

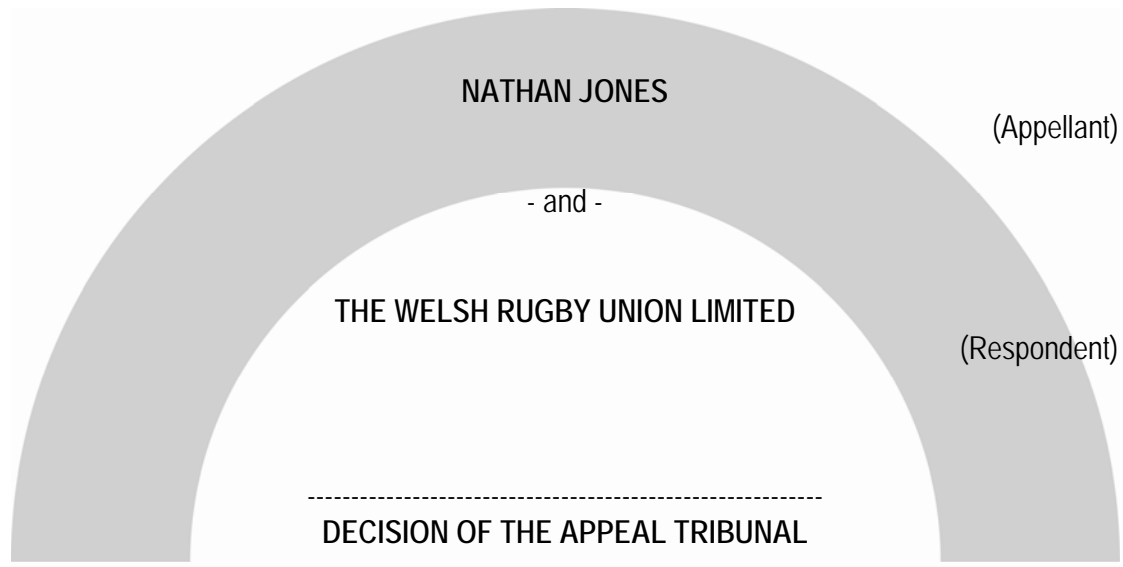
## NATIONAL ANTI DOPING PANEL

In the matter of an Appeal

Case Reference Number 120026

Before: Graeme Mew (Chair)  
Lorraine Johnson  
Professor Peter Sever

**BETWEEN:**



### **INTRODUCTION**

1. Alleged Anti-Doping Violations in competitive Welsh Rugby fall under the jurisdiction of the National Anti-Doping Panel (“NADP”), applying the UK Anti-Doping Rules (“UKADR”).
2. Nathan Jones (the “Player”) appeals against a decision of an Anti-Doping Tribunal of the NADP consisting of Mr. Paul Gilroy QC, Ms Judy Vernon and Mr. Abi Ekoku (the “Arbitral Tribunal”) dated 9 April 2010.
3. The Arbitral Tribunal concluded that the Player had failed without compelling justification to submit to Sample collection after notification of Testing and had thereby committed an Anti-Doping Rule Violation contrary to Article 2.3 of the UKADR. A sanction of a period of Ineligibility for two years was imposed.
4. The Arbitral Tribunal summarised the facts upon which the charge against the Player was based as follows:

[O]n 26 September 2009, following a game between Neath RFC and Ebbw Vale RFC, in which the Player participated (for Ebbw Vale RFC), he was notified that he had been selected to provide

a urine sample. Initially he said that he was unable to provide a sample. He later said that he had to travel to Bristol to work. It was therefore alleged that he had failed (the original charge indicated that he had “refused”) to provide a sample. The Player certified on the sample collection form that he was refusing to do so because of “work commitments”. The WRU did not accept that such work commitments constituted a “compelling justification” for his refusal to provide a sample.

