



Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
FIBA Internal Regulations governing Anti-Doping
in the matter

Eddin Orlando Santiago
(born 21 November 1975)

hereafter:

(“the Player”)

(Nationality: Puerto Rican)

Whereas, the Player underwent an in-competition doping test on 24 June 2009 in San German (Puerto Rico) on the occasion of a game between Atléticos de San German and Vaqueros de Bayamón for the Liga de Baloncesto Superior Nacional de Puerto Rico (“BSN”);

Whereas, the analysis of the Player's sample was conducted at the Laboratory of Laval, Quebec (Canada), which is a WADA-accredited laboratory. On 20 July 2009 the laboratory informed the Olympic Committee of Puerto Rico that the sample showed the presence of metabolites of stanozolol, which is a prohibited substance under the applicable rules;

Whereas, on 22 July 2009 the BSN served a copy of the laboratory report on the Player announcing that a two-year suspension would be imposed on him unless he informed BSN within 48 hours of his intention to have the “B” sample analysed and to present his position at a hearing before the President of BSN;

Whereas, by letter dated 23 July 2009 the Player requested the opening of the “B” sample and a hearing to be organised where he could present all relevant evidence;

Whereas, on the same day the Player visited the clinic “Docosy” in Rio Pedras, Puerto Rico and voluntarily provided a urine sample. The sample was analysed with a focus on anabolic steroids at the “Quest Diagnostics” laboratory, which is not WADA-accredited. The analysis did not show the presence of any prohibited substance in the Player’s specimen;

Whereas, on 28 August 2009 the BSN informed the Player that the analysis of the “B” sample at the Laval laboratory had confirmed the presence of stanozolol metabolites (a copy of the said laboratory report was enclosed) and that, as requested, a hearing would take place on 16 September 2009;

Whereas, on 14 September 2009 the Player requested from BSN the postponement of the hearing and the production of certain documents, including all information regarding the samples’ chain of custody;

Whereas, on 15 September 2009 the BSN rejected the Player’s requests considering that they had been filed too late, i.e. less than 48 hours before the hearing;

Whereas, by decision dated 26 October 2009 the BSN imposed a two-year ban on the Player, starting from the notification of the decision, i.e. 27 October 2009 (“the BSN Decision”);

Whereas, on 29 October 2009 the Player filed an appeal before the Appeals' Committee of the BSN against the BSN Decision;

Whereas, by email dated 2 November 2009 the BSN informed the Player that it considered the matter closed and that he would have to seek further recourse before the Puerto Rican Basketball Federation ("PUR BF") and FIBA;

Whereas, by correspondence of the same day FIBA Americas informed FIBA about the case at hand and forwarded a letter of the PUR BF, according to which the latter had accepted and decided to respect the BSN Decision;

Whereas, by letter dated 19 November 2009 FIBA suspended the Player –who was in the meantime playing in Mexico– with immediate effect, both for international and national competitions;

Whereas, on 8 December 2009 the Player filed a brief with five exhibits;

Whereas, on the afternoon of the same day the Player together with his counsel Mr. Edwin León León and his agent Mr. José Paris, exercised his right to be heard via telephone conference by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, President of FIBA's Legal Commission and of Dr. Heinz Günter, Vice President of FIBA's Medical Commission. Ms. Cendrine Guillon, FIBA Anti-Doping Manager as well as Dr. Dirk-Reiner Martens and Mr. Andreas Zagklis, FIBA Legal Advisors, were in attendance;

Whereas, shortly after the conclusion of the hearing FIBA invited the Player to submit any additional arguments and evidence by no later than Friday, 18 December 2009;

Whereas, on 9 December 2009 FIBA invited the PUR BF to provide the following information:

- (a) *whether the decision dated 26 October 2009 is final or if the Player has the right to file an internal appeal before a hearing body in PUR;*
- (b) *a copy of the complete file on the Doping Control test, the results management procedure and the hearing before the PUR hearing bodies;*
- (c) *whether the player was given the opportunity to attend the opening of the "B" sample and whether he has requested (and been provided with) a copy of the laboratory documentation package. In this respect, the correspondence between the player, the testing authority and the laboratory is of particular interest.*

Whereas, on 16 December 2009 the BSN replied as follows:

- (a) *All the doping related decisions taken by the Puerto Rico National Superior Basketball League ("BSN") are appealable to the Puerto Rico Basketball Federation and from there to the International Basketball Federation. According to our file, the Puerto Rico Basketball Federation embraced the decision taken by the BSN and their confirmatory decision was informed to FIBA. At this moment there is no pending appeal before a hearing body in PUR.*
- (b) *Enclosed you will find a copy of the complete file of the case.*
- (c) *The player did not request to attend the opening of the "B" sample. His petition was limited to the opening and analysis of the sample by the same laboratory that performed the "A" sample. (See the documents included) The player did not request on time a copy of the laboratory documentation package. In relation to the correspondence with the player, the authority and the laboratory, please refer to the enclose documents.*

Whereas, on 18 December 2009 the Player filed his second brief along with ten exhibits;

Whereas, on 22 December 2009 FIBA forwarded BSN's reply to the Player and invited the latter to submit his comments until 7 January 2010;



Whereas, on 7 January 2010 the Player filed his fourth piece of submissions together with one exhibit;

Whereas, in view of the fact that the Player's written submissions had –to a large extent– dealt with the issue of finality of the BSN Decision and other procedural matters, on 14 January 2010 FIBA wrote to the Player's representatives as follows:

The Panel has decided a) to proceed in this matter and b) to grant your request for a second hearing by telephone conference.

*The hearing will take place on **Monday, 25 January 2010 at 4pm (Geneva time)**.*

During the hearing the Player will be invited to present his position also in respect of the merits of this case, including amongst others:

- A) The presence of the prohibited substance in his body (article 2.1 of the FIBA Internal Regulations governing Anti-Doping);*
- B) Whether –and if yes, on what occasion– he used a prohibited substance (article 2.2 of the FIBA Internal Regulations governing Anti-Doping)*

Whereas, on 25 January 2010 the Player together with his counsel Mr. Edwin León León and his agent Mr. José Paris was heard via telephone conference by the same FIBA Disciplinary Panel;

Whereas, the Player's submitted in essence the following:

- the adjudicating procedure before the BSN violated his right to be heard and the fundamental principle of due process;
- he was deprived of his right to have a full review of the file, prepare adequately for the hearing and examine important witnesses such as Dr. Ibeth Yasmín López Enríquez ("Dr. López") who was privately interviewed by the BSN;
- he was not provided with copies of the laboratory documentation, despite his request to the BSN;

- he was never informed of the day and time the “B” sample analysis would take place and thus did not attend the opening and analysis of the “B” sample, as he was entitled under Article 7.1.4 of the FIBA ADR;
- he suffers from a chronic medical condition on his right shoulder and has, since 2002, been receiving medical treatment on an almost permanent basis due to frequent shoulder dislocations;
- while playing in Mexico in February 2009 the team physician, Dr. López, prescribed and administered to him three injections –and later also tablets– of Winstrol as part of his medical treatment;
- he fully trusted Dr. López and was completely unaware of the fact that the injections or the tablets might contain a prohibited substance;
- he had the impression that he was simply receiving cortisone through the injections and did not inquire the origin or the nature of the medication;
- his physical appearance all but suggests that he has been using anabolic steroids;
- his last game of professional basketball was some time in mid-November 2009, after he received FIBA’s decision to suspend him provisionally;
- this is the first time in his almost twenty-year long career as professional basketball player that he is accused of an anti-doping rule violation.

Now, therefore, the Panel takes the following:

DECISION

A period of two years' ineligibility, i.e. from 19 November 2009 to 18 November 2011, is imposed on Mr. Eddin Orlando Santiago.



Reasons:

1. The relevant parts of the FIBA Internal Regulations governing Anti-Doping (the “FIBA ADR”) edition 2009, which apply to this matter, read as follows:

“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample. [...]

2.2 Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method. [...]

7.1.4 If the initial review of an Adverse Analytical Finding under Article 7.1.2 does not reveal an applicable TUE, or departure from the International Standard for Testing or the International Standard for Laboratories that caused the Adverse Analytical Finding, the actual identity of the Player shall be disclosed by the FIBA Anti-Doping Officer, who shall reveal the name of the Player corresponding to the code number on the "Official Doping Control Report" to the FIBA Secretary General or his delegate. FIBA shall promptly notify the Player of: (a) the Adverse Analytical Finding; [...] (d) the scheduled date, time and place for the B Sample analysis (which shall be within the time period Specified in the International Standard for Laboratories) if the Player or FIBA chooses to request an analysis of the B Sample; (e) the opportunity for the Player and/or the Player's representative to attend the B Sample opening and analysis at the scheduled date, time and place if such analysis is requested; and (f) the Player's right to request at his/her own cost

copies of the A and B Sample laboratory documentation package which includes information as required by the International Standard for Laboratories.

[...]

