

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations Relating
to the Game

A N D

IN THE MATTER of a doping offence by
EVGENY PRONENKO (“the
Player”)

Judicial Committee

T M Gresson	(New Zealand)	(Chairman)
Doctor Barry O’Driscoll	(Ireland)	
Doctor David Gerrard	(New Zealand)	

Appearances and Attendances

For the Board

Ben Rutherford	(IRB Legal Counsel)
Tim Ricketts	(IRB Anti-Doping Manager)
Larissa Javykh	(Interpreter)

For the Rugby Union of Russia

Howard Thomas	(Vice-President Rugby Union of Russia)
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Player

Evgeny Pronenko	(Player)
Tatiana Dorbysh	(Russian Counsel for the Player)
Alexander Pervukhin	(Head Coach/Director RC “Yenisey-STM”)
Alexander Orlov	(Doctor RC “Yenisey-STM”)
Anastasia Yuronina	(Interpreter)
Doctor Sergey Skurat	(Medical Practitioner)

Hearing

8 September 2011 and 16 September 2011 (by way of telephone conference) and thereafter by written submissions

REASONS FOR DECISION OF THE BOARD JUDICIAL COMMITTEE

1. The Board Judicial Committee (BJC) is now in a position to provide its reasons for its decision released on 14th October 2011.
2. On 12th July 2011, Evgeny Pronenko (“the Player”) provided a urine Sample number 2617220 during an Out-of-Competition Test conducted on behalf of

the International Rugby Board (IRB). Subsequently, the Sample returned an Adverse Analytical Finding for the substance Furosemide (“the substance”).

3. Furosemide is classified as a diuretic under s.5 of the World Anti-Doping Agency’s (WADA) List of Prohibited Substances and Methods. The WADA Prohibited List is incorporated in IRB Regulation 21 as Schedule 2. It is well known that diuretics can be used as masking agents to allow illegal substances (for example anabolic steroids) to be flushed out of the bodily system. The IRB has no record on file of a therapeutic exemption allowing the Player to use the prohibited substance.
4. Following receipt of the analysis of the A sample, and after a preliminary review conducted in accordance with IRB Regulation 21.20.1 (which confirmed that an anti-doping rule violation may have been committed), the Player was provisionally suspended on 21st July 2011. On 10th August 2011 the Player confirmed by way of correspondence from the Executive Director of the Russian Rugby Union (RRU) that he did not require the “B” sample to be analysed and he admitted the anti-doping rule violation.

Factual Background

5. The Player is aged 27. He has represented Russian National Teams since 2004 when he participated in the IRB Under 21 International Championship. In 2009 (Nations Cup) and 2010 (RWC Qualifying Matches) he represented the Senior National Team and in 2011 had been selected to participate at RWC played in New Zealand during September/October. Prior to 2011 he had signed Participation Agreements for the three Tournaments in which he “*inter alia*” agreed to comply with each of the Tournaments Anti-Doping Programmes. Further, the Player had been tested on three occasions, at the IRB Nations Cup 2009 (Out of Competition), the RWC 2011 qualifiers (In Competition) and at the FIRA Nations Cup 2011 (In Competition). The results of these tests were negative. In addition, the Player accepted he had received anti-doping educational materials (including a TUE guide). The Player acknowledged he was fully aware of the principle of strict liability which underpins the IRB Anti-Doping Programme and it was his personal responsibility to take care to avoid taking any substance which could result in him committing an anti-doping rule violation.

6. The Player stated that during the latter part of June 2011 he suffered a calf muscle injury which was successfully treated by his Club's Doctor. However on 1st July 2011 after testing the muscle the lower part of his leg became swollen and painful. Because the Club's Doctor in Krasnoyarsk (Siberia) was unavailable, his family insisted he obtained treatment from a local Licensed Medical and Diagnostic Clinic where he consulted Dr Sergey Skurat. Dr Skurat noted the Player had a "*significant odema*". He stated the Player's symptoms presented an "*emergency situation*" and he could not discount a diagnosis of Deep Vein Thrombosis. Thus, he prescribed the diuretic to reduce the swelling. He was also prescribed a non-steroidal anti-inflammatory drug (Movalis) and Nise Gel for pain relief.
7. Over the following days the Player's condition improved. As a result he stopped taking the medication on 4th July 2011 and because the symptoms had settled on 12th July 2011 when he signed the Doping Control form, he inadvertently omitted to refer to any of the medication Dr Skurat had prescribed. He only referred to "*Dexametason*" (anti inflammatory medication) which had been prescribed on 8th July 2011 by the Russian National Team Doctor. By this stage, the Player was a participant in a Training Camp with the National Team which was preparing for RWC 2011 to be played in New Zealand.
8. The Player stated at the time of consulting Dr Skurat he made no attempt to contact the Russian Team Doctor because he did not have his contact details. Further, he did not attempt to seek medical assistance from his Union. Further, the reason he sought urgent treatment for the swollen leg from a Doctor at the local clinic was because he was very anxious to participate in the Union's mid-July training camp in preparation for RWC 2011. He stated he advised Dr Skurat he was a member of the Russian Team and he sought his assurance that he would not prescribe any banned substances.
9. In his evidence Dr Skurat, aged 32, a qualified Traumatologist-Orthopaedic Specialist, candidly acknowledged that he was not completely familiar with WADA's List of banned substances for athletes. It was only because of the emergency caused by the swelling to the Player's left leg that he prescribed

the Furosemide. With the benefit of hindsight he very much regretted doing this. He requested the IRB to accept his apology for what had occurred.