## **PROCEDURAL HISTORY**

5. This Appeal Tribunal was appointed by the President of the NADP pursuant to Articles 5.3 and 12.6.1 of Procedural Rules of the National Anti-Doping Panel 2010 (“the NADP Rules”), following receipt from the Appellant of a Notice of Appeal dated 23 April 2010.
6. Article 13.4.1 of the UKADR provides that parties may appeal against a decision imposing Consequences (or not imposing Consequences) for an Anti-Doping Rule Violation.
7. Under Article 12.8 of the NADP Rules an Appeal Tribunal shall have the power to increase, decrease or remove any Consequences imposed by an Arbitral Tribunal, in accordance with the Anti-Doping Rules.
8. Article 12.4 (Standard of Review) of NADP Rules provides:
  - 12.4.1 Where required in order to do justice (for example to cure procedural errors in the Arbitral Tribunal proceedings), appeals to an Appeal Tribunal pursuant to this Article 12 shall take the form of a rehearing *de novo* of the issues raised in the proceedings, i.e. the Appeal Tribunal shall hear the matter over again, from the beginning, without being bound in any way by the decision being appealed.
  - 12.4.2 In all other cases, the appeal to an Appeal Tribunal shall not take the form of a *de novo* hearing but instead shall be limited to a consideration of whether the decision being appealed was erroneous.
9. The grounds for appeal contained in the Player’s Notice of Appeal can be summarised as follows:
  - a. The Doping Control Officer (“DCO”) responsible for Sample collection had failed to follow correct procedures by:
    - i. Failing to provide sealed drinking water to the Player at the doping control station (“DCS”) despite being aware that the Player was dehydrated;
    - ii. Failing to inform the Player of his right to be accompanied at the DCS by a representative of his choice;

- iii. Providing the Player with incorrect information about providing a partial urine Sample;
  - b. The Player had left the DCS before providing a Sample so that he could undertake an employment commitment. In doing so, the Player had relied on the advice of Steve Lewis, who was the director of rugby at Ebbw Vale (and who was also a former Chief Executive Officer of the WRU) as a result of which he felt confident leaving. He had not fully explained to the Tribunal the extent to which he had relied on the advice given by Mr. Lewis.
10. A pre-hearing telephone conference was conducted on 13 May 2010 at which time submissions were received on the standard of review and a determination was made (for reasons discussed below) that the appeal should proceed as a hearing *de novo*.
11. The hearing of this appeal took place on 19 May 2010 at The Millennium Stadium, Cardiff. The hearing was attended by the Player, Justin Jones (the Player's father and representative), Gareth Williams, of Hugh James, Solicitors, appearing on behalf of the Welsh Rugby Union ("WRU"), Stephen Price and Allan Davies (UK Sport Doping Control Officers), Steve Lewis (by telephone), Tony Josiah, Richard Redman and George Tsamis (UK Anti Doping) and Sue Humble, (NADP Secretariat). Testimony was received from The Player, Justin Jones, Stephen Price, Allan Davies and Steve Lewis. In addition a witness statement from Mark Jones (Player with Ebbw Vale RFC) was admitted.
12. During the course of the hearing, the Player withdrew his allegation that the DCO had failed to inform him of his right to be accompanied at the DCS by a representative of his choice
13. This document constitutes the final reasoned decision of the Appeal Tribunal, reached after due consideration of the evidence heard and the submissions made by the parties attending at the hearing.

#### THE STANDARD OF REVIEW

14. The Player had requested an expedited hearing pursuant to Article 7.7.8 of the UKADR. At that hearing before the Tribunal, the Player did not raise the alleged failure of the DCO to follow correct procedures. The Player claimed that he had reasonable justification for his failure to submit to sample collection because he had to be at work by a certain time. Despite taking on board water after being selected for Sample collection immediately after the Neath v Ebbw Vale match, the Player had not been able to produce a sample. He had waited as long as he could but had eventually felt compelled to leave before being able to produce a sample.

15. There was no suggestion that there was any impediment to the Player raising his allegations about the collection procedures at the hearing before the Tribunal. He had simply not done so.
16. In respect of the reasonable justification issue, however, the Player's notice of appeal emphasised the influence of Mr. Lewis:

After almost an hour of trying to be ready to provide a urine sample and a number of phone calls from my father urging me to leave to go to work with him, my team manager Mr Alan Evans summoned Ebbw Vale's Director of rugby Steve Lewis, a former Chief Executive of the Welsh Rugby Union to the DCS.

Mr Lewis's *[sic]* said I should leave and go to work.

I felt confident to leave for work and that there would be no repercussions as Mr Lewis is a person who I look up to, because not only was he a director of rugby at Ebbw Vale, but was also a former Chief Executive of the Welsh Rugby Union and I felt that his opinion had to be right.

This took any doubt out of my mind, not to leave, as I felt that no one would have any better knowledge than him in this matter. I would like to add that the only reason why I did not bring this up in my hearing was that I was protecting Mr Lewis. But now I have been handed a two-year suspension I feel I have to look after my own interests.