13.7 Sanctions imposed by national member federations or organisations outside FIBA and the application of FIBA sanctions by national member federations

13.7.1 National member federations shall immediately inform and shall cause organisations outside FIBA to immediately inform the Secretariat of FIBA and WADA of any sanction that they impose on a Player. This information must be accompanied by a copy of the complete file on the Doping Control test and must be sent to FIBA as soon as the decision of the national member federation or the organisation outside FIBA becomes final. A failure to abide by this rule will incur an administrative fine as stipulated in 0.1. [...]

13.7.2 The Disciplinary Panel mentioned in Article 8.1 above may decide whether and to what extent a sanction shall be imposed for the purposes of FIBA Competitions on a Player sanctioned by a national member federation. In taking this decision, the reliability of the doping test and of the analysis of the sample and the substance detected shall be taken into account. The implicated Player has the right to be heard. He may be suspended provisionally before the hearing.”

(emphasis added by the Panel)

2. The main issues to be decided by the Panel are:
 - (a) Does the finality (or not) of the BSN Decision affect the Panel’s competence to decide the case?
 - (b) Did BSN violate the Player’s right to be heard? If yes, what are the legal consequences on the case at hand;
 - (c) Did the Player commit an anti-doping rule violation? If yes, what is the applicable sanction?

Finality of the BSN Decision

3. In his submissions the Player emphasized that the BSN and the PUR BF did not entertain his appeal dated 29 October 2009 and thus the proceedings are still pending in Puerto Rico. The Panel notes that indeed, the applicable anti-doping rules of the BSN provide for four different adjudicating bodies, i.e. the BSN President, the BSN Appeals Committee, the Board of

Directors of the PUR BF and the Puerto Rican Olympic Committee. In reply to the Player's appeal before the BSN Appeals Committee, on 2 November 2009 the BSN referred the matter to the PUR BF and FIBA. Also on the same day, i.e. after the Player's appeal, FIBA received confirmation by the PUR BF that the latter had adopted and implemented the BSN Decision. The Panel considers this determination to be a decision and, absent any appeal against it, a final decision.

4. In any event, and notwithstanding the fact that the hearing process described in the BSN rules is not in compliance with the FIBA ADR, the Panel is of the opinion that generally the procedure before the FIBA Disciplinary Panel in accordance with Article 13.7 of the FIBA ADR is *not* an appeal process. Instead, it has been clear and consistent practice for years, accepted by WADA, the FIBA Appeals' Tribunal and the CAS, that FIBA through its Disciplinary Panel initiates its *own* proceedings in order to take an *own* decision *for the purposes of FIBA competitions*. Therefore, as it is evident from the wording of Article 13.7.2 which simply refers to a "sanctioned" Player, a *final* decision at national level is merely a *desideratum* and not a legal requirement for the FIBA Disciplinary Panel to decide "whether and to what extent a sanction shall be imposed".
5. It follows that this Panel is competent to apply at this point in time the FIBA ADR to the circumstances of this matter and pronounce a decision.

Player's right to be heard

6. The Player has filed detailed submissions complaining about the procedural irregularities during the process before the BSN. The Panel underlines that, as mentioned above, the proceedings before FIBA constitute a full hearing *de novo* during which a player is entitled to be heard and file documents in his defence. *A fortiori*, in the present matter, the Player was allowed to file four different pieces of submissions along with several appendices and to be heard twice, with the assistance of his legal counsel and of his agent. The Panel notes that the



Player did not raise any issues with regard to the proceedings before FIBA. Thus, the Panel finds that flaws which may have encumbered the process at national level are cured by the Player's opportunity to be fully heard before FIBA.

7. Further, the Panel notes that BSN was not only the adjudicating authority but also the one responsible for the results management of the Player's samples. The Panel notes that the Player's argument that the laboratory results should be invalidated because he was never invited by the BSN to attend the opening of the "B" sample is not without merit: no such invitation can be found on the file submitted by BSN and the respective requirement provided for in Article 7.1.4(d)-(e) has been strictly applied by CAS panels (e.g. CAS 2002/A/385, CAS 2008/A/1607). However, for the reasons explained below, the consequences of said omission on the laboratory results need not be decided by the Panel.

Anti-doping rule violation

8. The Panel takes due note of the fact that, in accordance with the Player's brief received on 8 December 2009 (p.7):

"he recalled that there and about February, 2009, while he was playing in Mexico, he was treated by the Medical Advisor of the team [Dr. López], for a shoulder injury, specifically he was injected with an unknown substance to him, by the team doctor, and that after consulting with her, she had told him that what she had injected him contained the illegal substance. (he provided the examiner with written certification of said doctor, in that regard)."

9. Even if the Panel were to disregard Dr. López's statement dated 13 September 2009 (where she clearly indicates that she decided to administer Winstrol-stanozolol to the Player as part of his treatment because there are no anti-doping controls in Mexico) the Panel is convinced from the above admission that the Player used a prohibited substance, i.e. stanozolol, on more than one occasions during February 2009. At this point the Panel wishes to refer to the World Anti-Doping Code and specifically to the Comment to Article 2.2:

“[U]nlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, or other analytical information which does not otherwise satisfy all the requirements to establish “Presence” of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.”

(emphasis added by the Panel)

10. As a result, regardless of the Player’s arguments with respect to the opening of the “B” sample, the Panel finds that the Player committed an anti-doping rule violation under Article 2.2 of the FIBA ADR.

11. Moving now to the applicable sanction, Article 10.2 of the FIBA ADR reads:

“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods

The period of Ineligibility imposed for a violation of 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 Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility. [...]”

12. The Player submitted that Article 10.5 applies to his case and that he bears no (significant) fault or negligence since “he went to the proper source for his treatment, to the Team’s Doctor, how could he presume, or would have foreseen that the team’s doctor would use a[n] illegal substance.”

13. It is relevant to point out in this regard that according to Article 2.2.1 “It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body”. This provision clearly introduces a duty of care for all athletes, in view of which the Panel cannot accept the Player’s argument.
14. Firstly, it has not been established that the Player was obliged under genuinely exceptional circumstances (e.g. treatment in the emergency room on account of an acute heart failure, CAS 2005/A/990) to take the medication provided by the club’s doctor. On the contrary, the Player testified that during the last 8 years where he played for several clubs he has been treated by the same physician, Dr. Mark Trautmann in Puerto Rico (“Dr. Trautmann”) and that, although this was his first shoulder-related treatment given by another doctor, he did not consult Dr. Trautmann or ask Dr. López to contact him.
15. Secondly, the Panel finds that the Player had a very clear obligation arising from the applicable rules to ensure that the medication he was receiving did not contain a prohibited substance which he delegated to the team physician Dr. López. The delegation of such duty, however, does not excuse the Player from his responsibility. It would indeed be to the severe detriment of the fight against doping if players were in a position to assign their obligations to third persons and consequently avoid any liability for the presence of a prohibited substance in their sample (CAS 2008/A/1597).
16. An international-level player with considerable experience like the Player in this case is expected to refrain from ingesting tablets given to him without any medication package, label or other indication of their origin. At a minimum, and after all these years of facing the same injury, he/she is expected to have the curiosity of personally inquiring the nature of the medication which was injected to his shoulder and buttock on a *repetitive* basis (at least three times) and for over a period of two weeks.

17. Thus, the Panel shares the views expressed in CAS 2008/A/1488:

“In consideration of the fact that athletes are under a constant duty to personally manage and make certain that any medication being administered is permitted under the anti-doping rules, the prescription of a particular medicinal product by the athlete’s doctor does not excuse the athlete from investigating to their fullest extent that the medication does not contain prohibited substances. [...]

While it is understandable for an athlete to trust his/her medical professional, reliance on others and on one’s own ignorance as to the nature of the medication being prescribed does not satisfy the duty of care as set out in the definitions that must be exhibited to benefit from finding No Significant Fault or Negligence. It is of little relevance to the determination of fault that the product was prescribed with “professional diligence” and “with a clear therapeutic intention”. To allow athletes to shirk their responsibilities under the anti-doping rules by not questioning or investigating substances entering their body would result in the erosion of the established strict regulatory standard and increased circumvention of anti-doping rules.”

18. It is noteworthy to quote at this point Dr. Trautmann’s statement, who personally knows the Player and has ample experience in treating athletes:

“At the time [of the injections in Mexico, [the Player] did not inquire about the type of medication because he usually did not do so in Puerto Rico [...]

I also know that at some point there would be a player who will be a victim of our will to try to get the athletes back to playing as soon as possible. I believe Santiago is one of those victims.”

19. Hence, under the applicable rules, an athlete who takes no precautions and relies totally on the decisions made by his support personnel should be ready to bear the consequences for the latter's fault or negligence. The Panel regrets to find that such harsh –but indeed fair– rule applies also in the case of the Player.

20. Lastly, the Panel notes that the Player was participating in competitions until the moment FIBA imposed a provisional suspension on him on 19 November 2009. Thus, the Panel decides that the period of ineligibility is to start on the above-mentioned date.



21. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached “Notice about Appeals Procedure”.

Geneva, 15 February 2010

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel