NATIONAL ANTI-DOPING PANEL

Before:

Christopher Quinlan

Dr Terry Crystal

Judy Vernon

BETWEEN:

UK Anti-Doping *National Anti-Doping Organisation*

-and-

Sam Walsh *Respondent*

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE 2009 ANTI-DOPING RULES OF THE RUGBY FOOTBALL LEAGUE

DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. This is the final decision of the Anti-Doping Tribunal convened under Article 8 of the 2009 Anti-Doping Rules of the Rugby Football League ('the Rules') to determine a charge brought against Sam Walsh (the Respondent) for commission of a doping offence in breach of Article 2.1 of the Rules.

2. Article 2.1 of the Rules makes it a doping offence to provide a sample that shows "the presence of a Prohibited Substance or its Metabolites or Markers".

3. The Respondent was born on 17 January 1992. He was an academy player for Hull FC ('the Club') having signed a 'pay per play' contract in September 2009. He was subject to the Rules. He was tested during a training session at the Club on 9 December 2009. The urine sample he provided was found to contain 19-norandrosterone and 19-noretiocholanolone, metabolites of anabolic steroids

listed in S1.1b (Anabolic Androgenic Steroids) World Anti-Doping Agency ('WADA') 2009 Prohibited List, which is incorporated in the Rules.

4. United Kingdom Anti-Doping Limited ('UKAD') is the National Anti-Doping Organisation for the United Kingdom and the Results Management Authority for the Rugby Football League.

5. The Tribunal held a hearing of the charge on 29 April 2010. The hearing was attended (in addition to the Tribunal) by
    - The Respondent and his father
    - Fiona Banks, Counsel for the Respondent
    - Henry Winsnes, Solicitor for the Respondent
    - Graham Arthur, Legal Director, UK Anti-Doping
    - Jason Torrance, para-legal, UK Anti-Doping
    - Dean Hardman (RFL Operations Manager)
    - Graham Sarjent, RFL
    - Stephen Watkins NADP Case Officer

6. This document constitutes our final reasoned decision, reached after due consideration of the evidence, submissions and Arbitral Awards placed before us.

Procedural History

7. The Respondent was charged with a doping offence by letter dated 29 January 2010. The letter set out the details of the alleged doping offence with which he is charged and a summary of the facts and the evidence relied upon by the RFL. The letter also imposed a provisional suspension with effect from 08.00 30 January 2010.

8. The letter further informed him that pursuant to Article 7.5.1 of the Rules he should reply to the letter indicating whether he wished to admit or deny the offence; whether he wished the B sample to be analysed; to show cause why he should not be provisionally suspended; and to make submissions as to sanction.

9. By email dated 3 February 2010, sent to Dean Hardman (RFL Operations Manager) the Respondent stated, "*…I would here by like to admit the charge but insist I was not fully at fault and negligent, I am deeply sorry for my lack of carelessness* [*sic*] *which I know has probably cost me my opportunity at Hull FC, I am also applying for my medical records due to an operation I had of an eye injury were* [*sic*] *I received steroids on a daily basis, I will ensure yourselves* [*sic*] *receive a copy …".* By that admission he accepted the presence of the prohibited substance in his sample but sought to provide an explanation for the adverse finding. He did not exercise his right, then or subsequently, to have the B sample tested.

10. On 14 February 2010 the Tribunal Chairman Christopher Quinlan issued written procedural directions. Further Directions were issued on 18 and 25 February 2010 and on the 25 March 2010 following application by the Respondent's solicitors for further time to prepare his case.

The Tribunal's Decision

Determination of the Charge

11. Article 2.1 of the Rules provides that a doping offence shall be constituted by:

"*The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE ('Therapeutic Use Exemption') granted in accordance with Article 4.*"

12. The A sample taken from the Respondent on 9 December (A1080450) contained 19-norandrosterone and 19-noretiocholanolone, metabolites of a number of anabolic steroids including nandrolone, bolandiol and 19-norandrostenedione, specified as a prohibited substance in S1.1b (Anabolic Androgenic Steroids) World Anti-Doping Agency 2009 Prohibited List. The average concentration of 19-norandrosterone was measured at 109 nanograms per millilitre. No action was taken in respect of a further atypical finding, namely an elevated testosterone/epitestosterone ratio.

13. The Respondent admitted the offence in his email of 3 February 2010.

Consequences

14. Article 10.2 of the Rules provides-

"For an Anti-Doping Rule Violation under Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and/or Prohibited Method) that is the Participant's first violation, a period of Ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of ineligibility (as specified in Article 10.4 and/or Article 10.5) or the conditions for increasing the period of Ineligibility (as specified in Article 10.6) are met."

