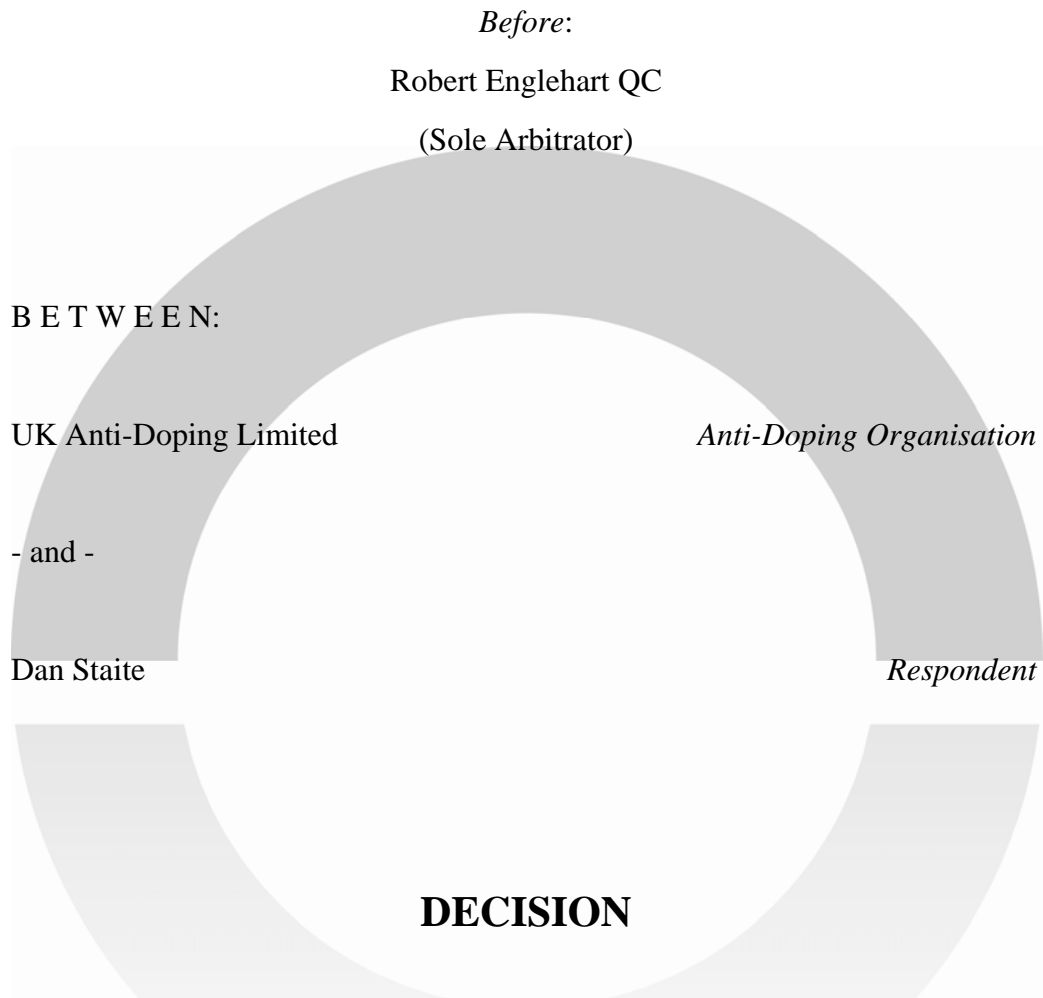


NATIONAL ANTI-DOPING PANEL



INTRODUCTION

1. I was appointed as Sole Arbitrator pursuant to Rule 5.1 of the 2010 Rules of the National Anti-Doping Panel to determine a charge brought against Dan Staite for the commission of an anti-doping rule violation. The charge, which was brought by UK Anti-Doping Limited (“UKAD”), alleged that two Prohibited Substances (as defined), erythropoietin and androsta-1,4,6-triene-3,17-dione, had been found in a urine sample provided by Mr Staite on 13 March 2010. Mr

Staite is a cyclist and is bound by the Anti-Doping Rules adopted by the British Cycling Federation (“the Rules”).

