



Decision

by

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

Juan Antonio Dixon
(born 9 October 1978)

hereafter:
(“the Player”)

(Nationality: U.S.A.)

Whereas, the Player underwent an out-of-competition doping test organised by the Hellenic National Council for Combating Doping (“ESKAN”) on 5 November 2009 in Thessaloniki (Greece) upon his arrival to play basketball for the Greek club Aris BC;

Whereas, the analysis of the Player's sample (Code no.: **1878670**) was conducted at the laboratory of Athens, Greece (“Athens laboratory”). Upon the Athens laboratory’s request, the IRMS analysis of the sample was conducted at the laboratory of Cologne, Germany (“Cologne laboratory”). Both laboratories are WADA-accredited. On 1 February 2010 the Athens laboratory informed ESKAN that the sample showed the presence of a metabolite of nandrolone, namely 19-norandrosterone in



a concentration (4,1 ng/ml, uncertainty 6,3%, confidence interval 95%) above the threshold determined in the applicable rules (2,0 ng/ml).

Whereas, on 8 February 2010 the Player requested the analysis of the B sample;

Whereas, given that the Player was playing in Spain since early January 2010, on 12 February 2010 the FIBA Disciplinary Panel provisionally suspended the Player with immediate effect both from international and national competitions;

Whereas, on 25 February 2010 the B sample was opened and analysed at the Athens laboratory in the presence of Mr. Stamatis Angelakis, FIBA-licensed agent of the Player. The sample was subsequently transferred to the Cologne laboratory for the performance of the IRMS analysis, which took place on 9 April 2010;

Whereas, on 15 April 2010 the Athens laboratory reported that “Nandrolone is [an] anabolic steroid and its metabolite 19-norandrosterone was confirmed in sample B1878670 at a concentration 4.6 ng/mL (Uncertainty 6.3%, 95% confidence interval). The analysis of sample B1878670 using the IRMS technology proved the exogenous origin of nandrolone”;

Whereas, on 15 April 2010 the Hellenic Basketball Federation wrote to FIBA that “we confirm that we wish that FIBA takes up the case of the player DIXON, Juan”;

Whereas, on 7 May 2010 FIBA informed the Player about the results of the B sample analysis and of his right to be heard either by telephone conference or in person;

Whereas, on 18 May 2010 the Player wrote to FIBA that “I appreciate this opportunity to be heard and would like to exercise this right by telephone conference [...]”;

Whereas, on 31 May 2010 the Player was 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, the Player at the hearing:

- did not contest the result of the test;
- stated that he is a 32-year old professional basketball player who, until November 2009, had played his entire career in the USA, initially NCAA college basketball and subsequently in the NBA. His decision to play in Europe was a “last resort” since he could not find a new contract in the NBA for the 2009/2010 season;
- stated that the doping test in question was the first in his career under FIBA rules, while he had never tested positive in numerous NBA anti-drug tests, approximately four every season;
- stated that in 2005 he represented professional basketball players before the U.S. Congress delivering an anti-steroid message;
- submitted that during the 2009 off-season he took part in a private muscle training programme for players’ off-season, where he was using after training a nutritional supplement named “Monster” which was suggested to him by his professional trainer;
- argued that said supplement must have been the source of the prohibited substance because he did not use any other new supplements in that period and before the November 2009 test;
- submitted that he remained without contract between the end of the 2008/2009 season and up until signing with Aris BC in November 2009;
- argued that he had never used supplements without medical advice and that this was the first time he could not consult a team doctor because he was out of contract for a considerable period of time;
- argued that he had no idea that the supplement he was taking before dinner could contain any prohibited substance and that he had no intention to enhance his performance since the competition period would start only 1-2 months after the said trainings;



- argued that his physical appearance (approx. 1.91m, 75 kgs) and style of play are a clear counter-indication of the use of steroids and that he has had a successful career, including a NCAA title and a NCAA tournament most-outstanding-player award, without the use of any prohibited substances;
- expressed his apologies and embarrassment for the positive doping control and stated that his profile as an icon for young athletes in his home town in Maryland has been seriously damaged;
- stated that he has not played basketball since he was provisionally suspended on 12 February 2010;
- affirmed that he had committed no previous anti-doping rule violation.

Now, therefore, the Panel takes the following:

DECISION

A period of one years' ineligibility, i.e. from 12 February 2010 to 11 February 2011, is imposed on Mr. Juan Antonio Dixon.

Reasons:

1. Article 13.7.6 of the FIBA Internal Regulations governing Anti-Doping (the "FIBA ADR") edition 2009 reads as follows:

"13.7.6 In the event of an anti-doping rule violation within the jurisdiction of a national member federation, the Disciplinary Panel is authorised to impose a sanction according to these Regulations if the national member federation fails to do so, provided that in performing the Doping Control test the provisions of these Regulations were followed and, in particular, that the analysis of the sample was



performed by a WADA-accredited laboratory. The implicated Player has the right to be heard. He may be suspended provisionally before the hearing.”

2. Considering that the Player transferred from Greece to Spain before the analysis of the A sample was concluded and that the Hellenic Basketball Federation chose not to decide on the matter but rather requested FIBA to pass a decision that will apply internationally, the FIBA Disciplinary Panel is competent to hear this matter.