17. In addition to the Player's asserted reluctance to bring up his reliance on the advice of Steve Lewis at the hearing before the Arbitral Tribunal, we noted that Mr. Lewis was not asked to give evidence before the Arbitral Tribunal.
18. The Appeal Tribunal concluded, without opposition from the WRU, that the interests of fairness would be best served if we exercised our discretion, pursuant to Article 12.4.1 of the NADP Rules to allow a *de novo* hearing.

## **FACTS**

19. The facts are largely undisputed. We have drawn heavily on the recitation of those facts by the Arbitral Tribunal.
20. The Player is contracted to play rugby on a part-time basis for Ebbw Vale RFC, who competed in the Principality Premiership - a very senior level of Welsh Rugby - in the 2009/10 season. The Player has played for Ebbw Vale approximately 2 years, having previously played for Swansea RFC, whose first team also play in the same league.
21. The Player has never previously been subject to anti-doping tests in sport, but has been tested at work, with no adverse outcome. He has not received any anti-doping education as an athlete.

22. By a player registration form signed by the Player on 30 July 2009, the Player undertook “to observe the bye-laws, resolutions and regulations of the Welsh Rugby Union and the Rules of the National League....or any such replacement, substitute or successor competitions”. By resolution, the WRU has adopted the UKADR as its anti-doping rules and, hence, the UKADR form part of the rules which the Player committed himself to observing.
23. On the afternoon of Saturday 26 September 2009, Neath entertained Ebbw Vale in the Principality Premiership. The Player played at scrum half for the away side through the entirety of the match.
24. At the end of the match, the Player was notified by Mr. Price that he had been selected for doping control procedures. The following notification, which is printed on the sample collection form, was read to the Player by Mr. Price:

You have been selected to provide a urine sample and are required to report to a Doping Control Station immediately. Please advise the DCO/Chaperone if you are unable to report immediately. You are required to provide a urine sample under the supervision of a DCO of the same gender at the earliest opportunity. Refusal or failure to comply with this request may be regarded as an anti-doping rule violation. You may be accompanied by a representative/interpreter of your choice. The DCO/Chaperone will arrange for you to be accompanied to the Doping Control Station.

Mr. Price signed the box on the form beside this notification. Underneath the following acknowledgment was signed by the Player:

I understand that I have been notified to report to the Doping Control Station to provide a urine sample. I acknowledge that I have been notified and understand that a refusal or failure to comply with this request to provide a urine sample may constitute an anti-doping rule violation.

25. The Player’s principal employment is with the screeding business run by his father, Justin Jones. He was scheduled to perform such work in the evening after the game against Neath RFC. UK Screeders had contracted Mr. Jones (senior) to undertake some floor screeding on a sub-contracting basis at a Bristol City Centre development starting at 6.30 pm on the day of the match. By letter dated 13 October 2009, UK Screeders Contracts Manager, Mr. Marc Booth, confirmed the basic details of the relevant contract, stating that there would have been financial implications if the relevant work had not been completed as scheduled, and that the Player and his father were the only operatives at the time who were both inducted to work on site and capable of carrying out the works in question to the required standard.

26. Justin Jones, who is himself a level 2 rugby coach and accredited referee, provided a handwritten letter essentially in support of the factual account given by and on behalf of his son as to the difficulties which would have been caused in terms of the Player's work commitments had he not left Neath RFC's ground at the time he did. Mr. Jones (senior) told both the Tribunal and the Appeal Tribunal that if he and his son had not attended at the relevant work site at the appropriate time there was every possibility that the screed material being delivered to site would have been driven off site and dumped (ie written off). He indicated that this would have resulted in the loss of approximately £900 worth of screed.
27. In his report, contained within the pro-forma Sample Collection Form completed in respect of this matter, Allan Davies, the lead DCO at the match, provided the following factual account:

*"The athlete was notified at the conclusion of the game at 16.15 on 26/9/2009. He was chaperoned continuously following notification. The athlete made no attempt to provide a sample but stated frequently that he was unable to do so. He did not refuse to provide a sample but was not ready to do so.*

*At 16.40 he advised DCO Steve Price that he had to travel to Bristol to his place of work.*

*DCO Steve Price urged the athlete not to depart the DCS but to remain until he was ready to provide a sample. The athlete telephoned his father, who apparently insisted to the athlete that he was required to travel with his father to shop premises in Bristol to work overnight. The athlete then repeated his desire to leave the DCS without providing a sample.*

