

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **MARTIN NUÑEZ LASALLE (ARGENTINA)** CONTRARY TO REGULATION 21 AND IN THE MATTER OF THE HSBC SEVENS WORLD SERIES TOURNAMENT/SERIES ANTI-DOPING PROGRAMME

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

Judicial Committee:

Dr. Roger Evans (Wales)
Dr. Barry O'Driscoll (Ireland)
Graeme Mew (Canada – Chair)

Appearances:

For the International Rugby Board:
Ben Rutherford (Counsel)

For the Player
Raymundo Sosa Quintana (Counsel)

Attendances:

Martin Nuñez Lasalle (the Player)
Tim Ricketts (Anti-Doping Manager, International Rugby Board)
José Reira (Unión Argentina de Rugby)
Sol Iglesias (National Teams Operations Manager – Unión Argentina de Rugby)
Dr. Gastón Lemoine (Witness)
Veronica Cornejo (Witness)

Heard: 5 May 2011 (By way of telephone conference)

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. When he is not playing rugby, Martin Nuñez Lasalle (the "Player") works in the family bakery in Salt, Argentina. It is his primary source of income.
2. On 6 June 2010, the Player lifted a 50 kilogram sack of flour and immediately felt an acute pain in his left shoulder. Having injured his left shoulder the previous month, while playing for Argentina in the IRB Sevens World Series tournaments in

London and Edinburgh, the Player immediately consulted an orthopaedic surgeon who ordered a MRI and physiotherapy.

3. The pain did not abate. The orthopaedic surgeon recommended surgery.
4. The Player had considerable reservations about undergoing surgery. However, the pain became considerably worse after the Player participated in a rugby match on 13 June 2010. He then decided to consult Dr. Gastón Lemoine, an oncologist who specialises in pain treatment.
5. In the course of providing Dr. Lemoine with his history, the Player says he did not disclose, and Dr. Lemoine acknowledges that he did not ascertain, the fact that the Player was a rugby player and that he had recently injured the left shoulder while playing rugby.
6. Dr. Lemoine did ascertain that the Player's pain was being caused, or at least contributed to, by tendonitis. He elected to treat this condition through the application of radiation therapy, which he described as a "proven therapy for his pathology".
7. In conjunction with the radiation therapy, Dr. Lemoine administered a number of drugs – dexametasone, meprednisone, deca-durobolin and amitriptiline.
8. The Player was under Dr. Lemoine's care and treatment from 14 June 2010 to 21 June 2010. The treatment was successful and the Player was able to resume normal activities again in July 2010.
9. On 4 December 2010, while playing for the Argentina team in the World Sevens Series Tournament in Dubai, the Player underwent in-competition drug testing. The "A" sample of the urine specimen which the Player provided was tested at the WADA accredited laboratory at the University of the Free State, Bloemfontein, South Africa, on 14 December 2010. The sample was positive for the prohibited substance, 19-Norandrosterone at a concentration of 14 ng/ml.
10. 19- Norandrosterone is a metabolite of Nandrolone and/or precursors, which is an anabolic androgenic steroid under s.1 of the WADA Prohibited List 2010. An anti-doping rule violation based on the presence of this substance in a player's sample carries with it a presumptive sanction of two years ineligibility from all rugby activities.
11. Following a preliminary review of the case undertaken in accordance with clause 20.1 of the Tournament/Series Anti-Doping Programme (the "Programme"), it was determined that the Player was not in possession of a therapeutic use exemption ("TUE") and that, accordingly, an anti-doping rule violation may have

been committed in contravention of clause 2.1 of the Programme, which corresponds with IRB Regulation 21.2.1.

12. The Player was notified by the IRB of his adverse analytical finding via the Unión Argentina de Rugby (the "Union") by letter dated 21 December 2010. The letter arrived while the Union's offices were closed for end-of-year holidays and thus the Player was advised orally on 23 December 2010 by the Union that he was provisionally suspended pursuant to Clause 19.1 of the Programme (IRB Regulation 21.19.1). On 12 January 2011, Dr. Gasón Lemoine, acting at that time in the capacity of representative of the Player, advised the IRB by e-mail that "[t]here will be no need to use sample B, as it will confirm the results of sample A's analysis".

