

BEFORE THE ANTI-DOPING APPEAL TRIBUNAL OF SOUTH AFRICA
(Instituted in terms of Section 17(2) (a) of Act No. 14 of 1997, as amended by Act No.
25 of 2006)

Case No.: AT 06/2012

In the matter between:-

THE INTERNATIONAL RUGBY BOARD (IRB) (APPELLANT)

versus

Mr HARALD PIETER VAN STADEN (ATHLETE) (FIRST RESPONDENT)

and

SOUTH AFRICAN INSTITUTE FOR
DRUG-FREE SPORT (SAIDS) (SECOND REPENDENT)

DECISION

1. On the 2nd November 2011 the Athlete was informed by SAIDS of an Adverse Analytical Finding in that an analysis of his urine sample provided during an in-competition test on 8th October 2011 after the under 21 rugby match between the Sharks and the Leopards confirmed the presence of 2a-Methyl-5a-androsta-3a-ol-17-one, a metabolite of the Anabolic Agent, Drostanolone. At the same time the Athlete was informed that he was Provisionally Suspended with immediate effect.
2. The matter was referred to the SAIDS Disciplinary Committee and on the 19th December 2011 the Committee found the Athlete Guilty of a contravention of the SAIDS Anti-Doping Rules (Article 2.1 of the Code) and imposed a Sanction of 2 (Two) years ineligibility.
3. This appeal however, focuses solely on the fact that the Committee failed to give the Athlete credit for the period of the Provisional Suspension as required by Article 10.9.2.
4. The IRB represented by Mr Christo Ferreira submitted a comprehensive Appeal Brief in which they state that they have no qualm with the Finding nor the period of Ineligibility as determined by the Committee but submitted that

the Committee failed to credit the Athlete with the period of his Provisional Suspension.

5. The Athlete was not present in person or by telephone and made no written submissions.
6. SAIDS was represented by Adv. Nic Kock who submitted that the onus was on the Athlete to prove that he served his Provisional Suspension. No such proof was placed before the Commission and it was therefore correct for the Committee not to give the Athlete credit for the period of the Provisional Suspension.
7. Adv. Kock informed us that he had done considerable research with the assistance of WADA but could not find any case law dealing with the burden of proof, relating to the question as to whether or not a Provisional Suspension was observed or not.
8. He contended however that Article 3.1 of the Code was the authority for his submission that the burden of proof was on the Athlete to satisfy the Committee on a balance of probabilities that he observed the Provisional Suspension.
9. He further submitted that a wide interpretation should be placed on the words *"....Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances"*
10. Consequently, he submitted that the underlined quoted words was in fact a reference to the onus in matters like establishing whether or not a Provisional Suspension was observed by an athlete.
11. This was however never raised or placed in issue by SAIDS at the hearing.
12. It is also common cause that there is no evidence to the effect that the Athlete did not honour his Provisional Suspension.
13. The Committee considered the issue of giving the Athlete credit for the period of Provisional Suspension and concluded as follows:

"There was no indication from the athlete that he had refrained from participating in the sport from the date he received notification of his provisional suspension. The athlete's failure to attend the hearing left the panel with no option but to impose the sentence effective from the date of the hearing."
14. The issue of the Commencement of Ineligibility Period is dealt with in Article 10.9 of the Code and in respect of this matter, Article 10.9.2 which reads as follows:

"10.9.2 Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility to be served"

See also Article 10.9.5 which finds applicability.

15. We cannot find any Article nor could any be pointed out to us, which places the onus on the Athlete to show that he respected the Provisional Suspension. Article 3.1 deals only with an anti-doping rule violation and not a violation of a Provisional Suspension. SAID's submission regarding the applicability of Article 3.1 is therefore not accepted.
16. Article 10.10.3 (Violation of the Prohibition of Participating During Ineligibility), which in our view includes a violation of a Provisional Suspension is applicable and requires SAIDS to determine whether the Athlete has violated the prohibition. No such determination has been made by SAIDS.
17. Our ruling is therefore as follows:
 - 17.1 The Appeal of the IRB is admissible.
 - 17.2 An Athlete who has been served with a Provisional Suspension notice is presumed to have respected such suspension until the contrary is proved.
 - 17.3 The decision of the SAIDS Anti-Doping Disciplinary Committee relating to the date of the commencement of the sanction (19th December 2011) is set aside and substituted with the 2nd November 2011 as the commencement date of the two years ineligibility period.
 - 17.4 No order is made as to costs.
18. This decision may be appealed to the Court of Arbitration for Sport (CAS).



ALEX ABERCROMBIE

Dr Glen Hagemann

Prof. Yoga Coopoo