

JUDICIAL AWARD BY THE FISA DOPING HEARING PANEL

sitting in the following composition

Members: **John Boulton**
 Mikio Hiura
 Mike Williams

In the case of Sawarn Singh

The Facts

FISA conducted out of competition testing in India on 19 February 2015. A urine and a blood sample were collected from Sawarn Singh (“the Athlete”). IDTM conducted the testing on behalf of FISA.

The urine Sample collected from the Athlete was numbered 3064525 and recorded on the Doping Control Form. The Athlete signed this form and received a copy. Sawarn Singh declared on the doping control form that had taken the following products during the seven days before the test: Blumox-CA-625, Omnacortil, Kolq, Expect-B. He made no comments on the doping control procedure. The WADA accredited laboratory in India received the urine and the blood samples. The Delhi Laboratory received the “A and B” samples of the urine sample on 20 February 2015.

The Results from the Delhi Laboratory dated 13 March 2015 indicate that Sample A showed the presence of terbutaline. Terbutaline is included in the 2015 Prohibited Substances/Methods List of the World Anti-Doping Code. Terbutaline is classified in class S3 Beta-2 Agonists.

The Athlete did not have a valid Therapeutic Use Exemption (TUE) for terbutaline with FISA. The National Anti-Doping Agency of India confirmed by email on 31 March 2015 that the Athlete also did not have a valid nationally approved TUE. No departures from the International Standard for Testing (ISL) have been established.

The Athlete was notified of the positive test result by the Executive Director of FISA in a letter dated 29 April 2015.

In an email dated 8 May 2015, the President of the National Federation, Rajlaxmi Singh Deo, confirmed that the Athlete *“waives the testing of the B sample and does not rebut the findings of the A sample”*.

In an email dated 29 July 2015, the President confirmed that *“no additional facts will be established before the hearing panel other than what has been admitted.”* The Executive Director of FISA appointed a FISA Hearing Panel (the “Panel”) and the Athlete did not attend the Hearing which took place in Rio de Janeiro on 6 August 2015.

Evidence Provided for the Hearing

The material provided to the Panel was as follows:

1. The Doping Control Form
2. The Lab results
3. The letter from FISA's Executive Director to the Indian Federation dated 29 April
4. The reply from the President of the Indian Federation, waiving the B sample testing, and explaining how the positive test occurred.
5. Email from the Indian NADO indicating there was no relevant TUE
6. Statement of the Athlete
7. Copy of the prescription by Dr. Gurdas Singh Chahal for the medications taken by the athlete including Xpect-B which contained the specified substance terbutaline.

Applicable law

The applicable rules

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test (19 February 2015). These rules are consistent with the World Anti-Doping Code.

The relevant rules

The relevant rules in this case are the FISA Anti-Doping Bye Laws including but not limited to:

- Article 2.1.1 which states it is each Rower's personal duty to ensure no Prohibited Substance enters his body;
- Article 10.2 which sets a period of four years' ineligibility for a first violation for a prohibited substance, unless the anti-doping rule violation involves a specified substance and it can be established that the anti-doping rule violation was not intentional which means the period of Ineligibility shall be two years. The athlete shall have the opportunity to establish the basis for eliminating or reducing this sanction as provided in Articles 10.4 and 10.5;

Articles 10.4 and 10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances
- Article 10.4 No Fault or Negligence

If a Rower establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated.
- Article 10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence.
- Article 10.5.1 Reductions of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.
- Article 10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Rower or other Person can establish No Significant Fault or Negligence, then the period of ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of ineligibility, depending on the Rower's or other Person's degree of fault.

Merits

The Panel is satisfied that an anti-doping rule violation was established by the evidence of the laboratory analysis. There was the presence of terbutaline in the Athlete's urine. The Rower does not contest the anti-doping rule violation.

There was no provisional suspension imposed under Article 7.9.2.

The evidence seen by the Panel establishes to the satisfaction of the tribunal that the athlete was ill, suffering from jaundice, malaria, coughs and cold and high fever. A local doctor in his home town visited him on 16 February 2015 and prescribed him various medications one of which was a cough medicine which contained terbutaline.

The period of ineligibility, terbutaline being a specified substance, is two years under Article 10.2.2 and the evidence does not establish that it was intentional under Article 10.2.1.2.

The Athlete was submitting whereabouts in ADAMS as he was included in the FISA 2015 RTP although he was injured with a back stress fracture and had not rowed since September 2014. In the anti-doping test conducted on 19 February 2015, the Athlete noted the medication concerned on the Doping Control Form. The Doping Control Officer indicated to the Athlete that the medication contained a banned substance and the Athlete ceased taking it.

The facts indicate that he was unaware that he was taking a banned substance, under advice from his local doctor. There is no evidence of an intention to take the substance to enhance performance.

Therefore the provisions of Articles 10.5.1 apply and the panel had to consider whether there was significant fault or negligence on the part of the athlete, and whether the 2 year period of ineligibility should be reduced.

The Panel concluded that there was an element of negligence on the part of the athlete, but that it was not significant fault or negligence. The fault was that he did not check the medications prescribed by his doctor, which an experienced and educated athlete like him should do. He then could have obtained a Therapeutic Use Exemption (TUE) so that he would have been able to keep taking the medication to treat his illness. It is unclear if he had been educated by his National Federation or by the National Anti-Doping Agency of India of the possibility of applying for a TUE in such circumstances.

The Athlete wrote in his statement that he had attended talks by his National Federation about the dangers of doping and the dangers of taking medicines both off the shelf and prescribed by a doctor without checking the medicines. He also attended lectures by his National Anti-Doping Agency on aspects of doping in sports.

FOR THESE REASONS

The FISA Doping Hearing Panel finds:

1. The Athlete has satisfied the Panel that the requirements of Article 10.5.1 have been met. The period of ineligibility should be reduced to one year, commencing from the date of testing, namely 19 February 2015. It notes, in doing so, that the athlete has not competed since that time.
2. This award is rendered without costs.

Rio de Janeiro, Brazil, 6 August 2015

For the FISA Doping Hearing Panel:

John Boulton

Mikio Hiura

Mike Williams