

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

IN THE MATTER OF

SPORT IRELAND

AND

IS-4505

RULING OF THE IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

A. Introduction

1. Mr. IS-4505 is 28 years of age and participates as an amateur in the sport of motocross. Mr. IS-4505 is considered to be a talented participant and has been involved in the sport for a number of years.

2. Motorcycling Ireland is the National Governing Body for motocross in Ireland. According to Motorcycling Ireland, every person wishing to compete in one of these motorsport events must be the holder of a Competition Licence issued by Motorcycling Ireland. Motorcycling Ireland informs the panel that the annual licensing procedure requires applicants for licenses or license renewals to undergo an anti-doping seminar each year.

3. On the [...] 2016, Mr. IS-4505 was competing in a Motorcycling Ireland event. He, by virtue of his placing in the event, having come second, was selected for a doping test by way of a urine sample. No issue arises as to the manner in which the sample was taken or the subsequent analysis of the sample. Following normal procedures, Sport Ireland sent the sample to a laboratory in Cologne, Germany, the Deutsche Sportoshschule Köln Institute Für Biochemie. The analytical report from the laboratory made an Adverse Analytical Finding of the presence of the substance Benzoyllecgonine. Detection of Benzoyllecgonine is consistent with the administration of the prohibited substance cocaine. This finding was made on foot of an analysis of the "A" sample. On receipt of this

Adverse Analytical Finding, Sport Ireland, as it was required to do under Article 7.2 of the Irish Sports Council Anti Doping Rules (2015) (hereinafter referred to as “the Rules”), conducted a review. There was no therapeutic use exemption granted to Mr. IS-4505

4. By letter of the 25th August, 2016, Sport Ireland wrote to Mr. IS-4505 outlining the findings of the laboratory and formally charging him with the following Anti-Doping Rule Violation (“ADRV”):

“Article 2.1 – The presence of a Prohibited Substance or its Metabolites or Markers in your Sample.”

5. The letter went on to explain the relevant provisions of Article 10 of the Rules and the various potential outcomes that might result depending on the circumstances.
6. Cocaine is a Prohibited Substance listed as a stimulant under the Prohibited List published as an International Standard by the World Anti Doping Association (“WADA”). Accordingly, Mr IS-4505 was automatically Provisionally Suspended pursuant to Article 7.8.1 of the Rules from the 26th August, 2016. This meant that he was barred temporarily from participating in any competition or activity prior to the final decision at a hearing to be conducted under Article 8. Mr. IS-4505 did not appeal the provisional suspension. Mr. IS-4505 was asked to provide a response to the charges by the 13th September 2016 and his rights in that regard and the options open to him under the Rules were outlined in the letter.
7. Under Article 7.8.4 of the Rules, because Mr. IS-4505 was provisionally suspended, he had a right to an expedited hearing before the Disciplinary Panel.
8. Following certain conversations between Mr. IS-4505 and Sport Ireland, Mr IS-4505 communicated by email dated the 18th September, 2016 admitting the ADRV and agreeing to engage in a consultation process.
9. While there were indications that Mr. IS-4505 intended to engage in a consultation process, and instructed solicitors to act on his behalf, Mr. IS-4505 in essence did not engage in a consultation process and the solicitors who had, on his

behalf, entered into correspondence with Sport Ireland and their legal advisers, subsequently ceased to act for Mr. IS-4505 and Mr. IS-4505 failed or refused to engage with the disciplinary process any further, up to and including failing or refusing to attend or participate in the Panel's disciplinary hearing.

