

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **KASUN DE SILVA**
(SRI LANKA) CONTRARY TO REGULATION 21

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

Judicial Committee:

Dr. Ismail Jakoet (South Africa)

Dr. Barry O'Driscoll (Ireland)

Graeme Mew (Canada – Chair)

Appearances and Attendances:

Tim Ricketts (Anti-Doping Manager, International Rugby Board)

For The Board:

Susan Ahern (Counsel)

For The Player:

Kasun De Silva (Player)

Savanta de Saram (Counsel for the Player)

Jivan Goonetilleke (Assistant to Mr. de Saram)

Dilroy Fernando (Executive Director, Sri Lanka Rugby Football Union)

Dr. Seevali Jayawickrema (Medical Representative, Sri Lanka Rugby Football Union)

DECISION OF BOARD JUDICIAL COMMITTEE

1. Kasun De Silva (the “Player”) is a 22 year old Sri Lankan rugby player. Having represented his country at the Under 19 level, he was, in late 2007, called up, for the first time, to represent his country at the senior level in the Asian Rugby Championships (“ASIAD”) which were held in Sri Lanka.
2. On 3 November 2007, Mr. De Silva provided a urine sample as part of the in-competition anti-doping programme conducted at ASIAD.

3. In accordance with the usual practice, the urine specimen provided by the Player was divided into "A" and "B" samples. The "A" sample was sent to the Doping Control Centre in Penang, Malaysia, and tested in accordance with the World Anti-Doping Agency's International Standard for Laboratories. The Player's "A" sample was found to contain Carboxy-THC (Cannabinoids) at a concentration greater than the set threshold of 15ng/ml. This is a Prohibited Substance listed under s. 8.Cannabinoids on the 2007 World Anti-Doping Agency Prohibited List.

4. A preliminary review of the case, undertaken by Gregor Nicholson (Scotland) on 16 November 2007, and conducted in accordance with IRB Regulation 21.20, confirmed that there was no apparent departure from the International Standards for Testing, no Therapeutic Use Exemptions ("TUE"s) on file for the use of the substance for the Player and that, accordingly, an anti-doping rule violation by the Player may have been committed in contravention of IRB Regulation 21.2.1. The Player's Union was then notified of the results of the "A" sample. The Union, in turn, advised the Player and provisionally suspended him from rugby effective 21 November 2007.

5. The Player waived his right to have his "B" sample analysed within the 21 day time frame set out in IRB Regulation 21.20.5 and, therefore, in accordance with the Regulations, he is deemed to have accepted the "A" sample results.

6. This Board Judicial Committee ("BJC") has been appointed to consider the Player's case. The Player indicated that he wished to have a hearing before the BJC and participate in that hearing by way of telephone conference.

7. The hearing took place by way of a telephone conference call on 10 January 2008. Written submissions were received prior to hearing from both the IRB and the Player. At the hearing, verbal evidence was received from the Player and additional information was provided to the BJC by the Player's lawyer and the representatives of the Union.

Anti-Doping Rule Violation Established

8. Regulation 21.2 of the Regulations Relating to the Game provides, inter alia:

The following constitute anti-doping rule violations:

21.2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's bodily Sample.

- (a) It is each Player's personal duty to ensure that no Prohibited Substance enters his body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Sample. 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 Regulation 21.2.1.

9. Regulation 21.6 addresses the principle of personal responsibility and provides;

21.6.1 It is each Player's responsibility to ensure that no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used. It is also the personal responsibility of each Player to ensure that he does not commit any other anti-doping rule violation.

21.6.2 It is the sole responsibility of each Player and Person to acquaint himself with all of the provisions of these Anti-Doping Regulation including the Guidelines. It is also each Player's sole responsibility to notify the Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to ensure that any medical treatment received by them does not violate any of the provisions of these Regulations.

10. Under Regulation 21.3.1, the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC.

11. The Player advised the BJC that he accepts the analytical findings of the laboratory. Accordingly, we conclude that the Board has established, in respect of the Player, an anti-doping rule violation, namely, the presence of Carboxy THC (a metabolite of cannabis), a Prohibited Substance, at a concentration higher than the threshold of 15ng/ml, in the Player's bodily Sample.

Circumstances of the Anti-Doping Rule Violation

12. The Player asserts that he is a non-smoker. He does not drink alcohol. He has never used recreational drugs. He advises that he comes from a very religious Christian background and is a devoted church goer. On 27 October 2007 the Player apparently had a serious lapse of judgment. His best friend from childhood was leaving for overseas employment and the Player attended his farewell party. In a letter written to the Union on 22 November 2007 the Player stated:

...all my friends were having a good time and during the night a few of my friends were smoking cigarettes and I too had a few puffs just for the fun of it. I now realise that some of the cigarettes may have been laced [*sic*] with cannabis.”

13. At the hearing, the Player claimed that he was totally unaware that the cigarette he smoked contained cannabis. He said that the cigarette took the form of a normal conventional cigarette. He claims he would not have smoked it if he had known that it contained cannabis.

