical finding on 30 January 2007. The Player has been provisionally suspended pursuant to Regulation 21.19.1 since that date, pending the outcome of his case.

9. The Player advised the Board, through the Namibian Rugby Union (the “Union”), that he accepts the results of the analysis of the “A” sample of the urine specimen provided by him and, hence, does not require the “B” sample of his specimen to be analysed.

10. 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 to participate in that hearing by way of telephone conference.

11. On 13 March 2007, the BJC issue certain directions in relation to the hearing.

12. The hearing took place by way of a telephone conference call on 3 May 2007. A number of documents and written submissions were placed before the BJC. These are listed in Appendix A to this decision. In addition, verbal evidence was received from Kurt Kruger, Corrie Mensah and the Player himself.

The Player

13. The Player is 23 years old. He is an amateur player and works as a bank clerk. He has ambitions to play professionally. He plays his club rugby for Western Suburbs RFC in the Premier League of Namibian rugby. He has played rugby since he was in primary school. He first played for Namibia at the Under 19 level in 2000. Since then, he has played at the Under 21 level, for Namibia “A”, competed in the IRB 7s tournament in George in 2004 and been capped for his country 10 times at the senior level. He had hoped to represent his country in the 2007 Rugby World Cup.

14. The Player has been drug tested twice before, both in and out of competition. He agreed that when he played in the IRB 7s he signed a Player Agreement in which he acknowledged having read the IRB Anti-Doping Regulations, however he claims that he in fact just signed the form without reviewing the regulations. He is aware that there is a list of substances that he is not allowed to take but had not read it.

15. The Player claimed, and the Union confirmed, that he had received no information concerning doping from the Union. To the extent that there was player awareness of

doping, it was because some Namibian players had been tested at various international tournaments. Medical advice given to the Namibian players was confined to information about what could be taken, not what could not be taken.

Anti-Doping Rule Violation Established

16. Regulation 21.2.1 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.

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

18. The Player does not contest the analytical findings of the Free State University laboratory. Accordingly, we conclude that the Board has established an anti-doping rule violation, namely, the presence of Epimetendiol, a metabolite of methandienone, a Prohibited Substance, in the Player's bodily Sample.

Sanction

19. The sanction for the presence of a Prohibited Substance, such as methandienone, is two years Ineligibility for a first offence (Regulation 21.22.1). This is subject to the Player establishing the basis for eliminating or reducing this sanction based on "Exceptional Circumstances" as provided for in Regulation 21.22.4.

20. Some of the submissions made on the Player's behalf appear to have been predicated on the applicability to the Player's case of reduced sanctions in cases where the anti-doping rule violation relates to the presence of a "Specified Substance". Methandienone (which includes its metabolites) is not a "Specified Substance", so that reduced sanctions are not available on that basis.

21. With respect to “Exceptional Circumstances”, two categories are identified in the Regulations. In the first category, if a Player can establish that he “bears No Fault or Negligence for the violation” and can establish how the Prohibited Substance entered his system, the period of Ineligibility can be eliminated. “No Fault or Negligence” means:

The Player’s establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the Prohibited Substance.

22. The second category is where the Player “bears No Significant Fault or Negligence” in which case the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. The definition of the term provides:

The Player’s establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to an anti-doping rule violation.

23. A commentary to the corresponding provision of the *World Anti Doping Code* makes it clear that only in truly exceptional cases and not in the vast majority of cases will these provisions operate to eliminate or reduce a sanction.¹

¹ The commentary to Article 10.5 of the World Anti Doping Code provides:

To illustrate the operation of Article 10.5, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a prohibited substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); and (c) sabotage of the Athlete’s food or drink by a spouse, coach or other person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

24. The burden is on the Player to establish the existence of “exceptional circumstances” under Regulation 21.22.4 on a balance of probability.

25. The Player acknowledges that he should have taken more care. He puts forward as mitigating circumstances:

- a) His previous good character.
- b) He comes from a disadvantaged background and has hitherto been a role model in his community.
- c) His amateur status and lack of knowledge of doping matters.
- d) He believed he was using “natural” supplements and had no intention of using Prohibited Substances.
- e) The level of methandienone in his system was “marginal” and not reflective of prolonged use or intent to enhance sport performance.
- f) That he generally followed the advice of team doctors concerning supplement use.
- g) His co-operation with the sample collection process, including his open declaration of the substances he was using.
- h) The lack of information on doping issues conveyed by the Union.
- i) The support of his Club.
- j) A commitment by the Player and his Club to raise consciousness of anti-doping rules through better education and dissemination of information.

26. Before any mitigating factors can be considered, the Player must, as noted, establish how the Prohibited Substance entered his system. He candidly acknowledges that he cannot. Even if he could, however, we have concluded that he has failed to establish the existence of “Exceptional Circumstances” as that term is understood and described in the Regulations, the World Anti Doping Code and the jurisprudence.

27. With respect to supplement use generally, the risks are well known. The Player's submissions refer to *Athlete Guide*, edition 4, published by the Board in partnership with WADA, which, contains the following information about supplement use:

“Extreme caution is recommended regarding supplement use. It is WADA's position that a good diet is of utmost importance to athletes. The use of dietary supplements by athletes is a concern because in many countries the manufacturing and labeling of supplements may not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under anti-doping regulations. A significant number of positive tests have been attributed to the misuse of supplements, and taking a poorly labeled dietary supplement is not an adequate defense in a doping hearing.”