*I then spoke with the athlete and encouraged him to remain until he provided a sample. He told me that he had to return to his home in Swansea to join his father to travel in his father's van to Bristol. I pointed out to the athlete that it would be more sensible for his father to collect him from the Neath ground which is en route from his father's home in Swansea to Bristol. The athlete again phoned his father and he then advised me that his father wanted him to return home with his car so that the car would be available for use by his mother. I suggested to the athlete that someone from his Club could arrange for his car to be taken home. He did not wish to consider that option but stated that he would leave without providing a sample.*

*I pointed out to him that I could not believe that his reason for not providing a sample was a 'compelling reason'. I suggested that a representative from his Club be advised of the situation before he left.*

*I contacted the Ebbw Vale Club Secretary, Alan Evans who attended outside the DCS. The situation was explained to Mr Evans who encouraged the athlete to remain until he provided a sample. Mr Evans then summoned his Club's Director of Rugby Mr Steve Lewis (a former CEO of the WRU). Mr Lewis made no attempt to encourage the athlete to remain and provide a sample.*

*Mr Lewis stated that I was being unreasonable and that the athlete be allowed to leave and that the Doping Control staff should travel with the athlete to Bristol until he was able to provide a sample.*

*I told him that was not possible and that it was a matter for the athlete if he chose to remain.*

*Mr Lewis pointed out that the athlete was not a full time athlete and needed the income from the work in Bristol. I pointed out that the athlete could be delayed for 2 hours on the motorway travelling to Bristol. All the above conversations with Mr Evans and Mr Lewis took place in the presence and hearing of the athlete who maintained that he would leave the DCS without providing a sample as he had to travel to work in Bristol.*

*In my judgment the athlete's reason was not a compelling reason not to provide a sample.*

- (i) If the athlete did have a work commitment he has played in a senior rugby match where he could have sustained an injury which would have disabled him from working and driving in any event.*
- (ii) If the work commitment was essential he would not have played the fixture.*
- (iii) The distance from Swansea to Bristol is at least 80 miles via the M4, with regular delays - such time delays could be much longer than the delay at Doping Control until he was able to provide a sample.*

*At 17:15 on 26.9.2009 the relevant SCF was completed. By this time the remainder of the Ebbw Vale team had left the ground and it was not possible to contact or test either of the selected reserves”.*

28. After the match the Player was dehydrated, and after being notified that he had been selected for testing, the Player consumed 1 ½ to 2 pints of water.

29. At the appeal hearing the Player asserted, for the first time, that he had not been provided with water from sealed bottles but, rather, had used tap water to re-hydrate. Mark Jones, another Ebbw Vale player selected for sample collection that day, stated that he, too, was never offered sealed water at the DCS.
30. Mr. Davies, the Lead DCO in attendance refutes this. He states that the provision of sealed water would have been pointed out to the Player. While he noted that the provision of sealed water would have been the responsibility of the home club and acknowledged that he had no specific recollection of water being available, he pointed to his contemporaneous report, completed on the day of sample collection, which recorded the presence of sealed drinks. Mr. Price was adamant that he would not have provided the Player with a cup of water supplied from a tap.
31. Despite his attempts at rehydration, the Player remained unable to provide a sample. He says that he was told by Mr. Price that he would have to fill the collection vessel up to a line on the beaker denoting a sample of 90ml in one attempt. He understood from this that he could not provide two or more partial samples totalling 90ml or more. Mark Jones says that he was told the same thing but adds that he had been tested before and therefore knew that he could provide a sample on more than one attempt.
32. Mr. Price, who has been a DCO for eight years, says that he would not have told the Player that a partial sample would be discarded. Mr. Davies, who was present during the Player's discussions with Mr. Price, stated that had he heard Mr. Price tell the Player that a partial sample would be discarded, he would have interjected. He added that one other player selected for doping control that afternoon had, in fact, provided a partial sample.
33. The Player observes that Mr. Davies was not in hearing range while Mr. Price was explaining the partial sample issue.
34. It is not in dispute that the Player never did provide a urine sample. Nor is it disputed (a) that the Player told Mr. Price and Mr. Davies that he was unable to produce a sample; and (b) that he did not remain at the DCS until he could produce a sample but, rather, elected to leave so that he could go to work.
35. As the discussion between the Player and the DCOs evolved, Mr. Davies contacted Alan Evans, the Ebbw Vale RFC club secretary. Mr. Davies thought that Mr. Evans would be the right person to encourage the Player to remain at the DCS until he had provided a sample. Mr. Evans attended and did provide assistance. Mr. Evans, in turn, contacted Steve Lewis, who then came to the DCS.
36. The 14 October 2009 letter from Mr. Evans indicates that Mr. Lewis, the Club's Director of Rugby, had encouraged the Player to remain and



give a sample, and further that he had asked if there were any players available to take the Player's car home but that the Coach had advised that the only players capable of doing that had already left the ground. Mr. Evans further observed that Mr. Lewis had suggested that a DCO accompany the Player to Bristol, while another followed, to extend the opportunity for the Player to provide a sample. Mr. Evans also stated that Mr. Lewis had suggested that as the Player was due to train at Ebbw Vale the following week, his location at particular times would be known to the DCOs who could attend to repeat the test because if there were any banned substances in the Player's body at that time, it was unlikely that they would have cleared by the following week.

37. Consistent with his notice of appeal, the Player's evidence was that he understood the gist of the advice given by Mr. Lewis to be "If you have to go to work, go." As a result the Player felt confident that he could leave for work without repercussions.
38. Justin Jones said that he felt largely responsible for the difficulties that his son was facing, and that his son had listened to his father without realising the consequences of what he had done. However, he added that when Mr. Lewis had intervened and not encouraged the Player to stay, the Player had felt it was safe for him to leave.
39. Mr. Lewis gave evidence via telephone. He has vast rugby experience as a player, a regulator and an administrator. As a former CEO of the WRU he was generally familiar with anti-doping regulations. Nevertheless, he conceded that he did not have a great deal of knowledge or experience of refusal or failure to provide a Sample situations. He did understand, though, that a finding that the Player had failed without reasonable justification to provide a sample would have serious consequences for the Player
40. Mr. Lewis was of the view that the DCOs were not acting reasonably given the Player's employment commitments. He felt that they were effectively forcing the Player to break a commercial contract.
41. Although Mr. Lewis did not expressly advise the Player to leave the DCS, he conceded that his words and actions would have led the Player to believe that the Player had compelling justification for failing to provide a sample.
42. After reports from the DCOs had been provided, UK Sport, by letter dated 1 October 2009, asked the WRU to investigate whether the Player had "compelling justification" for not submitting to sample collection. After investigation, the WRU concluded that the Player did not have compelling justification and so notified the Player by letter dated 1 March 2010.
43. The Player was provisionally suspended effective 3 March 2010.

## DISCUSSION

### *Procedures Followed at the Doping Control Station*

44. The Player's concerns about the procedure followed by the DCOs can be addressed succinctly. The contemporaneous records of the DCOs do not support the Player's allegations. The testimony of the DCOs did not disclose any reason to believe that the usual procedures regarding the provision of drinking water or the collection of partial samples were departed from.
45. Had the Player's concerns been raised contemporaneously we may have accorded them greater weight.
46. To the extent that the evidence of the Player and Mark Jones conflicts with the evidence of the DCOs in respect of the procedures followed at the DCOs, we accept the evidence of the DCOs.
47. More importantly, any alleged shortcomings in the procedures followed at the DCS were unconnected to the Player's failure to provide a sample and, hence, irrelevant to the charge which the Player faces.

### *Reason for the Player's Failure to Submit to Sample Collection*

48. The Player was dehydrated after the game. Despite taking on board water, he was not ready to provide a sample. He had not yet even selected a sample collection vessel to use.
49. The Player was clearly under pressure to leave the DCS so that he could accompany his father to their jobsite in Bristol.
50. At the same time that he was under pressure to leave, he was receiving conflicting advice. The DCOs and, it would seem, Mr. Evans (at least initially) were urging him to remain until he had provided a sample. Mr. Lewis, on the other hand, was supportive of the Player's wish to leave.
51. We accept the Player's evidence that he felt justified in leaving because of the advice given by Mr. Lewis. As the Player put it:

"Mr Lewis said I should leave and go to work. I felt confident to leave for work and there would be no repercussions as Mr Lewis is a person who I look up to, because not only was he a director of Ebbw Vale RFC but was also a Chief Executive of the Welsh Rugby Union and I felt that his opinion had to be right. This took any doubt out of my mind, not to leave, as I felt that no one would have better knowledge than him in this matter."
52. Mr. Lewis' evidence is consistent with the Player's. While he maintains that he did not actually tell the Player it was alright for him to leave, he acknowledges that his advice to the Player would have led the Player

to believe that there were compelling circumstances for the Player's failure to submit to sample collection.

53. The WRU, noting the Player's personal responsibilities under the UKADR,<sup>1</sup> asserts that the reason for the Player's failure to submit to sample collection was his election to go to work rather than remain at the DCS until he had provided a sample.
54. For the Player, the pivotal moment in deciding to leave the DCS to go to work was the advice of Mr. Lewis.
55. The intervention of Mr. Lewis notwithstanding, the fact is that the Player left the DCS because he felt he had to go to work. In so concluding, we accept that the Player's decision was influenced by Mr. Lewis, whose advice he preferred over that of the DCOs.