15. This is the Respondent's first violation.

16. Article 10.4 does not apply: the prohibited substances are not specified substances. Article 10.5.1 does not apply: it is not suggested that there was no fault or negligence. The Respondent sought to establish no significant fault or negligence (Article 10.5.2).

The Respondent's Case

17. The Respondent relied upon Article 10.5.2 of the Rules, which provides:

"If a Participant establishes in an individual case that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation charged, then 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…When the Anti-Doping Rule Violation charged is an Article 2.1 Violation… the Athlete must also establish how the Prohibited Substance entered his/her system in order to have the period of Ineligibility reduced."

18. The Procedural Directions issued on 14 February included a direction that the Respondent must serve all evidence he wished to rely upon relating to the eye operation referred to in his email of 3 February. He abandoned that line in advance of the hearing. In written submissions filed on his behalf it was withdrawn with the positive assertion that "…*further to investigation, the medications that the Respondent was prescribed for his eye condition cannot have caused the adverse analytical finding*". The operation was said to have taken place in 2007.

19. The Respondent's case was that the adverse analytical finding came about as a consequence of ingesting a contaminated health supplement. He asserted further that he had received virtually no education in relation to prohibited substances and Anti-Doping Rule Violations and "no education at all" in relation to the dangers of contaminated supplements.

20. The Respondent is now eighteen years of age. He was seventeen when tested. He started playing rugby league aged six years. He is studying for a "Sports" diploma. He joined the Hull Kingston Rovers FC ("Hull KR") academy in April 2008, aged sixteen. He is a hooker. He said Hull KR wanted him to "put on weight" because he was "too small, too light".

21. He had used supplements regularly since 2006. At the time he was tested he was using a supplement called "PHD Pharma Gain", which his friends were also using. He also used a supplement called "NAR NOX Shock". He used supplements because they "help muscle growth". He purchased them from a shop in Hull. He said every time he purchased supplements he asked if they were "legal". In answer to Mr Arthur, he said he was asking because he "played rugby and would it have any effect on me if I got drug tested". He then said it was to ensure he was not breaking the criminal law.

22. He said he did not know he was subject to doping control tests and had never been tested. In writing he asserted that he had never received any guidance on anti-doping, testing or banned substances. Asked about RFL evidence that in July 2009 Hull KR informed them that he (as a member of the academy) had been present at an anti-doping education session, he said he was told not to use steroids and to buy all his supplements from the Club. He said he knew steroids were "banned" but he insisted he believed they were banned by the Club. He said that in 2008 and 2009 he did not know the RFL operated an Anti-Doping regime.

23. He said he was unaware of the RFL's "100% Me" campaign. It has been running since 2006 and was promoted by the provision to clubs of posters to display in changing rooms and the like. The poster contains a warning of the dangers of supplements. He said he'd never seen such a poster.

Determination

24. The Respondent has the burden of satisfying the Tribunal, on the balance of probabilities (Article 8.3.2) of each of the requisite elements of Article 10.5.2.

How the Prohibited Substance entered his body

25. The Respondent's case rests upon his assertion that he did not take anything other than the supplements and so one or other or both must have been the source of the prohibited substances. It was a possible innocent explanation coupled with a denial of deliberate doping.

26. We are not satisfied that contamination of the supplements he took was more likely than not to have been the way the prohibited substances entered his system. We are of that view essentially for the following reasons.

27. First, the Respondent produced no direct evidence to support that assertion. The labels of each of the supplements do not disclose the prohibited substances as ingredients. He produced no scientific evidence to prove the alleged contamination. He said that was because (1) the supplements he was taking at the time had been used up and (2) he did not have sufficient funds to pay for such analysis. Whatever the explanation, there was no direct evidence before us that the supplements (or either of them) he was taking or examples of them contained the prohibited substances.

28. Second, he told us that a friend whom he said was taking the same supplements was tested at the same time. His sample did not produce an adverse analytical finding.

29. Third, the fact that supplements can contain substances which are prohibited under the Rules is not of itself sufficient to discharge the burden upon the Respondent. His Counsel asserted that it supported the Respondent's case. It might be capable of so doing, but as she acknowledged that depended upon our accepting the Respondent had not taken anything else. He denied it when asked by the Chairman.

30. He had reason to: he had been told he was too light. He said the supplement he was given at Hull KR was "just a protein powder" which did not have the desired result. He was looking to add muscle bulk.

31. We rejected his evidence on a number of issues such as his assertion that in 2008 and 2009 he did not know that the RFL operated an Anti-Doping regime. His explanation that the inquiry he made as to the legality of the supplements he was purchasing was to ensure he was not breaking the criminal law was inconsistent with other evidence he gave on that topic. Further, we could not accept his denial that he was unaware of the RFL's "100% Me" campaign.