28. In addition to using supplements, though, the Player took two tablets off a friend, having no idea what he was taking. The name of the product (which he claims he did not know at the time he used it), “Anabol” should have set off alarm bells immediately.

29. We note, also, that despite the Player's asserted ignorance of doping matters, he had experience of drug testing and knew he was one of the Namibian players who were part of the Board's Registered Testing Pool.² He also acknowledged that he had heard the phrase “anabolic steroid” before.

30. In short, it cannot be said the Player's fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to an anti-doping rule violation.

31. Having so found, we have no discretion to reduce the sanction from the mandatory period of ineligibility of two years.

Decision

32. On 18 December 2006, the Player committed an anti-doping rule violation, namely, the presence in a bodily Sample provided by the Player of Epimetendiol, a metabolite of methandienone. Methandienone is a Prohibited Substance under both Regulation 21 and the World Anti-Doping Code.

² The pool of International Level Players, established by the Board, that is subject to both In Competition and Out-of-competition Testing by the Board

33. The sanction imposed for this anti-doping rule violation is a period of Ineligibility of two years, commencing 30 January 2007 (the date upon which the Player's provisional suspension under Regulation 21.19 commenced) and concluding (but inclusive of) 30 January 2009.

34. 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 specified 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.

35. We acknowledge that, in the Player's individual circumstances, the sanction imposed may appear particularly harsh. However, all players, at whatever level of the game, professional or amateur, are subject to the same rules. Furthermore, the IRB, as an adherent to the World Anti Doping Code, is bound to follow the principles of strict liability and uniform sanctions which are applied throughout the international sport community.

36. That said, it is, indeed, unfortunate that, once again in an anti-doping rule violation case, the Union has done little if anything to educate its players and team support personnel. The Union's failure does not, however, detract from the personal responsibility which each athlete bears to ensure that he or she does not violate anti-doping rules.

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 via Mr. Ricketts by 17:00 Dublin time on 15 June 2007, with any responding written submissions to be provided by no later than 17:00 Dublin time on 22 June 2007.

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 limit within which the process must be initiated.

7 June 2007

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

Graeme Mew, Chairman

APPENDIX A

Documentary Evidence and Submissions Received

DATE	DOCUMENT
Undated	Signed Player Consent & Agreement Form, IRB Sevens 04 – 05
26 January 2002	Preliminary review – adverse analytical finding – Gregor Nicholson
16 January 2006	Memorandum from IRB (T. Ricketts) to Anti-Doping Representatives/National Team Managers of small selected IRB Member Unions re: 2006 IRB Out of Competition Anti-Doping Programme
March 2006	Information relating to Player's personal details (as member of registered testing pool)
15 March 2006	Memorandum from IRB (T. Ricketts) to Anti-Doping Representatives/National Team Managers of small selected IRB Member Unions re: 2006 IRB Out of Competition Anti-Doping Programme – 2 nd Quarter Updates
15 June 2006	Memorandum from IRB (T. Ricketts) to Anti-Doping Representatives/National Team Managers of small selected IRB Member Unions re: 2006 IRB Out of Competition Anti-Doping Programme – 3 rd Quarter Updates
15 September 2006	Memorandum from IRB (T. Ricketts) to Anti-Doping Representatives/National Team Managers of small selected IRB Member Unions re: 2006 IRB Out of Competition Anti-Doping Programme – 4 th Quarter Update
18 December 2006	Doping Control Form WADA
24 January 2007	Report on A - Sample A analysis (report #24010701) – University of the Free State
24 January 2007	Letter from WADA (Stuart Kemp & Rune Andersen) re: Testing
25 January 2007	E-mail from IRB (I. Baudo) to Gregor Nicholson re: preliminary review – adverse analytical finding
29 January 2007	Letter from IRB (T. Ricketts) to Namibia Rugby Union (Christopher Alexander) re: adverse analytical finding
29 January 2007	Letter from IRB (T. Ricketts) to the Player c/o Namibia Rugby Union re: adverse analytical finding
30 January 2007 (and preceding)	E-mail traffic between IRB (I. Baudo) and Namibia Rugby Union re: notification of adverse analytical finding
2 February 2007	UPS delivery notification re: delivery on 2 February 2007 to Namibia Rugby Union (Christopher Alexander)

6 February 2007	E-mail traffic from Player to Namibia Rugby Union to IRB regarding notification of Player
9 February 2007	Letter from IRB (T. Ricketts) to the Player re: waiver of right to have B – Sample analysed and appointment of BJC
14 February 2007 (and preceding)	E-mail traffic between Namibia Rugby Union and IRB regarding notification
16 February 2007	Letter from Olivier's Law Office (B. D. Basson) to IRB c/o Namibia Rugby Union
19 February 2007	IRB request for directions
19 February 2007	Letter from IRB (T. Ricketts) to the Player c/o Namibian Rugby Union Re: Appointment of BJC
20 February 2007 (and preceding)	E-mail traffic regarding appointment of BJC
9 March 2007	Letter from Namibia Rugby Union (Dirk H. Conradie, President) to IRB
20 March 2007	Letter from Western Suburbs RFC of Namibia (C. Mensah) to BJC
23 March 2007	Submissions of Player
30 March 2007	Submissions of IRB
4 May 2007	Letter from IRB (T. Ricketts) to Player's lawyer regarding additional evidence regarding Anabol products
8 May 2007	Supplementary submissions on behalf of Player (with annexures)