



Decision

by

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

Mr. X
(born.././..)

hereafter:
(“the Player”)

(Nationality: U.S.A.)

Whereas, the Player underwent an in-competition doping test on 26 March 2009 in Leiden (the Netherlands) after a game between ZZ Leiden and Hanzevast Capitals organised in the framework of the Netherlands Basketball Association’s (“NBB”) first division;

Whereas, the analysis of the Player's sample (1863016) was conducted at the Laboratory of Cologne (Germany), which is a WADA-accredited laboratory. On 22 April 2009 the laboratory informed the Netherlands’ Anti-Doping Agency (“NADA”) that the sample showed an elevated testosterone/epitestosterone ratio (T/E >4) of 8,0 and that, in accordance with the WADA Prohibited List, further investigation in the form of follow-up testing and carbon isotope ratio measurements were required;

Whereas, on 14 May 2009 the Cologne Laboratory informed the NADA that, after having analysed the sample with isotope ratio mass spectrometric (IRMS) methods, it had found that the $\delta^{13}\text{C}$ [‰]-values of the testosterone and testosterone metabolites did not indicate an application of testosterone or testosterone prohormones;

Whereas, in application of the results management procedure for Atypical Findings, the NADA decided to perform follow-up testing on the Player;

Whereas, on 20 May 2009 at his residence in Groningen (the Netherlands) the Player was notified to produce an out of competition urine sample but refused to do so;

Whereas, on 1 July 2009 the NBB referred the matter to its Disciplinary Board (“NBB Disciplinary Board”);

Whereas, on the basis of the Player’s written submissions and the documents submitted by the NADA, the NBB Disciplinary Board decided on 10 October 2009 that the Player had not committed an anti-doping rule violation. Such decision (“the NBB First Decision”) was communicated in writing to the Player on 26 October 2009;

Whereas, on 5 November 2009 the NADA filed an appeal against the NBB First Decision before the NBB Board of Appeal;

Whereas, on 13 December 2009, the NBB Board of Appeals decided to impose a two-year period of ineligibility on the Player, starting from 20 May 2009 (“the NBB Final Decision”);

Whereas, the NBB provided FIBA with a copy of the entire file by correspondence dated 3 February 2010;

Whereas, on 16 March 2010 the Player through his agent Mr. Y and his attorney Mr. Z exercised his right to be heard via telephone conference by a FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, member 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's position as expressed by his representatives can be summarized as follows:

- the result of the test performed on 26 March 2009 was not contested;
- the NADA had no authority to test him because the Dutch championship was over and subsequently his employment contract had expired;
- the Player decided to stay in the Netherlands a few weeks after the end of the season as a tourist and was not playing professional basketball at the relevant point in time;
- the doping control officer did not identify himself nor explained why the Player should submit a urine sample;
- the Player is no longer playing basketball and could not attend the hearing because he was at his new employment, which is unrelated to basketball;

Now, therefore, the FIBA Secretary General takes the following:

DECISION

A period of two years' ineligibility, i.e. from 20 May 2009 to 19 May 2011, is imposed on Mr. X.

Reasons:

1. Article 2.1 of the FIBA Internal Regulations governing Anti-Doping (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: [...]

2.3 Refusing or failing without compelling justification to submit to Sample collection after notification as authorized in these Anti-Doping Rules, or otherwise evading Sample collection."

2. The Player has not denied at any stage of the proceedings before either FIBA or the NBB disciplinary bodies that he indeed *refused* to submit to sample collection, but rather has brought forward several arguments why, in his view, he was not under any obligation to undergo an out of competition doping test.
3. In this respect, the Panel initially notes that Article 5 of the FIBA ADR reads:

"5.1 Authority to Test

5.1.1 All Players registered for Competitions of FIBA agree to undergo Doping Control tests, and to provide Samples (e.g. urine, blood, saliva, sweat) and to

undergo any other type of control test provided for by FIBA, the IOC or the World Anti-Doping Agency (WADA).

5.1.2 All Players under the jurisdiction of a National Federation shall be subject to In-Competition Testing by FIBA, the appropriate Zone, the Player's National Federation, and any other Anti-Doping Organization responsible for Testing at a Competition or Event in which they participate. All Players under the jurisdiction of a National Federation, including Players serving a period of ineligibility or a Provisional Suspension, shall also be subject to Out-of-Competition Testing at any time or place, with or without advance notice, by FIBA, the appropriate Zone, WADA, the Player's National Federation, the National Anti-Doping Organization of any country where the Player is present, the IOC during the Olympic Games, and the IPC during Paralympic Games. Target Testing will be made a priority.

(emphasis added)

4. In the present matter, the NADA followed the process for Atypical Findings since the Player's sample taken at an in-competition test in the Netherlands had revealed an elevated T/E ratio. Articles 7.2.4 and 7.2.5 of the FIBA ADR make it clear that the anti-doping organisation shall "conduct follow-up investigation" and "not provide notice of an Atypical Finding until it has completed its investigation and has decided whether it will bring the Atypical Finding forward as an Adverse Analytical Finding" or not.
5. It follows from the above provisions of the FIBA ADR (which are, in that relation, identical to the World Anti-Doping Code and the WADA International Standards) that the NADA was *obliged* to locate the Player in the Netherlands and perform on him further tests, be it in-competition or out of competition.
6. Further, in view of the documentation before the Panel, the Player's arguments that he was unaware of the authority who tried to test him or that the doping control officer did not present his credentials must fail. Indeed, the Player signed at the moment of refusing to submit to sample collection a form prepared by the NADA in Dutch, English and French entitled "Aanwijzing dopingcontrole / Notification Doping Control / Instruction sur le Contrôle

Antidopage) and bearing the NADA logo (“Doping Autoriteit”) on the top (“the Form”). The Form contains an introductory note which reads as follows (English text):

“You are notified that you have been selected for a doping control [...] Failure to be present in time, not signing applicable forms and/or failure to cooperate may result in sanctions applied by the sport organization. You may be accompanied by an attendant.”

7. The Form is further filled in properly, stating “16.45” as the time and “20 MEI 2009” as the date of the control. The Panel notes that Player signed the Form at the designated place, which is a clear indication that he was fully aware of the fact that this was an anti-doping organisation officially providing him with notice for sample collection. In addition, the Form contains a hand-written note at the bottom of the page by a friend of the Player who was apparently also present. The note reads:

“It was not made clear for who[m] the test was intended for X will take a test at any time, if the intention of the results are made know[n] to him. Please give X or [email address] contact letting him know when and where, if need be. Johan Safire [signed]”

8. The Panel concludes that the Player refused to submit to sample collection without compelling justification and that the procedure followed by the NADA was in compliance with the requirements set out in the FIBA ADR. Therefore, the Player has committed an anti-doping-rule violation pursuant to Article 2.3 of the FIBA ADR.

9. According to Article 10.3.1 of the FIBA ADR

“10.3.1 For violations of Article 2.3 (refusing or failing to submit to Sample collection) or Article 2.5 (Tampering with Doping Control), the Ineligibility period shall be two (2) years unless the conditions provided in Article 10.5, or the conditions provided in Article 10.6, are met.”

10. The Panel notes that there are no circumstances on file which would call for either the elimination/reduction or the increase of the above-mentioned period of ineligibility. The Player

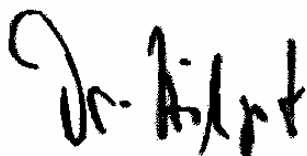


did not raise such a defence either, merely submitting that his actions were not in violation of the FIBA ADR at all. The Panel regrets the fact that, despite numerous warnings and public awareness regarding doping procedures, a professional player playing basketball internationally could consider that an out of competition test at his residence is allowed only when he is “under contract” or when “the intention of the results” for such a control is provided by the anti-doping authorities.

11. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction of two (2) years.
12. The Panel deems fair pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 20 May 2009, as the Player has not played basketball since that date.
13. 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 April 2010

On behalf of the FIBA Disciplinary Panel



Dr. Wolfgang Hilgert
President of the Disciplinary Panel