

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations Relating to
the Game

AND

IN THE MATTER of an alleged doping offence by
JOVAN PUPUKE contrary to
IRB Regulation 21

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

Judicial Committee

Tim Gresson (New Zealand) Chairman
Gregor Nicholson (Scotland)
Dr Ismail Jakoet (South Africa)

Appearances and Attendances

For the Board

Darren Bailey (Senior Counsel for the IRB)
Tim Ricketts (Anti-Doping Manager)

For the Cook Islands Rugby Union

Ben Koteka (CEO)

The Player

Jovan Pupuke

Hearing

Thursday 3 July 2008 by way of telephone conference

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. Jovan Pupuke ("the player") is a rugby player who plays most of his sport in New Zealand where he has lived all his life. Because of his ancestry, he was selected to represent the Cook Islands at the IRB Junior World Trophy Tournament held in Santiago, Chile.
2. On 19 April 2008, following the Cook Islands/Romania match, he provided an in-competition urine sample.
3. Subsequently the player's "A" sample provided in the course of the test was found to have contained the prohibited substance 11-nor-delta 9-

tetrahydrocannabinol-9-carboxylic acid (a metabolite of cannabis) at a concentration level of 79ng/ml, which is a higher level than that prescribed by WADA (15ng/ml). Carboxy-THC is a Prohibited Substance listed under s.8 Cannabinoids on the WADA Prohibited List 2008.

4. A preliminary review of the case undertaken by Dr Barry O'Driscoll (Ireland) on 1 May 2008 in accordance with IRB Regulation 21.20 confirmed that there was no apparent departure from the International Standard for Testing, there were no TUE's (Therapeutic Use Exemptions) on file for use of the substance for the player and therefore an anti-doping rule violation by the player may have been committed in contravention of IRB Regulation 21.2.1.
5. The player was advised by letter dated 1 May 2008 of the results of the "A" sample and advised that in accordance with IRB Regulation 21.19 he was provisionally suspended. The provisional suspension became effective on 19 May 2008. By letter dated 19 May 2008 the player accepted the "A" sample results.
6. This Board Judicial Committee has been appointed to consider the player's case. The player, through the Cook Islands Rugby Union, advised that he could participate in a hearing before the BJC by way of telephone conference.
7. The hearing took place by way of a telephone conference call on 3 July 2008. Written submissions were received prior to the hearing from the IRB. Prior to the hearing the player sent an email dated 8 June 2008 in which he stated he took full responsibility for his actions and apologised to all concerned. At the hearing, oral evidence was received from the player and further submissions were made on behalf of the IRB and the player.
8. The Board Anti-Doping Regulations (which adopt the mandatory provisions of the WADA Code) set out the framework under which all players can be subjected to doping control. The Regulations (and the WADA Code) are based on the principles of personal responsibility and strict liability for the presence of prohibited substances.
9. Pursuant to Regulation 21.2.1 the *"presence of a Prohibited Substance or its Metabolites or Markers in a Player's bodily sample"* constitutes an anti-doping

rule violation. The violation occurs whether or not the player intentionally or unintentionally used the Prohibited Substance or was negligent or otherwise at fault.

10. Regulation 21.6 addresses the principle of personal responsibility. It 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 Regulations including the Guidelines. It is also each Player's sole responsibility to notify 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."

11. The Board has the burden of establishing that an anti-doping rule violation has occurred to the comfortable satisfaction of the hearing body (Regulation 21.3.1). In this regard the Player, prior to and at the hearing, acknowledged the use of the prohibited substance and accepted the analytical findings. Accordingly, we are satisfied that the Player has committed an anti-doping rule violation due to the presence of a prohibited substance namely cannabinoids in the Player's urine sample.

Sanctions – Regulatory Framework

12. Although the period of ineligibility for a first offence involving the presence of a prohibited substance is usually two years, certain "specified substances", including cannabinoids, are governed by Regulation 21.22.2, which provides as follows:

Imposition of Ineligibility for Specified Substances

21.22.2.1 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 is 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.