*Was there Compelling Justification for the Player's Failure to Submit to Sample Collection?*

56. Members of the Appeal Tribunal have reached different conclusions on this question.

*Majority View: Compelling Justification has Not Been Established*

57. The phrase "compelling justification" connotes that the reason for an athlete refusing must be exceptional,<sup>2</sup> indeed, unavoidable<sup>3</sup>.

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<sup>1</sup> 1.3.1 It is the personal responsibility of each Athlete (which may not be delegated to any other Person):

- 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 an Anti-Doping Rule Violation and of 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 ingests and uses;
  - ii. ensuring that any medical treatment he/she receives does not infringe these Rules;
  - iii. making him/herself available for Testing at all times, whether In-Competition or Out-of-Competition;
  - iv. when included in a Registered Testing Pool, providing accurate and up-to-date whereabouts information for purposes of Out-of-Competition Testing; and
  - v. cooperating fully with any investigation into a potential Anti-Doping Rule Violation under these Rules

<sup>2</sup> *International Paralympic Committee v Wium*, International Paralympic Committee Legal Committee, 7 October 2005, at para 3.

<sup>3</sup> *CCES v Boyle*, SDRCC DT 07-0058 (31 May 2007), at para 53. The arbitrator concluded:

"... even if I accept that the Athlete was taken suddenly, violently and horribly ill while training, I cannot accept that there was reasonable, let alone compelling, justification for her failure to submit for Sample collection. To be compelling, her departure would have to have been unavoidable. [emphasis added].

58. Tribunals have rejected as “compelling justification” going to work,<sup>4</sup> going to church,<sup>5</sup> parental pressure,<sup>6</sup> team orders to attend a team meeting<sup>7</sup> or sudden onset of illness.<sup>8</sup>
59. We have concluded that the Player has not established that there was compelling justification for his failure to submit to Sample collection.
60. We agree with the following principle stated by the Court of Arbitration for Sport in *Azevedo v FINA*:
- “No doubt, we are of the view that the logic of anti-doping tests and of the DC Rules demands and expects that, whenever physically, hygienically and morally possible, the sample be provided despite objections by the athlete. If that does not occur, athletes would systematically refuse to provide samples for whatever reasons, leaving no opportunity for testing”.<sup>9</sup>
61. While we recognise that the Player was under great pressure to get to work, and that the intervention of Mr. Lewis was pivotal in the Player’s decision to leave the DCS, the fact is that in doing so, the Player nevertheless rejected the clear and unequivocal warnings given by the DCOs that not remaining until a Sample had been provided could result in serious consequences.

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<sup>4</sup> *Wium*, above. In that case, which involved out-of competition testing, the IPC Legal Committee observed:

“If work pressure were an adequate justification for athletes to refuse to provide a sample then numerous athletes would be able to avoid testing”.

<sup>5</sup> *Wium*, above.

<sup>6</sup> *CCES v Zarboni-Berthiaume*, SDRCC DT 09-0114 (11 February 2010). In that case the athlete, who was a minor (17) was ordered by her mother to leave the DCS with her. The tribunal noted (at paragraph 19) that the athlete “appeared to be obeying her mother, and showed no reluctance considering the consequences that her departure could have on her status as an active Athlete”.

<sup>7</sup> *WADA v. CONI, FIGC, Maninni and Possanzani*, CAS 2008/A/1557 (29 January 2009). Two football players were notified of doping control at conclusion of match. On their way to the DCS, they were intercepted by their team coach and President and ordered to attend a team meeting. The chaperone was barred from the dressing room where the meeting occurred and players were, consequently, not under observation for thirty-five minutes. CAS determined that the mere fact of giving a sample later did not itself excuse the initial refusal/failure to appear for doping control. There was no evidence that the athletes insisted that they should report for doping control first. They could have ignored direction to attend the team meeting without repercussion and should have reported to doping control directly. The athletes’ justification was, accordingly, not “compelling”.

<sup>8</sup> *Boyle*, above. After being selected for doping control while training, the athlete claimed that she became “suddenly, violently and horribly ill”. She went to the washroom without a chaperone or DCO present and then left the facility.