2. Erythropoietin is included in the World Anti-Doping Association’s 2010 list at S1 as an erythropoiesis stimulating agent. Similarly, androsta-1,4,6-triene-3,17-dione appears on that list at S4 as an aromatase inhibitor. As such, they are both classified as Prohibited Substances under the Rules. In these circumstances, UKAD brought the charge of his having committed an anti-doping rule violation against Mr Staite.
3. Having been appointed as sole arbitrator to determine the charge, I issued procedural directions on 11 June 2010. Mr Staite had previously indicated on 25 May 2010 that he did not wish to participate at all in this arbitration, and he maintained this stance following my directions. The following exchange of e-mails between Mr Staite and Mr Arthur of UKAD had taken place on 25 May 2010. This exchange is critical to the question whether it is now open to UKAD to contend that a period of ineligibility for Mr Staite should be increased for aggravating circumstances under Article 10.6 of the Rules.
4. On 25 May 2010 Mr Staite e-mailed Mr Arthur with the following terse message:

Hello Graham,
I have nothing more to add to the case and wish to not be contacted concerning this issue in the future.
Kind regards
Dan

In isolation, this e-mail does no more than convey Mr Staite’s unwillingness to play any part in the proceedings. However, it must be read in the light of its context, which is that of a reply to Mr Arthur’s e-mail of the same date by which Mr Arthur had said as follows:

Dan – I am writing regarding the anti-doping rule violation that has been made against you.

We have spoken about a number of issues associated with this matter, and so I want to be sure that I understand your position properly before we proceed further.

In particular—

You have indicated to me on the telephone that you admit the charge, in that you admit the use of the substances detailed in the charge (dated April 30th, 2010, a copy of which is attached to this mail). Can you please confirm that this is the case.

I have explained to you that there is the potential for you to reduce the period of ineligibility that will be imposed upon you, assuming that the charge is upheld, by providing “assistance” to UK Anti-Doping ... You have indicated that you understand this to be the case, but do not wish to avail yourself of this opportunity. Again, it would be helpful if you could confirm that this is the case

The e-mail went on to discuss the possibility of summary disposal of the charge under Article 7.5.4 of the Rules.

5. Pursuant to my directions, UKAD then served on Mr Staite a detailed statement with submissions to the effect that Mr Staite had not only committed an anti-doping rule violation but also should be subject to ineligibility of more than two years by reason of aggravating circumstances. As noted, Mr Staite simply did not respond in any way. Accordingly, I duly held a hearing in Mr Staite’s absence to determine the charge and consequences on 28 June 2010.

THE BACKGROUND

6. Mr Staite is a competitive cyclist. I was told at the hearing how the event at which he gave the urine sample leading to the instant charge was what was called “a low level event”. It was a National B event. Although Mr Staite was eligible to compete in National A events, he has in fact much more frequently competed in National B events where prize money is limited and where, I was told, detection of drugs was at such a level unusual. The records demonstrate that in 2009 Mr Staite competed in 21 National B events and 2 National A events; in 2008 he competed in 28 National B events and no National A events.

7. On 13 March 2010 Mr Staite competed at the British Cycling Federation's Roy Thame Cup and then underwent a drug test. The urine sample which he had provided was forwarded to the WADA accredited laboratory at the Drug Control Centre, King's College London. In the usual way, the sample was divided into an A sample and a B sample. The A sample was found to contain both 19- androsta-1,4,6-triene-3,17-dione and also evidence of erythropoietin that was not consistent with endogenous production. This result was confirmed in an analytical report from the laboratory dated 20 April 2010. The laboratory documentation was reviewed, and no departure from the International Standard for Laboratories was found by either of two reviewers instructed by UKAD.
8. Given the adverse analytical finding, the present charge was brought. A provisional suspension from participation in competition or any other official activities was also imposed on Mr Staite with effect from 8 a.m. on 1 May 2010.
9. The evidence before me also disclosed that, prior to Mr Staite being told of the result of his urine test, he was visited at his home by UKAD representatives on 18 March 2010. They sought to obtain a blood sample from Mr Staite, who was at home when they visited. UKAD was entitled to do this pursuant to Article 5.2.1 of the Rules under which:

All Athletes ... must make themselves available for and must submit to Testing by (or as authorised by) [UKAD] (urine and/or blood) pursuant to these Rules at any place and time (whether In-Competition or Out-of-Competition, whether in the UK or overseas).
10. However, Mr Staite refused to provide a sample and told the UKAD representatives that they could not come into his house. Whilst he claimed to have a heavy cold as a reason for not co-operating, there was no obvious sign of

his having a cold. The UKAD representatives remained at Mr Staite's house for about an hour attempting to gain admission but without success. From the evidence before me it is clear that Mr Staite's was being deliberately obstructive in refusing to provide a blood sample. I was invited at the hearing to draw the inference that this was because he realised that he would have traces of drugs in his blood.

THE RULES

11. Article 2.1 of the Rules provides that the presence in a urine sample of an Athlete (including a cyclist such as Mr Staite) of a Prohibited Substance or its metabolites constitutes an anti-doping rule violation. Prohibited Substances are those so categorised in the WADA Prohibited List, as issued from time to time, and include both erythropoietin and androsta-1,4,6-triene-3,17-dione. Article 2.1.2 goes on to stipulate:

Proof of either of the following to the standard required by Article 8.3.1 is sufficient to establish an Anti-Doping Rule Violation under Article 2.1:

- a. Presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete's A Sample, where the Athlete waives analysis of his/her B Sample and the B Sample is not analysed; or
- b.

Thus, for the purposes of establishing an anti-doping rule violation it may be necessary to do no more than point to the result of a urine test.

12. Turning to the consequences of an anti-doping rule violation, it is necessary to have regard to Article 10.2 of the Rules:

For an Anti-Doping Rule Violation under Article 2.1 (presence of a Prohibited Substance or its Metabolites or Markers) 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 ... 10.5) or for increasing the period of Ineligibility (as specified in Article 10.6) are met.

In this instance there is no suggestion of reason for eliminating or reducing the period of ineligibility. Accordingly, the consequence is a period of ineligibility of two years unless the conditions for increasing the period under Article 10.6 are met. Article 10.6 provides under the heading in bold “**Aggravating**

Circumstances that may Increase the Period of Ineligibility:

10.6.1 If the NADO [UKAD] establishes in an individual case involving an Anti-Doping Rule Violation ... that aggravating circumstances are present that justify the imposition of a period of Ineligibility greater than the standard period, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years, unless the Participant can prove to the comfortable satisfaction of the hearing panel that he/she did not knowingly commit the Anti-Doping Rule Violation.

10.6.2 A Participant can avoid the application of Article 10.6.1 by admitting his/her Anti-Doping Rule Violation promptly after being confronted with it by the NADO.

THE ANTI-DOPING RULE VIOLATION

13. In this case there is no doubt that an anti-doping rule violation was committed. The analytical report from the Drug Control Centre demonstrated the presence of Prohibited Substances in the urine sample. Moreover, it is clear on the evidence that there was no departure from either the International Standard for Laboratories or the International Standard for Testing. Mr Staite did not seek to have his B sample analysed and none of the evidence was contested by him. I am entirely satisfied that there was an anti-doping rule violation.

THE CONSEQUENCES

14. As is apparent from the Rules, the ordinary consequence in the present circumstances is a period of ineligibility of two years. The question before me is whether that ordinary consequence should not be applicable on the present facts but, rather, there should be an increased period of up to four years’ ineligibility.

