

BEFORE THE ANTI-DOPING APPEAL TRIBUNAL OF SOUTH AFRICA
(Instituted in terms of Section 17(2) (a) of Act No. 14 of 1997, as amended by Act No.
25 of 2006)

Case No.: AT 07/2012

In the matter between:-

THE INTERNATIONAL RUGBY BOARD (IRB) (APPELLANT)

versus

Mr JUAN-DRE DU TOIT (Athlete) (FIRST RESPONDENT)

and

SOUTH AFRICAN INSTITUTE FOR
DRUG-FREE SPORT (SAIDS) (SECOND REPENDENT)

DECISION

1. On the 11th August 2011 the Athlete was informed by SAIDS of an Adverse Analytical Finding in that an analysis of his urine sample provided during an out-of-competition test on 11th July 2011 at the Craven Week Rugby Tournament confirmed the presence of 19-Norandrosterone and 19-Noreticholanolone, metabolites and/or precursors of the Anabolic Agent, Nandrolene. At the same time the Athlete was informed that he was Provisionally Suspended with immediate effect.
2. The matter was referred to the SAIDS Disciplinary Committee and on the 31st January 2012 the Committee found the Athlete Guilty of a contravention of the SAIDS Anti-Doping Rules (Article 2.1 of the Code) and imposed a Sanction of 2 (Two) years ineligibility.
3. This appeal however, focuses solely on the fact that the Committee failed to give the Athlete credit for the period of the Provisional Suspension as required by Article 10.9.2.
4. The IRB represented by Mr Christo Ferreira submitted a comprehensive Appeal Brief in which they state that they have no qualm with the Finding nor the period of Ineligibility as determined by the Committee but submitted that

- the Committee failed to credit the Athlete with the period of his Provisional Suspension.
5. The Athlete was not present in person or by telephone and made no written submissions.
 6. SAIDS was represented by Adv. Nic Kock who submitted that the onus was on the Athlete to prove that he served his Provisional Suspension. No such proof was placed before the Commission and it was therefore correct for the Committee not to give the Athlete credit for the period of the Provisional Suspension.
 7. Adv. Kock informed us that he had done considerable research with the assistance of WADA but could not find any case law dealing with the burden of proof, relating to the question as to whether or not a Provisional Suspension was observed or not.
 8. He contended however that Article 3.1 of the Code was the authority for his submission that the burden of proof was on the Athlete to satisfy the Committee on a balance of probabilities that he observed the Provisional Suspension.
 9. He further submitted that a wide interpretation should be placed on the words "...Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances"
 10. Consequently, he submitted that the underlined quoted words were in fact a reference to the onus in matters like establishing whether or not a Provisional Suspension was observed by an athlete.
 11. This was however never or placed in issue by SAIDS at the hearing.
 12. Adv. Kock's submissions to the Committee that SAIDS might have been willing to accept that the period of ineligibility should commence on the date of his Provisional Suspension, namely, 11th August but because neither the Athlete nor his mother were willing to co-operate with SAIDS he asked that the period commence as from the date of the hearing appears to be an acceptance that the Athlete did honour his Provisional Suspension.
 13. In our view, neither SAIDS nor the Committee has the authority to make such a determination on the basis of the non-co-operation of the Athlete.
 14. It is also common cause that there is no evidence to the effect that the Athlete did not honour his Provisional Suspension. In fact the Committee under paragraph 6.4 of its Conclusion states that the sanction imposed replaces the Provisional Suspension of the 11th August 2011.

15. The issue of the Commencement of Ineligibility Period is dealt with in Article 10.9 of the Code and in respect of this matter, Article 10.9.2 which reads as follows:

"10.9.2 Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility to be served"

See also Article 10.9.5 which finds applicability.

16. We cannot find any Article nor could any be pointed out to us, which places the onus on the Athlete to show that he respected the Provisional Suspension. Article 3.1 deals only with an anti-doping rule violation and not a violation of a Provisional Suspension. SAID's submission regarding the applicability of Article 3.1 is therefore not accepted.

17. Article 10.10.3 (Violation of the Prohibition of Participating During Ineligibility), which in our view includes a violation of a Provisional Suspension is applicable and requires SAIDS to determine whether the Athlete has violated the prohibition. No such determination has been made by SAIDS.

18. Our ruling is therefore as follows:

18.1 The Appeal of the IRB is admissible.

18.2 An Athlete who has been served with a Provisional Suspension notice is presumed to have respected such suspension until the contrary is proved.

18.3 The decision of the SAIDS Anti-Doping Disciplinary Committee relating to the date of the commencement of the sanction (19th January 2012) is set aside and substituted with the 11th August 2011 as the commencement date of the two years ineligibility period.

18.4 No order is made as to costs.

19. This decision may be appealed to the Court of Arbitration for Sport (CAS).

DATED AT NEWLANDS ON THIS 26th DAY OF JULY 2012.



ALEX ABERCROMBIE

Dr Glen Hagemann

Prof. Yoga Coopoo