<sup>9</sup> CAS 2005/A/925 (24 January 2006)

62. With respect to suggestions that the DCOs could have done more, it was not, in our view, incumbent on the DCOs to accompany the Player to Bristol in order to enable him to provide a sample.
63. Furthermore, the Player's offer to submit to testing the following week, while, perhaps well-intentioned, would, if accepted, suggest that it could be an answer to a request for a sample pursuant to anti-doping regulations that an athlete or player could defer the provision of a sample to a more convenient date or time. The integrity of the anti-doping system would simply break down if this was to be an acceptable practice.
64. The UK ADR requires that athletes not only familiarise themselves with anti-doping rules, but that persons from whom an athlete takes advice are also acquainted with all of the requirements of the UK ADR, including being aware of what constitutes an Anti-Doping Rule Violation.
65. It would appear that neither the Player nor Mr. Lewis, who the Player relied on for advice, were sufficiently acquainted with the applicable requirements of the UKADR. Unfortunately, they chose not to follow the advice of the DCOs, who were acquainted with the rules.
66. The principles of personal responsibility and strict liability which underpin the *World Anti-Doping Code* and the UKADR will sometimes result in harsh consequences, taking account of all of the circumstances, and this is such a case.
67. It was argued on behalf of the Player that a distinction should be drawn between the commitments of a full time professional and a part-time or semi-professional such as the Player who does not earn his living from playing Rugby Union. If the Player and his father had not attended the site in Bristol by 6 p.m. on the day in question, the screeding works which were to be undertaken would not have been completed in time, and under the terms of the contract with the main contractor this would almost certainly have resulted in a loss in the region of £5,000 to the Player's father's business.
68. The majority of us are of the view that the fact that the Player is not a professional and has not received anti-doping education will not ordinarily be factors which would inform a determination of whether there was compelling justification for the Player's failure to provide a Sample. While we agree that each case needs to be evaluated on its own facts, the majority of us are of the view that it is not appropriate for us to effectively legislate the application of different standards depending on the level at which an athlete participates. As the preamble to the *World Anti-Doping Code* states, the "purpose of the Code is to advance the anti-doping effort through universal harmonization of core anti-doping elements" [emphasis added].

69. We are accordingly unable to accept that the Player's work commitment was adequate justification for his failure to provide a Sample.
70. Because of this, we uphold the Tribunal's findings concerning the consequences of the Player's Anti-Doping Rule Violation, including its determination that there were no exceptional circumstances which would warrant a departure from the imposition of a period of Ineligibility of two years pursuant to Article 10.3.1 of the UKADR.
71. For the avoidance of doubt, we agree with the Tribunal's decision on consequences, which was stated in the following terms:
- a. Under Article 10.3.1 of the UKAD Rules, where a Player is found to have committed a Doping Offence under Article 2.3 of those Rules, and, as here, such offence is the Player's first Doping Offence, the Tribunal must, subject to paragraph 3.26.2 below, impose a period of Ineligibility of two years.
  - b. In a case of this nature, the Tribunal is only given discretion to depart from that Consequence in the following narrow circumstances, namely:
    - i. where the Player establishes No Fault or Negligence in accordance with Article 10.5.1 of the UKADR, no period of Ineligibility will be imposed, or
    - ii. where the Player establishes No Significant Fault or Negligence in accordance with Article 10.5.2 of the UKADR, the period of Ineligibility may be reduced, but by no more than one half.
  - c. If the Player seeks to rely on any of the foregoing pleas in mitigation, the onus is on him to satisfy the Tribunal, on the balance of probabilities, of each of the requisite elements of the plea.
  - d. In this case, the Player essentially relied on the same factual matters advanced in relation to his plea of "compelling justification", namely the economic pressure he was subjected to as a result of his need to attend the work site in Bristol at the first opportunity after the relevant match.
  - e. In the judgment of the Tribunal, the Player failed to establish any of the necessary elements set out at paragraph 3.26.2 above. Accordingly, the period of Ineligibility imposed on the Player is two years.
72. We would add that the Player's lack of anti-doping education and, for that matter, that of some of the other individuals involved in the events that occurred at the DCS, is a regrettable feature of this case. It

underscores the need for better efforts to ensure knowledge and understanding of anti-doping rules at all levels of sport.