10. Following the provisional suspension the Player was withdrawn from the Training Camp and did not represent his Union during RWC 2011.

The Doping Offence

11. The IRB Anti-Doping Regulations set out the framework under which all Players can be subjected to Doping Control and the procedures for any alleged infringements of those Regulations. The IRB Regulations also adopt the mandatory provisions of the World Anti-Doping Code (“the Code”)¹.
12. Both the IRB Anti-Doping Regulations and the Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods.
13. Pursuant to 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.
14. Regulation 21.2.1(a) provides:

“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 Samples. 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 rule violation under Regulation 21.2.1”.
15. In relation to the principle of personal responsibility Regulation 21.6 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*

¹ The WADA Code can be found on the WADA website at http://www.wada-ama.org/documents/world_anti-doping_program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf

received by them does not violate any of the provisions of the Regulations.

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 these Anti-Doping Regulations including the Guidelines.”*

16. Pursuant to Regulation 21.3.1 the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC. The Player accepts and does not challenge the analytical findings of the laboratory. Accordingly, the BJC finds the Board has established to the required standard the anti-doping rule violation; that is the presence of the Prohibited Substance Furosemide in the Player’s bodily sample.

Sanction

Regulatory Framework

17. The IRB’s regulatory framework stipulates that in imposing the appropriate sanction the BJC is required to apply the relevant provisions of Regulation 21 (which are based on the World Anti-Doping Code). 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).
18. Furosemide is a Specified Substance. The relevant provision is IRB Regulation 21.22.3 which provides:

“Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

21.22.3 Where a Player or other Person can establish how a Specified Substance entered his body or came into his possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years.

To justify any elimination or reduction from the maximum period of Ineligibility set out above, the Player or other person must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the Judicial Committee the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance. The Player’s or other Person’s

degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”

19. It follows in order to satisfy Regulation 21.22.3 the Player is required:
 - On the balance of probabilities to establish how the Furosemide entered his body
 - Establish to the comfortable satisfaction of the BJC that his Use of Furosemide was not intended to enhance his sport performance or mask the Use of a performance-enhancing substance². To justify any reduction or elimination of the sanction the Player must produce corroborating evidence in addition to his word of the absence of intent to enhance sports performance or mask the Use of a performance enhancing substance.

20. If the foregoing pre-conditions are satisfied the Player's degree of fault shall be the criterion for assessing any reduction of the period of Ineligibility.

21. During the hearing both the Player and Dr Skurat were asked by Counsel for the IRB and members of the BJC searching questions in relation to how the Furosemide was ingested and whether it was intended to enhance sport performance or mask the use of a performance-enhancing substance. Initially the BJC had reservations as to whether the use of a diuretic for the management of localised swelling was a credible therapeutic option. Ultimately, however, although the hearing was conducted by way of a telephone conference (thus making it more difficult to assess credibility issues) the BJC accepted that use of a diuretic in these circumstances was occasionally adopted as a practice of the medical clinic in Krasnoyarsk. Further, the BJC accepted Dr Skurat's evidence that he determined the diuretic was the best medical option to assist in the full recovery of the Player. Accordingly, as indicated in its decision dated 14th October 2011 the BJC accepted that both pre-conditions had been established by the Player.

² The nature of the burdens the Player must satisfy are set out in the Comments to Article 10.4 of the WADC which is available at www.wada-ama.org. The Comments also elaborate upon the type of circumstances which in combination might lead a hearing panel to be comfortably satisfied of no-performance-enhancing intent, for example *“the fact that the nature of the Specific Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport-related prescription for the Specified Substance ...”*

