

David Phillips QC
Lorraine Johnson
20 July 2010

BETWEEN

UK ANTI-DOPING

Applicant

and

RODERICK ATTARD

Respondent

FINAL DECISION

1. INTRODUCTION

- 1.1 This is the final decision of the Anti-Doping Tribunal ("the tribunal") convened under Article 8 of the Anti-Doping Rules (the "Anti-Doping Rules") of Rugby Football League ("RFL") to determine a charge brought by UK Anti-Doping ("UKAD") against Roderick Attard (the "player") for commission of a Doping Offence in breach of Article 2.1 of the Anti-Doping Rules.
- 1.2 Article 2.1 of the Anti-Doping Rules makes *the Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample* a doping offence.
- 1.3 The player provided a sample of urine on 19 January 2010. Analysis of that sample revealed the presence of 19-norandrosterone and 19-noretiocholanolone, the metabolites of the prohibited substance nandrolone. WADA has set the minimum reporting level for 19-norandrosterone as 2ng/mL. The amount actually detected in the player's sample was 141ng/mL.
- 1.4 The player did not contest the result of the analysis. In his Response dated 12 April 2010

the player raised the following arguments –

- 1.4.1 He should be granted a retrospective Therapeutic Use Exemption (“TUE”).
 - 1.4.2 He had acted without fault or negligence.
 - 1.4.3 He had acted without significant fault or negligence.
 - 1.4.5 He had admitted the violation in the absence of other evidence.
- 1.5 This document constitutes the final reasoned decision of the tribunal, reached after due consideration of the evidence heard and the submissions made by the parties attending at the hearing.

2. PROCEDURAL HISTORY

- 2.1 The player was charged with an Article 2.1 doping offence by UKAD’s letter dated 1 March 2010. In the conventional way, that letter gave details of the charge, the facts that underlay it, the disciplinary procedure that would be followed, and the consequences of the charge being proved. It also provisionally suspended the player with effect from 8am on 2 March 2010. The player accepted the result of the analysis and elected not to have the B sample analysed.
- 2.2 By its letter dated 8 March 2010 UKAD requested the National Anti-Doping Panel (“NADP”) to determine the charge. This tribunal was appointed for that purpose by the President of the NADP. Directions were given on 16 & 25 March 2010. The original hearing date was vacated at the player’s request. On 16 July 2010 the President of the NADP directed that the matter should be heard by a tribunal made up of the two present members. That was done: the matter was heard in Newcastle on 20 July 2010.
- 2.3 At the hearing the tribunal had before it the immaculate bundle that had been prepared by UKAD. We record our gratitude to UKAD for the care and trouble that went into preparation of such an excellent bundle. The tribunal has considered all the documents contained in that bundle, and has read and taken into account all the witness statements and experts’ reports submitted by the parties. At the hearing the tribunal heard oral evidence from the player and from Anthony Micallef: we are very grateful to Mr Micallef for

having travelled from Malta in order to give oral evidence. In addition, we heard oral submissions from the parties' legal representatives, Mr Rod Finlay for the player, and Mr Richard Redmen for UKAD, both of whom had submitted clear and carefully argued written statements of their respective cases.

3. FACTUAL BACKGROUND

3.1 The player is a Maltese national who was born in, and who has lived almost all his life in Malta. There is no doubt that sporting facilities, and knowledge of Anti-Doping measures in Malta are considerably less advanced than the comparable facilities and knowledge in much of Europe. The player had played rugby (initially Union, more recently League) for some years at an amateur level. By profession he was and remains a school teacher, specialising in physical education. He qualified as a teacher after spending a considerable period of time in further education.

3.2 The player had no expectation of leaving his teaching career in Malta until, in December 2009, he was approached by Gateshead Thunder Rugby League Club. He had been registered with Gateshead Thunder since 18 December 2009, but did not arrive at the club until 17 January 2010 – two days before the sample that led to these proceedings was given.

3.3 Since about 2007 the player had suffered from a shoulder injury. Following investigations, in November 2008, surgical stabilisation of the shoulder was performed. The player's recovery was slow. His condition was such that not only did it prevent him from playing rugby, it also affected his ability to perform his teaching duties. Two of his colleagues told him of injections that they had had to cure similar conditions. The player discussed possible remedies with his physiotherapist, who he was seeing regularly. The physiotherapist recommended some "substance", but told the player that he was not authorised to prescribe it.

3.4 In response to questions from the tribunal the player frankly said that he knew that what was being recommended was a prescription drug, and that although he did not know the

precise substance he knew that it was some form of steroid or steroid based drug.

3.5 The player determined that he should obtain the recommended treatment but was concerned by the delay that would follow if he were to make an appointment to see the only sports doctor on Malta. The player therefore decided to source the recommended substance from a contact at the gym. He knew others who had obtained the substance from the same source, and was confident that it would have the desired effect. That expectation was proved to be correct. The player's condition improved rapidly. He took seven injections of the substance, one every three or four weeks. Perhaps understandably, his recollection of dates was somewhat vague: the player believed that the first injection had been in about January 2009, and that the last was in September 2009.

3.6 The player's evidence, therefore, was that about four months had elapsed between the date of the last injection and his start with Gateshead Thunder in January 2010. The sample was given on 19 January 2010, two days after the player had arrived at the club. After the sample had been given the player declared in Box 25 on the sample form the following use of a drug – *Injection in shoulder in Nov 2009 as part of rehab pro as part of shoulder reconstruction*. In evidence he explained that he was under pressure at the time that he completed the form, and that the correct date for the last injection was in fact September 2009.

3.7 The player did not contest the accuracy of the analysis of the A sample. He advanced the course of injections taken in 2009 as the explanation for the analysis, and on the basis of that explanation put forward the four arguments that are identified in paragraph 1.4, above.

4. THE TRIBUNAL'S DECISION

4.1 Retrospective TUE

4.1.1 The player abandoned this application at the start of the oral hearing. It is not something that the tribunal needs to determine.

4.2 No fault or negligence

4.2.1 The player relies on the provisions of article 10.5.1 of the Anti-Doping rules. If he demonstrates that he bore no fault or negligence for the violation the normal period of ineligibility shall not be imposed. In other words, no sanction shall be imposed.

4.2.2 In order to bring himself within article 10.5.1 the player must satisfy the threshold requirement of demonstrating how the prohibited substance entered his body. The player's explanation has been set out above, namely that the steroids were taken as part of a sensible, but unauthorised, therapeutic regime to speed his recovery from shoulder surgery.

4.2.3 The tribunal finds that it has not received a comprehensive and accurate explanation from the player for the presence of the steroids in his system. The tribunal accepts that the player sought treatment to accelerate his recovery but finds the detail of the evidence given by the player to be insufficient to satisfy the threshold test that is a requirement of a successful plea under article 10.5.1. The tribunal's reasoning for this finding is as follows –

4.2.3.1 Professor David Cowan's evidence is that the level of 19-norandrosterone found in the sample is inconsistent with the player's evidence that the most recent injection was in September 2009. Professor Cowan states *I would not expect such a large concentration as was found...to be detected approximately some 15 weeks after cessation of use of the source of the substances*. That evidence was not challenged or controverted by the player. We accept Professor Cowan's opinion.

4.2.3.2 There was no evidence from the player to explain the reading. On the contrary, the player's evidence about dates and detailed circumstances was uncertain and unclear. In his oral evidence he was unable to provide a clear recollection. Further, his written and oral evidence as to the date of the last injection was at variance with what he had said in writing on the sample form on 19 January 2010.

4.2.4 UKAD put to the player in cross-examination that the true explanation for the high readings in the sample was that he had taken steroids to enhance his performance at the trial with Gateshead Thunder. This was denied by the player. Apart from Professor Cowan's

evidence there is no evidence to support the explanation that was advanced by UKAD.

4.2.5 It is not necessary for the tribunal to decide whether the case on this point advanced by UKAD is correct. It is sufficient for it to find, as we have, that the player has not sufficiently established how the prohibited substance entered his system. The consequence is that the player is not able to advance an argument based on no fault or negligence.

4.2.6 In these circumstances it is not necessary for the tribunal to make any findings about fault or negligence. We therefore confine ourselves to the observation that a case in which a player has embarked upon a medically unauthorised course of treatment with illicitly obtained prescription-only drugs is not an obvious case in which a tribunal would be persuaded that there was no fault or negligence.

4.3 No significant fault or negligence

4.3.1 In order to bring himself within article 10.5.2 of the Anti-Doping Rules so as to make a plea of no significant fault or negligence the player must satisfy the same threshold test of demonstrating how the prohibited substance entered his body. The reasoning that the tribunal has set out above applies equally: the threshold test is not satisfied. The observations that we have made about the apparent merits of the no fault or negligence argument apply equally to the no significant fault or negligence argument.

4.4 Admission of the violation in the absence of other evidence

4.4.1 This provision (Article 10.5.4 of the Anti-Doping Rules) applies only where the admission is made by the player *before having received notice of a Sample collection*. The admission relied upon by the player was made on the face of the sample form. Accordingly, the provision can have no application in this case. There is therefore no need for the tribunal to consider whether what the player wrote on the form was in fact an admission as envisaged by Article 10.5.4.

5. CONCLUSION

5.1 The tribunal finds that the breach charged by the UKAD is made out and dismisses each of

the mitigating arguments advanced by the player. The consequence is that the mandatory period of 2 years ineligibility for a first violation prescribed by Article 10.2 of the Anti-Doping Rules must be imposed.

5.2 The effect of Article 10.9.3 of the Anti-Doping Rules is that that period of ineligibility shall commence on the date of the player's provisional suspension, namely 2 March 2010. The player's plea that the period should commence on 19 January 2010 cannot be entertained because he did not give written notice of any voluntary provisional suspension from the date: the fact that he may not have played since then is not in itself sufficient.

5.3 Accordingly, the tribunal declares that the player shall be subject to a period of ineligibility of two years commencing on 2 March 2010. During that period the player shall not be permitted to participate in any capacity in a competition or in any other capacity (other than authorised Anti-Doping education or rehabilitation programmes) organised, convened, or authorised by the RFL or by any body that is a member or, or affiliated to, or licensed by the RFL.

5.4 No order is made as to costs.

6. RIGHTS OF APPEAL

6.1 In accordance with Article 13 of the Anti-Doping Rules there is a right to appeal against this decision to the NADP. Any party who wishes to exercise its/his rights to appeal must file its/his Notice of Appeal within 21 days from the date of receipt of this decision.



David Phillips QC & Lorraine Johnson

26 July 2010