

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations Relating
to the Game

A N D

IN THE MATTER of an alleged doping offence
by SEAN FLETCHER (“the
Player”)

Judicial Committee

T M Gresson (New Zealand) (Chairman)
Philip Thomson (Australia)
Doctor David Gerrard (New Zealand)

Appearances & Attendances

For the Board

Mr Ben Rutherford (Counsel for the IRB)
Mr Tim Ricketts (IRB Anti-Doping Manager)

Player

Sean Fletcher (Player)
Kane Ruddell (Witness for Player)
Ramsay Tomokino (Cook Islands' Coach)

Hearing

By written statements, submissions and by way of telephone conference on
21 December 2012

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. Sean Fletcher (“the Player”) is aged 23. He is employed as a Glazier. He is also a part-time Professional Rugby Player. His ambition is to become a full-time professional. Although he lives in New Zealand, because of his ancestry he has represented the Cook Islands National 15s and 7s teams since 2007. He also plays club rugby in New Zealand. On the 4th August

2012, following his side (Ardmore Marist) winning the Counties Senior Reserve Competition, he spent the evening watching the Super 15 final (the competition was won by the team (the "Chiefs") he supported) and celebrating in a fashion which will be generally familiar to the reader. He consumed alcohol which impaired his judgment and candidly admitted during the evening on approximately two occasions he foolishly smoked a cannabis "joint" which was being shared by a group of persons.

2. On 26th August 2012 he provided an in-competition urine sample (Code Number 2742106) during the IRB Oceania Sevens Championship 2012 ("the Tournament") which was a qualification tournament for Rugby World Cup Sevens 2013.
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 31.2 ng/ml, which is a higher level than that prescribed by WADA (15 ng/ml). Carboxy-THC is a Prohibited Substance listed under s.8 Cannabinoids on the WADA Prohibited List 2012. Cannabinoids are classified as a Specified Substance.
4. A preliminary review of the case undertaken by Dr Ismail Jakoet (South Africa) on 14th September 2012 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 14th September 2012 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 17th September 2012. By letter dated 22nd September 2012 the Player accepted the "A" sample results. Thus, it was not necessary for the "B" sample to be analysed.

6. The Player signed the Team Member Consent Form for the Tournament. The Consent Form was attached to the Participation Agreement which included provisions relating to the Tournament's Anti-Doping Programme. The Player acknowledged he was bound by the Anti-Doping Programme and had the opportunity to read and understand the Terms of Participation for the Tournament. The Player had signed similar Player Consent Forms in relation to the IRB Under 19 World Champions Tournament in Belfast in 2007 and the 2011/12 IRB Sevens World Series event in Wellington.
7. This Board Judicial Committee was appointed to consider the Player's case.
8. The hearing (which related to sanction only) took place by way of a telephone conference call on 21st December 2012. Written submissions were received prior to the hearing from the IRB. Prior to the hearing the Player sent an e-mail dated 5th December 2012 in which he stated he took full responsibility for the "*stupidity*" of his actions. At the hearing, oral evidence was received from the Player, his Coach and Kane Ruddell (an Ardmore Marist Team-mate). Submissions were made on behalf of the IRB.

The Tournament Anti-Doping Programme – IRB Regulation 21

9. The TADP, which included the IRB Anti-Doping Regulations, prescribes the framework under which all players can be subjected to Doping Control and the procedures for any alleged infringements of the Programmes. The Regulations also adopt the mandatory provisions of the World Anti-Doping Code ("WADC")¹.
10. Both the Regulations and Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods.
11. 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. It provides:

"The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample constitutes an anti-doping rule violation.

¹ The WADC 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

A violation does not require intent, fault, negligence or knowing use [as defined in the TADP] on the part of the Player”.

12. 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 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.”*

13. 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 as mentioned, 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 his urine sample.

Sanction – Regulatory Framework

14. Regulation 21.4.5 provides:

“For purposes of the application of Regulation 21.22 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.”