Degree of Fault

22. In his submissions Counsel for the IRB helpfully referred the BJC to the following cases involving Furosemide and other diuretics in which a reduced sanction was awarded based on the equivalent of IRB Regulation 21.22.3 having been satisfied; The Football Association (“FA”) v Touré (FA Regulatory Commission, 28 May 2011 – Bendroflumethiazide, six months’ Ineligibility); Federation Internationale de Gymnastique (“FIG”) v Melnychenko (FIG Presidential Commission, 25 February 2011 – Furosemide, two months’ Ineligibility; although it is not clear if the athlete also served two months’ Provisional Suspension); Drug Free Sport New Zealand (“DFSNZ”) v Chalmers (Sports Tribunal of New Zealand, 11 March 2010 – Furosemide, five months’ Ineligibility); and FIG v Dos Santos (FIG Presidential Commission, 27 January 2010 – Furosemide, five months’ Ineligibility).
23. Reference can also be made to the cases of IRB v Sorokin (7 January 2009) – (medically prescribed use of medicine which contained Indapamide to treat a serious heart condition - reprimand and warning) and IRB v Slimani (14 October 2008) – (medically prescribed nasal decongestant which contained the banned substance Tuaminoheptane - reprimand and warning).
24. It is noted the range of sanctions imposed in the foregoing cases extend from six months suspension to a reprimand and a warning. The BJC is mindful of the need for consistency in the sanctioning process but in our view although previous cases can be of assistance, ultimately every case will depend on its own facts and on the evidence presented at a hearing.
25. Not unexpectedly, both Counsel made competing submissions in relation to the degree of fault on the Player’s part. Counsel for the IRB submitted that given the degree of fault on the Player’s part the sanction should be above “*the highest end of the sanction range in equivalent cases*”. Counsel noted that the Union by way of a letter from its Executive Director had suggested a period of Ineligibility of eight months that could be used as “*a guide*” but the BJC notes the Executive Director did not provide specific reasons for his recommendation. Counsel also referred to the Player’s level of education, the Player’s failure to contact the Union or the Union Doctor, his failure to ensure that Dr Skurat had the necessary expertise to treat his injury

appropriately, his general lack of caution in relation to his personal responsibility to ensure he was not prescribed banned substances and in particular, his failure to personally check the prescribed medication did not contain a banned substance.

26. On the other hand, Miss Dorbysh on behalf of the Player submitted the Player was essentially a victim of circumstances in that the Player's and the Doctor's lack of vigilance could be explained by the urgency of the critical situation which had developed. The goal was to restore the Player's health whereby he would be able to participate in the RWC Training Camp. She referred also to the Player's early admission of guilt and his excellent record and standing as a National Team Player; but of course these factors are not strictly relevant in relation to the assessment of the Player's degree of fault.
27. In assessing the Player's degree of fault the BJC noted the Player is an experienced rugby player. Under the strict liability principle of the IRB's anti-doping regime he properly accepted he was fully aware he had a personal duty of ensuring no Prohibited Substance entered his system. Since 2004, he has received material on anti-doping and has been tested in Competition on three previous occasions. Under the 2011 Out of Competition Testing Programme as a member of the IRB testing pool he was aware he could be tested at any time. He had previously signed agreements to comply with the IRB Anti-Doping Regulations and for these reasons he was fully aware of the perils of using medically-related substances which could result in an anti-doping offence.
28. Secondly, the BJC noted the Player, when injured at a critical period during his preparation for RWC, unfortunately failed to contact his National Union or the Union's designated doctor. Rather, because of his predicament he elected to seek urgent attention from a doctor who, it transpired, was not completely familiar with the anti-doping requirements of treating sports injuries.
29. In addition, although the Player indicated to Dr Skurat he was an international player and therefore subject to an anti-doping regime, generally he displayed a lack of caution and ambivalence towards his responsibilities. As a prospective member of the Russian Team which had been selected to

participate in the RWC he should have taken every possible step to ensure his preparation and rehabilitation complied with the strict requirements of the IRB Anti-Doping Programme.

30. On the other hand, the BJC accepts overall that the Player in terms of his health was faced with a challenging situation. He was suffering from significant swelling to his infected lower leg. He was in pain. He had been urged by his family to seek urgent medical treatment. His Club Doctor was unavailable. At the time he was residing in Krasnoyarsk, Siberia. He did not have the Union Doctor's contact details. The Player allowed his very strong desire to participate in the National Team's Training Camp in preparation for the RWC to take precedence over his anti-doping responsibilities, which to some degree is understandable (although not excusable).
31. Ultimately, having regard to the sanctions imposed in previous cases (refer paragraphs 20 and 21 supra) and all the surrounding circumstances of the infraction, the BJC concluded that the Player's degree of fault was at the higher end of the sanction range in the cases cited. As noted in the case of Toure (supra) the Player was suspended for a period of six months for taking "*water tablets*", a product designed to reduce water retention. Counsel for the IRB sought to distinguish this case from the current case on the basis Toure's use of a banned substance related to his physical appearance (ie. his abdomen) rather than an attempt to regain fitness following an injury. However, there are a number of factors which are common to both cases; although in Toure the banned substance was taken over a greater period of time. Accordingly, the BJC concluded the period of suspension for the Player should be for the same period as the period imposed in the Toure case.

Decision

32. For the reasons outlined, the sanction imposed for this anti-doping rule violation is a period of ineligibility of six months commencing from 21st July 2011 (being the date upon which the Player's provisional suspension commenced) and concluding (but inclusive of) the 21st January 2012.

Costs

33. 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 28th November 2011, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 12th December 2011.

Review

34. 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 21.24.2, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.

T M Gresson
Chairman

14 November 2011