10. The form of consultation which can take place and the procedure under which an athlete can provide "*substantial assistance*" to Sport Ireland in relation to anti-doping rule violations by another person (or a separate disciplinary or criminal matter) was outlined and explained to Mr. IS-4505. He did not avail of either of these procedures.
11. Anecdotally Mr. IS-4505 indicated to Sport Ireland that he did not take the prohibited substance in competition.
12. No request was made for the "B" sample to be analysed.
13. By letter of the 9th December, 2016, Sport Ireland wrote to the Secretary to the Disciplinary Panel referring the alleged violation of the Rules to the Disciplinary Panel in accordance with Article 8.2 of the Rules.
14. The Secretary to the Panel wrote to Mr. IS-4505 and DAC Beachcroft (the solicitors acting for Sport Ireland) by a letter of the 15th December, 2016, notifying them that the Chairperson of the Disciplinary Panel, Michael M. Collins SC, had appointed a panel to consider the case. The letter provided an outline of the procedures to be followed and stated that the Disciplinary Panel had provisionally decided to hold a hearing to consider the case on 16th January, 2017. In light of the apparent admission of the ADRV by Mr. IS-4505 the Disciplinary Panel directed that Mr. IS-4505 deliver to Sport Ireland a written submission on the facts, the applicable legal principles and what Mr. IS-4505 contended was the appropriate sanction or consequences if any to be imposed by the Disciplinary Panel together with details of all witnesses that Mr. IS-4505 intended to call at the hearing. The Disciplinary Panel also directed that Sport Ireland deliver a written submission and details of witnesses in reply. Mr. IS-4505 was invited to inform

the Secretary of the Disciplinary Panel if he required a more expedited hearing than that proposed.

15. Mr. IS-4505 did not respond to the Secretary to the Panel's letter of the 15th December, 2016 or deliver any written submission.
16. DAC Beachcroft, on behalf of Sport Ireland, furnished a written submission to the Secretary to the Disciplinary Panel by way of a letter of the 11th January 2017, referring to the findings of the laboratory and submitting that Sport Ireland had established the ADRV under Article 2.1. They pointed out that under Article 10.1.1 the period of ineligibility to be applied was 4 years, unless Mr. IS-4505 could establish that the ADRV was not intentional and they referred to the meaning of the term "*intentional*" in Article 10.1.3 of the Rules.¹
17. By virtue of Article 10.1.2 of the Rules, if Mr. IS-4505 could establish that the ADRV was not intentional, the period of ineligibility would be 2 years. As cocaine is a Non Specified Substance which is prohibited In-Competition only, the violation would not be considered "*intentional*" if Mr. IS-4505 could establish that the cocaine was used out of competition in a context unrelated to sport performance (Article 10.1.3.2). The submission from Sport Ireland pointed out that in the absence of any evidence or submissions from Mr. IS-4505 the period of ineligibility should be 4 years. The submission also referred to other consequences apart from ineligibility which would flow from a finding of a rule violation such as disqualification of the result obtained by Mr. IS-4505 in the competition, the forfeiture of medals, points and prizes and the fact that the reasoned decision of the Disciplinary Panel would be published.
18. Finally, Sport Ireland pointed out that depending on what submissions might be made by or on behalf of Mr. IS-4505 Sport Ireland might have to seek an adjournment of the hearing if it needed to adduce evidence or submissions to challenge Mr. IS-4505 evidence or submissions.

¹ "As used in Articles 10.1 and 10.2, the term "*intentional*" is used to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk." The Article goes on to deal with certain presumptions for a substance which is only prohibited In-Competition.

B. The hearing on the 16th January, 2017

19. There was no appearance by Mr. IS-4505. The Panel heard evidence of the attempts that had been made by Sport Ireland, the Secretary of the Disciplinary Panel and Motorcycling Ireland, represented by Mr. Bernard Keller, to encourage Mr. IS-4505 to attend the hearing. The Panel accepts that all proper efforts were made in this regard and regrets the absence of Mr. IS-4505.

20. Article 2.1.1 of the Rules provides:

“It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his or her Sample. Accordingly, it is not necessary that Intent, Fault, Negligence or knowing Use on the Athlete’s part be demonstrated in order to demonstrate an Anti-Doping Rule Violation under Article 2.1.”

21. The presence of a prohibited substance in the athlete’s “A” sample or the confirmation of this in the analysis of the “B” sample is treated under Article 2.1.2 as establishing an ADRV. Accordingly, and bearing in mind that Mr. IS-4505 had expressly accepted the ADRV, there was no dispute that Mr. IS-4505 was guilty of the ADRV alleged.