It can be seen cannabinoids are specified substances.

15. Pursuant to 21.22 the sanction for a first anti-doping rule violation is a period of two years ineligibility. However, the two year minimum sanction is subject to the conditions provided in Regulations 21.22.3 to 21.22.9 for reducing or increasing the period of ineligibility.

16. Given the circumstances of this case, only the provisions of Regulation 21.22.3 are required to be considered by us. Regulation 21.22.3 provides:

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

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.”

17. It follows that in order to satisfy Clause 22.3 the Player is required:
- On the balance of probabilities to establish how the cannabinoids entered his body; and
 - To establish to the comfortable satisfaction of the BJC that his use of cannabinoids was not intended to enhance his sport performance² or mask the use of a performance-enhancing substance³.
 - 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.

If the foregoing pre-conditions are satisfied the Player’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

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 ...”*

³ There was no suggestion in this case of an intention to mask the use of a performance enhancing substance and thus, that aspect requires no further consideration. If the foregoing pre-conditions are satisfied the Player’s degree of fault is the criterion for assessing any reduction of the period of Ineligibility.

18. In relation to the above pre-conditions the BJC was satisfied they had been established to the requisite standards. There was no issue with regard to the credibility of the Player and his team-mate Kane Ruddell, both of whom with commendable candour described the sharing of the marijuana cigarette by some members of the group consisting of approximately seven persons. The group was outside the clubrooms, in an area normally used by cigarette smokers. Thus, we are satisfied that given the well-documented effects of cannabis consumption (including impaired physical reactions and cognitive function) at the time it was consumed by the Player there was no intention on his part to enhance performance. It was consumed by him only for a recreational purpose.

Degree of Fault

The Case for the Player

19. The BJC was impressed by the Player's candour. From the outset, he acknowledged because he was affected by alcohol he had consumed cannabis⁴ and being in what he described as "good spirits" "... celebrating the flow of the night" he smoked the cigarette "may be" on at least two occasions when it was passed around the group. At the time, although the team had been officially selected, he expected he would be playing in the Oceania 7s Tournament. However, at the time of consuming the cannabis he did not think of the consequences in relation to the Oceania Tournament and for this reason "it never crossed his mind" he could be in breach of the IRB In-competition Anti-Doping regime at the Tournament.
20. Although he was critical of the lack of anti-doping education in the Cook Islands', he acknowledged that he was familiar with the IRB's anti-doping education programme and indeed, in Belfast had attended Mr Rickett's presentation on Anti-Doping. He was aware of the perils of using banned substances including cannabis. Normally he "does not have time for cannabis". Occasionally he consumes it but given his ambition to become a professional rugby player he aims to keep himself fit. There was a negative result when he was previously tested at the IRB Tournament in 2007. During

⁴ Because the level of marijuana found in the Player's system (31.2 ng/ml) was low it would be difficult to establish an accurate correlation between it and the consumption level

the hearing he very much regretted his conduct which has and will result in adverse consequences.

21. The Cook Islands' Coach informed us the Player "*was not really a drinker ... because he is an athlete who looked after his body*".
22. Kane Ruddell⁵ (who did not consume cannabis) made similar comments. He emphasised the Player was a "*fit guy ... really into his rugby ... trains hard ... he is dedicated*". Mr Ruddell, who is now aged 30 and has been with the Club since the age of 13, has previously seen the Club members (but excluding the Player) consuming cannabis.

IRB Submissions

23. Mr Rutherford reminded the BJC that the commentary on Article 10.4 of WADC states:

"In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional of cases."

24. Accordingly we were requested (correctly in our view) to put aside considerations relating to the schedule for the 2013 World Series Sevens Tournament.
25. Counsel helpfully referred to the sanctions imposed in the most recent cannabinoid cases including: IRB v Jamaluddin (14 February 2011 – six months ineligibility)⁶, IRB v Tu'ipuluto (2 December 2010 – five months' ineligibility)⁷, IRB v Van Staveren (17 February 2010 – six months' ineligibility)⁸, and IRB v Chkhikivadze (2 June 2009 – four months' ineligibility)⁹.