32. Our rejection of his evidence on a number of important issues in the context of the matters in paragraph 30 left us unable to conclude that he probably had not taken anything else. Taken with our other conclusions, we are not satisfied that contaminated supplements was the probable explanation for his ingestion of the prohibited substances. Accordingly he failed on the prerequisite of establishing how the prohibited substances entered his system.

No Significant Fault or Negligence

33. Even if we had been satisfied that the Respondent's explanation of how the prohibited substances entered his body was probably by ingestion of contaminated health supplements, his behaviour demonstrated significant fault and negligence.

34. We had regard to the WADA Code which provides that "youth and inexperience" are relevant factors to be assessed in determining the Respondent's fault under Article 10.5.2. However, he signed professional terms (i.e. he was being paid to play) with the Club. He is subject to and bound by the Rules. It is his duty to ensure that he complies with the Rules. Article 1.3.1. under the heading Core Responsibilities provides

"It is the personal responsibility of each Athlete…

a. to acquaint him/herself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of these Rules, including (without limitation) being aware of what constitutes a Anti-Doping Rule Violation and what substances and methods are on the Prohibited List; and

b. to comply with these Rules in all Respects, including

i. *Taking full responsibility for what he/she ingest and uses…"*

35. The starting point is that he is responsible for what he ingests.

36. Second, his own case was that he made inquiry only of the persons from whom he purchased the supplements. He did not, for example, ask or seek advice from anyone at the Club. He ignored the advice he was given at Hull KR in July 2009 to only buy his supplements from the Club.

37. Third, we reject the assertion that he had received insufficient education from his Club and/or the RFL and had never been told of the dangers of contaminated supplements. We reached that conclusion for the following reasons -

i. We rejected his evidence that he did not know there was an Anti-Doping regime in Rugby League.

ii. This was his second contract with a professional club. Contracts contain a specific clause reminding players of their responsibility to comply with and observe Anti-Doping Regulations. He said he had never read the contract nor been provided with copies. The contract does no more than remind a player of his responsibility. A failure to read it is not a defence.

iii. The RFL sent him a copy of the Professional Players' Guide. He told us he had received a copy, which he had never read. The third page of that publication is dedicated to Anti-Doping and in the middle of that page under the

heading "Anti-Doping – Supplements" is an express warning of the dangers of supplements.

iv. The RFL provides an abundance of other Anti-Doping material. For example, there is an Anti-Doping section of the RFL website. In 2008 all RFL clubs were sent an Anti-Doping booklet. The website and the booklet refer to the dangers of contaminated supplements.

v. He has played rugby league at a number of different clubs and grounds. We were unable to accept his evidence that he was unaware of the RFL's "100% Me" campaign and had never seen the campaign poster. That poster contains a warning of the dangers of supplements.

vi. It is inconsistent with his own evidence that every time he purchased the supplements he asked whether they were "legal". In answer to Mr Arthur, he said he was asking because he "played rugby and would it have any effect on me if I got drug tested". That inquiry demonstrates that (1) he knew of the Anti-Doping regime and (2) of the risks of supplements.

38. Accordingly, even if we had been satisfied to requisite standard that the prohibited substances entered his body as a result of his innocent use of contaminated supplements, he failed to establish no significant fault or negligence under Article 10.5.2.

Ineligibility

39. The period of ineligibility imposed on the Respondent is 2 years.

40. In light of his ready admission, UKAD stated that it "would not object" to the Tribunal backdating commencement of the period of ineligibility to the date the sample was collected, namely 9 December 2009. Accordingly, Ms Banks invited the Tribunal to start the period of ineligibility on that date. The parties agreed that Article 10.9.2 of the Rules provides that such is a matter for the Tribunal's

discretion. The Respondent's evidence was that he continued to train until he received the letter dated 29 January.

41. We can no find good reason for starting the period of ineligibility on 9 December. Therefore, in accordance with Article 10.9.3 of the Rules the period of ineligibility shall run from the date of the provisional suspension, namely 30 January 2010 until midnight on 29 January 2012.

42. The Respondent's status during the period of ineligibility is as provided in Article 10.10 of the Rules, namely he may not participate in any capacity in a competition or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by the RFL or by any body that is a member of, or affiliated to, or licenced by the RFL.

Summary of Decision

43. For the reasons set out above, the Tribunal makes the following decision
    i. A Doping Offence contrary to Article 2.1 of the Rules has been established.
    ii. The period of ineligibility imposed is two years starting on 30 January 2010 and ending at midnight on 29 January 2012.

Right of Appeal

44. In accordance with Article 13 of the Rules the Respondent may appeal against this decision by lodging a Notice of Appeal within 21 days of receipt hereof.

Christopher Quinlan, Chairman
Dr Terry Crystal
Judy Vernon

Signed on behalf of the Tribunal

18 May 2010