Anti-Doping Rule Violation Established

13. The Programme is based upon the IRB Anti-Doping Regulations which set out the framework under which players can be subjected to doping control and the procedures for any alleged infringements of those Regulations. The Regulations (and thereby the Programme) also adopt the mandatory provisions of the World Anti-Doping Code (the "Code").

14. The Programme (and the IRB Anti-Doping Regulations and the Code) is based on principles of personal responsibility and strict liability for the presence of Prohibited Substance or the use of Prohibited Methods.

15. Under Clause 2.1 of the Programme (equivalent to IRB Regulation 21.2.1), the "presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample" constitutes an anti-doping rule violation. A violation does not require "intent, fault, negligence or knowing Use [as defined in the IRB Regulations]" on the part of the Player.

16. Clause 6 of the Programme (IRB Regulation 21.6) addresses the principle of personal responsibility and provides:

"6.1 It is each Player's responsibility to ensure that;

- (a) no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used;
- (b) he does not commit any other anti-doping rule violation;
- (c) ...
- (d) he informs Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by them does not violate any of the provisions of the Programme.

...

6.3 It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of the Programme including the Guidelines (appearing as Schedule 1 to the Programme).”

17. The Player does not dispute that he has, on several occasions, signed Team Member Consent Forms to doping control measures in his capacity as a member of the Argentina national sevens team. Specifically, he had signed a team member consent form for the series 2010/2011, acknowledging the application of the Programme, on 25 November 2010. The Player had also provided “Player Whereabouts Information” in relation to his participation in the IRB’s Testing Pool for the first quarter of 2011.

18. In a letter from the Player to the IRB dated 25 January 2011, the Player wrote:

“I received Decadurobolin [*sic*] on the following days: June 14th, 2010 and June 21st, 2010. Likewise, and as of the first consultation, intramuscular and oral Corticoids, pain killers and Amitriptilina [*sic*].”

19. At the commencement of the hearing, the Player, through counsel, acknowledged that he accepted the analytical findings of the laboratory.

20. By reason of the foregoing, we conclude that the Board has established, in respect of the Player, an anti-doping rule violation, namely the presence of 19-Norandrosterone, a Prohibited Substance, in the Player’s bodily Sample.

Evidence

21. The BJC had before it a record which included the doping control form, various player consent forms executed by the Player, including a player consent form in relation to the HSBC Sevens World Series 2010/2011 dated 25 November 2010 and the Participation Agreement, to which the Player’s signature relates, the Sample Analysis Report, the Preliminary Review Report, a letter from the Player dated 25 January 2011 with attached medical certificates and e-mail correspondence and additional correspondence between the Player, the Union and the Board. Witness statements or other communications from witnesses or records were accepted into evidence:

- (a) Statement of Dr. Mario Larrain (orthopaedic surgeon) dated 4 May 2011;
- (b) Clinical notes and records relating to orthopaedic surgery undertaken on the Player by Dr. Mario Larrain;

- (c) Clinical notes and records maintained by Dr. Lemoine (with translation);
- (d) Dr. Carolos Moreno Solá Alsina (orthopaedic surgeon); and
- (e) Other clinical notes and records of the Player.

22. At the hearing, oral testimony was given by the Player, Dr. Lemoine, Ms. Cornejo and Dr. Carlos Moreno Solá Alsina.

The Player

23. The Player is 24 years old and is semi-professional, receiving a stipend from the UAR of 1,500 pesos per month (approximately \$230). In addition to this, he earns approximately 4,000 pesos per month working in the family bakery.

24. The Player is experienced in international rugby and acknowledged his familiarity with the Board's anti-doping programme. He has previously undergone doping control procedures and confirmed that he had signed player consent forms to anti-doping measures. In particular he acknowledged that he was aware that the use of anabolic steroids was prohibited.