22. What is at issue is the question of the appropriate sanction. The steps by which the Panel must approach this issue are set out in the opening words of Article 10:

“The appropriate sanction shall be determined in a sequence of four steps. First, the Irish Sport Anti-Doping Disciplinary Panel shall determine which of the basic Ineligibility sanctions (Article 10.1 or 10.2) apply to the particular anti-doping rule violation. Second, if the basic Ineligibility sanction provides for a range of sanctions, the Irish Sport Anti-Doping Disciplinary Panel shall determine the applicable sanction within that range according to the Athlete or other Person’s degree of Fault (Article 10.3 or 10.4). In a third step, the Irish Sport Anti-Doping Disciplinary Panel shall establish whether there is a basis for elimination, suspension, or a reduction of the sanction (Article 10.5). Finally, the Irish Sport Anti-

Doping Disciplinary Panel shall decide on the commencement of the period of Ineligibility under Article 10.7."

23. The default period of Ineligibility for a violation of Article 2.1 is 4 years since cocaine, although a Prohibited Substance, is not a Specified Substance. However, if the Athlete can establish that the ADRV was not intentional then the combination of Article 10.1.1 and Article 10.1.2 means that the period of ineligibility shall be 2 years. The meaning of "intentional" as defined in Article 10.1.3 has been referred to above. In particular, Article 10.1.3 also provides:

"An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition ...

10.1.3.2 shall not be considered "intentional" if the substance is not a Specified Substance [which cocaine is not] and the Athlete can establish that the Prohibited Substance was used out of competition in a context unrelated to sport performance."

24. Thus, if Mr. IS-4505 could have established that the cocaine was used out of competition in a context unrelated to sport performance, the ADRV would not be considered intentional and the period of ineligibility would be 2 years.

25. There are other grounds upon which a period of Ineligibility may be eliminated, reduced or suspended under Article 10.5 but none of those applied on the facts of this case and, in circumstances where Mr. IS-4505 was not present and made no representations in this regard, they did not arise for consideration.

C. The evidence and submissions

The Panel heard from Mr. Gary Rice, Solicitor, of DAC Beachcroft, on behalf of Sport Ireland who gave details of the test, analysis, notification and proposed sanction of Mr. IS-4505

D. The Panel's determination

26. In the absence of any evidence or submissions by or on behalf of Mr. IS-4505 and on the basis of the evidence submitted by Sport Ireland, the Panel finds that there was an ADRV by Mr. IS-4505. No evidence in mitigation has been advanced by or on Mr. IS-4505 behalf. In all the circumstances, the Panel considers that the appropriate sanction is a period of Ineligibility of 4 years which will run from the date on which the sample was taken, being the [...] 2016.

E. Conclusion

27. The panel thanks Mr. Bernard Keller, of Motorcycling Ireland and Mr. Gary Rice, of DAC Beachcroft, Solicitors, for their assistance in the course of this hearing.

28. The Panel makes the following findings and orders:

- (1) Mr. IS-4505 committed an Anti-Doping Rule Violation being the presence of a Prohibited Substance (cocaine) in his sample contrary to Article 2.1.1 of the Rules.
- (2) The Anti-Doping Rule Violation did not involve a Specified Substance.
- (3) Mr. IS-4505 is prohibited on account of this Anti-Doping Rule Violation from participating in a Competition or activity for a period of 4 years from the 31st July, 2016 as provided for in Article 10.8 of the Rules.
- (4) Since the Anti-Doping Rule Violation occurred in connection with an In-Competition test, the individual result obtained by Mr. IS-4505 in the Competition on the [...], 2016, is forfeited including forfeiture of any medals, titles, points and prizes obtained by virtue of the purported result on that day.

(5) The Panel draws attention to the provisions of Article 9.2 of the Rules. Since the Anti-Doping Rule Violation occurred in connection with an Event (i.e. a series of individual competitions conducted together under one ruling body, in this case Motorcycling Ireland), the finding of an Anti-Doping Rule Violation may, if Motorsport Ireland so decide, lead to Disqualification of all of Mr. IS-4505 individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes.

(6) In the exercise of its discretion under Article 10.10, the Panel has decided not to make any award of costs in respect of the hearing against Mr. IS-4505 or any other person.

(7) The question of publication of this decision is a matter for Sport Ireland.


29. The Panel draws Mr. IS-4505 attention to his rights of appeal, if he so wishes, under Article 13 of the Rules.



Judge Rory MacCabe, S.C.,

Mr. Warren Deutrom

Dr. Pat O'Neill

 25th day of January, 2017