

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **ANDRE DE KLERK (NAMIBIA)** CONTRARY TO REGULATION 21

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

Judicial Committee:

Gary Rice (Ireland)

Gregor Nicholson (Scotland)

Graeme Mew (Canada – Chair)

Appearances and Attendances:

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

For the International Rugby Board:

Ben Rutherford (Counsel)

The Player

Andre De Klerk

For Namibia Rugby Union

Sakkie Mouton (Chief Executive Officer)

Also Present

Yolanda Enslin (Player's Mother)

Heard: 23 February 2010 By way of telephone conference

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. This case involves an anti-doping rule violation which is as straightforward as it is disturbing.
2. At the age of 19 Andre De Klerk (the "Player") has already accomplished a great deal as a rugby player. He has represented his country at the IRB Junior World Rugby Trophy Tournament in Kenya in 2009 and later the same year was selected to make his test debut on the senior men's team in a 2011 Rugby World

Cup qualifying match. He had also agreed terms with the Natal Sharks Academy and was well on track to achieve his ambition of becoming a professional rugby player.

3. The terms that the Player agreed with the Sharks included a requirement that he meet certain strength and fitness standards, including bench pressing 1.3 times his own body weight. The Player weighs 110 kilograms. He was scheduled to undergo fitness testing with the Sharks on 2 November 2009. As that date approached, the Player became concerned that he might not reach the required standard. He therefore decided that he needed to do something to boost his strength.

4. After speaking with another Namibian player, the Player was put in contact with someone who sold him 100 5mg tablets of a substance called “Dianabol”. He paid N\$500 for the pills, which represented a 4 week supply. It was during his second week of using these pills that he was requested to participate in an Out-of-Competition test which was administered by the South African Institute of Drug Free Sport as part of the IRB’s Out-of-Competition testing programme.

5. The urine sample provided by the Player was analysed by the South African doping control laboratory at the University of the Free State in Bloemfontein. The results identified the presence of Epimetendionol and 17-Epimethandienone, which are metabolites of Methandienone. Methandienone is an anabolic androgenic steroid classified under S1.Anabolic Agents in the World Anti-Doping Agency (“WADA”) 2009 List of Prohibited Substances and Methods.

6. In accordance with the usual practice, when the Player provided his urine sample, it was divided into “A” and “B” samples. A preliminary review of the case, including the results of analysis of the A sample, was undertaken in accordance with IRB Regulation 21.20.1, which determined that an anti-doping rule violation may have been committed in contravention of IRB Regulation 21.2.1.

7. The IRB notified the Player of this Adverse Analytical Finding by letter dated 24 November 2009. The Namibian Rugby Union (“NRU”) subsequently provided the IRB with copies of correspondence from the NRU to the Player dated 27 November 2009 advising the Player of the Adverse Analytical Finding and, further, advising the Player that he was provisionally suspended.

8. The Player’s mother, Yolanda Enslin, submitted an e-mail to the IRB dated 2 December 2009 in which it was stated, *inter alia*, that:

“...Andre ACCEPTED the finding of the “A” sample.”

9. The NRU also sent an e-mail to the IRB on 2 December 2009 in which it advised that the Player accepted the outcome of the Adverse Analytical Finding, and requested a hearing date.

10. This Board Judicial Committee (“BJC”) was then appointed to consider the Player’s case.

11. The hearing took place by way of telephone conference on 23 February 2010.

Anti-Doping Rule Violation Established

12. At the outset of the hearing, the Player confirmed that he acknowledged the presence of Epimetendiol and 17-Epimethandienone in his urine sample and, hence, that he had used a Prohibited Substance. Accordingly, we are satisfied that the Player has committed an Anti-Doping Rule Violation, contrary to Regulation 21.2.1.

Evidence

13. The Player gave a starkly frank account of what had happened. He obtained Dianabol pills, as described above, in order to boost his strength. He did this to secure his own future in rugby.

14. The Player acknowledged that he had received anti-doping education when he participated in the IRB Junior World Trophy. He also acknowledged that he had signed a player consent form dated 14 June 2009 in relation to the Terms of Participation for the Rugby World Cup Qualifiers 2011. He also knew that, as a member of the senior national representative 15s squad for the Namibia Rugby Union, he had been elevated into the IRB Testing Pool in the third quarter of 2009.

15. When he decided that he needed to do something to boost his strength for the upcoming fitness and strength training test that had been scheduled for 2 November, the Player claims that he acted on his own initiative in seeking out chemical assistance. He obtained information concerning a possible source of steroids from another Namibian rugby player. The Player indicated that he did not wish to identify that player. He was then evidently put in touch with someone who sold him the Dianabol tablets previously described.

16. The Player admits that he knew that what he was doing was cheating. He admits that he knew he might be tested out of competition. He admits that he took a calculated risk. He says that in doing so, he acted only in his own interests and without any wish to harm the sport of rugby.