*Dissenting View: Compelling Justification Has Been Established*

73. However one chooses to define the term “compelling” (forceful, persuasive, convincing, for example) there can be little doubt in anyone’s mind that the circumstances of the Jones family – father and son – including but not limited to their commitments that evening to lay concrete screed floors overnight in a block of flats in Bristol, the timing of delivery of the ready mixed concrete, the limited time span during which it can be used and the penalty costs incurred for failure to complete the job, would constitute a compelling reason for the Player to leave Ebbw Vale having been unable to produce a Sample. Add to this the statement by Justin Jones that they would incur severe financial penalties as a consequence and that the family business would become bankrupt had they not been able to complete the job.
74. In interpreting Article 2.3 of the UKADR, the circumstances outlined above constitute a compelling justification for failing to provide a Sample.
75. We were presented at the hearing with guidance on the interpretation of Article 2.3 in the form of a text entitled Sport: Law and Practice<sup>10</sup> and, in particular sections concerning “Drug Use in Sport: Policing and Enforcing the Anti-Doping Rules”. At paragraph E2.130 reference is made, at footnote 8, to the case of *Wium v IPC* standing for the proposition that “an efficient *out of competition* [my italics] testing programme can only work if the boundaries of “compelling justification “are kept extremely narrow” and that “Only truly exceptional circumstances should be allowed to justify refusal to submit to testing”. The authors continue:
- “In that case, neither a desire to go to church nor a need to go to work was said not to constitute sufficient justification to refuse to provide a sample”.
76. First, this citation specifically refers to out-of-competition testing, which does not apply in the present case and, secondly, we are again asked to interpret the meaning of “truly exceptional circumstances”.
77. The circumstances leading to Nathan Jones departure from Ebbw Vale were “truly exceptional”.
78. Furthermore, the role played by Steve Lewis, the Director of Rugby at Ebbw Vale and former CEO of the WRU, should be considered. When a junior rugby player confronted for the first time by a DCO is advised by a very senior official in Welsh rugby to leave the ground and travel

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<sup>10</sup> Adam Lewis and Jonathan Taylor, Sport: Law and Practice, 2<sup>nd</sup>. Ed, (Tottel Publishing, 2008)

to Bristol without providing a urine sample, it is difficult to ignore the bearing this would have had on the Player's decision to leave, given the enormous pressures resulting from time commitments in Bristol. It is accepted, however, that under the *Code*, it is the Player's responsibility alone to acquaint himself with all the requirements of the UKADR.

79. A decision to accept the plea of work commitments as the basis for a compelling justification to provide a urine sample, would not, in my view, set a precedent that would influence the upholding of the *Code* in future tribunals assessing anti-doping violations.
80. The issues surrounding this case are not covered by the generality of the statement provided in the guidance quoted above, that "a desire to go to church nor a need to go to work was said not to constitute sufficiently justification to refuse to provide a sample". In these days of professional sport, the circumstances of a fully paid professional and those of a sportsman who, although playing high standard rugby, depends for his livelihood on other full time employment, should be recognized as different. The full interpretation of this case these differences should be taken into consideration.
81. The circumstances of this case are exceptional, if not unique. If the Appeal Tribunal were to accept that there were compelling reasons for not providing a urine sample, the only precedent that would be set, in my opinion, is that if a similar case were to occur in the future (and it will not !), a tribunal would be influenced by the outcome of this case.
82. One of the members of the Appeal Tribunal therefore concluded that a doping offence contrary to Article 2.3 of the UK Anti-Doping Rules has not been established, and, accordingly, the Player's appeal should be allowed and the Arbitral Tribunal's finding that the Player committed an Anti-Doping Rule Violation should be set aside.

## DECISION

83. By a majority of 2-1, we find that the Player has committed an Anti-Doping Rule Violation, namely failing without compelling justification to submit to sample collection after notification of testing as authorised in the UKADR.
84. As a result of the Player's Anti-Doping Rule Violation, the Player will be subject to a period of Ineligibility of two years.
85. In accordance with Article 10.9 of the UKADR, the period of Ineligibility shall run from 3 March 2010 and so shall end at midnight on 2 March 2012. During the period of Ineligibility, in accordance with Article 10.10.1 of the UKADR, the Player shall not be permitted to participate in any capacity in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes)



organised, convened, authorised or recognised by the WRU or by any body that is a member of, or affiliated to, or licensed by The WRU.

*Costs*

86. We are provisionally of the view that each party should bear its own costs. If either party is of a contrary view, they should notify the NADP Secretariat within 5 working days of the receipt of this decision, following which we will give directions for the determination of any costs that are sought.

*Further Appeal*

87. We draw the parties' attention to Article 13 of the NADP Rules and Article 13.6 of the UKADR concerning appeal rights.

Graeme Mew (Chair)

Lorraine Johnson

Professor Peter Sever

**Signed on behalf of the Appeal Tribunal on 9 June 2010**



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**Chair**