

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF A DOPING OFFENCE BY MYKOLA DEMEN

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT
CLAUSE 21, TOURNAMENT ANTI-DOPING PROGRAMME, RUGBY WORLD
CUP 2011 QUALIFYING TERMS OF PARTICIPATION

Judicial Committee

Christopher Quinlan (RFU, Chairman)

Dr. Barry O'Driscoll (IRFU)

Dr. Roger Evans (WRU)

DECISION OF THE BOARD JUDICIAL COMMITTEE

Introduction

1. Pursuant to the (updated) Clause 21, Tournament Anti-Doping Programme (Rugby World Cup 2011 Qualifying Terms of Participation, Section 7), we (Christopher Quinlan, Dr. Barry O'Driscoll and Dr Roger Evans) comprise the Board Judicial Committee appointed to consider this alleged anti-doping rule violation.
2. Mykola Demen ('the Player') was tested as part of the Rugby World Cup 2011 Qualifying Terms of Participation, Tournament Anti-Doping Programme ('the Programme'). The urine sample was taken from him on 22 May 2010 by authorised doping control officers in accordance with the Programme, Clause 8. At the material time the Player was playing for the Ukraine National side in a Rugby World Cup 2011 ('RWC2011') qualifying match against Romania in

Ukraine. The sample was split into two: A and B samples. The Player tested positive (A Sample 2534918) for stanozolol.

3. The detection of stanozolol is consistent with the administration of the prohibited substance stanozolol. Stanozolol is a Prohibited Substance listed as an Anabolic Androgenic Steroid S1 in the World Anti-Doping Agency 2010 List of Prohibited Substances and Methods and in Schedule 2 to the Programme.
4. A preliminary review of the case was undertaken by Gregor Nicholson (Scotland) on 15 June 2010 (*per* Clause 20, the Programme). He determined that an anti-doping rule violation may have been committed contrary to Clause 2.1.
5. The IRB notified the Player and his Union, National Rugby Federation of Ukraine ('NRFU'), of the adverse analytical finding by letter dated 23 June 2010. That letter also informed the Player of, *inter alia* the following
 - a. the relevant sanction regime;
 - b. his right to have the B sample tested;
 - c. his right to request a hearing before the Board Judicial Committee; and
 - d. in consequence of the said adverse analytical finding that he was provisionally suspended from playing or training for his team or Union or participating in any other team or any organised rugby activity until resolution of the matter.
6. In an email sent from the NRFU to Mr Tim Ricketts (IRB Anti-Doping Manager) on 8 July 2010 at 10.41, the Player apparently stated:
"I am Nicolaj Demen, I confirm that I received all documents and I was acquainted with all translated documents".

Within the body of the same email is the following:

"We accept the finding of the A sample and accept the prescribed sanctions."

7. On 11 July and by email the IRB Anti-Doping Manager sought clarification as to Player's position (rather than that of his Union). By a further email from the NRFU on 28 July 2010 at 08.36, the IRB was informed:

"I confirm that NRFU has discussed the position with the player N. Demen he was present personally in federation. He understands this situation and he accepts all sanctions, he doesn't want to do test B...In 2 or 3 hours I will send you translated letter from player N. Demen."

8. We have read and considered three letters from the Player. Two are dated 27 July 2010, one copy in Russian and the other an English translation of that letter. We have also had placed before us and considered a letter (in English) from the Player dated 31 August 2010. In each of the translated letters he refers to himself as "Mykola Demen¹" and we are told that is his name.

9. In his letter 27 July 2010 the Player said that he had participated in track and field athletics for ten years. He stated:

"...Four years ago at the same time I started to play rugby. Having training or the competition on track and field took myself the pills, I did it not deliberately. I did not know about the influence of these pills on my organism, I thought that I take additives with vitamins."

10. We treated that as an admission by the Player that he had taken pills. We also accept that the said pills were the source of the stanozolol. He did so "not deliberately"; we understand him to mean that he did not know that the pills contained stanozolol or any prohibited substance.

11. In his letter dated 31 August 2010 the Player "confirmed":

¹ There are other variations within our documentation

"I have admitted to an anti-doping rule violation (namely IRB Regulation 21.2.1 in that a Prohibited Substance, Stanozolol, was found to be present in my sample) as set out in my letter to the president of the [UKRF] dated 27 July 2010".

12. In that same letter the Player waived his right to a hearing before us (*per* Clause 14.3 of the Programme). We did not consider one necessary.
13. By the email 8 July 2010 and/or the email 28 July 2010 and/or his letter 27 July 2010 and/or the letter dated 31 August 2010 the Player accepted the A Sample results. We treat such as an admission of an anti-doping violation. He waived his right to have the B sample tested (*per* Clause 20.6 *et seq* of the Programme).