25. During the last two tournaments of the 2009/2010 IRB World Sevens Series, in London and Edinburgh, the Player had received a hard strike on his left shoulder and had developed some pain and discomfort in that area. While it did not stop him playing, when he returned to Argentina, the pain continued. Once back in Argentina, the Player resumed his normal occupation as an assistant in the family bakery shop. The pain in his shoulder continued. After consulting with the Union, it was suggested that the Player should see an orthopaedic surgeon. He therefore went to speak to Dr. Solá. A MRI scan was ordered. Dr. Solá prescribed a corticoid, non-steroidal anti-inflammatories, TENS and diclofenac orally. He also made a referral to physiotherapy.

26. These treatments did not provide a great deal of relief to the Player. Dr. Solá then recommended surgery. The Player did not want to undergo surgery. One of his best friend's fathers had died in surgery.

27. Notwithstanding his pain and the workplace injury, the Player did play rugby on 13 June. He had received a pain killing anaesthetic to allow him to play, even though his pain at the time was very severe. It was not until after that match that the Player decided to consult Dr. Lemoine. His father was familiar with Dr. Lemoine who had treated the Player's grandmother a year or two previously. He knew that Dr. Lemoine was an oncologist who also treated pain through non-surgical means.

28. The Player did not inform the Union that he was going to consult Dr. Lemoine. When he arrived at Dr. Lemoine's office on 14 June 2010 he was in acute pain.

Although he was conscious, he felt faint due to the pain and could not speak. The initial consent to treatment form was signed by the Player's father.

29. The treatments consisted of radiation therapy. The Player believes that he was sedated. While he now understands that Dr. Lemoine administered a drug, the Player claims that he did not feel any injection and did not know at the time that any drug was being administered.

30. The Player did not at any time prior to becoming aware of his positive drug test inform Dr. Lemoine that he was an athlete.

31. The treatment administered by Dr. Lemoine worked very well. After three weeks he was able to return to normal activities. Most importantly, he was able to go back to work. But the pain did not go completely.

32. In April 2011, the Player did undergo surgery on the left shoulder. He took the view that as he had been suspended and because the injury did exist, that it was opportune for him to have the surgery, which was undertaken by Dr. Mario Larrain, who is affiliated with the UAR.

33. The Player claims that he did ask Dr. Lemoine what treatment he would receive. Dr. Lemoine said only radiotherapy. On cross-examination, the Player was more vague about the injections he had received. Although he claims not to have known that he received any injections at all, he says that he was sedated every time he went to see Dr. Lemoine. The first treatment he had with Dr. Lemoine lasted for 40 minutes, subsequent daily treatments lasted 15-20 minutes. The Player did not consider it strange that he was sedated because he could barely lie properly on a stretcher. The sedation made him more relaxed. The Player believes that he did ask Dr. Lemoine what he had used as a sedative. He could not remember the name but believes it was a common anaesthetic.

34. Between the time that he was treated and the time that he learned about the positive test result, the Player did not discuss the treatment he had received from Dr. Lemoine with Dr. Larrain or anyone else at the Union.

35. The Player claims that he did not find out that Dr. Lemoine had given him steroid injections until after getting the positive test result. The Player is not, however, critical of the assistance that he received from Dr. Lemoine.

Dr. Gastón Lemoine

36. Dr. Lemoine is the director of a radiation oncology facility in Salt. He provides medical care to approximately 120 oncological patients at day, four to six of whom present with benign conditions. He is a member, and follows the recommendations,

of the American Society of Therapeutic Radiation Oncology. During the course of his daily practice, he administers on average some 40 drugs a day, the use of which is intended to ease the side effects of treatment or to facilitate the response to treatment.

37. Dr. Lemoine treated the Player for shoulder pain. He regards the treatment that he provided as having been extremely effective, and allowing the Player to go on with his normal life.

38. Although Dr. Lemoine is, himself, a former rugby player, and has occasionally acted as a match doctor, he does not, in his daily professional capacity, practice sports medicine as such. When the Player first presented, Dr. Lemoine was told that the Player was unable to work as a baker. He presented with severe pain and was unable to move his arm. He had received traditional treatments without any results. The Player did not make any reference to rugby. There was nothing from the Player's physical presentation that might have alerted Dr. Lemoine to the fact that he was a rugby player.