14. The Player explained that he smoked the cigarette for the sake of friendship. He smoked the entire cigarette. Notwithstanding this, he did not feel any effect from having smoked the cigarette. The Player denies that he smoked the cigarette for any performance enhancing purpose.

15. The Player was questioned at some length by counsel for the Board as well as by members of the BJC. Throughout that questioning, he steadfastly maintained that he consumed an entire cigarette, that he felt no effects from having done so, and that he was unaware that the cigarette contained cannabis. He also said that he was not familiar with the smell of cannabis when smoked.

16. The Player acknowledged being aware of anti-doping regulations. However, he claims that he did not realise that cannabis was a Prohibited Substance. He claimed (and in this regard, his evidence was corroborated by the Union) that the focus of the anti-doping education he had received was on performance enhancing substances and the use of supplementation. He acknowledged, however, that he was aware of his responsibilities as an athlete and, in particular, that he was responsible for whatever ended up inside his body.

17. For the Union, Mr. Fernando indicated that, as a result of this incident, there had been an increased awareness of anti-doping issues in Sri Lankan rugby. Although anti-doping education information had, prior to the incident, been circulated to clubs and team doctors, additional educational information was now planned before the next season starts in May 2008. Dr. Jayawickrema, the Union’s medical advisor, said that the Union is working with the national anti-doping organisation in Sri Lanka. He acknowledged that the emphasis had been placed on performance enhancing drugs and

supplement use. The experience of Mr. De Silva underscored the importance of broadening the scope of the anti-doping education provided.

Sanction

18. Sanctions are provided for in Regulation 21.22. Ordinarily the period of Ineligibility for Prohibited Substances for a first time offence is two (2) years (Regulation 21.22.1).

19. However, certain “specified substances” including Cannabinoids, fall to be considered under Regulation 21.22.2 which provides:

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.

20. The burden is on the Player to establish to the satisfaction of the BJC, that his Use of Carboxy-THC (Cannabinoids) was not intended to enhance his sport performance, to avail of the reduced sanctions for a first offence in Regulation 21.22.2.

Discussion

21. The Player has already been profoundly affected by this incident. An allowance which he receives as an amateur rugby player has been cut. His employment, which is connected to his status as a rugby player, may be in jeopardy. In Sri Lanka, we were advised, there is a considerable social stigma attached to recreational drug use, even in social settings.

22. On behalf of the Player it was submitted that he had already served enough time, taking into account all of the circumstances. The BJC was directed to its decision in the case of *Davy Larguet* in October 2004, where a two (2) month sanction was imposed on a player who had smoked a joint at the wedding of a friend, which then led to a positive test.

23. On behalf of the Board, it was submitted that there was an opportunity presented by this case for lesson to be learned. Although the Player is relatively young, it was submitted he is not so young to be unaware of the significance of doping in sport.

24. The BJC, while not unsympathetic to the Player's predicament, has concluded that a three (3) month sanction would be appropriate in this case. The BJC does not accept the Player's evidence that he consumed, for the first time in his life, a whole cigarette, yet was completely unaffected by it. The BJC also wishes to emphasise the message which other judicial committees have delivered in the past in connection with recreational use of cannabinoids by rugby players that even, as here, where there is no intent to enhance sport performance, rugby players who commit anti-doping rule violations as a result of the use of cannabinoids can nevertheless expect, in a vast majority of cases, to receive a meaningful period of suspension. Although it is the "off season" in domestic rugby in Sri Lanka at the present time, we were advised that, but for his suspension, the Player would be training and preparing for international competition, including the Hong Kong Sevens. We are, accordingly, satisfied that a three (3) month suspension will be sufficiently meaningful in terms of its impact on the Player's participation in rugby activities.

Decision

25. On 3 November 2007, the Player committed an anti-doping rule violation, namely, the presence in a bodily Sample provided by the Player of Carboxy-THC (a metabolite of cannabis) at a concentration higher than 15ng/ml. Carboxy-THC is a Prohibited Substance under both Regulation 21 and the *World Anti-Doping Code*.

26. The sanction imposed for this anti-doping rule violation is a period of Ineligibility of three (3) months, commencing on 21 November 2007 (the date upon which the Player was provisionally suspended under Regulation 21.19) and concluding (but inclusive of) 20 February 2008.

27. The Player's attention is drawn to Regulation 21.22.7, which provides:

No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match, Series of Matches and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by the Board or any Member Union. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB. In addition, for any anti-doping rule violation not involving specific substances described in Regulation 21.22.2, some or all sport related financial support or other sport-related benefits received by such Player or Person will be withheld by the Board and its Member Unions.

Costs

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 BJC via Mr. Ricketts by 17:00 Dublin time on 8 February 2008 with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 15 February 2008.

Review

29. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.24.1) and an appeal to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.24.2 which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.

4 February 2008

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a stylized flourish at the end.

Graeme Mew
Chairman