

## **INTERNATIONAL RUGBY BOARD**

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **NICOLAS VENEGAS (CHILE)** CONTRARY TO REGULATION 21

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

Judicial Committee:

**Dr. David Gerrard** (New Zealand)

**Dr. Ismail Jakoet** (South Africa)

**Graeme Mew** (Canada – Chair)

For The Board:

Susan Ahern (Counsel)

The Player:

Nicolas Venegas

Also Present:

Gonzal Abrigo (CEO, Federación de Rugby de Chile)

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

### **DECISION OF BOARD JUDICIAL COMMITTEE**

1. Nicolas Venegas (the “Player”) is a 23 year rugby player from Chile. On 13 November 2008 he went to a farewell gathering for a friend and smoked marijuana. He used marijuana again on 15 November. On 22 November he represented Chile in a South America Championship match against Uruguay. He was selected for an in-competition doping test which resulted in a positive finding for Cannabis metabolite 11-nor-9-carboxy- $\Delta^9$ -tetrahydrocannabinol (Carboxy-THC) at a concentration of 64ng/ml (+/- 5 ng/ml). Carboxy-THC is listed under S8 Cannabinoids on the WADA List of Prohibited Substances 2008. The presence of Carboxy-THC in a person’s bodily sample at a concentration which

is greater than 15ng/ml constitutes an anti-doping rule violation under IRB Regulation 21 and under the *World Anti-Doping Code* (2003).

2. Following a preliminary review of the case in accordance with IRB Regulation 21.20, the Player was notified that he may have committed an anti-doping rule violation via the Federación de Rugby de Chile (the “Union”) on 22 December 2008 and was provisionally suspended on 4 January 2009.

3. The Player, by email dated 5 January 2009, waived his right to have the “B” sample of his urine tested and stated:

“...about the fact that my doping test had a positive result. I don’t need the second sample because I know I had consumed marijuana days before the competition...”

4. 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.

5. The hearing took place by way of a telephone conference call on 16 February 2009. Written submissions were received prior to hearing from the IRB. At the hearing, verbal evidence was received from the Player and additional information was provided to the BJC by the Union’s representative.

### **Anti-Doping Rule Violation Established**

6. 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.

7. 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.

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

9. The Player advised the BJC that he accepts the analytical findings of the laboratory. Accordingly, we conclude that the Board has established the anti-doping rule violation with which the Player is charged.

### **Circumstances of the Anti-Doping Rule Violation**

10. The Player initially told the BJC that he was not a habitual user of marijuana. He would use it a maximum of twice a year. This evidence was then revised somewhat when he claimed that he had only ever used marijuana twice, those occasions being on 13 and 15 November 2008. As noted already, the first of these occasions was during a farewell gathering for a friend. He claims that the

marijuana had no effect on him the first time he used it, which is why he tried it again two days later.

11. The domestic rugby season in Chile had just ended and although he had played for Chile against Argentina on 8 November, the Player said that he had not initially been selected for the Uruguay match so that when he used marijuana he had no concern that he might be playing rugby again a few days later.

12. The Player has been playing rugby for six years. He is an art student. He has received anti-doping education through the Union and his club and has been drug tested previously. He knew it was contrary to anti-doping rules to use marijuana. He says he would not have done so if he had realised he would be playing in the Uruguay v Chile match.

13. The Player has a good disciplinary record and has no prior anti-doping rule violations.

### **Sanction**

14. 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).

15. However, certain “specified substances” including Cannabinoids, can 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.

16. 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**

17. The Player expressed remorse for his conduct and acknowledged that he had ignored his responsibilities as a rugby player. He describes rugby as "my life" and is concerned about his inability, through suspension, to participate in pre-season training.

18. The Player is correct. He did ignore his responsibilities. Other than his ready acknowledgment that he committed an anti-doping rule violation, there are no mitigating circumstances in this case. One week before a match which there was at least a chance he would play in, he used marijuana on two occasions. He knew that doing so was wrong, he understood the dangers of using drugs, he had been drug tested before and knew about anti-doping rules generally. We felt that he may not have been wholly open with us regarding his previous marijuana use.

19. While we accept that the Player consumed marijuana for recreational purposes and, thus, that the Player has met the burden of establishing that his Use of Carboxy-THC was not intended to enhance his sport performance, the BJC nevertheless regards the Player's conduct as a serious violation.

20. We were referred to previous decisions of Board Judicial Committees in cannabis cases where sanctions have included periods of suspension ranging from two to six months.

21. In our view because of the limited mitigating factors, the appropriate sanction in this case is a period of ineligibility of four months.

### **Decision**

22. On 22 November 2008, 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*.

23. The sanction imposed for this anti-doping rule violation is a period of Ineligibility of four (4) months, commencing on 4 January 2009 (the date upon which the Player was provisionally suspended under Regulation 21.19) and concluding (but inclusive of) 3 May 2009.

24. 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**

25. 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 23 March 2009 with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 30 March 2009.

## **Review**

26. 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.

17 March 2009

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

Graeme Mew, Chairman