39. When Dr. Lemoine first treated the Player, he could not get the Player to keep still on the table. Instead, the Player lay down on the floor. Dr. Lemoine told the Player's father that he would have to sedate the Player in order to treat him.

40. According to Dr. Lemoine, radiation works best when blood flow in the affected area is increased. Accordingly, when Dr. Lemoine treated the Player, he administered a steroid, Deca-Durabolin, to improve the flow of blood to the shoulder.

41. Dr. Lemoine noted that, during the course of his professional education, he had not received any specific information or training concerning athletes and/or prohibited substances that athletes were not permitted to use.

42. Dr. Lemoine claims that he carefully explained the risks of radiotherapy to the Player's parents. He elected to use a mild sedative when he first treated the Player because the Player could not remain totally still for even five to ten minutes. Dr. Lemoine acknowledges that he did not at any time while he was explaining his treatment to either the Player or his parents, refer to the use of anabolic steroids. The consents signed, initially by the Player's parents, and subsequently by the Player, make reference to the application of radiotherapy and other "pertinent measures" to reduce pain. There is no specific reference to the use of steroids in the consents.

43. Dr. Lemoine does not believe that the Player would have seen him administering the steroid injections. The injections were administered in the side of the buttocks.

44. At the end of December, after being contacted by the Player's father, Dr. Lemoine told the Player's father that he had given the Player steroid injections.

45. When questioned by the medically qualified members of the BJC, Dr. Lemoine characterised the Player as phobic to surgery and incapable of working. Treatment was started on an urgent basis. The consents used by Dr. Lemoine always referred to "other pertinent measures". In Dr. Lemoine's view, this would have included the administration of steroids as complimentary to the radiation therapy.

46. Never in the past ten years has Dr. Lemoine treated a patient who he knew to be a sportsman who would be subject to anti-doping measures.

Veronica Cornejo

47. Ms. Cornejo is a physiotherapist who had treated the Player on a number of occasions prior to June 2010, when the Player came to her with an acute pain in his left shoulder. She treated him mainly with analgesic painkillers because he had to play a match on 13 June. On 14 June the Player came back to Ms. Cornejo's clinic. He was in even more acute pain. She recommended further analgesic treatment. He apparently did not continue with that treatment because he then pursued other therapy.

48. Ms. Cornejo knew that the Player was also working with a nutritionist and that he played rugby professionally. She was aware that he was subject to anti-doping measures. She knew that he had seen Dr. Solá the day before he came to see her. On a scale of one to ten, the Player's pain was 9/10 when he first came in but had gone down to 5/10 by Friday 11 June. When he returned on Monday 14 June, his pain level was 10/10.

Dr. Carolos Moreno Solá

49. Dr. Solá saw the Player in June 2010 for a shoulder injury. He recalls the Player explaining that he was subject to anti-doping measures. Dr. Solá believes that the Player specifically mentioned the prohibited list. Dr. Solá prescribed a corticoid, non-steroidal anti-inflammatory and referred the Player for TENS and ultrasound treatments. Dr. Solá confirmed that he did not and has never prescribed anything for the Player that would include a prohibited substance. Dr. Solá said that with the type of injury the Player had he would never recommend radiotherapy with Deca-Durobolin.

Documents Filed by IRB

50. Counsel for the IRB filed documentation relating to the drug Deca-Durabolin. Examples of Deca-Durabolin labels and containers clearly refer to Nandrolone. Sources of information in Spanish concerning this product were identified.

Sanctions

51. Sanctions are provided for in Clause 22 of the Programme (IRB Regulation 21.22). The period of Ineligibility for a Prohibited Substance for a first time offence is two years pursuant to Clause 22.1 (IRB Regulation 21.22.1):

“Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

22.1 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, 22.4, 22.5, 22.6, 22.7 and 22.8, or the conditions for increasing the period of Ineligibility, as provided in Clause 22.9, are met:

First violation: Two (2) years’ Ineligibility.”

52. Clauses 22.4 (IRB Regulation 21.22.4) and 22.5 (IRB Regulation 21.22.5) provide for the elimination or reduction of the otherwise applicable period of Ineligibility based on “exceptional circumstances”:

“22.4 No Fault or Negligence

If a Player or other Person establishes in an individual case that he bears No Fault or Negligence, the otherwise-applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Player’s Sample in violation of Clause 2.1 (Presence of a Prohibited Substance or its Metabolites Markers), the Player must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility eliminated. In the event this Clause 22.4 is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Clause 22.10.

22.5 No significant Fault or Negligence

If a Player or other Person establishes in an individual case that he bears No Significant Fault or Negligence, the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than eight years. When a Prohibited Substance or its Markers or Metabolites is detected in a Player's Sample in violation of Clause 2.1 (presence of a Prohibited Substance or its Metabolites or Markers), the Player must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility reduced."

53. No Fault or Negligence is defined in Section A of the Programme as follows:

"The Player's establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the Prohibited Substance or Prohibited Method."

No Significant Fault or Negligence is defined in Section A of the Programme as follows:

"The Player's establishing that his fault or negligence, when viewed in the totality of the circumstance and taking into account the criteria for No Fault or Negligence, was not significant in relationship to an anti-doping rule violation."

Submissions On Behalf of the Player

54. The Player asserts he was not negligent or at fault. He is a baker, not a professional rugby player. He made his own treatment decisions. He had a very severe pain. He was phobic for surgery. He also believed that having surgery would prevent him from playing rugby for a period of time.

55. When he underwent radiation therapy with Dr. Lemoine, the Player was never told, and had no reason to suspect, that he would be treated with a Prohibited Substance. He had no knowledge of the Prohibited Substance entering his body. He was sedated when it happened.

56. The Player should not be held responsible for something which was beyond his control. Dr. Lemoine has acknowledged responsibility for having administered the Prohibited Substance, not knowing that the Player was a rugby player or subject to anti-doping control measures.

57. Although in normal circumstances the Player would have told Dr. Lemoine that he was a rugby player (he did tell Dr. Solá and Ms. Cornejo) the Player went to Dr. Lemoine because his condition was acute. The Player disputes that he had a responsibility to consult with the Union, but even if he did have such a responsibility, there would not have been time to do so.

Submissions of the Board

58. The Player is a semi-professional rugby player. He went to a doctor who was not connected to rugby after having been recommended to undergo surgery on his shoulder. Before going for radiation therapy, he did not consult his union, he did not tell Dr. Larrain, and he did not tell Dr. Lemoine that he was a rugby player.

59. In short, the Player demonstrated a complete lack of caution.

60. It is highly unlikely that the Player was completely unaware that he had received an injection. The evidence concerning sedation was not contained in the written submissions and only emerged during the course of oral testimony at the hearing. The BJC should conclude that the Player did, in fact, know that he was injected with something.

61. By not disclosing his rugby activities, the Player was at fault. The commentary to the Code makes it clear that athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance. The Player is seeking to pass his personal responsibility off to Dr. Lemoine.

Discussion

62. The radiation therapy received by the Player appears to have been unorthodox. It is not an option which the orthopaedic surgeons who treated the Player would have recommended.

63. The fact that the Player had no knowledge that Dr. Lemoine would administer an anabolic steroid does not exculpate him. Even if the Player did not know he was receiving an injection at all, he cannot, in the circumstances, escape responsibility all together. As it is, we have difficulty accepting the Player's evidence that he was unaware that he had any injections.

64. The Player does, however, appear to have been in acute pain when he went to see Dr. Lemoine. The treatment which Dr. Lemoine was proposing was unorthodox, but there was no reason, from the evidence presented, for the Player or his parents to have suspected that the treatment which Dr. Lemoine was going to give would

include the administration by injection of Nandrolone. The medically qualified members of the BJC are of the view that Nandrolone would not be a predictable treatment in the care of this injury.

65. Regrettably there have been a number of previous cases in rugby which have involved Nandrolone.

66. In *IRB v. Iraj* (13 March 2008), the player had attended his general practitioner complaining of sexual health problems and claimed to have been “accidentally” injected with Nandrolone. The player did not declare the substance on his doping control form, nor did he apply for a therapeutic use exemption. The tribunal did not accept the player’s account that his doctor had accidentally injected a banned substance and was therefore not satisfied that the player had established that the mandatory sanction should either be eliminated or reduced.

67. In *IRB v. Chochishvili* (4 July 2008), the player claimed that he had been injected with Nandrolone by his general practitioner to “cure a sickness” related to food poisoning. The doctor in question was not even identified, let alone called as a witness. The tribunal was not prepared to accept that a duly qualified medical practitioner, who was aware that the player was competing for his national under 20 team, was inherently unlikely to have had no knowledge of prohibited substances in sport.

68. In *IRB v. Gonzales* (29 June 2008), the player used some legally purchased nutritional supplements, one or more of which he claimed had resulted in a positive test result for Nandrolone. The tribunal found that there was no evidence of exceptional circumstances that would warrant a reduction of the mandatory two year sanction.

69. In *IRB v. Moyano* (31 May 2007), a Board Judicial Committee considered the case of a 20 year old student who had represented Argentina at the under 21 level. He had used nutritional supplements and vitamins as part of his fitness regime. Prior to doing so, he had consulted his parents. They were concerned that he should use “safe and secure” products. The player had therefore consulted a licensed nutritionist. She had recommended a product which, when subsequent investigations were undertaken, turned out to have included Stanazolol. This was the Prohibited Substance that had been found in the player’s system and which led to an anti-doping rule violation charge.

70. The tribunal concluded that a reduction of the otherwise applicable sanction of two years was warranted because there had been no significant fault or negligence on the player’s part. The player had sought professional advice on the nutritional substances he had used and had received bad advice. However, because of the wide-spread accessibility of warnings about supplement use, the tribunal was not prepared to reduce the otherwise applicable sanction of two years to the maximum

possible degree for cases of no significant fault or negligence. Accordingly, a sanction of Ineligibility for 18 months was imposed on the player.

71. In *P. v. IIHF*, CAS 2005/A/990, the Court of Arbitration for Sport dealt with the case of a Ukrainian professional ice hockey player who had participated in the IIHF Senior Ice Hockey Championship, 2005. A sample of urine provided by the player during the course of the tournament was positive for the presence of Nandrolone. The player's evidence was that approximately five weeks previously, while playing in a domestic match, he had been body checked by a player of the opposite team and had hit the boards so hard that he had to be taken off the ice. In the changing room he was helped out of his hockey gear and then taken to the hospital where he was treated for acute heart failure which was later diagnosed as "postcardio sardiosclerosis". In the emergency room, he was given intravenous and intramuscular injections. The player contended that unbeknownst to him, one of these injections was 1ml of Retabolil 5%, a steroid also known as Nandrolone. According to the player, the team doctor failed to accompany him to the hospital and, further, that when arriving at the hospital, he was in a very bad physical and mental condition which made it impossible for him to monitor or even ask questions about the treatment which was going to be applied. He was in severe pain and all he cared about was saving his life. After leaving hospital, he made a rapid recovery, and did not pay much attention to the incident. He resumed training approximately two weeks later and subsequently joined the Ukrainian national team two weeks before he was tested.

72. The CAS panel accepted the player's evidence that the presence of the Prohibited Substance was caused by the injection of Retabolil in the emergency room of the hospital. Furthermore, the panel found that the player had adduced sufficient evidence that, under the unique circumstances of the case, he was unable to influence or control the treatment applied to him in an emergency situation. The panel therefore accepted that the player had met the burden of demonstrating that he was without fault or negligence for the anti-doping rule violation and that the otherwise applicable period of Ineligibility should be eliminated. In its concluding remarks, the CAS panel considered that the player had no reason to suspect that he would be treated with a substance which – contrary to practice in Western Europe – was being applied for a heart condition.

73. Although there are some similarities to the present case and the *P. v. IIHF* decision, a critical difference is that Dr. Lemoine was unaware that the Player was a rugby player. This was notwithstanding the fact that the Player had played in a rugby match the day before and that having done so, the pain and discomfort he had previously been experiencing in his shoulder had been made significantly worse. It is notable that, before going to see Dr. Lemoine, the Player had gone back to Ms. Cornejo, the physiotherapist. She was aware that he had played rugby the previous day. While we accept the testimony of Dr. Lemoine that he was not aware that the Player was a rugby player, this does not absolve the Player of responsibility for making sure that Dr. Lemoine knew this. Indeed, the Player had multiple

opportunities to inform Dr. Lemoine that he was a rugby player and to find out more about the nature and scope of the treatment he was receiving when sedated.

74. Accordingly, the BJC rejects the Player's submission that there was no fault or negligence on his part.

75. Each of these cases must turn on its own particular circumstances, and in this case, we are persuaded that although the Player was negligent, his negligence was not significant in relation to the anti-doping rule violation. It is noteworthy that the positive test resulted from a sample which the Player provided a full six months after he had last received an injection from Dr. Lemoine (no evidence was tendered to suggest that the lapse of time between Dr. Lemoine's treatment and the provision of the sample was inconsistent with the position advanced by the Player that his positive test resulted from Dr. Lemoine's treatment).

76. In the circumstances, we would reduce the otherwise applicable sanction of two years to fifteen (15) months. We have concluded that the maximum discount of 50% of the otherwise applicable sanction should not be applied in this case because of the Player's failure to notify the Union or its medical advisers, either immediately before, or in the months following his treatment by Dr. Lemoine. In coming to this decision we have considered cases such as *Knauss v FIS*, CAS 2005/A/847 and *Oliveira v USADA*, CAS 2010/A/2107, where athletes took supplements after researching the supplements' contents, only to test positive due to supplements containing unidentified ingredients including Prohibited Substances. In each case, the athletes concerned had their sanctions reduced from two years to eighteen months on the basis of "no significant fault or negligence" on their part. A distinguishing feature between the Player's situation and the athletes in *Knauss* and *Oliveira* is that both of those cases involved supplement use by athletes who were alert to the anti-doping risks of using unapproved supplements. By contrast, as noted, the Player would have had no reason to believe that the pain treatment he was receiving from Dr. Lemoine incorporated the administration of nandolone.

77. The BJC reiterates, for the benefit of the Player and all other athletes, the importance of athletes informing any physician or other health care provider that he or she is an athlete before treatment is received. It is equally important that an athlete consults with his or her club or team medical adviser (or equivalent), or if there is no such person, with a physician familiar with the athlete's activities and/or medical history, before receiving medical treatment or specialist advice. In this case, the Player did neither. As a result he has received a lengthy period of Ineligibility while at the peak of his rugby playing career.

Decision

78. On 4 December 2010, the Player committed an anti-doping rule violation, namely, the presence in his bodily Sample of 19-Norandrosterone. 19-Norandrosterone is a Prohibited Substance under both Regulation 21 and the Code.

79. The sanction imposed for this anti-doping rule violation is a period of Ineligibility of 15 months, commencing on 23 December 2010 (the date upon which the Player was notified of the adverse analytical finding and provisionally suspended) and concluding (but inclusive of) 22 March 2012.

80. The Player's attention is drawn to IRB Regulation 21.22.13 which provides, *inter alia*, that:

“No Player...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 Union or Tournament Organiser. Such participation includes but is 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.”

The full text of Regulation 21.22.13 concerning status during Ineligibility should be consulted.

Costs

81. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to the BJC via Mr. Ricketts by 17:00 Dublin time on 8 July 2011, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 15 July 2011.

Review

82. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.4.2, which sets out the process for referral to a Post-Hearing Review Body, including the time within which the process must be initiated.

1 July 2011

A handwritten signature in black ink, appearing to read 'Graeme Mew'. The signature is stylized with a large 'G' and a cursive 'Mew'.

Graeme Mew, Chairman