3. Article 2.1 of the FIBA ADR reads 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.

2.1.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. 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 violation under Article 2.1. [...]”

4. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA FIBA ADR since a metabolite of nandrolone, a prohibited substance listed in WADA's 2009 Prohibited List (the “2009 Prohibited List”) under letter S.1.1.b (Endogenous Anabolic Androgenic Steroids when administered exogenously) was found in a concentration above the threshold in his urine sample. The 2009 Prohibited List expressly mentions that for norandrosterone “*an Adverse Analytical Finding reported by a laboratory is considered to be scientific and valid proof of exogenous origin of the Prohibited Substance. In such case, no further investigation is necessary*”. This fact remained uncontested.

5. According to Article 10.2 of the FIBA ADR

“The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), [...] 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.”

6. In that respect, Article 10.5 of the FIBA ADR provides that if a Player establishes that he bears no fault or negligence (10.5.1) or no significant fault or negligence (10.5.2) the otherwise applicable period of ineligibility shall be reduced or even eliminated. In the event that the Player has violated Article 2.1 of the FIBA ADR, like in the present case, he must also establish how the Prohibited Substance entered his system. The Panel feels satisfied that the low amount of 19-norandrosterone found in the Player's sample is consistent with the use of a contaminated nutritional supplement during off-season.
7. Further, the Panel notes that the circumstances of this case are unique in that the Player had never registered with any national member federation of FIBA or signed a contract with a FIBA club prior to November 2009, i.e. a few days before the doping control. In fact, the doping control performed on the Player was part of his licensing procedure by the Hellenic Basketball Federation upon the Player's joining the Greek club Aris BC.
8. Therefore, the Panel shall examine the Player's fault or negligence at the point in time when he submitted himself for the first time in his career to the regulatory framework of FIBA and in particular to the duties mentioned in Article 2 of the FIBA ADR. The Panel carefully reaches this conclusion having in mind that the FIBA ADR apply to all players, with or without contract, who have at least registered once in their career with a FIBA club.
9. In the present matter, it is evident that the Player had been playing consistently for organisations outside FIBA for more than 10 years and that, during the 2009 off-season, he had



no intention to sign a contract with a FIBA club. He was admittedly looking for another NBA contract and chose to wait until November, when the NBA teams would have finalised their rosters. Realising that no employment opportunities were available to him in the USA, he decided to play in Europe where the season had already started.

10. In view of the above, the Panel is of the opinion that the Player had a duty to ensure that no prohibited substances were present in his body when joining a FIBA club. In this context, looking at the totality of the circumstances (see CAS 2006/A/1025), the Panel finds the Player's negligence to be non-significant. Even if he used the "Monster" supplement in autumn 2009, he could not have expected that it was contaminated and, more importantly, that the prohibited substance would remain in his body, even in low concentrations, until he would start playing for a FIBA club. It would be both unreasonable and legally unsound to fully impose on the Player the very high duties arising from Article 2.1.1 of the FIBA ADR, when such provision was not applicable to him at the time he used the nutritional supplement.
11. At this point the Panel refers to the text of the World Anti-Doping Code and especially to Article 20.3.4 where the status of players registered with professional leagues is mentioned:

"20.3 Roles and Responsibilities of International Federations [...]"

20.3.4 To require Athletes who are not regular members of the International Federation or one of its member National Federations to be available for Sample collection and to provide accurate and up-to-date whereabouts information as part of the International Federation's Registered Testing Pool consistent with the conditions for eligibility established by the International Federation or, as applicable, the Major Event Organization. [...]"

[Comment to Article 20.3.4: This would include, for example, Athletes from professional leagues.]"

(emphasis added)



12. The Panel fully endorses this position and notes that a duty such as the availability for testing applies also to Players who are not regular members of an International Federation. Conversely, the Panel underlines that the Player was never registered with FIBA before November 2009. Of course, in conformity with the ruling of CAS in the case 2000/A/262 (Roberts v/ FIBA) the above conclusion does not mean that a basketball player not previously registered with FIBA receives a green light to use prohibited substances. On the contrary, all players wishing to participate in competitions organised or sanctioned by FIBA have to fully respect the FIBA ADR and all violations occurring outside FIBA and its national member federations shall be submitted to FIBA's jurisdiction as per Article 13.7 of the FIBA ADR.
13. In view of the above the Panel finds that
- a) the Player was not able to prove that he took all necessary precautions to exclude any chance of having a prohibited substance in his body when first signing with a FIBA club;
 - b) in the exceptional circumstances of this case, the jurisprudence of CAS and of the FIBA bodies regarding a player's duty of diligence when selecting nutritional supplements does not fully apply to the Player;
14. Based on the above findings, the Panel holds that the Player's negligence was not significant and that it is appropriate to impose on him a sanction of one (1) year.
15. The Panel emphasizes that it reached the above conclusions on the basis of very particular circumstances as evidenced, and without therefore intending to give any direction whatsoever for future cases.
16. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on the date of the Player's provisional suspension, i.e. on 12 February 2010.



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

Geneva, 16 July 2010

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel