

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **ROBERT DEDIG** CONTRARY TO REGULATION 21

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

Judicial Committee:

Gregor Nicholson (Scotland)

Dr. Barry O'Driscoll (Ireland)

Graeme Mew (Canada – Chair)

Appearances and Attendances:

For the Board:

Tim Ricketts (Anti-Doping Manager)

Darren Bailey (Counsel)

For the Player:

Robert Dedig (Player)

Dr. Ben Viljoen (National Team Doctor, Namibia Rugby)

DECISION OF THE JUDICIAL COMMITTEE

1. Robert Dedig (the “Player”), a member of the Namibian national mens’ rugby team, suffers from seasonal asthma and exercise induced brochospasm, the effects of which are relieved by regular salbutamol inhalations.
2. Salbutamol is a compound that is classified as a beta-2 agonist and, as such, it is a “Prohibited Substance” under Regulation 21 of the Regulations Relating to the Game (the “Regulations”) and under the World Anti-Doping Code. The presence of salbutamol in a bodily sample provided by a player in a concentration exceeding 100ng/ml constitutes an anti-doping violation unless the player has first delivered to the relevant Anti-Doping Organisation an abbreviated therapeutic use exemption (“Abbreviated TUE”) application

including a medical notification justifying the therapeutic necessity for the use of salbutamol.

3. Anti-doping violations involving the presence of a Prohibited Substance carry a penalty, for a first violation, of two years' ineligibility to participate in rugby. However, in the case of certain "specified substances", of which salbutamol is one, if the player can establish that the use of the substance was not intended to enhance sport performance, the penalty for a first offence is, at a minimum, a warning and reprimand and no period of ineligibility from future events, and at a maximum, one year's ineligibility.

4. On 26 September 2004 following the semi-final of the Top 10 cup competition of the Confederation Africaine de Rugby ("CAR") between Namibia and Zimbabwe in Windhoek, the Player provided a urine sample as part of the doping control procedures for the match. After analysis, the sample was found to contain salbutamol in a concentration exceeding 100ng/ml.

5. The International Rugby Board (the "Board") wrote to the Player's national Union, the Namibian Rugby Union, on 15 October 2004 enquiring whether an Abbreviated TUE was on file permitting the use of salbutamol by the Player. On 27 October the acting CEO of Namibia Rugby responded, advising that there was no TUE on file for the Player.

6. A preliminary review of the case was then undertaken pursuant to Regulation 21.20.1., which concluded that:

- the "A" sample of the specimen he had provided had resulted in an Adverse Analytical Finding for the presence of salbutamol in a concentration exceeding 100ng/ml,
- there had been no valid TUE on file at the time he provided the sample; and
- as a result, an anti-doping rule violation may have been committed.

7. The Player was notified of the outcome of the preliminary review by a letter dated 9 November 2004. He was given the option of having the "B" sample of his specimen

analysed. He was also notified that pursuant to Regulation 21.19.1 he was provisionally suspended pending the outcome of the case.

8. The Player wrote to the Board on 10 November admitting his use of salbutamol as prescribed by Dr. B.P. Viljoen for asthma and allergic symptoms, and waiving his right to have the “B” sample tested. He requested an expedited hearing before a Board Judicial Committee to deal with his case.

9. A Judicial Committee was immediately appointed and the Player was notified by a letter date 10 November that a hearing would take place by telephone conference the next day. The Player was informed of his right to participate in the proceedings by being present on the conference call and/or making written submissions. The Player was invited to concur with the expedited process that the Board had proposed.

10. At the hearing on 11 November, the Player and Dr. Viljoen, who is both the Player’s personal physician and the Namibian Team Doctor, were present during the conference call, as were representatives of the Board.

11. The record before the Judicial committee included:

- a) Doping Control Form completed by the Player on 25 September 2004
- b) The correspondence between the Board and the Player
- c) The correspondence between the Board and Namibia Rugby
- d) The Analytical Report of the South African Doping Control Laboratory at the University of the Free State dated 30 September 2004
- e) Letters to whom it may concern from Dr. Viljoen dated 27 October 2004 and 11 November 2004
- f) Abbreviated TUE applications by the Player for salbutamol and celestone (a glucocorticosteroid) dated 27 October 2004
- g) Preliminary review undertaken by Dr. Ismail Jakoet dated 4 November 2004.

12. At the outset of the hearing it was agreed by the parties and duly recorded that an anti-doping violation had occurred and that the Player had no record of previous violations. The issues that therefore fell to be decided by the panel were:

- a) Whether the Player could establish that his use of salbutamol, a specified substance under Regulation 21.22.2, was not intended to enhance sport performance;
- b) Sanctions

13. During the course of the hearing the Player and Dr. Viljoen were questioned by counsel for the Board and by the panel. Submissions were also made by and on behalf of the Player and the Board. Following the conclusion of the hearing, the panel retired to consider its decision. The panel then issued the following statement:

Robert Dedig, a member of the Namibian national team, has been found to have committed an anti-doping rule violation by a judicial committee of the International Rugby Board consisting of Graeme Mew (Chair - Canada), Gregor Nicholson (Scotland) and Dr. Barry O'Driscoll (Ireland). Mr. Dedig tested positive for the presence of salbutamol in a bodily sample provided by him during in-competition testing on 25 September 2004. This was Mr. Dedig's first anti-doping rule violation.

The judicial committee was satisfied that the player's use of salbutamol was for therapeutic purposes and not intended to enhance sport performance, and having taken into account this and the other circumstances surrounding the violation, has determined that the appropriate sanction, in this case, is that the player be reprimanded and warned of the serious consequences in the event of any further anti-doping rule violation. The player's provisional suspension under regulation 21.19 is, as a result, terminated.

Full written reasons for the judicial committee's disposition of this matter will be provided separately.

These are those full written reasons.

14. It should be stated at the outset that the Judicial Committee regards the Player's conduct as a serious breach of the Regulations. It is a fundamental principle of anti-doping rules in rugby and other sports that participants in sport bear personal responsibility to:

- ensure that Prohibited Substances are not found in their bodies
- be acquainted with anti-doping regulations
- ensure that medical treatment which they receive does not violate anti-doping regulations

15. Ignorance of the Regulations or inadvertent failure to complete TUEs are not valid defences to allegations of anti-doping rule violations.

Intention To Enhance Sport Performance

16. As already noted, whereas ordinarily the period of ineligibility for a first offence involving the presence of a Prohibited Substance is two years, certain “specified substances”, including salbutamol, are governed by Regulation 21.22.2, which provides as follows:

Imposition of Ineligibility for Specified Substances

21.22.2 The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where a Player can establish that the Use of such a specified substance was not intended to enhance sport performance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year's Ineligibility.

Second violation: Two (2) years' Ineligibility.

Third violation: Lifetime Ineligibility.

However, the Player or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Regulation 21.22.4.

17. The Player claims a 10 year history of asthma and allergies, which have been treated with regular salbutamol inhalations. Dr. Viljoen has been the Player's personal doctor for the past three years and stated that he had assessed the Player's condition on a number

of occasions (although acknowledging that pulmonary function testing had not been undertaken due to a lack of locally available testing equipment). Dr. Viljoen's opinion is that without salbutamol treatments, the Player would become very ill. Both he and the Player stated that the Player's use of salbutamol was entirely for therapeutic purposes.

18. The panel was satisfied that the Player is a genuine asthmatic and that his use of salbutamol was entirely for therapeutic purposes. While the panel would ordinarily expect to see evidence of pulmonary function testing in such cases, we are nevertheless satisfied, in all of the circumstances, that the Player did not intend to enhance sport performance. Having so concluded, we then considered the appropriate sanction under Regulation 21.22.2.

Sanction

19. Both the Player and Dr. Viljoen professed ignorance that salbutamol was a prohibited substance or the conditions under which its use can be legitimised through an Abbreviated TUE application.

20. The Player had not previously been drug tested. He started playing for the national team earlier this year and was therefore not on the Namibian squad that went to the 2003 Rugby World Cup (where there was an extensive anti-doping programme). He had not completed any medical declarations (similar in effect to abbreviated TUEs) under the predecessors to the current Regulations. He uses a salbutamol puffer before every match. While vaguely aware of anti-doping issues, the Player claimed not to understand the principles of strict liability.

21. The Player has not missed any matches as a result of his interim suspension. He was selected to play in the CAR Final against Morocco on 13 November 2004. A continuation of his suspension would have prevented him from playing in this match.

22. Dr. Viljoen has only been the Namibian team doctor since August. While he knows about restrictions on the use of Prohibited Substances, he thought that the use of salbutamol by athletes was permitted. He was unaware, until this case, of the TUE programme. He indicated that information which was sent by the Board to the Unions

concerning the revised Regulation 21 and the TUE procedures may not have been passed on to the current CEO of Namibia Rugby.

23. Abbreviated TUEs have now been delivered by the Player and other members of the Namibean Union.

24. It was noted both during the preliminary review and by the panel, that Dr. Viljoen has also submitted an Abbreviated TUE in respect of the occasional use by the player of a glucocorticosteroid, even though the abbreviated TUE process is not applicable to the route of administration specified, namely intra-muscular (which would require the “full” TUE process established by the World Anti-Doping Agency and referred to in the Regulations to be followed). This situation needs to be rectified to avoid the commission of a further anti-doping violation.

25. Clearly not enough has been done by Namibia Rugby to inform itself, its officials, players and team doctors, about the Board’s anti-doping regulations. While the Player’s ignorance of his personal responsibilities is not an acceptable excuse, the Union and Dr. Viljoen’s acts and omissions also contributed to the Player’s violation. It is essential that immediate and effective action is taken by Namibia Rugby and its constituents to rectify this lamentable state of affairs

26. It is worth noting that all participants in the Game are subject to Anti-Doping rules: a “Person” for the purposes of Regulation 21 includes a “referee, touch judge, coach, selector, medical officer, physiotherapist or any other individual who is or has been at any time involved in the Game, or in the organisation, administration or promotion of the Game and also includes Player Support Personnel and any organisation or entity”. Rugby administrators and medical advisers are therefore also susceptible to sanctions if they commit anti-doping violations. Assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation is itself an anti-doping rule violation. It is therefore imperative that Unions ensure that anti-doping information is widely disseminated and understood at all levels of the Game and by persons in all capacities.

27. The Player co-operated with the Board throughout. He readily acknowledged the validity of the urine sample analysis. He has now sought to become compliant with his responsibilities by filing an Abbreviated TUE for salbutamol. His season is about to end, but for the CAR Final. In the circumstances, it is our view that, , the objectives of the Regulations and the Board's anti-doping programme do not require that the Player serve any additional period of suspension and that they will be adequately served by reprimanding the Player, but emphasising to him that he has been found guilty of an anti-doping violation which will be a matter of formal record, and warning him of the severe consequences for him of any further anti-doping rule violation.

28. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the Judicial Committee and to the Player by 17:00 Dublin time on 14 December 2004, with any written submissions by the Player in response to be provided to the Board (which shall be responsible for forwarding such submissions on to the Judicial Committee) by no later than 17:00 Dublin time on 20 December 2004.

8 December 2004

[signed]

Graeme Mew

Gregor Nicholson

Barry O'Driscoll