UKAD'S SUBMISSIONS

15. It is right to say that before me Mr Arthur of UKAD was appropriately moderate in his submissions. In particular, he did recognise that one could read the e-mail exchange of 25 May 2010, to which I have already referred, as constituting an admission by Mr Staite such as to exclude an increase in the period of ineligibility by reason of Article 10.6.2. Nevertheless, he left it to me to decide both whether Article 10.6.2 applied and whether there were aggravating circumstances. As regards the latter aspect, Mr Arthur relied upon two features of the evidence. First, he pointed out that there was here the use of two substances as appears from the laboratory report; one of these was undoubtedly, as the evidence established, used as a performance enhancing drug. Whilst the use of two drugs cannot be considered as two separate anti-doping rule violations because of Article 10.7.4 of the Rules, Mr Arthur relied upon the commentary to Article 10.6 of the WADA Code on which Article 10.6 of the Rules is based. This commentary identifies as a possible aggravating circumstance the fact that the drug taker has “used or possessed multiple Prohibited Substances”. The second feature upon which Mr Arthur relied was the evidence to which I have referred about Mr Staite’s refusal to take a blood test on 18 March 2010. This could not be the subject of any charge, again by reason of Article 10.7.4. However, Mr Arthur submitted that it should be regarded as an aggravating circumstance because it was, in the language of the commentary to Article 10.6 of the WADA Code, “deceptive or obstructing conduct to avoid the detection ... of an anti-doping rule violation”.

DISCUSSION

16. I have considerable sympathy with UKAD’s criticism of Mr Staite for what happened on 18 March 2010 when a blood test was attempted. One can readily infer that Mr Staite’s motive for his conduct was to conceal any trace of drugs

in his blood. I am less sure about the submission that the finding in Mr Staite's urine test of two drugs on what was a single occasion should be regarded as an aggravating circumstance. All would doubtless depend on the precise circumstances, but as a generality it does not seem to me that a mixture of substances is so much more reprehensible than a single substance. Nevertheless, I do not need to come to a conclusion on this point. In my view the decisive factor in the present instance is Article 10.6.2 of the Rules.

17. The rationale behind Article 10.6.2 of the Rules is no doubt to provide an incentive for the avoidance of unmeritorious disputes. Contested hearings may be long drawn out and costly. It is obviously in the general interest that they should only take place where justified. I have come to the conclusion that, regarded fairly in its context, Mr Staite was in substance admitting an anti-doping rule violation on 25 May 2010. It is true that he did not expressly say that he admitted the charge. However, what he was saying in response to Mr Arthur's e-mail amounted in reality to an admission. It must be borne in mind that the context of what he said was (a) Mr Arthur's statement that he had admitted the charge and (b) Mr Arthur's invitation to him to assist UKAD and thereby obtain a reduction in the two year period of ineligibility. In particular, Mr Staite's expressed unwillingness to have anything more to do with the case may be viewed as a refusal to assist UKAD in order to try to have the two year ban lessened. But, it is certainly the case that Mr Staite was not disputing the statement that he had admitted the charge on the telephone.

18. I therefore conclude that by reason of Article 10.6.2 there is no basis for me to do other than impose a period of ineligibility of two years. UKAD submitted, and I agree, that this period of ineligibility should in accordance with Rule 10.9.3 run from 8 a.m. on 1 May 2010 which was the commencement of the

provisional suspension in Mr Staite's case. In accordance with Article 13 of the Rules either UKAD or Mr Staite may file a Notice of Appeal against this decision within 21 days of receipt of the decision.

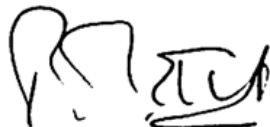
CONCLUSION

19. In summary, for the reasons given above, I make the following decision:
- an anti-doping rule violation was committed by Mr Staite;
 - the period of ineligibility in his case is to be two years; and
 - the period of ineligibility is to run from 8 a.m. on 1 May 2010 to 8 a.m. on 1 May 2012.

Either UKAD or Mr Staite (or any of the organisations specified in Article 13.4.1 of the Rules) may appeal against this decision as set out in the preceding paragraph.

6 July 2010

ROBERT ENGLEHART QC



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Robert Englehart QC

Sole Arbitrator