13. Regulations 21.3.1 and 21.22.2 requires the BJC to consider whether the player has established on a balance of probabilities that his use of cannabinoids was not intended to enhance sport performance and, if so, to decide the sanction that should be imposed for a first violation by the Player.

The Player's Account

14. The player informed the BJC that he is aged 19, lives in New Zealand and plays under 21 rugby in the Wellington competition. In January 2008, he was advised he had been selected as a standby player for the Cook Islands team. However, in mid-March, his position in the team was confirmed. The Junior World Championship was the first international tournament he had attended.
15. Prior to the tournament he had not attended an IRB or local union anti-doping education programme but candidly stated that he had a general understanding of rugby anti-doping procedures and specifically was aware the consumption of cannabis was not permitted.
16. At the commencement of the tournament the player acknowledged he had signed a consent and agreement form, which clearly stipulated his obligations under the anti-doping programme.
17. In relation to his consumption of cannabis, he stated that he had first consumed cannabis approximately twelve months prior to the tournament. Further, after being initially confused as to dates, he stated that over the weekend of 29/30 March 2008 during a prolonged period extending over several hours, he consumed cannabis (together with alcohol) by participating in the sharing of cannabis joints with three other persons. He described how he consumed "... a fair amount". He became "quite stoned". He "felt ill" and the effects did not disappear until the following day. Approximately five days later he joined his team in Auckland for a camp prior to their departure for the tournament in Chile. Following the suicide of a friend he consumed cannabis again when he returned to New Zealand after the tournament. He denied consuming cannabis during either the training camp or the tournament.

18. In response to questioning, the player discounted any suggestion that he smoked cannabis to enhance his performance. He did so while socially interacting with his three friends at a party during the evening of 29/30 March 2008.
19. Mr Koteka apologised for the player's behaviour and stated that his union strongly supported the IRB's anti-doping measures.
20. Senior Counsel for the IRB, in referring to the statutory framework of Regulation 21, submitted that in the event of the player proving, on a balance of probabilities that the cannabis use was not to enhance his performance playing rugby, then the BJC was empowered to exercise its discretion in determining the appropriate sanction. Counsel referred to troubling features of the player's conduct, in particular the consumption of cannabis (together with alcohol) over a prolonged period during the course of an evening, resulting in the player being significantly physically affected by the substance. Counsel referred to the player's urine sample (taken on 19 April 2008) concentration level of 79ng/ml was well above the prescribed maximum of 15ng/ml. Further, the consumption had occurred against the background of the player having been finally selected for the Cook Islands team and was aware using cannabis was prohibited.
21. The IRB acknowledged the player had admitted the offence at the earliest opportunity and on 8 June 2008 showed genuine contrition in an email to the IRB. It read:
- "I, Jovan Pupuke take full responsibility for my actions and apologise to all parties concerned (my parents, Wellington Cook Islands, Cook Islands Rugby Union, my team mates and the IRB tournament organisers) that have assisted me in achieving national representative honours."*

Discussion

22. For the most part the BJC accepted the player's account as being truthful and reliable. However, given the concentration level of cannabis (79ng/ml) found in the urine sample provided on 19 April 2008, the BJC considered it may not have been fully informed as to whether additional cannabis was consumed during the three-week period during which the team had assembled and subsequently

participated in the tournament. Whilst the BJC accepts that cannabis can remain within the bodily system sometimes for periods of several weeks, it has reservations whether that would necessarily occur at the relatively high level of 79ng/ml. In this case that was after a period of three weeks.

23. However, although the BJC has reservations about the player's account, we are satisfied that given the well-documented effects of cannabis consumption (including impaired physical reactions and cognitive function) at the time it was used there was no intention on the player's part to enhance performance. Irresponsibly it was consumed for a recreational purpose.

Sanction

24. Although (as has been stated in previous decisions of the Board Judicial Committee) the recreational use of cannabis is not behaviour which is unknown in the rugby community, the Regulations Relating to the Game make it clear it is prohibited. Accordingly the BJC has made it clear in several cases, it is not prepared to look on players' violations as minor matters deserving of no more than slaps on the wrist in the form of reprimands.