⁵ Kane Ruddell was given the usual warning with regard to his evidence being potentially self-incriminating. He confirmed he understood the warning but nevertheless elected to testify.

⁶ Decision available at <http://www.irbkeeprugbyclean.com/downloads/cases/50/110214%20jamaluddin%20decision.pdf>

⁷ Decision available at <http://www.irbkeeprugbyclean.com/downloads/cases/48/J-101202-gm-tuipulotudecision.pdf>

⁸ Decision available at <http://www.irbkeeprugbyclean.com/downloads/cases/33/van%20staveren%20-%20canada%20-%202009.pdf>

⁹ Decision available at http://www.irbkeeprugbyclean.com/downloads/cases/31/j-09602-gm-chvihivivadze_8981.pdf

26. Counsel submitted Chkhikvadze is of little assistance. It had “*factual peculiarities*” and sanctions imposed by the BJC have tended to be more severe since that case.
27. In relation to assessing the Player’s degree of fault, Counsel noted:
- The ingestion was voluntary, although his judgment was affected by his level of intoxication.
 - The Player has had five years experience as an International Player. He had been fully educated about the IRB’s anti-doping programme. This included attending the presentation given by the IRB’s Anti-Doping Manager and having access to its handbook which Mr Rutherford noted at page 21 states:
“Remember – a Player can test positive for Cannabis even if its use was in the days or weeks prior to a Match.”
 - The Player’s degree of fault was equivalent to that of Jamaluddin (who was also intoxicated at the time of consumption and whose cannabis level was 32 ng/ml) and Van Staveren (another experienced educated player who consumed cannabis in a social setting. His level was 40 ng/ml and unlike the Player in the present case he did not anticipate he would play representative rugby again).
28. Counsel emphasised that there is a need for consistency in the sanctioning process and thus ensure there is overall fairness to all players and it was incumbent on the BJC to impose a period of ineligibility on the Player at least equivalent to that in Jamaluddin and Van Staveren cases, namely a period of six months’ ineligibility.

Discussion

29. Although (as he been stated in previous cases of the Board Judicial Committee) the recreational use of cannabis is not behaviour which is unknown in the rugby community, the Anti-Doping Regulations make it clear it is prohibited. The BJC 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. Further, in assessing the Player’s degree of fault we are obliged
-

to consider the specific circumstances relating to his departure from the requisite standard of behaviour. Thus, matters relating to the attributes as a Player and his playing programme which were mentioned during the hearing are not relevant to the assessment.

30. Clearly, as Mr Rutherford submitted, there is a need for consistency in the sanctioning process for cannabis violations. He noted recently the sanctions have been more severe¹⁰.
31. In assessing the Player's degree of fault we consider the relevant factors including the following.
32. Firstly, although the consumption of alcohol may explain how the violation occurred, given the Player's responsibility to ensure no prohibited substance entered his system his alcohol consumption cannot be used to negate the strict requirements of Regulation 6 in relation to the banned substance. Nor was it suggested that the Player's level of intoxication caused him to completely lose his self control and consume the cannabis. Thus, as the Player responsibility acknowledged during the hearing he had to accept the consequences for actions committed under the influence of alcohol during the evening in question.
33. At the age of 23, the Player had already acquired experience over a period of five years as an International Rugby Player. He had received extensive education on the IRB's anti-doping programme. Indeed during Mr Rickett's slide presentation to the Players in 2007 he appropriately emphasised¹¹

"Cannabis (Cannabinoids) / Marijuana

Banned In Competition for rugby from 1 January 2004. Probably the most easily accessible drug in many countries today which currently has a high rate of use by youths and young adults. As mentioned earlier 50% of the global positives in rugby for 2006 were from Cannabis. Positives that could have been avoided.