17. The Player said that he was aware that the minimum sanction for his Anti-Doping Rule Violation is a period of two years’ Ineligibility. He said that he was willing to take his punishment “as a man”. He acknowledged that there were no exceptional circumstances in his case that would warrant a reduction of the minimum penalty.

Sanctions

18. Under 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.

19. The period of Ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers) is 2 years for a first violation. This period of Ineligibility can be reduced in exceptional circumstances as set out in Regulation 21.22.4 (No Fault or Negligence), 21.22.5 (No Significant Fault or Negligence) or 21.22.6 (Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations).

20. The Player acknowledged that he was solely at fault for the Anti-Doping Rule Violation that he had committed. Although informed of the opportunity to benefit from a reduction of the period of Ineligibility if he provided substantial assistance in discovering or establishing Anti-Doping Rule Violations by another person¹, the Player has, to date, declined the opportunity to provide such assistance.

21. It should be noted that under Regulation 21.22.9, it is open to a BJC to find that there are aggravating circumstances present which justify the imposition of a period of Ineligibility greater than the standard sanction. If a BJC finds that there are aggravated circumstances present which justify the imposition of a period of Ineligibility greater than the standard sanction, the period of Ineligibility otherwise applicable shall be increased up to a maximum of 4 years unless the Player can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the Anti-Doping Rule Violation.

22. A Player can avoid the application of an increased penalty for aggravating circumstances by admitting the Anti-Doping Rule Violation as asserted promptly after being confronted with the Anti-Doping Rule Violation.

Discussion

23. The Player committed a brazen breach of the IRB’s Anti-Doping Rules. He knowingly cheated and gambled on not getting caught.

24. No doubt out of some sense of *noblesse oblige*, the Player does not wish to identify the individual who told him where he could obtain steroids. He has thereby decided to forego the possibility of a suspension of part of the sanction under Regulation 21.22.6

¹ Regulation 21.22.6 Provides that the Board Judicial Committee may, prior to a final appellate decision under Regulation 21.27 or the expiration of the time to appeal, suspend a part of the period of Ineligibility imposed on an individual case where the Player has provided Substantial Assistance to the Board Judicial Committee, criminal authority or professional disciplinary body which results in the Board discovering or establishing an Anti-Doping Rule Violation by another Person or which results in a criminal or disciplinary body discovering or establishing a criminal offence or breach of professional rules by another Person.

25.Despite the Player's avowed desire not to stain the reputation of his sport, by the facts and circumstances recited by the Player he has done just that. Faced with the personal challenge of meeting the fitness and strength requirements of the Academy at the Natal Sharks, the Player opted to cheat. His ability to do so was assisted by another player – it is not known at what level of the game – who told him where he could obtain steroids.

26.During the course of his evidence, the Player acknowledged that he was aware of the case of [*IRB v Roger Thompson*](#), which involved a Namibian rugby player who was suspended for two years in 2007 as a result of testing positive for one of the same substances, Epimetendiol, which was recorded in the Player's own Adverse Analytical Finding. The Player's Anti-Doping Rule Violation was committed despite him knowing about the *Thompson* case and despite the anti-doping education he had undertaken.

27.Although the BJC heard from Mr. Mouton of the NRU that the Namibia National Olympic Committee has recently established a Namibia National Anti-Doping Organisation, which is encouraging, it is clear that doping remains a serious issue in Namibian rugby.

28.Were it not for the fact that the Player acknowledged, at a very early stage of the process, that he did not contest the findings of the A sample testing, we would have been sympathetic to submissions that an increased period of Ineligibility should have been imposed on him due to aggravating circumstances.

29.As it is the Player will not be able to play any further part in Namibia's 2011 Rugby World Cup campaign and, indeed, will be unable to participate in any aspect of the sport of rugby², or other sports which recognise and enforce the sanction imposed by the IRB.

30.We therefore conclude that the minimum penalty of two years' Ineligibility should apply.

² The Player's attention is drawn to Regulation 21.22.13 (Status During Ineligibility) and, in particular, 21.22.13A(i) which provides:

No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board or any Member Union or Tournament Organiser. 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.

Decision

31. On 27 October 2009, the Player committed an Anti-Doping Rule Violation by reason of the presence in the Player's Sample of Epimetendiol and 17-Epimethandienone, metabolites of Methandienone, which is an anabolic androgenic steroid under S.1 of the WADA prohibited list 2009.

32. The sanction imposed for this Anti-Doping Rule Violation is a period of Ineligibility of two years.

33. The Player was provisionally suspended on 27 November 2009. The period of Ineligibility will, accordingly, expire on 27 November 2011.

Costs

34. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be submitted to the BJC via Mr. Ricketts by 17:00 Dublin time on Monday 22 March 2010 with any responding written submissions from the Player to be provided by 17:00 Dublin time on Monday 29 March 2010.

Appeal Rights

35. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.24) and if applicable, an appeal to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is 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.

36. It remains open for the Player to provide "Substantial Assistance" pursuant to Regulation 21.22.6 up until the final appellate decision in his case or the expiration of the time to appeal this decision.

15 March 2010

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

Graeme Mew, Chairman