25. During the hearing, passing reference was made by counsel for the IRB to previous BJC decisions. They include *Larguet*¹, *Younes Ho*², *Vadym*³, *Garbuzov and Rechnev*⁴, *Nagelevuki*⁵ and *Zhamutashvili and Todua*⁶. Of course, each of these cases has its own features. In *Ho*, the player admitted that he had smoked cannabis at a friend's wedding ten days prior to his departure for an IRB Sevens qualifying tournament. The player admitted that at the time of the celebrations he had forgotten about his responsibilities and the committee was satisfied that the player regretted his conduct. The concentration level was not recorded. The BJC suspended the player from participation in rugby for a period of three months stating:

"Notwithstanding the contrition shown by the player and the supportive participation in the hearing by his club, the fact remains that the Regulations

¹ IRB v Davy Larguet, 8 October 2004

² IRB v Younes Ho, 22 December 2004

³ IRB v Kolyshkin Vadym, 25 July 2005

⁴ IRB v Andrey Garbuzov and Yaroslav Rechnev, 28 September 2006

⁵ IRB v Sireli Nagelevuki, 16 March 2007

⁶ IRB v Davit Zhamutashvili and Davit Alexander Todua, 27 September 2007

Relating to the Game make it quite clear that cannabinoids are prohibited and that their presence in the event of doping controls will result in an Adverse Analytical Finding, which, in turn, will lead to sanctions. Accordingly the Judicial Committee is not prepared, in the absence of any truly mitigating circumstances, to look on the player's violation as a trivial matter. Indeed, the player's position as a role model for younger people in his community underscores the magnitude of the player's failure to meet his responsibilities when committing this infraction." (Paragraph 14)

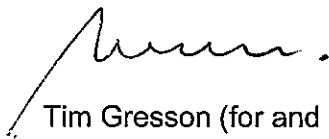
26. In *Vadym*, the player's account to the effect that he had made a "terrible mistake" purchasing painkillers in Prague was rejected by the BJC. The level was not recorded. There were no mitigating circumstances and the player was suspended for six months.
27. The BJC considers that there is a parallel between this case and *Ho's* case. As an underage rugby player chosen to represent his national team at the Junior World Trophy, the player had a responsibility not only to himself but as he has properly acknowledged to others, not to use prohibited substances at any stage, and in particular only days before the team assembled in Auckland prior to its departure for the tournament. As the BJC has emphasised in previous cases, it deprecates the use of cannabis by players prior to or around the time of IRB tournaments and considers there is a need for a condign sanction to demonstrate that cannabis use during these periods is unacceptable.
28. In determining the appropriate starting point for the sanction, the BJC accepts all the aggravating factors that were referred to by counsel for the IRB. In addition, given the player's concentration level in his urine sample, the BJC has concern as to whether the player has been completely candid with regard to the extent of his cannabis use between 29 March 2008 and 19 April 2008. Further, the BJC has taken into account its previous decisions in relation to cannabis violations and the need for consistency in the sanctioning process. Taking all these matters into account, the Board considers that an appropriate starting point is a period of suspension of four months reduced to three months on account of the player's early acknowledgment of guilt, his expressed regret and remorse that his conduct has tarnished the image of rugby in the Cook Islands.

29. Accordingly, the BJC directs that the period of suspension should commence from 19 May 2008 (being the date of the provisional suspension) until 18 August 2008 (both dates inclusive).

30. This decision is subject to review by a Post Hearing Review Body (Regulation 21.25) and an appeal to the Court of Arbitration for Sport, binding on both the player and the union. For the sake of clarity, it is intended that the sanctions determined by the BJC in this matter shall replace any domestic sanctions imposed on the player by his union.

31. If the Board wishes the BJC to exercise its discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC and to the player by 17.00 hours Dublin time on 1 August 2008, 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 BJC) by no later than 17.00 hours Dublin time on 14 August 2008.

15 July 2008



Tim Gresson (for and on behalf of Board Judicial Committee)

Ismail Jakoet

Gregor Nicholson