Studies show that residue of this substance can stay in the body for up to 6 weeks after it is taken.

¹⁰ Previous cases include IRB v Davy Larguet, 8 October 2004; IRB v Younes Ho, 22 December 2004; IRB v Kolyshkin Vadym, 25 July 2005; IRB v Andrey Garbuzov and Yaroslav Rechnev, 28 September 2006; IRB v Sireli Naqelevuki, 16 March 2007; IRB v Davit Zhamutashvili and Davit Alexander Todua, 27 September 2007

¹¹ Slide 26

This is one drug that you may come across at parties and after a few beers and some peer pressure from your mates you make a blurred decision to have a smoke of a joint. Seems alright at the time you have a great night but two weeks later you are called up for a drug test after a match and BANG – Positive Test Result.

Don't fall victim to this situation. Marijuana may in many people's minds not be performance enhancing but it is on the Prohibited List. Even though you may be 17 or 18 years old, you are role models for the sport and your country don't let yourself down by falling into this trap."

34. As mentioned, the Player also had access to the IRB's Anti-Doping Handbook prior to the 2012 IRB/HSBC Sevens Tournament held in Wellington. The Handbook clearly warns players that there can be positive tests for cannabis even if its use was in the days or weeks prior to the match. Thus, as the Player correctly acknowledged he was fully aware of the dangers of consuming cannabis.
35. However, we do not consider this case as serious as the recent cases that have been referred to. In this regard we note the relatively low concentration level of cannabinoids found in the Player's sample. He did not regularly use cannabis ("*couple of times before*") and following the positive test result at the first opportunity he acknowledged he was clearly at fault by admitting the anti-doping rule violation.
36. Further, it was clear to us he deeply regretted (as he stated) his "*stupidity*" not only in relation to the adverse consequences for himself but also his conduct tarnished the image of Cook Islands' Rugby. We accepted also, as Mr Tomokino stated the Player is "*... dedicated to Rugby and maintains a high standard of fitness*" and has eschewed the temptation of more regularly consuming cannabis at the Club. These factors indicate to us that because of the general state of excitement that evening as a result of the Club side winning the Championship and the Super 15 side also winning, without thinking of his future participation in the Oceania tournament over the weekend of 25th/26th August 2012 and generally of the consequences for his conduct, there was an unfortunate lapse of judgment on his part. These factors, do not excuse the Player's conduct but they are relevant in assessing the degree of negligence on his part.

37. In previous decisions BJC's have denounced players using banned substances shortly before or during IRB Tournaments when they have been selected to participate in Tournaments. For example, in the case of Jamaluddin the selected player consumed cannabis five days before he was scheduled to represent his country at the Commonwealth Games. In Van Staveren the player had been selected for the British Columbia representative side and he consumed cannabis "a week or two" before participating in the IRB American Rugby Championship Tournament. In this case although the Player expected to play in the Tournament, the consumption occurred 21 days before it commenced. The Cook Islands' Team had not been selected. We are satisfied these factors (which were not present in the cases of Jamaluddin and Van Staveren) contributed to the Player simply not thinking of his responsibilities in relation to the Oceania Tournament. It is clear, the Player did not report his conduct to the Cook Islands' Union nor volunteer to stand down from competition. But, given all the circumstances, we do not conclude that (in contrast to some of the players in other cannabis-related cases) he made the decision to "run" the risk of competing and testing positive during the Tournament.
38. Ultimately, having regard to the sanctions imposed in previous cases and all the surrounding circumstances relating to the violation, we concluded the period of suspension should be five months.

Decision

40. For the reasons outlined, the sanction imposed for this anti-doping rule violation is a period of ineligibility of five months from 17th September 2012 (being the date upon which the Player's provisional suspension commenced) and concluding (but not inclusive of) the 17th February 2013.

Costs

41. 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 5th February 2013, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 19th February 2013.

Review

42. 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.

DATED this 16th day of January 2013

T M Gresson
P Thomson
Dr D Gerrard