Anti-Doping Rule Violation

14. Section 7 of the RWC2011 Qualifying Terms of Participation contains the Tournament Anti-Doping Programme. The Programme was updated in January 2010 and the participating Unions were notified of that by a Notice promulgated on 29 January 2010. Section 7.1.1 of the of the RWC2011 Qualifying Terms of Participation states:
"Each Player nominated in the Participating Union's squad scheduled to participate in any of the RWC2011 Qualification Matches in 2010 are required to read and sign the Formal Acceptance by Team Members Form".
15. The Player signed the Formal Acceptance by Team Members Form dated 22 June 2010, after the date upon which the match was played. We are told that he appears not to have signed such a form before the match in question or at all before 22 June. If that is correct, it appears to us that he was not eligible to play in the said match. However, we are satisfied he is bound by the Programme.

16. First, on 30 October 2008 the Player's Union NRFU executed a Formal Acceptance in accordance with Sections 11 and 12 of RWC2011 Qualifying Terms of Participation. Clause 2.1 of Section 11 of RWC2011 Qualifying Terms of Participation states:

"The Participating Union on its own behalf and on behalf of each Team Member accepts the invitation to take part in the Tournament in accordance with the Terms of Participation."

17. By virtue thereof, his Union accepted on his behalf that he would take part in the Tournament in accordance with the Terms of Participation, which, of course, include the Programme.

18. Second, by accepting the invitation to play and by participating in the qualifying Tournament he impliedly agreed to observe, to be bound by and to comply with the provisions and terms of the RWC2011 Qualifying Terms of Participation and so by the Programme.

19. However, if we are wrong in our conclusion that he is bound by the terms of the Programme, he would fall to be dealt with by virtue of the materially identical anti-doping provisions in IRB Regulation 21.

20. Clause 2 of the Programme (IRB Regulation 21.2) provides:

"Players or other persons shall be responsible for knowing what constitutes an anti-doping violation and the substances and methods which have been included on the Prohibited List. The following constitutes anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample"

21. No issue is taken by the Player in respect of the taking of the sample, its preservation, integrity or the secure transmission of the same.

22. In light of his admissions and the other evidence before us, we are satisfied that on 22 May 2010 the Player committed an Anti-Doing Rule Violation contrary to Clause 2.1 of the Programme (IRB Regulation 21.2.1).

Sanction Regime

23. Stanozolol is a Prohibited Substance. Clause 22.1 of the Programme (IRB Regulation 21.22.1) provides:

"The period of Ineligibility imposed for a violation of Clause 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Clause 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Clause 2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Clauses 22.3 and 22.4, or the conditions for increasing the period of Ineligibility, as provided in Clause 22.9, are met:

First violation: Two (2) years' Ineligibility."

24. The starting point for a first violation therefore is a period of ineligibility of two (2) years.

25. In his letter of 31 August 2010 the player stated:

"I do not wish to make any submissions with respect to the sanction to be imposed on me."

26. Notwithstanding that, we have considered whether there are any grounds for mitigating the starting point of ineligibility for two years.

27. Clause 22.3 of the Programme (IRB Regulation 21.22.3) applies to Specified Substances. By virtue of it being an S1 anabolic agent, Stanozolol is not a Specified Substance.

28. Clauses 22.4 and 22.5 of the Programme (no Fault or Negligence and No Significant Fault or Negligence, IRB Regulations 21.22.4 and 21.22.5): the Player's own account is that he took pills without knowing precisely what they contained; he did so without taking any precautions or making any enquiry. The starting point is that the Player is responsible for what he ingests (Clause 2.1(a) of the Programme/IRB Regulations 21.2.1(a)). Even if we were to proceed on the basis of the Player's account, he could not hope to get any argument of no fault or negligence or no significant fault or negligence off the ground.

29. We are told (and accept) it is his first anti-doping rule violation.

30. Accordingly, the only appropriate period of ineligibility to one of two (2) years commencing on the date of his provisional suspension, namely 23 June 2010 and continuing up to and including 22 June 2012.

31. The meaning of Ineligibility is set out is to be found in Clause 22.13 of the Programme (IRB Regulation 21.22.13). Clause 22.13A(i) (IRB Regulation 21.22.13A(i) thereof states:

"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

32. The sanction for the anti-doping rule violation committed by the Player on 22 May 2010 by reason of the presence in the Player's sample of stanozolol is a period of ineligibility of two (2) years.

Appeal

33. This decision is final, subject to a Post Hearing Review Body (Clause 24 of the Programme/IRB Regulation 21.24) and, if applicable, an appeal to the Court of Arbitration for Sport (Clause 26 of the Programme/IRB Regulation 21.26). In this regard, attention is directed to Clause 24.2 (IRB 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 started.

Costs

34. If the Board wishes us to exercise our discretion in relation to costs (Clause 21.10 of the Programme/IRB Regulation 21.21.10), written submissions should be submitted to the Board Judicial Committee via Mr Ricketts by 16.00 BST on Monday 22 November 2010, with any response from the Player in writing to be provided to Mr Ricketts by 16.00 GMT on Monday 29 November 2010.

Christopher Quinlan, Chairman

Dr. Barry O'Driscoll (IRFU)

Dr Roger Evans (WRU)



Signed on behalf of the Tribunal

15 November 2010