

NATIONAL ANTI-DOPING PANEL

Before:
Rod McKenzie (Chair)
Robert Englehart, QC
Lorraine Johnson

BETWEEN:

UK Anti-Doping National ("NADO")

Anti-Doping Organisation ("NADO")

- and -

Denis Catana

Respondent

IN THE MATTER OF PROCEEDINGS BROUGHT BY THE NADO UNDER AND IN TERMS OF THE BRITISH WEIGHT LIFTING ASSOCIATION ANTI-DOPING RULES BEING THE UK ANTI-DOPING RULES VERSION 2 DATED 14 DECEMBER 2009 (ANTI-DOPING RULES) AND THE PROCEDURAL RULES OF THE NATIONAL ANTI-DOPING PANEL 2010 ("NADP RULES") AGAINST MR DENIS CATANA

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL ("THE TRIBUNAL")

1. INTRODUCTION

- 1.1 This is the final decision of the Tribunal convened under Article 8 of the Anti-Doping Rules to determine a Charge brought against the Respondent of 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 it an Anti-Doping Rule Violation to have present in an Athlete's Sample a Prohibited Substance. The Respondent was charged by letter from the NADO of 20 September 2010 that he had committed an Anti-Doping Rule Violation in respect that a Prohibited Substance (Metenolone) was found to be present in a Sample taking for Doping Control purposes from the Respondent (Reference Number A1090307) and provided by him on 20 August 2010.
- 1.3 Metenolone is classified as an Anabolic Agent and listed in s1.1(a) (Anabolic Androgenic Steroids – Exogenous) on WADA's 2010 List of Prohibited Substances. The Respondent

did not, at the material time, have a Therapeutic Use Exemption that would justify the presence of Metenolone in his body.

1.4 The Respondent was Provisionally Suspended with effect from 9am on 21 September 2010 from participation in any competition, training or other activities organised, authorised or recognised by the British Weight Lifting Association ("BWLA").

1.5 The Tribunal, made up of Rod McKenzie, Chairman, Robert Englehart QC, and Lorraine Johnson held a Hearing on the Charge on 30 November 2010 at the International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU ("the Hearing"). The Hearing was attended by the following persons in addition to the Members of the Tribunal:

Mr Richard Redman – Solicitor for the NADO
Tony Jackson – the NADO
Ann Sergeant – the NADO
Denis Catana – Respondent
Richard Harry – Legal Officer, NADP
Jenefer Lincoln – Assistant Legal Officer, NADP

1.6 This document constitutes the final reasoned decision of Tribunal, reached after due consideration of the evidence tendered and heard and the submissions made on behalf of the parties attending at the Hearing. The decision of the Tribunal on all matters before it for determination was unanimous.

1.7 In this decision capitalised terms, where the context so admits, have their defined meanings as provided in the Anti-Doping Rules

2. PROCEDURAL HISTORY

2.1 The Respondent was charged with Anti-Doping Violation by letter from the NADO to the Respondent dated 20 September 2010.

2.2 The NADO made a request for the appointment at a Doping Tribunal and the Members of the Tribunal were appointed by the President of the NADP in accordance with the NADP Rules. There were no objections to the appointed Members of the Tribunal by the NADO or the Respondent. There were no objections to the jurisdiction of the NADP or the Tribunal or to the Membership of the Tribunal.

2.3 Directions pursuant to Article 7.8 of the NADP Rules were issued by the Chairman of the Tribunal.

2.4 The Respondent did not request that the B Sample be tested.

2.5 The NADO complied in full with the Chairman's directions. There were failures by the Respondent to comply with the directions but Mr Redman confirmed at the commencement of the Hearing that the NADO took no issue with such non compliance and that he was content that the Hearing proceed notwithstanding the Respondent had failed to submit a written response to the Charge or a skeleton argument as required by the directions.

- 2.6 There were no preliminary issues raised by the parties either before or at the Hearing on 30 November 2010 in relation to the competency or fairness of the proceedings.
- 2.7 At the commencement of the Hearing the Chairman explained to parties the procedure that would be adopted at the Hearing and requested the Respondent to advise whether he admitted that he had committed the Anti-Doping Rule Violation alleged in the letter of 20 September 2010 from the NADO to the Respondent. The Respondent acknowledged and accepted that the Sample given by him on 20 August 2010 had returned an Adverse Analytical Finding for Metenolone as set out in the letter of 20 September 2010 and that he had therefore committed the Anti-Doping Rule Violation alleged in that letter. Whilst the Respondent did not state specifically that he was seeking to rely on Article 10.5 of the Anti-Doping Rules, it was clear from a statement submitted by him by email dated 26 November 2010 to the NADP that he was seeking to argue that the otherwise mandatory period of Ineligibility provided for in Article 10.2 of the Anti-Doping Rules could be eliminated or reduced on the basis of exceptional circumstances in that, he was seeking to argue, he bore No Fault or Negligence or No Significant Fault or Negligence for the Anti-Doping Rule Violation.
- 2.8 The Respondent acknowledged having received copies of the statement of Michael Stow, the Head of Science and Medicine for the NADO dated 25 November 2010 and the supplementary statement of Mr Stow dated 29 November 2010. He also acknowledged having received a copy of the statement of Mr Tony Josiah, a member of the staff of the NADO Legal and Results Management Directorate dated 22 November 2010. He also confirmed copies of the documentation referred to in the statements. The Respondent confirmed that he had no objection to or issues with the content of any of those three statements or the accompanying documentation and that he was happy to accept them all as being factually accurate. In the circumstances the Tribunal determined and the Respondent accepted that it was not necessary for Mr Stow or Mr Josiah to give oral evidence to the Tribunal since the Respondent did not contest any element of their evidence and did not wish to cross examine them.
- 2.9 The Respondent was unrepresented but he expressly confirmed that he wished to continue with the Hearing notwithstanding he did not have representation.
- 2.10 The NADO confirmed that the three admitted statements plus the accompanying documentation constituted the NADO's evidence in this matter and that since all of this material was not contested by the Respondent the NADO did not intend to lead any oral evidence at the Hearing.

3. EVIDENCE FOR THE RESPONDENT

- 3.1 Prior to the Respondent commencing his oral evidence the Chairman explained to him the matters that he would have to establish in order to succeed in persuading the Tribunal that it should eliminate the otherwise mandatory period of Ineligibility based on No Fault or Negligence for the purposes of Article 10.5.1 of the Anti-Doping Rules or reduce that period of Ineligibility based on No Significant Fault or Negligence for the purposes of Article 10.5.2 of the Anti-Doping Rules.

- 3.2 The Respondent explained that he had first taken up the sport of weightlifting as a junior in Moldova and that he had returned to the sport when he had come to the UK in 2007. There was no organised system of Testing in Moldova and he was first subjected to Testing in the UK in 2007. He had two further Tests in 2009 and three Tests in 2010. It was the final one of those three Tests, which was in preparation for his attending the Commonwealth Games as a member of the English team, which resulted in the Adverse Analytical Finding for Metenolone which was the subject of these proceedings.
- 3.3 He confirmed that he had received advice from those involved in coaching the UK national weightlifting team on Doping Control generally and on the risks associated with the taking of supplements.
- 3.4 He advised that he took various supplements, as was common for weightlifters which he had sourced in various ways and from various sources. He bought some at specialist shops and had purchased some supplements in Moldova. In addition he had purchased supplements in gyms where he had been training. Generally he purchased supplements from specialist shops. These supplements included Creatine Monohydrate, Glucosamine HCl (MSM and Chondroitin) from Natures Aid, Alezon Gel for a leg injury and Lean Grow MRF (Protein) by Sci-Mix.
- 3.5 He explained that when he bought supplements from a shop he would ask the shop assistant whether the supplements were "legal" in the sense that he sought confirmation they did not contain any substances which were "illegal" for Anti-Doping purposes.
- 3.6 He had not asked for advice from his team doctor or coaches in relation to the supplements that he had been taking. He acknowledged, in response to questioning from Mr Redman, that the Alezon Gel which he took for a leg injury was a veterinary product for use with horses. He had the Alezon Gel massaged into his leg on 20 August 2010. He had not disclosed that he had used this gel or the other supplements prior to taking the Test. He claimed that he thought he only had to disclose pills or the like that he had taken. He had written down Paracetamol and Ibuprofen. He claimed that this was in some way based on what he had been told by the Doping Control Officer at the time of the Test.
- 3.7 He said that he had bought the majority of the supplements in the UK and only a relatively small proportion had been purchased by him from Eastern European sources when he was in Moldova.
- 3.8 The Respondent explained that after having been advised of the Adverse Analytical Finding he had sought advice from a solicitor who specialised in Sports Law and Anti-Doping who had advised him of the procedures and costs involved in having his supplements subjected to analysis for the presence of Prohibited Substances including Metenolone. The Respondent explained that he did not have the financial resources to instruct this analysis to be carried out or to instruct professional team representation and that therefore he had had none of his supplements tested for the presence of Metenolone.
- 3.9 Mr Redman put to the Respondent in cross examination that the Respondent was well aware that Metenolone was an anabolic steroid which was particularly useful to

weightlifters because it enabled them to maintain muscle bulk and condition which had been built up during previous training regimes and was commonly used in association with other steroids so that other steroids were used to bulk up muscle and Metenolone was used to maintain muscle bulk already established. The Respondent acknowledged that he was aware that steroids could be used beneficially in weightlifting to enhance sport performance but he denied having knowingly taken steroids or any other Prohibited Substance for this purpose. Mr Redman put to the Respondent that he was being untruthful and that he had taken the Metenolone to maintain muscle bulk and condition already established. The Respondent denied this allegation.

- 3.10 The Respondent contested that the presence of Metenolone in his system must have been caused by it being present, without his knowledge, in one or more of the supplements taken by him since he had not intentionally consumed Metenolone and he could think of no other mechanism for it having entered his system.

4. SUBMISSIONS FOR THE NADO

- 4.1 The Tribunal were much assisted by the very full and detailed skeleton argument submitted by Mr Redman on behalf of the NADO. That skeleton argument reviewed the procedural history of the case, details of the Anti-Doping Rule Violation, the consequences in terms of Ineligibility and the requirements of Article 10.5 so far as sustaining a plea of No Fault or Negligence or No Significant Fault or Negligence in terms of Article 10.5.

- 4.2 It was submitted that the Respondent had failed to establish the threshold showing in that he, the Respondent, had not established how the Metenolone had entered his system and that therefore the Respondent could not rely on Article 10.5 since no exceptional circumstance could be established.

- 4.3 Mr Redman went on to submit that if, contrary to his primary submission, the Respondent had established how the Metenolone entered his system, then the Respondent had failed to show that he bore No Fault or Negligence or No Substantial Fault or Negligence for the Anti-Doping Rule Violation which the Respondent had admitted and that accordingly the period of Ineligibility of two years should not be eliminated or reduced.

- 4.4 Finally Mr Redman acknowledged there was no aggravating circumstances in this case and he submitted that the Respondent should have a period of Ineligibility of two years imposed commencing from the date on which the Respondent's Provisional Suspension had commenced ie 21 September 2010.

5. SUBMISSIONS FOR THE RESPONDENT

- 5.1 The Respondent did no more in submissions than reiterate his evidence that he had not deliberately taken Metenolone or any other Prohibited Substance and that any Prohibited Substance that he had taken must have been ingested by way of contaminated supplements since he could think of no other possible explanation as to how the Metenolone had entered his system.

6. **DISCUSSION**

- 6.1 The Respondent having admitted the Anti-Doping Rule Violation with which he was charged, a period of Ineligibility of two years in terms of Article 10.2 falls to be imposed unless the Respondent is able to establish one or other of the exceptional circumstances provided for in Articles 10.5.1 and 10.5.2 of the Anti-Doping Rules.
- 6.2 Article 1.3.1 of the Anti-Doping Rule identifies the core responsibilities of each Athlete. Article 1.3.1(b)(i) requires an Athlete to comply with the Anti-Doping Rules and, in particular, to take "full responsibility for what he/she ingests and uses."
- 6.3 Article 2.2.1 of the Anti-Doping Rules imposes as personal duty on each Athlete "to ensure that no Prohibited Substance enters his/her body." The same Article goes on to make it clear that it is each Athlete's responsibility if any Prohibited Substance is found in his or her Sample and that it is not necessary for intent, fault, negligence or knowing use to be established for an Anti-Doping Rule Violation under Article 2.1 to be committed. Articles 10.5.1 and 10.5.2 are therefore concerned with the elimination or reduction of sanction, not whether or not an Anti-Doping Rule Violation has been committed.
- 6.4 By Article 8.3.2 of the Anti-Doping Rules the burden of proof to be applied in considering whether the Respondent has discharged the burden of proving how the Prohibited Substance entered his system, which is present in a Sample, is proof on the balance of probabilities. If the Respondent cannot establish, on the balance of probabilities, how the Prohibited Substance entered his system then he cannot succeed in eliminating the otherwise minimum period of Ineligibility by Article 10.5.1 or reduce the otherwise minimum period of Ineligibility by application of Article 10.5.2.
- 6.5 In this case the Respondent's contention is that the Prohibited Substance in question must have entered his system by being ingested through contaminated supplement. The Respondent has provided no more than a list of the supplements that he has taken. He has not indicated which one or more of the supplements he considers was contaminated, nor has he explained how such contamination might have occurred. He produces no scientific or other evidence that any supplement taken by him is or was in fact contaminated with Metenolone, nor was any other any evidence in the shape of other cases where it has been alleged or established that supplements have been contaminated with Metenolone adduced.
- 6.6 The suggestion that the Respondent's supplements were contaminated is no more than speculation on the part of the Respondent. This falls far short of the evidence required to establish the threshold showing in Articles 10.5.1 and 10.5.2. In these circumstances the Respondent fails in his attempt to establish how the Prohibited Substance entered his system and accordingly neither of Articles 10.5.1 or 10.5.2 can apply in this case.
- 6.7 Even if the Respondent were able to establish how the Metenolone entered his system, it is clear, even if this was by way of contaminated supplements, that the Respondent bore a significant degree of fault for such ingestion. His attention to ensuring that the supplements consumed by him did not contain contaminated material was, at best,

rudimentary. He appears to have undertaken no review of the content of the supplements and he has not produced any of the supplements at the Hearing. He sourced supplements from a number of sources, not all of which were even vouched by staff in shops by advising him that they did not contain Prohibited Substances. He acknowledged having taken a gel for the treatment of a leg injury which was not for use in humans but was for veterinary use. He acknowledged having purchased supplements in Moldova which had been sourced from Eastern European suppliers and in gyms in the UK without knowing anything of their content or the sources of supply. He acknowledged that he had sought no advice from the medical or coaching staff and his National Team regarding the supplements that he was taking, nor had he disclosed the taking of the supplements on the Doping Control Form at the time of the Test which led to the Adverse Analytical Finding.

7. DECISION

7.1 The Tribunal has determined for the reasons set out in this decision that:

7.1.1 in contravention of Article 2.2 of the Anti-Doping Rules there was present in a Bodily Sample given by the Respondent on 20 August 2010, Metenolone which is a Prohibited Substance falling within s1.1(a) (Anabolic Androgenic Steroids – Exogenous) on WADA's 2010 List of Prohibited Substances;

7.1.2 in respect that there was not, at the time the Sample was taken, present a Therapeutic Use Exemption granted to the Respondent in accordance with Article 4 of the Anti-Doping Rules, an Anti-Doping Rule Violation was committed by the Respondent;

7.1.3 the Respondent has failed to establish how the Prohibited Substance entered his system for the purposes of Articles 10.5.1 and 10.5.2 of the Anti-Doping Rules;

7.1.4 in any event, the Respondent has failed to establish that he bore No Fault or Negligence and/or that he bore No Significant Fault or Negligence for the Anti-Doping Rule Violation committed by him; and, accordingly,

7.1.5 in respect of the Anti-Doping Rule Violation committed, the Respondent is Ineligible for a period of two years from 21 September 2010 until 20 September 2012 (both dates inclusive) with all the consequences provided for in Article 10.10.1 of the Anti-Doping Rules.

8. COSTS

8.1 No application was made by either party in relation to costs and no order as to costs is made.

9. RIGHTS OF APPEAL

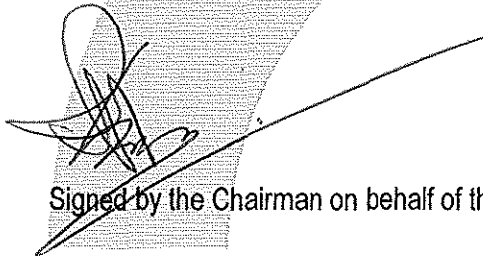
9.1 In accordance with article 13.4.2(b) of the Anti-Doping Rules the parties listed at article 13.4.1(a) to (h) have the right, within 21 days from receipt of a copy of this decision, to

appeal against this decision to an NADP Appeal Tribunal. The appeal procedures are set out in article 13.7 of the Anti-Doping Rules and article 12 of the NADP Rules.

Rod McKenzie, Chairman

Robert Englehart, QC

Lorraine Johnson

A handwritten signature in black ink, appearing to be 'Rod McKenzie', is written over a large, faint, circular watermark in the background. The signature is written in a cursive style and is positioned to the left of the text 'Signed by the Chairman on behalf of the Tribunal on 14 December 2010'.

Signed by the Chairman on behalf of the Tribunal on 14 December 2010